

**ASX ANNOUNCEMENT**

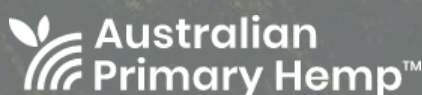
- The Sustainable Nutrition Group Ltd (“**TSN**” or the “**Company**”) has entered into a Scheme Implementation Deed (“**SID**”) with Elixinol Wellness Limited ACN 621 479 794 (“**EXL**”) pursuant to which EXL will acquire 100% of the TSN ordinary shares and 100% of TSN unlisted options under TSN Board-recommended Schemes of Arrangement (“**Schemes**”).
- Upon implementation of the Schemes, TSN shareholders will hold 30% of the merged group and EXL shareholders will hold 70%.
- TSN shareholders will receive 1.1225 EXL shares for every TSN share held on the Schemes record date implying a price per share of \$0.0314, and TSN Scheme Option holders will receive 1.1225 EXL options per TSN option.
- EXL will extend loan funding of up to \$2 million to provide working capital during the period of the Schemes. The loan funding will be secured by a security interest granted by TSN and its operating subsidiary over all of their present and after-acquired property, with some exceptions.
- The TSN Board considers that the Schemes are in the best interests of TSN shareholders and TSN Scheme Option holders and unanimously recommends that TSN shareholders and TSN Scheme Option holders vote in favour of the Schemes.
- If approved, the Schemes are expected to be completed by late March.

**Schemes of Arrangement with Elixinol Wellness Limited**

**Melbourne, Australia, 29 November 2022:** TSN a producer, manufacturer and distributor of premium hemp and plant-based health products, is pleased to announce it has entered into a SID with EXL, a global leader in the hemp industry.

Founded in 2017, EXL through its subsidiaries, manufactures and distributes hemp derived nutraceuticals, cosmetics, and food products under the Elixinol and Hemp Foods Australia brands in the Americas, Europe, and Australia. It offers hemp derived cannabidiol and food products, dietary supplements, topicals, and skincare products.

EXL’s business model predominately distributes products across the Americas and Australia, with intentions to provide branded hemp and other plant derived products to consumers globally via exclusive distribution and/or trademark and know-how licensing agreements.

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### TSN Board Recommendation

The TSN Board unanimously recommends that TSN shareholders and TSN Scheme Option holders vote in favour of the Schemes (as relevant), and each director intends to vote all of the TSN shares held or controlled by them in favour of the Schemes, in the absence of a superior proposal and subject to the Independent Expert concluding that the Schemes are in the best interests of TSN shareholders and TSN Scheme Option holders.

Pauline Gately, Interim Executive Chairman commented: *“The combination of TSN and EXL creates a leading plant-based food, health and wellness company with a strong global distribution network. We immediately recognised the merits of combining the two highly complementary businesses to rapidly broaden the product range and share each other’s leading product development IP to drive cost-effective growth.*

*The economies of scale to be accessed via the combined group are anticipated to facilitate the delivery of cost efficiencies with the objective of accelerating our pathway to profitability. The combined group is anticipated to benefit from potential annualised cost savings of up to \$4.3m identified from the strategic reviews undertaken by both companies, in addition to further identified potential cost synergies of up to \$2.3m, representing total potential annualised cost savings of up to \$6.6m.*

*TSN has always strived to be ahead of the curve within the fast-growing trend towards plant-based nutrition, and we believe this next step in the Company’s journey will allow us to instantly grow our market share.”*

### Background

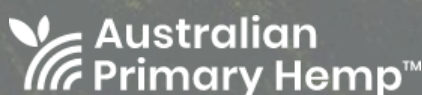
On 18 May 2022, TSN announced that it commenced a strategic review into the operations of the Company, with the objective of maximising shareholder value. Over the term of the review, the Board assessed a number of options relating to the operations of the Company and has unanimously decided that the offer received from EXL reflected in today’s announcement represents the best available option to maximise shareholder value. Further details on the strategic review can be found at the bottom of this announcement.

### Strategic Rationale

The proposed merger aligns with TSN’s strategic objectives of being a vertically integrated, premium hemp and plant-based health and wellness company. The merger will provide the following benefits to the group:

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- **Creates a global plant-based food, health and wellness company:** Optimises the supply chain in Australia and enables the group to leverage access to one of the largest contract grower networks in Australia
- **Highly complementary product set with improved product innovation:** Number of brands increase from 4 to 8, unique products increase from 67 to 143, across the human nutrition, food, CBD, pet, and wellness verticals. Additionally, the combined group's new product development and IP sharing will assist in driving cost effective growth, whilst also accelerating e-commerce growth with the increased SKUs & product range aimed to increase growth in website traffic and online sales through seven e-commerce sites, including in the US
- **Expands distribution network:** Immediately broadens distribution capabilities across Australia from ~2,300 locations to ~4,100 locations, providing substantial cross-sell opportunities for EXL and TSN brands, and the ability for EXL and TSN to expand existing relationships with partners and distributors
- **Increases size and scale:** Leveraging the strategic reviews conducted by both TSN and EXL, the combined group aims to realise economies of scale through the rationalisation of operations and distribution channels. The combined group targets cost and revenue synergies to be realised over time, as well as margin expansion through the consolidation of operations
- **Leveraged to strong sector tailwinds:** The group is positioned to leverage the mainstream shift towards plant based, sustainable nutrition products. The global plant-based protein market is expected to significantly grow from US\$10.3bn in 2020 to US\$17.5bn in 2027<sup>1</sup>. Furthermore, industry and bi-partisan support for CBD to be potentially recognised as a dietary supplement in the US is expected to be a significant catalyst for the market

<sup>1</sup> Food Frontier: Hungry for plant based: Australian Consumer Insights, Colmar Brunton, October 2019

## Details of the Scheme

TSN has entered into the SID with EXL, under which:

- EXL will acquire all of the ordinary shares in TSN held on the record date for consideration of 1.1225 EXL shares being issued per TSN share; and
- EXL will in exchange for the cancellation of all of the unlisted options on issue in TSN on the record date, issue 1.1225 EXL options per TSN option (with an exercise price of A\$0.232) (**Option Scheme**),

by way of schemes of arrangements recommended by the Board (collectively the **Schemes**).

Upon implementation of the Schemes, there will be an implied ownership split of 30% current TSN shareholders and 70% current EXL shareholders.



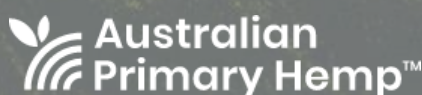
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The implementation of the Schemes are subject to a number of key conditions which include:

- approval by TSN shareholders and the Scheme Option holders;
- receipt of any applicable court or regulatory approval and material third party consents;
- no material adverse change in TSN/EXL's business; and
- other conditions precedent customary for transactions of this nature.

In addition, the SID provides for a number of conditions precedent to the implementation of the Schemes, including but not limited to:

- (a) some current TSN option holders will have their TSN options cancelled pursuant to an option cancellation agreement with TSN;
- (b) holders of TSN performance rights will have their performance rights either vest, lapse or be cancelled (immediately prior to implementation of the Schemes) pursuant to an agreement with TSN; and
- (c) TSN will be required to present evidence of a level of net debt at the date of implementation of the Schemes that is satisfactory to EXL as a condition precedent to the implementation of the Schemes.

The SID includes customary deal protection provisions including exclusivity provisions, reciprocal break fees payable in certain circumstances (capped at \$271,000 exclusive of GST for TSN), no shop, no talk and no due diligence obligations, as well as notification requirements and matching rights in the event a competing proposal emerges. The Schemes are not subject to any financing conditions.

The full terms of the SID, as well as other agreed terms are enclosed with this announcement. Capitalised terms which are otherwise not defined in this announcement have the meaning given in the SID.


Subject to the relevant conditions being satisfied, the Schemes are expected to be implemented in late March.

#### Loan Arrangement Between TSN and EXL

Additionally and separate to the Schemes, EXL will provide loan funding of up to \$2 million to TSN's operating subsidiary, The Sustainable Nutrition Group (Australia) Pty Ltd ACN 614 061 794. The secured 12-month loan is on arm's length terms, with an interest rate of 11.51% per annum. An initial drawdown of \$1.15 million occurred upon execution of the SID.

  
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The proceeds of the loan must be used for refinancing existing debt, to cover the costs, fees and expenses to undertake the Schemes as well as working capital requirements in the period prior to the Schemes becoming effective. Upon the Schemes becoming effective, the loan will be refinanced to an unsecured intercompany loan. If the Schemes do not complete, the loan is repayable in full within 12 months.

### Illustrative Timetable

TSN shareholders and Scheme Option holders do not need to take any action at this time.

A Scheme booklet containing information relating to the Schemes, the reasons for the TSN directors' recommendation, the Independent Expert's report and details of the Scheme Meetings will be dispatched to TSN shareholders and Option holders in advance of the Scheme Meetings.

An indicative timetable for completion of the transactions the subject of the Schemes is set out below. This timetable is indicative only and is subject to change due to factors including Court availability, the satisfaction (or, if applicable waiver) of the conditions precedent and the timing of any necessary regulatory approvals.

<b>First Court Hearing</b>	Early February 2023
<b>Scheme Meetings</b>	Early March 2023
<b>Second Court Hearing</b>	Early March 2023
<b>Effective Date</b>	Late March 2023
<b>Record Date</b>	Late March 2023
<b>Implementation Date</b>	Late March 2023

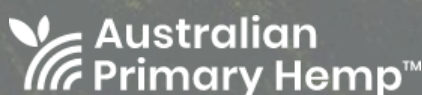
### Advisors

TSN is advised by Canaccord Genuity (Australia) Limited (**Canaccord**) as financial advisor and K&L Gates as legal advisor in relation to the transaction.

Canaccord has agreed to only take success fees to be satisfied by the issue of equity in the merged group as outlined in the SID attached to this announcement.

  
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### Strategic Review

TSN today announces the outcomes of its strategic review that was announced on 18 May 2022. The review was undertaken to assess the Company's product ranging, customer acquisition pipeline, cost base and financial forecasts, following the loss of a strategic customer supply agreement for existing branded goods (announced on 18 May 2022), and the resignation of the CEO (announced on 26 May 2022).

As announced in the quarterly report dated 29 July 2022, TSN secured an initial finance facility of \$230,000 from a non-bank lender to meet its short-term capital obligations. TSN planned to continue pursuing a long-term solution to its working capital need, while also conducting a strategic review and determining an appropriate strategy to execute its inventory monetisation plans.

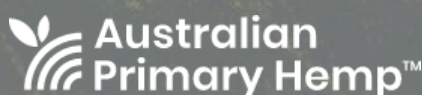
As a function of the review, TSN explored a number of plans to monetise excess grain inventory. Discussions were held with strategic parties to consider offloading the grain in bulk, whilst plans to de-hull the grain to improve margins or process it into products were also considered.

Throughout the review process, the potential sale or merger of all, or parts, of TSN was assessed, with engagement from a number of parties. EXL was identified as the most-suitable party due to its complementary product mix, cost and revenue synergy potential, and ability to assist TSN with funding its working capital requirement.

The Board has implemented a number of cost reductions initiatives, for a total potential annualised net savings of \$1.1m (excluding potential transaction-related merger cost synergy of up to \$2.3m), with the objective to accelerate TSN's pathway to cashflow breakeven and to re-focus marketing and operational efforts on the most successful SKUs. Throughout the strategic review, emphasis has been placed on optimising the Company's balance sheet, reducing headcount and marketing expenses, in addition to prioritising the development of SKUs in high growth markets such as the pet product range.

### Suspension Update

The Company is in the final stages of finalising the 30 June 2022 Financial Report and is expected to resume trading following the release of this report. The Annual Report is expected to be lodged by 9 December 2022.

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**For further information, please contact:**

Pauline Gately  
Interim Executive Chair  
The Sustainable Nutrition Group Ltd  
+61 3 9692 7222

**Authorised for release by the TSN Board of Directors****About EXL**

Elixinol Wellness Limited (ASX:EXL) is a global leader in the hemp industry, innovating, marketing and selling hemp derived nutraceutical and food products. The Company's simplified business model is focusing on:

- In the Americas, innovating, marketing and selling high quality Elixinol branded hemp derived nutraceutical and skincare products based in Colorado, USA
- In Australia, Hemp Foods Australia is a leading hemp food wholesaler, retailer, manufacturer and exporter of bulk and branded raw materials, and finished products
- In the United Kingdom, South Africa, Japan, Brazil, Mexico and Malaysia (pending approvals), Elixinol branded products are available to consumers via exclusive Distribution and/or Trademark and Know-How Licensing Agreements
- Across the Rest of World, expanding distribution of branded hemp derived products through reputable distributors as key markets open.

See more at [www.elixinolwellness.com](http://www.elixinolwellness.com)

**About TSN**

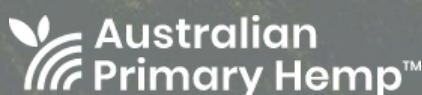
The Sustainable Nutrition Group Ltd ("TSN") is a vertically integrated business which produces, manufactures, and distributes a range of sustainable and plant-based nutrition brands, including hemp products under the Mt Elephant, Australian Primary Hemp, Field Day and The Australian Superfood Company brands to retail, wholesale, e-commerce and white label customers in Australia. TSN engages across the value chain encompassing seed selection, farming, processing, packaging, distribution and sales of bulk, food service and retail products.

**Forward-Looking Statements**

This announcement contains forward-looking statements, including references to forecasts. Forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties, assumptions and other important factors, many of which are beyond TSN's control and speak only as of the date of this announcement. Readers are cautioned not to place undue reliance on forward-looking statements.

  
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Australian  
Primary Hemp™**ASX Code: TSN****THE SUSTAINABLE NUTRITION GROUP LTD**[www.sustainablenutrition.com.au](http://www.sustainablenutrition.com.au)

Level 4, 100 Albert Road, South Melbourne VIC 3205

Dated 28 November 2022

**Elixinol Wellness Limited**  
ABN 34 621 479 794

and

**The Sustainable Nutrition Group Ltd**  
ABN 48 071 666 334

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**SCHEME IMPLEMENTATION DEED**

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**Bird & Bird**

Level 22, 25 Martin Place  
Sydney NSW 2000 Australia  
Telephone: 61 2 9226 9888  
[www.twobirds.com](http://www.twobirds.com)  
Ref: ELIGL.0116



## CONTENTS

	<b>Clause Heading</b>	<b>Page</b>
1.	Definitions and interpretation.....	1
2.	Agreement to proceed with Scheme and Option Scheme .....	14
3.	Conditions Precedent and pre-implementation steps.....	15
4.	Scheme Steps .....	21
5.	Option Scheme Steps .....	23
6.	Implementation .....	24
7.	Conduct of business and requests for access .....	32
8.	Target Board recommendation .....	38
9.	Representations and warranties.....	40
10.	Releases.....	41
11.	Public announcements .....	42
12.	Exclusivity.....	43
13.	Target Break Fee.....	47
14.	Bidder Break Fee .....	49
15.	Termination .....	50
16.	Confidentiality .....	52
17.	GST .....	52
18.	Notices .....	53
19.	General provisions.....	54
	Schedule 1 Bidder Representations and Warranties.....	56
	Schedule 2 Target Representations and Warranties.....	59
	Schedule 3 Target Prescribed Occurrences and Bidder Prescribed Occurrences .....	62
	Schedule 4 Timetable.....	66
	Annexure A Form of Scheme.....	68
	Annexure B Form of Deed Poll.....	69
	Annexure C Form of Option Scheme .....	70
	Annexure D Form of Option Scheme Deed Poll.....	71

**THIS DEED** is made the 28th day of November 2022

**BETWEEN**

- (1) **Elixinol Wellness Limited** ABN 34 621 479 794 of C/- Company Matters Pty Limited, Level 12, 680 George Street, Sydney NSW 2000 (**Bidder**)
- (2) **The Sustainable Nutrition Group Ltd** ABN 48 071 666 334 of C/- Leydin Freyer, Level 4, 96-100 Albert Road, South Melbourne VIC 3205 (**Target**)

**RECITALS**

- (A) The parties have agreed that the Bidder will acquire all of the Scheme Shares by means of a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and its shareholders.
- (B) The parties have also agreed that the Bidder will, in consideration of the cancellation of all of the Scheme Options, issue options in the Bidder pursuant to a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and its optionholders.
- (C) The Target has agreed to propose and implement the Scheme and the Option Scheme, and the Bidder has agreed to assist the Target to propose and implement the Scheme and the Option Scheme, on the terms of this deed.

**OPERATIVE PROVISIONS**

**1. Definitions and interpretation**

**1.1 Definitions**

The following definitions apply unless the context requires otherwise.

**Accounting Standards** means:

- (a) the applicable accounting standards made by the relevant regulatory body, and the requirements relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied, except those inconsistent with the standards or requirements referred to in paragraph (a).

**Adviser** means, in relation to an entity, a financial, corporate, legal, or other expert adviser or consultant, who provides advisory or consultancy services in a professional capacity in the ordinary course of its business and has been engaged in that capacity in connection with the Transaction by the entity.

**ASIC** means the Australian Securities and Investments Commission.

**Associate** has the definition given to that term in section 12 of the Corporations Act, where the “designated body” is the Target or the Bidder (as applicable).

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

**ASX Listing Rules** means the official Listing Rules of the ASX as amended from time to time.

**Bidder Board** means the board of directors of the Bidder.

**Bidder Break Fee** means an amount being the actual third party costs incurred by the Target with respect to the Scheme, Option Scheme and implementation of the Target's obligations under this deed (in recognition that the Target will incur substantially higher costs than the

Bidder in implementation of the Scheme and Option Scheme including but not limited to ASIC fees, Adviser costs, Court fees, Independent Expert fees and the costs in seeking its own Scheme Shareholder and Scheme Optionholder approval) but capped at \$271,000 (plus GST);

**Bidder Counterproposal** has the meaning given in clause 12.4(a)(v).

**Bidder Data Room Materials** means the Bidder Disclosure Letter and the written information, documents and responses disclosed or made available to the Target or its Representatives by or on behalf of the Bidder on or before 5:00pm on 27 November 2022 in the “EXL Data Room”, an index of which has been initialled for identification by the Bidder’s solicitors on behalf of the Bidder and by the Target’s solicitors on behalf of the Target).

**Bidder Disclosure Letter** means the letter so entitled from the Bidder provided to the Target on or before the date of this deed and any document identified in that letter as having been disclosed to the Target subject to such document having been Fairly Disclosed in the Bidder Due Diligence Material.

**Bidder Due Diligence Material** means the Bidder Data Room Materials and any information disclosed by or on behalf of the Bidder Group (including in response to requests for information) to a Target Party, including any written information disclosed to the Target and its Advisers.

**Bidder Executive Team** means Ronald Dufficy, Global Chief Executive Officer, Teresa Cleary, Group General Counsel & Company Secretary and Josephine Lorenz, Global Chief Financial Officer of the Bidder.

**Bidder Group** means the Bidder and each of its Subsidiaries (excluding, at any time, the Target and its Subsidiaries to the extent that the Target and its Subsidiaries are Subsidiaries of the Bidder at that time). A reference to a member of the Bidder Group or a Bidder Group Member is a reference to the Bidder or any such Subsidiary.

**Bidder Information** means information about the Bidder Group provided or approved by Bidder or any of its Advisers to the Target in writing for inclusion in the Scheme Booklet, as required by clauses 6.3(a) and 6.3(g).

**Bidder Material Adverse Change** means any event, occurrence, circumstance or matter that occurs, is discovered or is announced (each a **Specified Event**) on or after the date of this deed, which has resulted in, or is reasonably likely to result in, either individually or when aggregated with all such events, occurrences, circumstances or matters of a like kind or category:

- (a) a reduction in the consolidated annual operating profit of the Bidder Group by an amount more than \$1,750,000.00 based on the annualised operating profit as calculated on a quarterly basis (calculated in a manner consistent with the Bidder Group's annual accounts and after taking into account any Specified Event after the date of this deed that has or could reasonably be expected to have a positive effect on consolidated annual operating profit), as compared to what the consolidated annual operating profit of the Bidder Group could reasonably be expected to have been but for Specified Event; or
- (b) a diminution in the consolidated net assets of the Bidder Group by an amount equal to \$1,750,000.00 or more, as compared to what the consolidated net assets of the Bidder Group could reasonably be expected to have been but for the Specified Event,

in each case other than any event, occurrence, circumstance or matter:

- (c) required or expressly permitted by this deed, the Scheme or the Option Scheme;
- (d) which Target has previously approved or requested in writing;



- (e) to the extent that it was Fairly Disclosed in the Bidder Due Diligence Material or the Bidder Disclosure Letter;
- (f) Fairly Disclosed to ASX within 12 months prior to the date of this deed or Fairly Disclosed in a document lodged with ASIC that is publicly available by or on behalf of Bidder within 12 months prior the date of this deed;
- (g) which would have been Fairly Disclosed to the Target had the Target conducted searches 10 Business Days before the date of this deed of the PPS Register or the public records maintained by the High Court of Australia, the Federal Court of Australia or the Supreme Courts of each Australian State and Territory in relation to the Bidder or a Subsidiary of the Bidder (as relevant);
- (h) arising from an act of terrorism, war (whether or not declared), natural disaster, epidemic, pandemic or adverse weather conditions, cyber security incident or the like after the date of this deed;
- (i) relating to third party costs and expenses incurred by Bidder associated with the Transaction, including any fees payable to external Advisers of Bidder, to the extent such amounts are Fairly Disclosed in the Bidder Due Diligence Material or Bidder Disclosure Letter; or
- (j) arising from the announcement of, or entry into, or performance of obligations under, this deed and consummation of the transactions contemplated by it (including, to the extent it arises out of the entry into or performance of those obligations, the loss of any contract).

**Bidder Party** means any member of the Bidder Group or any officer, employee or Adviser of any member of the Bidder Group.

**Bidder Prescribed Occurrence** means the occurrence on or after the date of this deed of any of the occurrences set out in Schedule 3, other than an occurrence:

- (a) required or expressly permitted by this deed, the Scheme or the Option Scheme;
- (b) to the extent that it was Fairly Disclosed in the Bidder Due Diligence Materials or the Bidder Disclosure Letter;
- (c) to the extent it is Fairly Disclosed in filings of the Bidder with the ASX before the date of this deed or Fairly Disclosed in a document which would be disclosed in a search of ASIC records or the PPS Register or the public records maintained by the High Court of Australia, the Federal Court of Australia or the Supreme Courts of each Australian State and Territory in relation to the Bidder or a Subsidiary of the Bidder (as relevant); or
- (d) with the written consent of the Target.

**Bidder Representation and Warranty** means a representation and warranty of the Bidder set out in Schedule 1.

**Bidder Security Right** means a performance right, performance share, warrant, convertible note, instrument, deferred consideration share or other security (or offer or agreement to issue any of the foregoing) that may convert into, or result in the issue of, a Bidder Share, whether granted under the Bidder employee incentive plan(s) or otherwise.

**Bidder Share** means an issued fully paid ordinary share in the capital of the Bidder.

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

**Business Day** means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day that banks are open for business in Sydney, Australia, other than a Saturday, Sunday or public holiday.

**Canaccord** means Canaccord Genuity (Australia) Limited ABN 19 075 071 466.

**Canaccord Mandate** means the mandate agreement between Canaccord and the Target dated on or about the date of this agreement.

**Cancellation Option** means 3,396,422 Target Options.

**Cancellation Optionholder** means a holder of a Cancellation Option.

**Claim** means in relation to a person, an obligation, debt, demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent, whether at law, in equity, under statute or otherwise.

**Competing Proposal** means any proposal, offer, agreement or transaction, which if entered into or completed, would result in a Third Party (alone or with one or more Associates):

- (a) in the case of the Target:
  - (i) directly or indirectly acquiring a Relevant Interest in, Voting Power, or becoming the holder of, or otherwise having a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of Target Shares or more than 50% of the share capital of any material Subsidiary of the Target (including through one or more derivative contracts);
  - (ii) directly or indirectly acquiring control within the meaning of section 50AA of the Corporations Act of the Target or a material Subsidiary of the Target;
  - (iii) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of the Target's business or assets or the business or assets of the Target Group;
  - (iv) otherwise directly or indirectly acquiring or merging with Target or a material Subsidiary of Target; or
  - (v) entering into any agreement, arrangement or understanding requiring the Target to abandon, or otherwise fail to proceed with, the Transaction,

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

- (b) in the case of the Bidder:
  - (i) directly or indirectly acquiring a Relevant Interest in, Voting Power, or becoming the holder of, or otherwise having a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of Bidder Shares or more than 50% of the share capital of any material Subsidiary of the Bidder (including through one or more derivative contracts);

- (ii) directly or indirectly acquiring control within the meaning of section 50AA of the Corporations Act of the Bidder or a material Subsidiary of the Bidder;
- (iii) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of the Bidder's business or assets or the business or assets of the Bidder Group;
- (iv) otherwise directly or indirectly acquiring or merging with the Bidder or a material Subsidiary of Bidder; or
- (v) entering into any agreement, arrangement or understanding requiring the Bidder to abandon, or otherwise fail to proceed with, the Transaction,

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

**Conditions Precedent** has the meaning given in clause 3.1.

**Confidentiality Deed** means the confidentiality deed between the Bidder and the Target dated 15 July 2022.

**Consideration Option** means an option to acquire a Bidder Share, to be issued under the Option Scheme.

**Consideration Share** means a fully paid share in the capital of the Bidder, to be issued under the Scheme.

**Corporations Act** means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

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

**Court** means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing between the parties.

**Deed Poll** means a deed poll in favour of all Scheme Shareholders in the form of Annexure B (or such other form agreed to in writing between the parties to this deed).

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

**Effective Date** means the date on which the Scheme or the Option Scheme (as applicable) becomes Effective.

**End Date** means the date that is seven months after the date of this deed or such other date as may be agreed in writing between the Target and the Bidder.

**Excluded Options** means 334,000 Target Options.

**Excluded Optionholder** means the holder of the Excluded Options.

**Exclusivity Period** means the period from and including the date of this deed to the earlier of:



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

**EXL secured loan** means the secured loan of up to \$2 million by the Bidder to the Target pursuant to the terms of a facility agreement and a general security deed, each dated on or about the date of this deed.

**Fairly Disclosed** means disclosed in sufficient detail and with sufficient specificity so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in mergers and acquisitions transactions involving businesses of the same or similar nature to the businesses conducted by the Target Group and the Bidder Group to identify and understand the nature and scope of the relevant matter, event or circumstance.

**Financial Indebtedness** means any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee;
- (d) finance or capital lease;
- (e) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or business;
- (f) agreement for the deferral of a purchase price or other payment in relation to the provision of services other than in the ordinary course of business of the Target Group or Bidder Group (as applicable); or
- (g) obligation to deliver goods or provide services paid for in advance by any financier.

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting and the Option Scheme Meeting be convened is heard or, if the application is adjourned for any reason, the day on which the adjourned application is heard.

**German Arbitration Proceedings** means the arbitration proceedings numbered DIS-SV-2021-00590 commenced on 8 December 2021 in the German Arbitration Institute between Elixinol B.V. and Mr. Frank Otto and others.

**Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world, including ASIC, ASX, the Foreign Investment Review Board, Australian Competition and Consumer Commission and equivalent bodies in jurisdictions outside Australia.

**GST** means goods and services tax in terms of the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Law** has the meaning given to that term in the GST Act.

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

**Implementation Date** means the fifth Business Day after the Scheme Record Date or such other date agreed to in writing between the Bidder and the Target or as may be required by ASX.

**Income Tax Assessment Act** means the *Income Tax Assessment Act 1997* (Cth).

**Independent Expert** means the independent expert appointed by the Target to prepare the Independent Expert's Report.

**Independent Expert's Report** means a report (including any written updates to such report) of the Independent Expert stating whether or not in its opinion the Scheme and the Option Scheme is in the best interests of Target Shareholders and Scheme Optionholders (as applicable).

**Ineligible Foreign Optionholder** means a Scheme Optionholder whose address shown in the Target Register as at the Scheme Record Date is a place outside of Australia and its external territories (unless Bidder determines that it is lawful and not duly onerous or impracticable to provide that Scheme Optionholder with Consideration Options when the Option Scheme becomes effective).

**Ineligible Foreign Shareholder** means a Scheme Shareholder whose address shown in the Target Share Register as at the Scheme Record Date is a place outside of Australia and its external territories (unless Bidder determines that it is lawful and not duly onerous or impracticable to provide that Scheme Shareholder with Consideration Shares when the Scheme becomes effective).

**Ineligible Shareholder** means an Ineligible Foreign Shareholder or an Unmarketable Parcel Shareholder.

**Ineligible Shares** has the meaning given to that term in clause 4.4.

**Insolvency Event** means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);
- (d) it has an administrator, controller or similar officer appointed, or any step preliminary to the appointment of such an officer is taken;
- (e) an application or an order is made, proceedings are commenced, or a resolution is passed (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days) for:
  - (i) its winding up, dissolution or administration; or
  - (ii) it entering into an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (f) a:
  - (i) receiver, receiver and manager, administrative receiver or similar officer is appointed to;
  - (ii) Security Interest becomes enforceable or is enforced over; or

- (iii) distress, attachment or other execution is levied or enforced or applied for over, all or a substantial part of its assets; or
- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

**Net Debt** means the cash and cash equivalents belonging to the Target, less Financial Indebtedness, as determined in accordance with the relevant Accounting Standards.

**Option Cancellation Agreement** means in respect of each Cancellation Option, an agreement between the Target and the Cancellation Optionholder under which, subject to the Scheme becoming Effective, the Cancellation Options held by the Cancellation Optionholder are cancelled.

**Option Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Optionholders in the form of Annexure C (or such other form agreed to in writing between the parties to this deed).

**Option Scheme Conditions** has the meaning given to that term in clause 3.2.

**Option Scheme Consideration** has the meaning given to that term in clause 5.2.

**Option Scheme Deed Poll** means a deed poll in favour of all Scheme Optionholders in the form of Annexure D (or such other form agreed to in writing between the parties to this deed).

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

**Order** means any decree, judgment, injunction, direction, writ or other order, whether temporary, preliminary or permanent, made or given by a court of competent jurisdiction or by another Government Agency.

**Option Swap Agreement** means in respect of the Excluded Options, an agreement between the Bidder and the Excluded Optionholder under which, subject to the Scheme becoming Effective, the Excluded Options held by the holder are cancelled and the Excluded Optionholder is issued options in the Bidder conferring the same benefits as reasonably practical as the current Excluded Options issued by the Target.

**Performance Rights Agreement** means in respect of each Target Performance Right, an agreement between the Target and the holder of Target Performance Rights under which, subject to the Scheme becoming Effective, the Target Performance Rights held by the holder will vest, lapse or be cancelled.

**PPS Register** means the register established under the PPSA.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

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

**Regulatory Approvals** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without notification.



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

**Relevant Interest** has the meaning given in the Corporations Act.

**Representative** means, in relation to the Bidder or the Target:

- (a) each other member of the Bidder Group or Target Group (as applicable);
- (b) an officer or employee of a member of the Bidder Group or Target Group (as applicable); or
- (c) an Adviser to a member of the Bidder Group or Target Group (as applicable), but excluding the Independent Expert.

**Required Regulatory Approvals** has the meaning given in clause 3.4(a).

**Retention Conditions** means:

- (a) the retention of employment by the Target of a minimum of two of the Target Executive Team;
- (b) the retention of employment by the Bidder of a minimum of two of the Bidder Executive Team; and
- (c) the Bidder has made irrevocable, subject to the implementation of the Scheme, offers of employment in an executive capacity (and no less favourable than their existing arrangements) to the Target Executive Team.

**Sale Nominee** means the agent appointed by the Target and the Bidder (each acting reasonably and in good faith) in accordance with clause 6.1(aa) to sell the Consideration Shares that are attributable to Ineligible Shareholders under the terms of the Scheme (or any nominee of such person).

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders in the form of Annexure A (or such other form agreed to in writing between the parties to this deed).

**Scheme Booklet** means the scheme booklet to be prepared by the Target in accordance with clause 6.1(a) and to be approved by the Court and despatched to Target Shareholders and Scheme Optionholders and which must include the Scheme, Option Scheme, an explanatory statement complying with all applicable laws, including the requirements of the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the ASX Listing Rules, the Independent Expert's Report, notice of the Scheme Meeting, notice of the Option Scheme Meeting and a proxy form for the Scheme Meeting and Option Scheme Meeting.

**Scheme Consideration** has the meaning given in clause 4.2.

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

**Scheme Optionholder** means a person registered in the Target Register as the holder of one or more Scheme Options as at the Scheme Record Date, other than an Excluded Optionholder and a Cancellation Optionholder.

**Scheme Options** means the Target Options on issue as at the Scheme Record Date, other than the Excluded Options and Cancellation Options.

**Scheme Record Date** means 7:00 pm on the date which is two (2) Business Days after the Effective Date, or such other Business Day agreed in writing between the parties, or as may be required by ASX.

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

**Scheme Shares** means the Target Shares on issue as at the Scheme Record Date.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme and Option Scheme is heard or, if the application is adjourned for any reason, the day on which the adjourned application is heard.

**Security Interest** means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 51A of the Corporations Act or in the PPSA.

**Specified Contract** means each of the leases of the premises occupied by the Target Group as at the date of this deed.

**Subsidiary** has the meaning given in the Corporations Act, provided that an entity will also be taken to be a Subsidiary of another entity if it is controlled by that entity (as “control” is defined in section 50AA of the Corporations Act) and, without limitation:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share;
- (b) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation; and
- (c) an entity will also be deemed to be a Subsidiary of an entity if that entity is required by the Accounting Standards to be consolidated with that entity.

**Superior Proposal** means a bona fide unsolicited written Competing Proposal received by the Target (and not received as a result of a breach by the Target of its obligations under clause 12) after the date of this deed that the Target Board considers, acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary and statutory duties (after having obtained written advice from the Target's legal adviser and financial advisers):

- (a) is reasonably capable of being completed in accordance with its terms; and
- (b) would, if completed substantially in accordance with its terms, result in a transaction that is more favourable to Target Shareholders than the Transaction (as the Transaction may be amended or varied following application of the matching right set out in clause 12.4),

taking into account all material terms and conditions of the Competing Proposal (including consideration, conditionality, funding, certainty and timing) and the identity of the person making it.

**Takeovers Panel** means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001 (Cth)*.

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

**Target Break Fee** means an amount being the actual third party costs incurred by the Bidder with respect to the Scheme, Option Scheme and implementation of the Bidder's obligations under this deed but capped at \$200,000.00 (plus GST).

**Target Data Room Materials** means the Target Disclosure Letter and the written information, documents and responses disclosed or made available to the Bidder or its Representatives by or on behalf of the Target on or before 5:00pm on 27 November 2022 in the

“Project Scoria – TSN Data Room” hosted by TwoBirds Access, an index of which has been initialled for identification by the Target’s solicitors on behalf of the Target and by the Bidder’s solicitors on behalf of the Bidder).

**Target Disclosure Letter** means the letter so entitled from the Target provided to the Bidder on or before the date of this deed and any document identified in that letter as having been disclosed to the Bidder subject to such document having been Fairly Disclosed in the Target Due Diligence Material.

**Target Director** means a director of the Target.

**Target Due Diligence Material** means the Target Data Room Materials and any information disclosed by or on behalf of the Target Group (including in response to requests for information) to a Bidder Party, including any written information disclosed to the Bidder and its Advisers.

**Target Equity Plan** means the Employee Incentive Plan issued by the Target.

**Target Executive Team** means Mitch Costin, Operations Manager and Sarah Jensen, Sales Director of the Target and Natalie Martin, General Manager of The Australian Super Food Company.

**Target Group** means the Target and each of its Subsidiaries. A reference to a member of the Target Group is a reference to the Target or any such Subsidiary.

**Target Information** means all information in the Scheme Booklet, including, but not limited to information regarding the Target Group prepared by the Target for inclusion in the Scheme Booklet that explains the effect of the Scheme and the Option Scheme and sets out the information prescribed by the Corporations Act and the Corporations Regulations but excluding the Bidder Information, the Independent Expert’s Report or any description of the taxation effect of the Transaction on Scheme Shareholders and Scheme Optionholders prepared by an external adviser to the Target.

**Target Material Adverse Change** means any event, occurrence, circumstance or matter that occurs, is discovered or is announced (each a **Specified Event**) on or after the date of this deed, which has resulted in, or is reasonably likely to result in, either individually or when aggregated with all such events, occurrences, circumstances or matters of a like kind or category:

(a) a reduction in the consolidated annual operating profit of the Target Group by an amount more than \$750,000.00 based on the annualised operating profit as calculated on a quarterly basis (calculated in a manner consistent with the Target Group’s annual accounts and after taking into account any Specified Event after the date of this deed that has or could reasonably be expected to have a positive effect on consolidated annual operating profit), as compared to what the consolidated annual operating profit of the Target Group could reasonably be expected to have been but for Specified Event; or

(b) a diminution in the consolidated net assets of the Target Group by an amount equal to \$750,000.00 or more, as compared to what the consolidated net assets of the Target Group could reasonably be expected to have been but for the Specified Event,

in each case other than any event, occurrence, circumstance or matter:

(c) required or expressly permitted by this deed, the Scheme or the Option Scheme;

(d) which Bidder has previously approved or requested in writing;

(e) to the extent that it was Fairly Disclosed in the Target Due Diligence Material or the Target Disclosure Letter;

- (f) Fairly Disclosed to ASX within 12 months prior to the date of this deed or Fairly Disclosed in a document lodged with ASIC that is publicly available by or on behalf of Target within 12 months prior the date of this deed;
- (g) which would have been Fairly Disclosed to the Bidder had the Bidder conducted searches 10 Business Days before the date of this deed of the PPS Register or the public records maintained by the High Court of Australia, the Federal Court of Australia or the Supreme Courts of each Australian State and Territory in relation to the Target or a Subsidiary of the Target (as relevant);
- (h) arising from an act of terrorism, war (whether or not declared), natural disaster, epidemic, pandemic or adverse weather conditions, cyber security incident or the like after the date of this deed;
- (i) relating to third party costs and expenses incurred by Target associated with the Transaction, including any fees payable to external Advisers of Target, to the extent such amounts are Fairly Disclosed in the Target Due Diligence Material or Target Disclosure Letter; or
- (j) arising from the announcement of, or entry into, or performance of obligations under, this deed and consummation of the transactions contemplated by it (including, to the extent it arises out of the entry into or performance of those obligations, the loss of any contract).

**Target Option** means an option to acquire a Target Share.

**Target Optionholder** means a person who is registered as the holder of one or more Target Options from time to time.

**Target Party** means any member of the Target Group or any officer, employee or Adviser of any member of the Target Group.

**Target Performance Rights** means 420,000 Target performance rights.

**Target Prescribed Occurrence** means the occurrence on or after the date of this deed of any of the occurrences set out in Schedule 3, other than an occurrence:

- (a) required or expressly permitted by this deed, the Scheme or the Option Scheme;
- (b) to the extent that it was Fairly Disclosed in the Target Due Diligence Material or the Target Disclosure Letter;
- (c) to the extent it is Fairly Disclosed in filings of the Target with the ASX before the date of this deed or Fairly Disclosed in a document which would be disclosed in a search of ASIC records or the PPS Register or the public records maintained by the High Court of Australia, the Federal Court of Australia or the Supreme Courts of each Australian State and Territory in relation to the Target or a Subsidiary of the Target (as relevant); or
- (d) with the written consent of the Bidder.

**Target Register** means the register of securityholders of the Target maintained by or on behalf of the Target in accordance with the Corporations Act.

**Target Representation and Warranty** means a representation and warranty of the Target set out in Schedule 2.

**Target Security Right** means a performance right, performance share, warrant, convertible note, instrument or other security (or offer or agreement to issue any of the foregoing) that may convert into a Target Share, whether granted under the Target Equity Plan or otherwise.

**Target Share** means an issued fully paid ordinary share in the capital of the Target.

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

**Third Party** means a person other than any member of the Bidder Group or the Target Group (as applicable).

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Schedule 4, which may be subject to modification.

**Transaction** means the acquisition of the Scheme Shares by the Bidder through implementation of the Scheme and the cancellation of the Scheme Options through implementation of the Option Scheme in accordance with the terms of this deed.

**Unmarketable Parcel Shareholder** means a Scheme Shareholder (other than an Ineligible Foreign Shareholder) who, on the Scheme Record Date, holds less than a marketable parcel (as that term is defined in the ASX Listing Rules) of Target Shares (assessed using the price of Target Shares on ASX at close of trade on the Effective Date).

**Voting Power** has the meaning given in the Corporations Act.

**Voting Statement** has the meaning given in clause 8.1(b)(ii).

## **1.2 Interpretation**

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

- (a) Headings and subheadings are for convenience only and do not affect the interpretation of this deed.
- (b) Words denoting the singular include the plural and words denoting the plural include the singular.
- (c) Words importing a gender include any gender.
- (d) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The word “person” includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency.
- (f) A reference to a party, clause, schedule or annexure is a reference to a party to, clause of, or schedule or annexure to, this deed.
- (g) A reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced from time to time.
- (h) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a consolidation, amendment, re-enactment or replacement of it, and a regulation or other instrument made under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.

- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to \$ or dollars is to Australian currency.
- (m) A reference to time is a reference to Sydney, Australia time unless otherwise specified.
- (n) Specifying anything in this deed after the terms “include”, “including”, “includes”, “for example”, “such as” or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.
- (o) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.
- (p) A term as defined in or for the purposes of the Corporations Act has the same meaning when used in this deed unless the context otherwise requires.

### **1.3 Business Day**

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

### **1.4 Consents or approvals**

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

### **1.5 Reasonable or best endeavours**

Any provision of this deed that requires a party to use reasonable endeavours or best endeavours to procure that something is performed or occurs or does not occur, does not include any obligation:

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Government Agency; or
  - (b) to commence any legal action or proceeding against any person,
- except where that provision expressly specifies otherwise.

### **1.6 Listing requirements included as law**

An ASX Listing Rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to a party to the compliance of those rules by a party.

## **2. Agreement to proceed with Scheme and Option Scheme**

- (a) The Target agrees to propose the Scheme and Option Scheme on and subject to the terms of this deed, and substantially in accordance with the Timetable.
- (b) The Bidder agrees to assist the Target to propose the Scheme and Option Scheme, on and subject to the terms of this deed, and substantially in accordance with the Timetable.



- (c) The Target and the Bidder agree to implement the Scheme and the Option Scheme on and subject to the terms of this deed, and substantially in accordance with the Timetable.

### **3. Conditions Precedent and pre-implementation steps**

#### **3.1 Conditions Precedent to Scheme**

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme are not binding, unless each of the following conditions precedent (**Conditions Precedent**) are satisfied or waived in accordance with clauses 3.3 and 3.5:

- (a) (**Orders convening Scheme Meeting**) the Court orders the convening of the Scheme Meeting under section 411(1) of the Corporations Act;
- (b) (**Target Shareholder approval**) Target Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act;
- (c) (**Independent Expert**) the Independent Expert issues an Independent Expert's Report which concludes that the Scheme and the Option Scheme is in the best interests of Target Shareholders and Scheme Optionholders (as applicable) before the time when the Scheme Booklet is registered with ASIC and does not publicly change or withdraw that conclusion before 8:00am on the Second Court Date;
- (d) (**Court approval**) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act (either unconditionally and without modification or with modifications or conditions consented to by the Bidder in accordance with clause 3.1(e)) and a copy of those orders is lodged with ASIC as contemplated in section 411(10) of the Corporations Act;
- (e) (**ASIC and ASX consents**): before 8:00am on the Second Court Date, ASIC and ASX issue or provide such consents, waivers and/or approvals which are reasonably necessary to implement the Scheme (noting that if such consents, waivers and/or approvals are subject to conditions those conditions must be acceptable to the Bidder acting reasonably and such consent, waiver and/or approval has not been withdrawn or revoked before 8:00am on the Second Court Date);
- (f) (**Other Governmental Authorities**) before 8:00am on the Second Court Date, the relevant Government Agency issues or provides such consents, waivers, approvals which the Bidder reasonably considers are necessary or desirable to implement the Scheme (noting that if such consents, waivers and/or approvals are subject to conditions those conditions must be acceptable to the Bidder) and such consent, waiver and/or approval has not been withdrawn or revoked before 8:00am on the Second Court Date;
- (g) (**No restraints**) no applicable law, regulation or rule shall have been enacted and no Order shall be in effect as at 8:00am on the Second Court Date (or the intended date for the Second Court Date, but for such law, regulation, rule or Order) that prevents or prohibits the implementation of the Scheme;
- (h) (**No Target Material Adverse Change**) no Target Material Adverse Change occurs between the date of this deed and 8:00am on the Second Court Date;
- (i) (**No Bidder Material Adverse Change**) no Bidder Material Adverse Change occurs between the date of this deed and 8:00am on the Second Court Date;
- (j) (**No Target Prescribed Occurrence**) no Target Prescribed Occurrence occurs between the date of this deed and 8:00am on the Second Court Date, which has not been remedied as at 8:00am on the Second Court Date;

- (k) **(No Bidder Prescribed Occurrence)** no Bidder Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date, which has not been remedied as at 8.00am on the Second Court Date;
- (l) **(Option Scheme)** all of the Option Scheme Conditions are satisfied or waived in accordance with the requirements of this deed, other than the Option Scheme Condition in clause 3.2(g).
- (m) **(Cancellation Options)** before 8:00am on the Second Court Date:
  - (i) the Target has complied with its obligations under clause 4.5 in relation to the Cancellation Options; and
  - (ii) Option Cancellation Agreements have been duly executed and exchanged by the parties thereto and are legally binding and effective, in respect of all Cancellation Options so that there are no Cancellation Options which are not the subject of an Option Cancellation Agreement;
- (n) **(Excluded Options)** before 8.00am on the Second Court Date:
  - (i) The Bidder has complied with its obligations under clause 4.6 in relation to the Excluded Options; and
  - (ii) Option Swap Agreements have been duly executed and exchanged by the parties thereto and are legally binding and effective, in respect of all Excluded Options so that there are no Excluded Options which are not the subject of an Option Swap Agreement;
- (o) **(Target Performance Rights)** Before 8:00am on the Second Court Date:
  - (i) the Target has complied with its obligations under clause 4.7 in relation to the Target Performance Rights;
  - (ii) Performance Rights Agreements have been duly executed and exchanged by the parties thereto and are legally binding and effective, in respect of all Target Performance Rights so that there are no Target Performance Rights which are not the subject of a Performance Rights Agreement;
- (p) **(Retention Conditions)** the Retention Conditions have been satisfied;
- (q) **(Specified Contract)** before 8:00am on the Second Court Date, in respect of each Specified Contract, the relevant counterparty has provided their consent, approval, waiver or confirmation to the change of control or ownership of the Target (or a Subsidiary of the Target) that will arise from implementation of the Scheme as required under the relevant Specified Contract and subject only to conditions acceptable to Bidder (acting reasonably);
- (r) **(Net Debt balance)**: before 8:00am on the Second Court Date, the Target has delivered to the Bidder documentation evidencing that, as at the Effective Date and as at the Implementation Date, the Target will have a Net Debt balance of no greater than \$2,000,000;
- (s) **(Canaccord Shares)**: Immediately prior to the Second Court Date, the Bidder has delivered to the Target a document confirming that it has assumed the obligation under the Canaccord Mandate to issue Canaccord 9,036,068 Bidder Shares immediately post-implementation of the Transaction.

### 3.2 Conditions to Option Scheme

Subject to this clause 3, the Option Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Option Scheme are not binding, unless each of the following conditions precedent (**Option Scheme Conditions**) are satisfied or waived in accordance with clauses 3.3 and 3.5:

- (a) (**Orders convening Option Scheme Meeting**) the Court orders the convening of the Option Scheme Meeting under section 411(1) of the Corporations Act;
- (b) (**Scheme Optionholder approval**) Scheme Optionholders approve the Option Scheme at the Option Scheme Meeting by the requisite majorities under section 411(4)(a)(ii) of the Corporations Act;
- (c) (**Court approval**) the Court approves the Option Scheme in accordance with section 411(4)(b) of the Corporations Act (either unconditionally and without modification or with modifications or conditions consented to by the Bidder in accordance with clause 4.8) and a copy of those orders is lodged with ASIC as contemplated in section 411(10) of the Corporations Act;
- (d) (**ASIC and ASX consents**): before 8:00am on the Second Court Date, ASIC and ASX issue or provide such consents, waivers and/or approvals which are reasonably necessary to implement the Option Scheme (noting that if such consents, waivers and/or approvals are subject to conditions those conditions must be acceptable to the Bidder acting reasonably and such consent, waiver and/or approval has not been withdrawn or revoked before 8:00am on the Second Court Date);
- (e) (**Other Governmental Authorities**) before 8:00am on the Second Court Date, the relevant Government Agency issues or provides such consents, waivers, approvals which the Bidder reasonably considers are necessary or desirable to implement the Option Scheme (noting that if such consents, waivers and/or approvals are subject to conditions those conditions must be acceptable to the Bidder) and such consent, waiver and/or approval has not been withdrawn or revoked before 8:00am on the Second Court Date;
- (f) (**No restraints**) no applicable law, regulation or rule shall have been enacted and no Order shall be in effect as at 8:00am on the Second Court Date (or the intended date for the Second Court Date, but for such law, regulation, rule or Order) that prevents or prohibits the implementation of the Option Scheme; and
- (g) (**Scheme**) The Scheme becoming Effective.

### 3.3 Reasonable endeavours and co-operation

Without prejudice to any other obligations of the parties under this deed:

- (a) Bidder must use its reasonable endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(i), 3.1(k), 3.1(n) and 3.1(s);
- (b) Target must use its reasonable endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(h), 3.1(j), 3.1(m), 3.1(o), and 3.1(r);
- (c) each party must, to the extent it is within its power to do so, use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(a), 3.1(c), 3.1(d), 3.1(e), 3.1(f), 3.1(g), 3.1(l), 3.1(q) and 3.1(r) and the Option Scheme Conditions in clauses 3.2(a), 3.2(c), 3.2(d), 3.2(e), 3.2(f) and 3.2(g); and
- (d) the parties must each use its reasonable endeavours to procure that no occurrence within its control will prevent the satisfaction of any Condition Precedent or Option Scheme Condition, except to the extent that such action is required to be done or

procured pursuant to, or is otherwise permitted by, this deed or the Scheme or Option Scheme, or is required by law.

### **3.4 Regulatory Approvals**

Without limiting the generality of clause 3.3 and subject to clause 3.4(d):

- (a) the Bidder must, to the extent it has not already done so prior to the date of this deed, apply for all necessary Regulatory Approvals for the Transaction (**Required Regulatory Approvals**) as soon as practicable and the Target must provide such assistance in respect of any such application as the Bidder may reasonably request, and each party must take all reasonable steps required as part of the approval process in respect of any such application, including responding to reasonable requests for information at the earliest practicable time;
- (b) the Bidder must keep the Target reasonably informed of progress in relation to the obtaining of the Required Regulatory Approvals, including:
  - (i) by promptly providing the Target with reasonable details of all dealings with Government Agencies in relation to the applications for Required Regulatory Approvals (including any requests for information by such Government Agencies; and any conditions or other arrangements proposed by any Government Agency in respect of such Required Regulatory Approvals);
  - (ii) by promptly providing the Target with any material information or matter which is likely to result in a delay in receipt of a Required Regulatory Approval that would mean the Timetable is unlikely to be achieved, or indicate that a Required Regulatory Approval is unlikely to be given; and
  - (iii) to the extent reasonably practicable to do so, by consulting with the Target, in advance, in relation to all proposed material communications and the proposed content of those communications (whether written or oral and whether direct or via an Adviser) with any Government Agency relating to any Required Regulatory Approval, and in relation to each proposed material step in the process of obtaining each Required Regulatory Approval;
- (c) without limiting clause 3.4(b), the Bidder must:
  - (i) provide the Target with drafts of any material written communications to be sent to a Government Agency, and allow the Target a reasonable opportunity to make comments on them prior to them being sent; and
  - (ii) promptly provide copies of any material written communications received from a Government Agency; and
- (d) before providing any document or other information to the Target pursuant to this clause 3.4, Bidder may redact any part of that document, or not disclose any part of that information, which contains or constitutes confidential, competitively sensitive or privileged information relating to the existing business or affairs of the Bidder or its Related Bodies Corporate, to the extent that the Bidder reasonably considers that the disclosure of such information to the Target would be unlawful or damaging to the commercial or legal interests of the Bidder or its Related Bodies Corporate, or would be reasonably likely to jeopardise any attorney-client, work product or other legal privilege.

### **3.5 Waiver of Conditions Precedent**

- (a) The Conditions Precedent in clauses 3.1(a) to 3.1(g)(other than clause 3.1(c)) and clause 3.1(l) and the Option Scheme Conditions in clauses 3.2(a) to 3.2(g) are for the benefit of the Target and the Bidder and cannot be waived.

- (b) The Conditions Precedent in clauses 3.1(h), 3.1(j), 3.1(m), 3.1(o), 3.1(p), 3.1(q) and 3.1(r) are for the sole benefit of the Bidder, and any breach or non-satisfaction of those Conditions Precedent may only be waived by the Bidder giving its written consent.
- (c) The Conditions Precedent in clauses 3.1(c), 3.1(i), 3.1(k), 3.1(n) and 3.1(s) are for the sole benefit of the Target, and any breach or non-satisfaction of those Conditions Precedent may only be waived by the Target giving its written consent.
- (d) A party entitled to waive the breach or non-satisfaction of a Condition Precedent or Option Scheme Condition pursuant to this clause 3.5 may do so in its absolute discretion.
- (e) If a waiver by a party of a Condition Precedent or an Option Scheme Condition is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent or Option Scheme Condition has not been waived.
- (f) If a party waives the breach or non-satisfaction of a Condition Precedent or an Option Scheme Condition, that waiver will not preclude it from suing the other party for any breach of this deed constituted by the same event that gave rise to the breach or non-satisfaction of the relevant Condition Precedent or Option Scheme Condition.
- (g) Waiver of a breach or non-satisfaction in respect of one Condition Precedent or Option Scheme Condition does not constitute:
  - (i) a waiver of breach or non-satisfaction of any other Condition Precedent or Option Scheme Condition resulting from the same events or circumstances; or
  - (ii) a waiver of breach or non-satisfaction of that Condition Precedent or Option Scheme Condition resulting from any other event or circumstance.

### **3.6 Notifications**

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent or Option Scheme Conditions;
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent or Option Scheme Condition has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent or Option Scheme Condition has been satisfied; and
- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or Option Scheme Condition or of any fact or circumstance that results in that Condition Precedent or Option Scheme Condition becoming incapable of being satisfied or that may result in that Condition Precedent or Option Scheme Condition not being satisfied in accordance with its terms.

### **3.7 Scheme voted down because of Headcount Test**

- (a) If the Scheme is not approved by Target Shareholders at the Scheme Meeting, or the Option Scheme is not approved by the Scheme Optionholders at the Option Scheme Meeting, by reason only of the non-satisfaction of the Headcount Test and the Target or the Bidder considers, acting reasonably, that the splitting by a holder of Target Shares into two or more parcels of Target Shares or the splitting by a holder of Target Options into two or more parcels of Target Options (whether or not it results in any change in beneficial ownership of the Target Shares or Target Options) or some abusive or

improper conduct may have caused or materially contributed to the Headcount Test not having been satisfied then the Target must:

- (i) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme or Option Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
  - (ii) make such submissions to the Court and file such evidence as counsel engaged by the Target to represent it in Court proceedings related to the Scheme or Option Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.
- (b) If the Court's approval of the Scheme or Option Scheme under section 411(4)(b) of the Corporations Act is given, notwithstanding that the Headcount Test has not been satisfied, the Condition Precedent in clause 3.1(b) or Option Scheme Condition in clause 3.2(b) is deemed to be satisfied for all purposes.

### **3.8 Failure of Conditions Precedent**

- (a) If:
- (i) there is a breach or non-satisfaction of a Condition Precedent or Option Scheme Condition which is not waived in accordance with this deed by the time or date specified in this deed for the satisfaction of the Condition Precedent or Option Scheme Condition;
  - (ii) there is an act, failure to act, event or occurrence that would, or does prevent a Condition Precedent or Option Scheme Condition being satisfied by the time and date specified in this deed for the satisfaction of that Condition Precedent or Option Scheme Condition (and the breach or non-satisfaction which would otherwise occur has not already been waived in accordance with this deed); or
  - (iii) the Scheme and the Option Scheme have not become Effective by the End Date,
- then either party may serve a written notice on the other party, and the parties must promptly consult in good faith with a view to determining whether:
- (iv) the Scheme or the Transaction may proceed by way of alternative means or methods;
  - (v) to extend the relevant time or date for satisfaction of the Condition Precedent or Option Scheme Condition;
  - (vi) to change the First Court Date or to adjourn the application for orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or Option Scheme Meeting to another date agreed by the parties;
  - (vii) to change the Second Court Date or to adjourn the application for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or Option Scheme to another date agreed by the parties; or
  - (viii) to extend the End Date.
- (b) If Target and Bidder are unable to reach agreement under clauses 3.8(a)(iv), 3.8(a)(v), 3.8(a)(vi), 3.8(a)(vii) or 3.8(a)(viii) within five Business Days after the delivery of the notice under that clause or any shorter period ending at 5:00pm on the day before the



Second Court Date, either party may terminate this deed by notice in writing to the other party, provided that:

- (i) the Condition Precedent or Option Scheme Condition to which the notice relates is for the benefit of that party (whether or not the Condition Precedent or Option Scheme Condition is also for the benefit of the other party); and
- (ii) there has been no failure by that party to comply with its obligations under this deed, where that failure directly and materially contributed to the Condition Precedent or Option Scheme Condition to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date,

in which case clause 15.3 will have effect.

### **3.9 Certificates in relation to Conditions Precedent and Option Scheme Conditions**

- (a) On the Second Court Date each party must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8:00am on the Second Court Date the Conditions Precedent and the Option Scheme Conditions (other than the conditions in clauses 3.1(d) and 3.2(c)) have been satisfied or waived in accordance with this deed.
- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 3.9(a) by 5:00pm on the day that is two Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

## **4. Scheme Steps**

### **4.1 Scheme**

The Target must propose a scheme of arrangement to the Target Shareholders under which:

- (a) all of the Scheme Shares will be transferred to the Bidder; and
- (b) the Scheme Shareholders will be entitled to receive the Scheme Consideration in accordance with the terms of this deed and the Scheme.

### **4.2 Scheme Consideration**

The consideration to be provided by the Bidder in respect of each Scheme Share is the issue of 1.1225 Consideration Shares per Scheme Share (**Scheme Consideration**).

### **4.3 Allotment and issue of Consideration Shares**

- (a) The Bidder undertakes to the Target (in its own right and as trustee on behalf of the Scheme Shareholders) that, in consideration of the transfer to the Bidder of the Scheme Shares under the terms of the Scheme, on the Implementation Date it will:
  - (i) accept that transfer; and
  - (ii) allot and issue to Scheme Shareholders 1.1225 Consideration Shares for each Scheme Share in accordance with the Scheme and the Deed Poll, on such terms that each Consideration Share will as from the date of such issue rank equally in all respects with each existing share of that class issued by the Bidder and will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.
- (b) To facilitate the issue of the Consideration Shares to Scheme Shareholders on the Implementation Date, the Target must provide to the Bidder, or procure the provision

to the Bidder, of a complete copy of the Target Register as at the Scheme Record Date (which must include the name, registered address and registered holding of each Scheme Shareholder as at the Scheme Record Date), within one Business Day after the Scheme Record Date. The details and information to be provided under this clause must be provided in such form as the Bidder's share registry may reasonably require, as notified to the Target by the Bidder prior to the Scheme Record Date.

- (c) Subject to the Scheme becoming effective, the Bidder must use all reasonable endeavours to ensure that the Consideration Shares are, from the Business Day following the Effective Date (or such later date as ASX requires), quoted for trading on ASX initially on a deferred settlement basis and thereafter on an ordinary settlement basis as required by the ASX Listing Rules.
- (d) The Bidder will not issue any Consideration Shares to Ineligible Shareholders and clause 4.4 will apply to Ineligible Shareholders.

#### **4.4 Implementation steps in relation to Ineligible Shareholders**

- (a) The Bidder will issue the Consideration Shares that would otherwise have been issued to Ineligible Shareholders as Scheme Consideration to the Sale Nominee appointed by the Target, in accordance with the terms of the Scheme (such Consideration Shares being **Ineligible Shares**). The Bidder will issue the Ineligible Shares to the Sale Nominee on the Implementation Date and before the Scheme Shares held by Ineligible Shareholders are transferred to the Bidder on that date.
- (b) The Target must procure that the Sale Nominee deals with the Ineligible Shares in accordance with the terms of the Scheme.

#### **4.5 Cancellation Options**

The Target must use reasonable best efforts to procure that as soon as reasonably practicable, and in any event within 20 Business Days after the date of this deed, each person who is a holder of a Cancellation Option enters into an Option Cancellation Agreement with the Target.

#### **4.6 Excluded Options**

The Bidder must use reasonable efforts to procure that as soon as reasonably practicable and in any event within 20 Business Days after the date of this deed, each person who is a holder of an Excluded Option enters into the Option Swap Agreement with the Bidder.

#### **4.7 Performance Rights**

The Target must use reasonable best efforts to procure that as soon as reasonably practicable, and in any event within 20 Business Days after the date of this deed, each person who is a holder of Target Performance Rights enters into a Performance Rights Agreement with the Target.

#### **4.8 No amendment to Scheme without consent**

The Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of the Bidder.

#### **4.9 Fractional entitlements**

Any fractional entitlement of a Scheme Shareholder to a part of a Consideration Share will be rounded up or down to the nearest whole number of Consideration Shares (rounded up if the fractional entitlement is equal to or greater than one half, and rounded down if the fractional entitlement is less than one half).

#### **4.10 Joint holders**

In the case of Target Shares held in joint names, any certificates or uncertificated holding statements for Consideration Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders and will be forwarded to the holder whose name appears first in the Target Register on the Scheme Record Date.

### **5. Option Scheme Steps**

#### **5.1 Option Scheme**

The Target must propose a scheme of arrangement to the Scheme Optionholders under which:

- (a) all of the Scheme Options will be cancelled; and
- (b) the Scheme Optionholders will be entitled to receive the Option Scheme Consideration in accordance with the terms of this deed and the Option Scheme.

#### **5.2 Option Scheme Consideration**

The consideration to be provided by the Bidder in respect of each Scheme Option is the issue of 1.1225 Consideration Options per Scheme Option (**Option Scheme Consideration**).

#### **5.3 Allotment and issue of Consideration Options**

- (a) The Bidder undertakes to the Target (in its own right and as trustee on behalf of the Scheme Optionholders) that, in consideration of the cancellation of the Scheme Options under the terms of the Option Scheme, on the Implementation Date it will allot and issue to Scheme Optionholders 1.1225 Consideration Options for each Scheme Option cancelled in accordance with the Option Scheme and the Option Scheme Deed Poll.
- (b) To facilitate the issue of the Consideration Options to Scheme Optionholders on the Implementation Date, the Target must provide to the Bidder, or procure the provision to the Bidder, of a complete copy of the Target Register as at the Scheme Record Date (which must include the name, registered address and registered holding of each Scheme Optionholder as at the Scheme Record Date), within one Business Day after the Scheme Record Date. The details and information to be provided under this clause must be provided in such form as the Bidder's share registry may reasonably require, as notified to the Target by the Bidder prior to the Scheme Record Date.
- (c) The Bidder will not issue any Consideration Options to Ineligible Foreign Optionholders and clause 4.4 will apply to Ineligible Foreign Optionholders.

#### **5.4 No amendment to Option Scheme without consent**

The Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Option Scheme without the prior written consent of the Bidder.

#### **5.5 Fractional entitlements**

Any fractional entitlement of a Scheme Optionholder to a part of a Consideration Option will be rounded up or down to the nearest whole number of Consideration Options (rounded up if the fractional entitlement is equal to or greater than one half, and rounded down if the fractional entitlement is less than one half).

#### **5.6 Joint holders**

In the case of Target Options held in joint names, any certificates or uncertificated holding statements for Consideration Options to be issued to Scheme Optionholders will be issued in

the names of the joint holders and will be forwarded to the holder whose name appears first in the Target Register on the Scheme Record Date.

## **6. Implementation**

### **6.1 Target's obligations**

The Target must take all necessary steps to propose and implement the Scheme and Option Scheme as soon as is reasonably practicable after the date of this deed and must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including by doing any acts it is authorised and able to do on behalf of Target Shareholders and Scheme Optionholders and each of the following:

- (a) **(Preparation of Scheme Booklet)** Subject to clauses 6.3(a), 6.3(b) and 6.3(d), prepare the Scheme Booklet so that it complies with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the ASX Listing Rules. The Scheme Booklet must include a statement that:
  - (i) other than the Bidder Information and the Independent Expert's Report, the Scheme Booklet has been prepared by the Target and is the responsibility of the Target, and that no Bidder Party assumes any responsibility for the accuracy or completeness of the Scheme Booklet (other than the Bidder Information); and
  - (ii) the Bidder Information has been provided by the Bidder and is the responsibility of the Bidder, and that no Target Party assumes any responsibility for the accuracy or completeness of the Bidder Information.

The Scheme Booklet and all public announcements by the Target in relation to the Scheme and Option Scheme (other than announcements as to purely administrative matters) must also include the Recommendation and Voting Statement required under clause 8 (subject always to the qualifications and limitations contained therein).

- (b) **(Independent Expert)** Promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this deed), and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (c) **(Review of draft Independent Expert's Report)** Following receipt from the Independent Expert, provide the Bidder with the draft report received from the Independent Expert for factual accuracy review only (noting in each case that any draft of the Independent Expert's Report provided to the Bidder for review will not include those sections containing the Independent Expert's opinion), and as soon as reasonably practicable give to the Independent Expert any comments that the Bidder provides the Target in relation to factual matters regarding the Bidder in any draft of the Independent Expert's Report.
- (d) **(Consultation with Bidder)** Consult with the Bidder as to the content and presentation of the Scheme Booklet, such consultation to include allowing the Bidder a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet a reasonable time before its lodgement with ASIC and obtain the Bidder's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) prior to lodgement of the Scheme Booklet with ASIC. The Target must consider in good faith any comments on drafts of the Scheme Booklet provided by or on behalf of the Bidder.
- (e) **(Approval of draft for ASIC)** as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving that draft as being in a form appropriate for

provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act.

- (f) **(Due diligence and verification)** Undertake appropriate due diligence and verification processes in relation to the Target Information and, after those processes have been completed, provide on or before the First Court Date an affidavit to the Court confirming the due diligence and verification processes undertaken and their completion.
- (g) **(Liaison with ASIC)** As soon as reasonably practicable after the date of this deed but no later than 14 days before the First Court Date, and following the Bidder giving confirmation or providing changes as contemplated by clause 6.3(e), provide an advanced draft of the Scheme Booklet to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and to the Bidder, and keep the Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use reasonable endeavours, in consultation with the Bidder, to resolve any such matters (provided that the Target may not resolve any such matters without the prior written consent of the Bidder to the extent that such matters relate to the Bidder Information).
- (h) **(Liaison with ASX)** As soon as reasonably practicable after the date of this deed but no later than 14 days before the First Court Date, and following the Bidder giving confirmation or providing changes as contemplated by clause 6.3(e), provide an advanced draft of the Scheme Booklet to ASX for its review in accordance with the ASX Listing Rules, and keep the Bidder reasonably informed of any matters raised by ASX in relation to the Scheme Booklet (and of any resolution of those matters), and use reasonable endeavours, in consultation with the Bidder, to resolve any such matters (provided that the Target may not resolve any such matters without the prior written consent of the Bidder to the extent that such matters relate to the Bidder Information).
- (i) **(Indication of intent)** Apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date.
- (j) **(Approval of Scheme Booklet)** As soon as practicable after conclusion of the review by ASIC and ASX of the Scheme Booklet, procure that a meeting of the Target Board is convened for the purpose of approving the Scheme Booklet for despatch to Target Shareholders and Scheme Optionholders, subject to approval of the Court.
- (k) **(Court direction)** Apply to the Court for orders directing the Target to convene the Scheme Meeting and Option Scheme Meeting, and consult with the Bidder as to the content of all relevant originating process, affidavits, submissions and draft minutes of Court orders. Such consultation must include providing the Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and the Target must consider in good faith any comments provided by or on behalf of the Bidder.
- (l) **(ASIC registration)** If the Court directs the Target to convene the Scheme Meeting, use reasonable endeavours to cause ASIC to register the Scheme Booklet under subsection 412(6) of the Corporations Act.
- (m) **(Despatch)** Provide the Scheme Booklet to Target Shareholders and Scheme Optionholders following receipt of the Bidder's written consent to the inclusion of the Bidder Information in the form and context in which the Bidder Information appears in such version of the Scheme Booklet.
- (n) **(Update Scheme Booklet)** If, after the Scheme Booklet has been provided to Target Shareholders and Scheme Optionholders, it becomes aware of information that is:
  - (i) not included in the Scheme Booklet and that is:

- (A) material for disclosure to Target Shareholders and Scheme Optionholders in deciding whether to approve the Scheme or Option Scheme (as applicable); or
  - (B) required to be disclosed to Target Shareholders or Scheme Optionholders under any applicable law; or
- (ii) included in the Scheme Booklet and is misleading or deceptive in a material respect in the form and context in which it appears in the Scheme Booklet,
 

inform Target Shareholders or Scheme Optionholders of the information in an appropriate and timely manner, in accordance with applicable law. The Target must consult with the Bidder as to the form and content of any supplementary disclosure before it is made to Target Shareholders and Scheme Optionholders, and, to the extent reasonably practicable, must provide the Bidder with a reasonable opportunity to review and comment on such disclosure before it is made and must consider in good faith any comments provided by or on behalf of the Bidder. To the extent that any supplementary disclosure relates to (or constitutes) Bidder Information, it may only be made with the Bidder's prior written consent (not to be unreasonably withheld or delayed).
- (o) **(Promote Transaction)** Participate in efforts reasonably requested by Bidder to promote the merits of the Transaction, the Scheme Consideration and Option Scheme Consideration, including, where requested by the Bidder, meeting with key Target Shareholders and Target Optionholders.
- (p) **(Information):**
  - (i) Provide reasonable information about the Scheme, Option Scheme, the Target Shareholders and the Target Optionholders to the Bidder and its Advisers which the Bidder requests and reasonably requires in order to:
    - (A) canvass views on the Scheme by Target Shareholders and the Option Scheme by Scheme Optionholders;
    - (B) facilitate the provision by, or on behalf of, the Bidder of the Scheme Consideration and the Option Scheme Consideration; or
    - (C) review the tally of proxy appointments and directions received by the Target before the Scheme Meeting and the Option Scheme Meeting.
  - (ii) Within 5 Business Days after the date of this deed, provide the Bidder with:
    - (A) a copy of the Target Register as at the date of this deed to the extent doing so does not breach applicable privacy laws; and
    - (B) the most recently available information in Target's possession regarding the beneficial ownership of Target Shares and Target Options and including a copy of the most recent beneficial ownership analysis report received by the Target (which, for the avoidance of doubt, may be as at a date prior to the date of this deed).
  - (iii) Provide the Bidder:
    - (A) every two weeks, a copy of the latest Target Register; and
    - (B) every two weeks, the most recently available information in the Target's possession regarding the beneficial ownership of Target Shares and Target Options including a copy of the most recent beneficial ownership analysis report received by the Target,



provided that if the Target Register or any beneficial ownership analysis report is received by the Target more frequently than every two weeks the Target must provide the Bidder with a copy of each such report after it is received by the Target.

- (q) **(Scheme Meeting)** Convene the Scheme Meeting to seek the Target Shareholders' agreement to approve the Scheme (in accordance with any orders made by the Court).
- (r) **(Option Scheme Meeting)** Convene the Option Scheme Meeting to seek the Scheme Optionholders' agreement to approve the Option Scheme (in accordance with any orders made by the Court).
- (s) **(No objection statement)** Apply to ASIC for the production of a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme and the Option Scheme.
- (t) **(Court approval)** Subject to:
  - (i) all Conditions Precedent in clause 3.1 (other than that in clause 3.1(d) and 3.1(l)) being satisfied or waived in accordance with this deed; and
  - (ii) all Option Scheme Conditions in clause 3.2 (other than that in clause 3.2(c) and 3.2(g)) being satisfied or waived in accordance with this deed,apply to the Court for:
  - (iii) orders approving the Scheme; and
  - (iv) orders approving the Option Scheme,and consult with the Bidder as to the content of all relevant affidavits, submissions and draft minutes of Court orders. Such consultation must include providing the Bidder with a reasonable opportunity to review and comment on the relevant Court documents before they are lodged, and the Target must consider in good faith any comments provided by or on behalf of the Bidder.
- (u) **(Court order)** If the Scheme and Option Scheme is approved by the Court, lodge with ASIC an office copy of any Court order approving the Scheme and Option Scheme by no later than the first Business Day after the day such office copy is received (or such later date as Bidder may agree in writing).
- (v) **(Court representation)** Procure that it is represented by counsel at the Court hearings convened in relation to the Scheme and Option Scheme, at which, through its counsel or solicitors, the Target will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed, the Scheme and the Option Scheme.
- (w) **(Scheme implementation)** If the Scheme becomes Effective:
  - (i) procure ASX to suspend trading in Target Shares from the close of trading on the Effective Date;
  - (ii) close the Target Register at the Scheme Record Date to determine the identity of Scheme Shareholders and their entitlements to the Scheme Consideration; and
  - (iii) subject to the Bidder satisfying its obligations under clause 4.3, execute proper instruments of transfer of the Scheme Shares on behalf of the Scheme Shareholders in favour of the Bidder and procure the registration in the Target

Register of all transfers of Scheme Shares to the Bidder under those instruments on the Implementation Date.

- (x) **(Option Scheme implementation)** If the Option Scheme becomes Effective:
  - (i) close the Target Register at the Scheme Record Date to determine the identity of Scheme Optionholders and their entitlements to the Option Scheme Consideration; and
  - (ii) subject to the Bidder satisfying its obligations under clause 5.3, cancel the Scheme Options on the Implementation Date.
- (y) **(ASX listing)** Maintain the Target's admission to the official list of ASX and the quotation of Target Shares on ASX up to and including the Implementation Date.
- (z) **(ASX delisting)** If directed by the Bidder in writing at any time after the Implementation Date, the Target must take all steps necessary for the Target to be removed from the official list of ASX, including lodging a request for removal with ASX and satisfying any conditions reasonably requested by ASX for it to act on that request.
- (aa) **(Sale Nominee Appointment)** As soon as reasonably practicable after obtaining the Court direction in clause 6.1(k), and in cooperation with the Bidder, appoint an agent as Sale Nominee.
- (bb) **(Regulatory notifications)** In relation to the Regulatory Approvals, lodge with any Government Agency within the relevant periods all documentation and filings required by law to be so lodged by the Target in relation to the Transaction.
- (cc) **(Bidder Information)** Without the prior written consent of the Bidder, not use the Bidder Information for any purposes other than those contemplated by this deed and the Scheme and Option Scheme.
- (dd) **(Compliance with laws)** Do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.
- (ee) **(Certificate)** Before the commencement of the hearing by the Court of the application for the orders under section 411(4)(b) of the Corporations Act, give to the Bidder a certificate signed by the Target stating whether or not each representation or warranty given by the Target is true and correct in all material respects as at the time it is given or made under clause 9.2.

## 6.2 Appeal process

If the Court refuses to make any orders convening the Scheme Meeting or Option Scheme Meeting or approving the Scheme or Option Scheme:

- (a) The Target and the Bidder must consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) The Target must appeal the Court's decision (unless the parties agree otherwise, or an independent senior counsel of the bar of New South Wales or Victoria advises before the End Date that, in their view, an appeal would have no reasonable prospect of success).

## 6.3 Bidder's obligations

The Bidder must take all reasonably necessary steps to assist the Target to propose and implement the Scheme and Option Scheme as soon as is reasonably practicable after the date of

this deed and must use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step, including each of the following:

- (a) **(Bidder Information)** Prepare and provide to the Target the Bidder Information for inclusion in the Scheme Booklet to comply with all applicable laws, including the Corporations Act, ASIC Regulatory Guide 60 and the ASX Listing Rules relevant to the Bidder Information and consult with the Target as to the content and presentation of the Bidder Information in the Scheme Booklet, such consultation to include allowing the Target a reasonable opportunity to review and make comments on successive drafts of the Bidder Information before lodgement of the Scheme Booklet with ASIC. The Bidder must consider in good faith any comments on drafts of the Bidder Information provided by or on behalf of the Target.
- (b) **(Review drafts of Scheme Booklet)** Review drafts of the Scheme Booklet prepared by the Target and provide any comments on those drafts as soon as practicable.
- (c) **(Due Diligence and Verification)** Undertake appropriate due diligence and verification processes in relation to the Bidder Information and, after those processes have been completed, provide on or before the First Court Date an affidavit to the Court confirming the due diligence and verification processes undertaken and their completion.
- (d) **(Independent Expert information)** Provide all assistance and information reasonably requested by the Target or by the Independent Expert in connection with the preparation of the Independent Expert's Report.
- (e) **(Confirmation of Bidder Information)** Before the Scheme Booklet is provided to ASIC pursuant to section 411(2) of the Corporations Act, procure that a meeting of the Bidder Board is held to consider the Bidder Information included in the Scheme Booklet as being in a form appropriate for provision to ASIC for review, and either:
  - (i) confirm in writing to the Target that the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission; or
  - (ii) provide to the Target the changes required to ensure that the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission.
- (f) **(Approval and consent to inclusion of Bidder Information)** As soon as reasonably practicable after the conclusion of the review by ASIC and ASX of the Scheme Booklet:
  - (i) procure that a meeting of the Bidder Board is held to consider the Bidder Information included in the Scheme Booklet as being in a form appropriate for despatch to Target Shareholders and Scheme Optionholders, subject to approval of the Court including but not limited to ensuring that the Bidder Information is not false, misleading or deceptive in any material respect (whether by omission or otherwise) at the date of despatch; and
  - (ii) confirm in writing to the Target that the Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears.
- (g) **(Update Bidder Information)** If at any time after the despatch of the Scheme Booklet, the Bidder becomes aware:

- (i) of new information which, were it known at the time of despatch, should have been included in any Bidder Information included in that version of the Scheme Booklet; or
- (ii) that any part of the Bidder Information included in that version of the Scheme Booklet is misleading or deceptive in any material respect (whether by omission or otherwise),

it must advise the Target so that the Target can determine whether supplementary disclosure to Target Shareholders and Scheme Optionholders is required in accordance with (and subject to the terms of) clause 6.1(n).

- (h) **(Deed Poll)** At least one Business Day before the First Court Date, enter into the Deed Poll and Option Scheme Deed Poll and deliver them to the Target.
- (i) **(Court representation)** If requested by the Target or desired by the Bidder, procure that it is represented by counsel at the Court hearings convened in relation to the Scheme and Option Scheme, at which, through its counsel or solicitors, the Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed, the Scheme and the Option Scheme.
- (j) **(Target Share transfer)** If the Scheme becomes effective, accept and otherwise do all things necessary to effect the transfer of the Scheme Shares to the Bidder as contemplated by the Scheme on the Implementation Date including execute proper instruments of transfer of the Scheme Shares and otherwise agree to be bound by the constitution of the Target.
- (k) **(Scheme Consideration and Implementation)** If the Scheme becomes Effective, on the Implementation Date, provide the Scheme Consideration in accordance with the terms of the Scheme, including by:
  - (i) approving the issue of Consideration Shares to Scheme Shareholders and the Sale Nominee in accordance with the Scheme;
  - (ii) ensuring that each Consideration Share so issued is fully paid and free from Security Interests;
  - (iii) updating the register of members of the Bidder accordingly;
  - (iv) applying to ASX for quotation of all new Bidder Shares issued as Scheme Consideration in accordance with the requirements of this deed and the Deed Poll; and
  - (v) doing all other things necessary to give effect to the Scheme and the Court orders approving the Scheme.
- (l) **(Option Scheme Consideration and Implementation)** If the Option Scheme becomes Effective, on the Implementation Date, provide the Option Scheme Consideration in accordance with the terms of the Option Scheme, including by:
  - (i) approving the issue of Consideration Options to Scheme Optionholders in accordance with the Option Scheme;
  - (ii) ensuring that each Consideration Option is free from Security Interests;
  - (iii) updating the register of optionholders of the Bidder accordingly; and
  - (iv) doing all other things necessary to give effect to the Option Scheme and the Court orders approving the Option Scheme,

- (m) **(Promote Transaction)** Participate in efforts reasonably requested by the Target to promote the merits of the Transaction, the Scheme Consideration and the Option Scheme Consideration, including, where requested by the Target, meeting with key Target Shareholders or Target Optionholders.
- (n) **(Regulatory Approvals)** Apply for any Regulatory Approval required by the Bidder to implement the Scheme or Option Scheme and to permit the issue of the Consideration Shares and Consideration Options within the time periods contemplated by the Scheme and Option Scheme (as applicable).
- (o) **(Regulatory notifications)** In relation to the Regulatory Approvals, lodge with any Government Agency within the relevant periods all documentation and filings required by law to be so lodged by the Bidder in relation to the Transaction.
- (p) **(Target Information)** Without the prior written consent of the Target, not use the Target Information for any purposes other than those contemplated by this deed, the Scheme and the Option Scheme.
- (q) **(Compliance with laws)** Do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.
- (r) **(Certificate)** Before the commencement of the hearing by the Court of the application for the orders under section 411(4)(b) of the Corporations Act, give to the Target a certificate signed by the Bidder stating whether or not each representation or warranty given by the Bidder is true and correct in all material respects as at the time it is given or made under clause 9.1.

#### **6.4 Disagreement on content of Scheme Booklet**

If the parties disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of Scheme Booklet. If after 2 Business Days complete agreement is not reached, then:

- (a) where the determination relates to Bidder Information, the Bidder will make the final determination, acting reasonably, as to the form and content of the Bidder Information; and
- (b) in any other case, the Target, acting reasonably, will make the final determination as to the form and content of the Scheme Booklet.

#### **6.5 Sequence of actions on the Implementation Date**

On the Implementation Date, the transactions forming part of the Scheme and Option Scheme will be implemented in the following sequence:

- (a) the Bidder will provide the Scheme Consideration to Scheme Shareholders in accordance with the Scheme (including the issue of Ineligible Shares to the Sale Nominee);
- (b) the Bidder will provide the Option Scheme consideration to the Scheme Optionholders in accordance with the Option Scheme;
- (c) the Scheme Shares will be transferred to the Bidder in accordance with the Scheme;
- (d) all of the Scheme Options will be cancelled in accordance with the Option Scheme; and
- (e) the Bidder Board will be reconstituted in accordance with clause 6.6.

## **6.6 Appointment of directors and Global Chief Executive Officer**

On and from the Implementation Date, but subject to the Scheme Consideration and Option Scheme Consideration having been paid by Bidder in accordance with the Scheme and Option Scheme (as applicable):

- (a) subject also to receipt by the Bidder of signed consents to act, the Bidder must cause the appointment of one (1) person nominated by Target and approved by the Bidder as a new non-executive director of the Bidder;
- (b) the Target must procure that all directors on the Target Board and the board of each member of the Target Group (other than any directors nominated by Bidder) resign from the Target Board or such other board (as applicable), with such written notice of resignation to confirm that the outgoing director has no outstanding Claim against the Target Group. Any such confirmation must not limit any Claim in the future under any deed of access and indemnity with any member of the Target Group, any constituent document of any member of the Target Group or any directors and officers' insurance policy entered into by any member of the Target Group; and
- (c) for the avoidance of doubt, Mr Ronald Dufficy will remain the Global Chief Executive Officer of the Bidder (including the combined business operations of the Bidder and the Target post the Implementation Date).

## **7. Conduct of business and requests for access**

### **7.1 No change in the conduct of the business**

- (a) Subject to clause 7.1(c), from the date of this deed up to and including the Implementation Date, each of the Target and the Bidder must, and must procure that each other member of the Target Group or Bidder Group (as relevant) must:
  - (i) conduct its business and operations in the ordinary course and substantially consistent (subject to any applicable laws and regulations) with the manner in which each such business and operation has been conducted in the 12 month period prior to the date of this deed;
  - (ii) use its best endeavours to:
    - (A) preserve intact the group's current business organisation;
    - (B) preserve and maintain the value of the businesses and assets of the group in all material respects;
    - (C) maintain all the material assets of the group in the normal course and consistent with past practice;
    - (D) keep available the services of its directors, officers, contractors and employees;
    - (E) preserve the group's relationships and contracts with material customers, suppliers, landlords, employees and others having material business dealings with it (including using reasonable endeavours to obtain consents from Third Parties to any change of control provisions in contracts or arrangements to which it is a party);
    - (F) preserve its relationships with Government Agencies;
    - (G) maintain (and, where necessary, use reasonable efforts to renew) the policies of insurance held by the group to insure any material risk of the group that are in force as at the date of this deed and promptly notify



the other party if any renewal proposal is not accepted by the relevant insurer;

- (iii) ensure each group member collects receivables and pays payables in a manner generally consistent with its practices in the 12 month period prior to the date of this deed;
  - (iv) not enter into any new line of business or new type of activities in which the group is not engaged as at the date of this deed;
  - (v) ensure that stock is ordered, managed, maintained or otherwise dealt with consistent with the group's practices in the 12 month period prior to the date of this deed;
  - (vi) ensure that no material change is made or permitted to be made to the businesses' product prices, promotional activity or terms of supply of any goods or services other than consistent with its practices in the 12 month period prior to the date of this deed;
  - (vii) manage the working capital of the group in the ordinary course of business and in substantially the same manner as it was prior to the date of this deed;
  - (viii) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the group is a party, and with laws, authorisations and licences which are material to the operation of the group and are applicable to a member of the group;
  - (ix) use reasonable endeavours to avoid the occurrence of an event within its control or the control of any other group member that would constitute or be likely to constitute a Target Material Adverse Change or Bidder Material Adverse Change (as applicable); and
  - (x) not take or fail to take any action that constitutes a Target Prescribed Occurrence or Bidder Prescribed Occurrence (as applicable) or that could reasonably be expected to result in a Target Prescribed Occurrence or Bidder Prescribed Occurrence (as applicable).
- (b) Without limiting clause 7.1(a) and subject to clause 7.1(c), the parties must not, and must procure that each other member of its group does not, from the date of this deed up to and including the Implementation Date:
- (i) incur any additional Financial Indebtedness other than any Financial Indebtedness provided by the Bidder;
  - (ii) make any change to its constitution;
  - (iii) (except as required by law or as provided in an existing contract in place as at the date of this deed) enter into or make any material change to the terms of employment of (including materially increasing the remuneration or compensation of), any person, including an officer, director, executive or other employee, whose total employment cost exceeds \$100,000 per annum (**Key Person**), in each case other than relating to rights or entitlements in effect on the date of this deed and which are Fairly Disclosed in the Target Due Diligence Material or Bidder Due Diligence Material (as applicable);
  - (iv) amend the terms of any option, performance right, incentive or share plan (except as expressly agreed with the other party in writing);

- (v) accelerate the rights of any of their employees to compensation or benefits of any kind (including under any option, performance right, incentive or share plan);
- (vi) terminate or encourage the resignation of a Key Person, except in accordance with current personnel practices;
- (vii) pay any of its officers, directors, executives or other employees a bonus, severance, termination or retention payment in excess of \$5,000 (in aggregate), other than pursuant to contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the Target Due Diligence Material or Bidder Due Diligence Material (as applicable);
- (viii) settle or compromise any dispute, audit or inquiry in relation to tax or duty or amend any tax return, other than in the ordinary course of its business;
- (ix) (except under contractual arrangements in effect on the date of this deed and which are Fairly Disclosed in the Target Due Diligence Materials or Bidder Due Diligence Material (as applicable)) enter into any enterprise bargaining agreement or similar collective employment agreement;
- (x) in respect of any single transaction or series of related or similar transactions, acquire, lease or dispose of any interest in a business, securities, assets, real property, entity or undertaking, the value of which exceeds \$25,000, individually or \$50,000 when aggregated with all such businesses, securities, assets, real property, entities or undertakings the subject of the transaction or series of related or similar transactions;
- (xi) enter into, amend or terminate any contracts or commitments with an annual value in excess of \$100,000 or with a value over the life of the contracts or commitments in excess of \$200,000;
- (xii) incur or enter into commitments involving capital expenditure of more than \$25,000 whether in one transaction or a series of related transactions;
- (xiii) write-down any of its material assets other than in accordance with the Accounting Standards;
- (xiv) enter into, vary or terminate any contract, joint venture, partnership or commitment for a duration of over 2 years or involving total expenditure greater than \$50,000 per year;
- (xv) create any Security Interest over any of its assets other than in respect of the EXL secured loan;
- (xvi) provide financial accommodation to any person other than to members of its group (irrespective of what form of Financial Indebtedness that accommodation takes);
- (xvii) enter into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
- (xviii) other than the German Arbitration Proceedings, settle any legal proceedings, disputed claim, investigation, arbitration or other like proceeding where the settlement amount payable by any member of the group exceeds \$50,000;
- (xix) change any accounting policy applied to a party to report its financial position, other than any change in policy required by a change in Accounting Standards;

- (xx) cancel any existing insurance policy in the name of or for the benefit of a group member in respect of any material assets or material risks unless a replacement policy (on the same or substantially similar terms) has been put in place;
  - (xxi) vary or terminate or intentionally fail to renew any material contract or material authorisation;
  - (xxii) do anything that would result in a change to its tax structure;
  - (xxiii) amend any arrangements with its Advisers, or appoint any new Adviser, resulting in an increase in fees payable by the group to any existing or new Adviser of \$100,000 or more (in aggregate), in respect of the Transaction or a Competing Proposal. For the avoidance of doubt, the parties may make any payment as and when required to be made under an engagement existing at the date of this deed which are Fairly Disclosed in the Target Due Diligence Materials or Bidder Due Diligence Materials (as applicable) in accordance with the terms of that engagement (without amendment);
  - (xxiv) allow any regulatory licences or permits material to the group or any other material authorisations to lapse or fall out of good standing; or
  - (xxv) authorise, commit or agree to do any of the matters set out above.
- (c) in each case except to the extent:
- (i) required or expressly permitted by this deed, the Scheme or the Option Scheme;
  - (ii) Fairly Disclosed in the Target Due Diligence Material, Bidder Due Diligence Material, the Target Disclosure Letter or Bidder Disclosure Letter (as relevant);
  - (iii) Fairly Disclosed to ASX or Fairly Disclosed in a document which would be disclosed in a search of ASIC records or the PPS Register or the public records maintained by the High Court of Australia, the Federal Court of Australia or the Supreme Courts of each Australian State and Territory in relation to the parties or the Subsidiaries of the parties (as relevant);
  - (iv) required to respond to an emergency, disaster or health advice of any Government Agency;
  - (v) required by any applicable law or regulation or Government Agency, or by an Order; or
  - (vi) consented to in writing by the Bidder or Target as relevant (such consent not to be unreasonably withheld or delayed).

## 7.2 Access to information and co-operation

- (a) **(Provision of access and information)** During the period from the date of this deed up to and including the Implementation Date, the parties must, and must procure each of its Subsidiaries to:
- (i) keep the other party fully informed of any developments relating to the group and the conduct of its business;
  - (ii) within 21 days from the end of each month, provide the other party with a copy of the management accounts and other reports on the financial affairs of the group relating to the previous month;

- (iii) respond to reasonable requests from the other party and its Representatives for information concerning its group businesses, operations and affairs as soon as reasonably practicable after such requests are made;
- (iv) give the other party and its Representatives reasonable access to its senior management team and records; and
- (v) otherwise provide reasonable co-operation to the other party and its Representatives,

in each case for the purposes of:

- (vi) the implementation of the Scheme and the Option Scheme;
  - (vii) integration planning prior to implementation of the Scheme and the Option Scheme which, for the avoidance of doubt, does not include ongoing due diligence on the Target Group or Bidder Group; or
  - (viii) any other purpose that is agreed in writing between the parties (acting reasonably).
- (b) **(Limits on the parties' obligations)** The obligations in clauses 7.2(a), 7.3 and 7.4 do not require the parties to:
- (i) do anything which would cause undue disruption to the business of the parties in the ordinary course;
  - (ii) require a member of the parties' group to take any action that would reasonably be expected to result in a group entity breaching any applicable law or the entity's constituent documents;
  - (iii) require a member of a party's group to take any action that would breach an obligation to any person (including any confidentiality obligations);
  - (iv) provide information to the other party concerning the directors' and management's consideration of the Scheme; or
  - (v) provide any confidential, commercially sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of its group taken as a whole.
- (c) The parties acknowledge that all information that is provided pursuant to this clause 7.2 will be provided subject to the terms of the Confidentiality Deed.

### **7.3 Integration planning**

- (a) On and from the date of this deed, the parties agree to establish a committee (**Integration Committee**) initially comprising of the following individuals:
  - (i) as representatives of Target: Pauline Gately, and the Target Executive Team; and
  - (ii) as representatives of Bidder: Josephine Lorenz and Felipe Favaro, General Manager, Hemp Foods Australia.
- (b) The role of the Integration Committee will be to act as a forum for discussion and planning in respect of the following:

- (i) matters related to integration planning, including employee retention and incentivisation, stakeholder engagement and communications, business operations and functions or processes; and
  - (ii) the process referred to in clause 7.4.
- (c) Each party must ensure that its representatives on the Integration Committee act in good faith in their capacity as members of the Integration Committee with a view to fulfilling the role and objectives of such committee (to the extent within their power).
- (d) The Integration Committee will meet at such times and places as agreed between the members of the Integration Committee from time to time, taking into account the existing roles and duties of Target's representatives on the Integration Committee. Meetings may be held via telephone or other forms of technology that provide representatives with an opportunity to participate.
- (e) The members of the Integration Committee may agree to invite other persons to attend meetings of the Integration Committee from time to time.
- (f) From time to time, certain members of the Integration Committee or other representatives of the parties (as agreed between the parties) will meet separately to meetings of the Integration Committee to discuss and progress matters considered or plans developed by the Integration Committee.
- (g) The parties acknowledge and agree that:
  - (i) the Integration Committee is a discussion and planning forum only, and the members of the Integration Committee do not have power to bind the other party or to give any consent, approval or waiver on behalf of such other party;
  - (ii) nothing in this clause 7.3 or elsewhere in this deed requires a party to act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties;
  - (iii) nothing in this clause 7.3 or elsewhere in this deed requires a party to take any action that would reasonably be expected to conflict with or violate the entity's constituent documents or any law;
  - (iv) the respective businesses of the Bidder Group and the Target Group are to continue to operate independently until (and subject to) implementation of the Scheme; and
  - (v) nothing in this clause 7.3 requires any of Target's representatives on the Integration Committee to do anything which would unduly interfere with their responsibilities to Target and the ongoing conduct of Target's business.

#### **7.4 Change of control consents**

As soon as practicable after the date of this deed, the Target and the Bidder must seek to identify any change of control, unilateral termination rights or notification rights in material contracts to which the Target or another member of the Target Group is party which may be triggered by or exercised in response to the implementation of the Transaction. In respect of those contracts:

- (a) the Target and the Bidder will agree a proposed course of action to obtain any consents or confirmations required (which, among other things, will have due regard to applicable legal restrictions) and then the Target will initiate contact, including joint discussions if required, with the relevant counterparties and request that they provide any consents or confirmations required or appropriate. The Bidder must not contact any counterparties for this purpose (other than any counterparties that the Bidder has a pre-existing relationship with prior to the date of this deed in relation to matters not

related to the Transaction) without the Target present or without the Target's prior written consent (which is not to be unreasonably withheld or delayed);

- (b) the Target must take all reasonable action necessary to give effect to any notifications required or obtain such consents or confirmation as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause 7.4 requires the Target or the Bidder to incur material expense);
- (c) the Bidder must cooperate with, and provide reasonable assistance to, the Target to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause 7.4 requires the Target or the Bidder to incur material expense); and
- (d) provided that the Target has complied with this clause 7.4, a failure by a member of the Target Group to obtain any third party consent or confirmation, or the exercise of a termination right, will not of itself constitute a breach of this deed by the Target and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

## **7.5 Directors' and officers' insurance and indemnities**

- (a) The Bidder acknowledges that, notwithstanding any other provision of this deed, the Target may, prior to the Implementation Date, enter into arrangements to secure directors' and officers' run-off insurance for up to such seven year period to the extent practicable at normal commercial rates, (**D&O Policy**), and that any actions to facilitate that insurance or in connection therewith will not be a Target Prescribed Occurrence or breach any provision of this deed.

## **8. Target Board recommendation**

### **8.1 Recommendations and Voting Statement**

- (a) The Target represents and warrants to Bidder that, as at the date of this deed, each Target Director has confirmed by unanimous resolution of the Target Board that he or she will act in accordance with clause 8.1(b).
- (b) Subject to clauses 8.2 and 8.3, the Target must use reasonable endeavours to ensure that:
  - (i) the Target Board unanimously recommends that Target Shareholders and Scheme Optionholders vote in favour of the Scheme at the Scheme Meeting and the Option Scheme at the Option Scheme Meeting (as applicable), in the absence of a Superior Proposal and subject to the Independent Expert being of the opinion at all times prior to the Second Court Date (including in any update of, or any revision, amendment or supplement to, the Independent Expert's Report) that the Scheme and Option Scheme is in the best interests of Target Shareholders and Scheme Optionholders (as applicable) (**Recommendation**);
  - (ii) the Scheme Booklet and all public statements and announcements by the Target in relation to the Scheme and Option Scheme (other than announcements relating to administrative matters only) include the Recommendation and a statement by the Target Board to the effect that each Target Director will, in the absence of a Superior Proposal and subject to the Independent Expert being of the opinion at all times prior to the Second Court Date (including in any update of, or any revision, amendment or supplement to, the Independent Expert's Report) that the Scheme and Option Scheme is in the best interests of Target Shareholders and Scheme Optionholders, procure the voting of all Target Shares and Target Options held or controlled by him or

her in favour of the Scheme at the Scheme Meeting and in favour of the Option Scheme at the Option Scheme Meeting (as applicable) (**Voting Statement**); and

- (iii) no member of the Target Board changes, withdraws, modifies or qualifies their Recommendation or Voting Statement or makes a recommendation or statement that is inconsistent with their Recommendation or Voting Statement (including by making any public statement supporting, endorsing or recommending a Competing Proposal and/or to the effect that they no longer support the Scheme or Option Scheme).

## **8.2 Withdrawal of Recommendation or Voting Statement**

- (a) The obligations in clause 8.1 will cease to apply:
  - (i) if the Independent Expert states the opinion in the Independent Expert's Report (or any update of, or any revision, amendment or supplement to, the Independent Expert's Report) that the Scheme and the Option Scheme is not in the best interests of Target Shareholders and Scheme Optionholders (as applicable);
  - (ii) if the Target receives a Competing Proposal and the Target Board determines, after all Bidder's rights under clause 12.4 have been exhausted, that the Competing Proposal constitutes a Superior Proposal; or
  - (iii) in respect of the Recommendation or Voting Statement of any Target Director:
    - (A) if a Court, ASIC or the Takeovers Panel requests that Target Director change, withdraw, qualify or modify, or abstain from making, his or her Recommendation or Voting Statement;
    - (B) if the Target reasonably determines that the relevant Target Director has an interest in the Scheme or Option Scheme that renders it inappropriate for him or her to make or maintain such Recommendation or Voting Statement and the Court would be unlikely to grant the orders contemplated under clause 3.1(d) as a result of such interest.
- (b) The Target represents and warrants to Bidder that, as at the date of this deed, as far as Target is aware, no Target Director has an interest in the Scheme or Option Scheme that renders it inappropriate for him or her to make or maintain his or her Recommendation or Voting Statement.
- (c) The Target will not be in breach of this deed, and will not be liable to the Bidder under this deed, solely as a result of a director of the Target publicly (or otherwise) failing to make, or adversely changing, withdrawing, adversely modifying or adversely qualifying of, a Recommendation or Voting Statement, in each case as permitted by clause 8.2(a)(iii).

## **8.3 Qualification of Recommendation or Voting Statement**

For the purposes of clause 8.1 and 15.1(b), customary qualifications and explanations contained in:

- (a) the Scheme Booklet or any public announcement in relation to a Recommendation or Voting Statement to the effect that the Recommendation or Voting Statement is made:
  - (i) in the absence of a Superior Proposal;

- (ii) in respect of any public announcement issued before the issue of the Scheme Booklet, subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme and Option Scheme is in the best interests of Target Shareholders and Scheme Optionholders (as applicable); or
- (iii) in respect of the Scheme Booklet or any public announcements issued at the time of or after the issue of the Scheme Booklet, subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme and Option Scheme is in the best interests of Target Shareholders and Scheme Optionholders (as applicable); or
- (b) any public announcement or other statement made by the Target, the Target Board or any Target Director to the effect that no action should be taken by Target Shareholders or Target Optionholders pending the assessment of a Competing Proposal by the Target Board; and
- (c) as permitted by clause 12.4(c),

will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation or Voting Statement, or an endorsement of a Competing Proposal, and will not contravene this clause 8 or trigger a right for the Bidder to terminate this deed under clause 15.

## **9. Representations and warranties**

### **9.1 Bidder Representations and Warranties**

- (a) The Bidder represents and warrants to the Target (in its own right and separately as trustee or nominee for each of the other Target Parties) that each Bidder Representation and Warranty is true and correct.
- (b) The Target acknowledges and agrees that the Bidder Representations and Warranties and the Bidder indemnity under clause 9.1(c) are given subject to those matters that:
  - (i) are expressly provided for in this deed;
  - (ii) are Fairly Disclosed in the Bidder Due Diligence Material or the Bidder Disclosure Letter;
  - (iii) have been Fairly Disclosed to the Target had the Target conducted a search of ASIC records or the PPS Register or public records maintained by the High Court of Australia, the Federal Court of Australia or the Supreme Courts of each Australian State and Territory in relation to a member of the Bidder Group, in each case prior to the date of this deed; or
  - (iv) are within the actual knowledge of the Target as at the date of this deed.
- (c) The Bidder indemnifies the Target against, and must pay the Target on demand the amount of, any losses, liabilities, damages, costs, charges or expenses suffered or incurred by any member of the Target Group as a result of, or in connection with, a breach of a Bidder Representation and Warranty.

### **9.2 Target Representations and Warranties**

- (a) The Target represents and warrants to Bidder (in its own right and separately as trustee or nominee for each of the other Bidder Parties) that each Target Representation and Warranty is true and correct.



- (b) The Bidder acknowledges and agrees that the Target Representations and Warranties and the Target indemnity under clause 9.2(c) are given subject to those matters that:
  - (i) are expressly provided for in this deed;
  - (ii) are Fairly Disclosed in the Target Due Diligence Material or the Target Disclosure Letter;
  - (iii) have been Fairly Disclosed to the Bidder had the Bidder conducted a search of ASIC records or the PPS Register or public records maintained by the High Court of Australia, the Federal Court of Australia or the Supreme Courts of each Australian State and Territory in relation to a member of the Target Group, in each case prior to the date of this deed; or
  - (iv) are within the actual knowledge of the Bidder as at the date of this deed.
- (c) The Target indemnifies the Bidder against, and must pay the Bidder on demand the amount of, any losses, liabilities, damages, costs, charges or expenses suffered or incurred by any member of the Bidder Group as a result of, or in connection with, a breach of a Target Representation and Warranty.

### **9.3 Timing of representations and warranties**

Unless expressed to be given at a particular time or during a particular period (in which case it is given at that time or during that period), each Bidder Representation and Warranty and each Target Representation and Warranty is given at:

- (a) the date of this deed;
- (b) the date the Scheme Booklet is despatched to Target Shareholders and Scheme Optionholders;
- (c) the date of the Scheme Meeting;
- (d) the date of the Option Scheme Meeting; and
- (e) 8:00am on the Second Court Date.

### **9.4 Survival of representations**

Each Bidder Representation and Warranty and Target Representation and Warranty and the indemnities in clauses 9.1(c) and 9.2(c):

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

### **9.5 Notification obligations**

Each party will notify the other party in writing as soon as practicable after that party becomes aware of any fact, matter or circumstance that constitutes or may reasonably constitute a breach of any of the Target Representations and Warranties or Bidder Representations and Warranties, as applicable.

## **10. Releases**

### **10.1 Target Parties**

- (a) Without limiting the Bidder's rights under clause 13, the Bidder releases its rights against, and agrees with the Target that it will not make a Claim against, any Target Party (other than the Target) in connection with:
- (i) the Target's execution or delivery of this deed;
  - (ii) any breach of any representation, covenant and warranty of the Target in this deed;
  - (iii) the implementation of the Scheme;
  - (iv) the implementation of the Option Scheme; or
  - (v) any disclosure made (at any time) by any Target Party including in the Target Due Diligence Material that contains any statement which is false or misleading whether in content or by omission,
- except to the extent the relevant Target Party has engaged in wilful misconduct or fraud.
- (b) This clause 10.1 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. The Target receives and holds the benefit of this clause as trustee for each other Target Party.

## **10.2 Bidder Parties**

- (a) Without limiting the Target's rights under clause 14, the Target releases its rights against, and agrees with the Bidder that it will not make a Claim against, any Bidder Party (other than the Bidder) in connection with:
- (i) the Bidder's execution or delivery of this deed;
  - (ii) any breach of any representation, covenant and warranty of the Bidder in this deed;
  - (iii) the implementation of the Scheme;
  - (iv) the implementation of the Option Scheme; or
  - (v) any disclosure made (at any time) by any Bidder Party including in the Bidder Due Diligence Material that contains any statement which is false or misleading whether in content or by omission,
- except to the extent that the relevant Bidder Party has engaged in wilful misconduct or fraud.
- (b) This clause 10.2 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. The Bidder receives and holds the benefit of this clause as trustee for each other Bidder Party.

## **11. Public announcements**

### **11.1 Announcement of the Transaction**

Immediately after the execution of this deed, the Target and the Bidder must each issue a public announcement in a form previously agreed between them in writing. Subject always to the qualifications and limitations in clause 8 and elsewhere in this deed, the Target announcement must include the Recommendation and Voting Statement contemplated under clause 8.1.

### **11.2 Other public announcements**

Each party must:

- (a) prior to making any public announcement or disclosure of, or in relation to, the Transaction or any other transaction the subject of this deed, the Scheme or the Option Scheme, to the extent reasonably practicable and lawful, consult with the other party as to the timing, form and content of that announcement or disclosure, including by giving the other party a reasonable opportunity to review it in draft form and taking into account all reasonable comments from them on the draft; and
- (b) not make any such public announcement or disclosure prior to such consultation, except as may be required by applicable law or the rules of any applicable securities exchange (including the ASX Listing Rules).

### **11.3 Statements on termination**

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clause 11.2 applies to any such statements or disclosures.

## **12. Exclusivity**

### **12.1 No current discussions regarding a Competing Proposal**

Each party represents and warrants that, as at the date of this deed, neither itself nor any of its Representatives is a party to any agreement with a Third Party entered into for the purpose of facilitating a Competing Proposal or is participating in any discussions or negotiations with a Third Party that concern, or that could reasonably be expected to lead to, a Competing Proposal with any Third Party.

### **12.2 No-shop, no talk and no due diligence**

During the Exclusivity Period, each party must not, and must ensure that each of its Representatives and their respective Associates, does not, directly or indirectly:

- (a) **(no shop):**
  - (i) solicit, invite, initiate or encourage any Competing Proposal or any enquiries, proposals, discussions or negotiations with any Third Party in relation to (or that could reasonably be expected to encourage or lead to) an actual, proposed or potential Competing Proposal, or which may otherwise lead to the Transaction not being completed; or
  - (ii) solicit, invite, encourage or initiate approaches, enquiries, discussions or proposals with a view to obtaining any offer, proposal or expression of interest from any person in relation to, or which may reasonably be expected to lead to, an actual, proposed or potential Competing Proposal,  
  
or communicate any intention to do any of these things; or
- (b) **(no talk)** subject to clause 12.5:
  - (i) negotiate or enter into or participate in negotiations or discussions with any Third Party; or
  - (ii) communicate any intention to do any of these things,  
  
in relation to (or that could reasonably be expected to encourage or lead to) an actual or potential Competing Proposal, or any agreement, understanding or arrangement that may be reasonably expected to encourage or lead to a Competing Proposal or which may otherwise lead to the Transaction not being completed, even if that Third Party's

Competing Proposal was not directly or indirectly solicited, encouraged or initiated by the Target or Bidder (as relevant) or any of its Representatives, or that Third Party has publicly announced the Competing Proposal; and

(c) **(no due diligence)** subject to clause 12.5:

- (i) solicit, invite, initiate, encourage, facilitate or permit, any person (other than the Bidder or Target as relevant) to undertake due diligence investigations in respect of the Bidder or Target (as relevant), its Related Bodies Corporate, or any of their businesses and operations; or
- (ii) make available to any person (other than the Bidder or Target (as relevant)) or permit any such person to receive any non-public information relating to the Target or Bidder (as relevant), its Related Bodies Corporate, or any of their businesses and operations,

in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

### **12.3 Notification of approaches**

- (a) During the Exclusivity Period, each party must promptly (and in any event within two Business Days) notify the other party in writing if the party or any of its Representatives:
  - (i) receives any Competing Proposal;
  - (ii) receives any approach, inquiry or proposal made by any Third Party to initiate any discussions or negotiations that could reasonably be expected to lead to a Competing Proposal;
  - (iii) becomes aware of any provision by it or any of its Representatives of, any material non-public information relating to any member of the Target Group or Bidder Group (as relevant) to any Third Party in relation to any Competing Proposal; or
  - (iv) any breach of this clause 12,whether direct, indirect, solicited or unsolicited, and in writing or otherwise.
- (b) Subject to clause 12.5, a notification given under clause 12.3(a) must include a summary of the material terms and conditions of the Competing Proposal (if any) and the identity of the Third Party making or proposing the Competing Proposal.

### **12.4 Bidder matching right**

- (a) Without limiting clause 12.2, during the Exclusivity Period, the Target:
  - (i) must not, and must procure that each member of the Target Group does not, enter into any legally binding agreement, arrangement or understanding in relation to a Competing Proposal. For the avoidance of doubt, any such legally binding agreement, arrangement or understanding does not include a member of the Target Group entering into a confidentiality agreement or like agreement for the purpose of providing non-public information in relation to an actual, proposed or potential Competing Proposal; and
  - (ii) must procure that no Target Director publicly changes, withdraws or adversely modifies their Recommendation or Voting Statement to publicly recommend a Competing Proposal, and must not enter into any agreement to implement a Competing Proposal, or make any public statement to the effect that he or she

no longer supports the Scheme or Option Scheme, unless the withdrawal, change, modification or qualification is permitted by clauses 8.2, 8.3 or 12.4(c),

unless:

- (iii) the Target Board determines that the Competing Proposal is or is reasonably likely to be a Superior Proposal;
  - (iv) the Target has provided the Bidder with all material terms of the actual, proposed or potential Competing Proposal, including price and the identity of the Competing Bidder making the actual, proposed or potential Competing Proposal;
  - (v) the Target has given the Bidder at least ten (10) days after the date of the provision of the information referred to in clause 12.4(a)(iv) to provide a counter proposal to the terms of the actual, proposed or potential Competing Proposal (**Bidder Counterproposal**); and
  - (vi) the Bidder has not announced a Bidder Counterproposal that the Target Board, acting reasonably and in good faith, determines would result in an outcome for the Target Shareholders that is at least as favourable as the terms of the actual, proposed or potential Competing Proposal by the expiry of the ten (10) day period in 12.4(a)(v).
- (b) If the Bidder provides the Target with a Bidder Counterproposal by the expiry of the ten (10) day period in clause 12.4(a)(v), the Target must use reasonable endeavours to procure that the Target Board reviews the Bidder Counterproposal and if the Target Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide a matching or superior outcome for Target Shareholders as a whole compared with the Competing Proposal, taking into account all of the material terms and conditions of the Bidder Counterproposal, then:
- (i) the Target and the Bidder must use their reasonable endeavours to agree the amendments to this deed, the Scheme, the Option Scheme, the Deed Poll and the Option Scheme Deed Poll (as applicable) that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and
  - (ii) the Target must use its best endeavours to procure that each Target director continues to recommend the Transaction (as modified by the Bidder Counterproposal) to Target Shareholders and Scheme Optionholders (other than as permitted by this deed).
- (c) Despite any other provision in this deed, any public announcement or other statement by the Target, the Target Board or any Target Director to the effect that:
- (i) the Target Board has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in this clause 12.4; or
  - (ii) Target Shareholders should take no action pending the completion of the matching right process set out in this clause 12.4,

does not:

- (iii) constitute a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation or Voting Statement or an endorsement of a Competing Proposal;
- (iv) contravene clause 8 or any other provision of this deed;

- (v) give rise to an obligation to pay the Target Break Fee under clause 13; or
  - (vi) give rise to a termination right under clause 15 or any other provision of this deed.
- (d) For the purposes of this clause 12.4, any material change to a Competing Proposal will constitute a new Competing Proposal in respect of which the Target must separately comply with its obligations under this clause 12.4.

## **12.5 Fiduciary exception**

Clauses 12.2(b), 12.2(c) and 12.3(a) do not apply to the extent they restrict a party or its Board from taking or not taking any action with respect to a genuine bona fide Competing Proposal (which was not solicited, invited, encouraged or initiated in breach of clause 12.2), provided that:

- (a) the relevant Board has first determined, in good faith, and in what it considers to be in the interests of the Target or Bidder (as applicable) and its shareholders, and after having received written advice from its external financial and external legal Advisers, that:
  - (i) such genuine bona fide Competing Proposal is, or could reasonably be expected to lead to, a Superior Proposal; and
  - (ii) taking the action or refusing to take the action (as the case may be) with respect to the Competing Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of its Board;
- (b) the party notifies the other party, as soon as reasonably practicable, if it proposes to take any action in reliance on the exceptions contained in this clause 12.5; and
- (c) in respect of an action to which clause 12.2(c) applies, before any non-public information in relation to a party or its subsidiaries is disclosed or otherwise provided or made available to the Third Party, the Third Party has entered into a confidentiality deed with the party on customary terms.

## **12.6 Compliance with law**

- (a) This clause 12 imposes obligations on the parties only to the extent that the performance of all or part of those obligations:
  - (i) does not constitute unacceptable circumstances as declared by the Takeovers Panel; or
  - (ii) is not determined to be unlawful by a court (including by virtue of it being a breach of the relevant Board's fiduciary or statutory duties).
- (b) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for, or in relation to, a declaration or determination of a kind referred to in clause 12.6(a) and, in the event that any such application is made by a Third Party, must take all reasonable steps (including by making submissions against the declaration or determination) to ensure that any such determination is not made or applies to the minimum extent possible.

## **12.7 Normal provision of information**

Nothing in this clause 12 prevents a party from:

- (a) providing information to its Representatives, auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business, or any Government Agency;
- (b) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Government Agency;
- (c) making presentations to, and responding to enquiries from, brokers, portfolio investors, analysts, institutional investors and institutional lenders in the ordinary course in relation to its business generally; or
- (d) engaging with its shareholders (in their capacity as a shareholder) in the ordinary course and consistent with past practice, in relation to the Target Group.

### **13. Target Break Fee**

#### **13.1 Background**

This clause 13 has been agreed to in circumstances where:

- (a) the Target believes the implementation of the Scheme and Option Scheme will provide significant benefits to it and its shareholders and optionholders, and acknowledges that, if the Bidder enters into this deed and the Scheme and Option Scheme is subsequently not implemented, the Bidder will have incurred significant costs and expenses in pursuing the Scheme and Option Scheme;
- (b) the Bidder requested provision be made for the relevant payment outlined in this clause 13, and the Bidder would not have entered into this deed without an agreement on the matters covered by this clause 13;
- (c) the Target Board believes that it is reasonable and appropriate to agree to the payment referred to in this clause 13 to secure the Bidder's entry into this deed; and
- (d) the Target has received separate legal advice in relation to this deed and the operation of this clause 13.

The parties acknowledge and agree that the costs actually incurred by the Bidder as referred to in clause 13.1(a) will be of such nature that they cannot be accurately ascertained, but that the Target Break Fee represents a genuine and reasonable pre-estimate of the internal, external advisory, financial and opportunity costs (and associated out of pocket expenses) that would actually be suffered by the Bidder if the Bidder enters into this deed and the Scheme and Option Scheme is subsequently not implemented.

#### **13.2 Payment of Target Break Fee**

Subject to clause 13.3 and 13.5, the Target must pay the Bidder the Target Break Fee if:

- (a) at any time before the End Date or, if earlier, the date the deed is terminated under clause 15, any Target Director:
  - (i) fails to make or publicly withdraws or adversely changes, modifies or qualifies their Recommendation or Voting Statement; or
  - (ii) makes a public statement that he or she no longer recommends the Transaction or recommending, supporting or endorsing another transaction (including any Competing Proposal),

in each case provided that the Bidder has terminated this deed in accordance with clause 15.1(b), and unless:

- (iii) the Independent Expert concludes that the Scheme and Option Scheme is not in the best interests of Target Shareholders and Scheme Optionholders (as applicable) (except where this conclusion of the Independent Expert is due to the existence of a Competing Proposal);
- (iv) the withdrawal or adverse change or modification is permitted by clause 8.2(a)(iii); or
- (v) the Target is (or would have been) entitled to terminate this deed pursuant to clause 15.1(a)(i) or 15.2;
- (b) the Bidder validly terminates this deed under clause 15.1(a)(i) or 15.1(b); or
- (c) the Bidder terminates this deed under clause 3.8(b) due to a failure of the Conditions Precedent in clause 3.1(h) or clause 3.1(j).

### **13.3 Payment conditions**

- (a) Notwithstanding the occurrence of any event under clause 13.2, no amount is payable under that clause if the Scheme and Option Scheme becomes Effective.
- (b) The Target can only ever be liable to pay the Target Break Fee once.

### **13.4 Timing of payment**

If the Target Break Fee is payable under this clause 13, the Target must pay the Target Break Fee within five Business Days of receipt of a written demand for payment from the Bidder.

### **13.5 Compliance with law**

- (a) This clause 13 imposes obligations on the Target only to the extent that the performance of those obligations:
  - (i) does not constitute unacceptable circumstances as declared by the Takeovers Panel; and
  - (ii) is not otherwise unlawful or is held to be unenforceable by a court (including by virtue of it constituting a breach of the fiduciary or statutory duties of any member of the Target Board).
- (b) If the Target Break Fee has been paid by the Target and clause 13.5(a) applies, the Bidder must reimburse all (or the relevant portion specified by a court or the Takeovers Panel, as applicable) of that amount to the Target within ten Business Days after receipt of a written demand for reimbursement from the Target.
- (c) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 13.5(a).

### **13.6 Limitation of liability**

- (a) Subject to clause 13.6(b) and notwithstanding any other provision of this deed:
  - (i) the payment of the Target Break Fee by the Target to the Bidder is the Bidder's sole and exclusive remedy in respect of the matter giving rise to the payment of the Target Break Fee and otherwise in respect of this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target in respect of such matter or otherwise in connection with this deed;



- (ii) the maximum liability of the Target to the Bidder and the maximum aggregate amount that the Target may be required to pay in relation to this deed, the Scheme and Option Scheme (including any breach of this deed by the Target) is the amount of the Target Break Fee; and
  - (iii) the amount of the Target Break Fee payable to the Bidder under this clause 13 shall be reduced by the amount of any loss or damage recovered by the Bidder in relation to a breach of any other clause of this deed.
- (b) Clause 13.6(a) does not limit the liability of the Target under or in connection with this deed in respect of any fraud, wilful misconduct or wilful or intentional breach by Target of this deed.

## **14. Bidder Break Fee**

### **14.1 Background**

This clause 14 has been agreed to in circumstances where:

- (a) the Bidder believes the implementation of the Scheme and Option Scheme will provide significant benefits to it and its security holders, and acknowledges that, if the Target enters into this deed and the Scheme and Option Scheme is subsequently not implemented, the Target will have incurred significant costs and expenses in pursuing the Scheme and Option Scheme;
- (b) the Target requested provision be made for the relevant payment outlined in this clause 14, and the Target would not have entered into this deed without an agreement on the matters covered by this clause 14;
- (c) the Bidder believes that it is reasonable and appropriate to agree to the payment referred to in this clause 14 to secure the Target's entry into this deed; and
- (d) the Bidder has received separate legal advice in relation to this deed and the operation of this clause 14.

The parties acknowledge and agree that the costs actually incurred by the Target as referred to in clause 14.1(a) will be of such nature that they cannot be accurately ascertained, but that the Bidder Break Fee represents a genuine and reasonable pre-estimate of the internal, external advisory, financial and opportunity costs (and associated out of pocket expenses) that would actually be suffered by the Target if the Target enters into this deed and the Scheme and Option Scheme is subsequently not implemented.

### **14.2 Payment of Bidder Break Fee**

- (a) The Bidder must pay the Target the Bidder Break Fee if:
  - (i) the Target validly terminates this deed under clause 15.1(a)(i); or
  - (ii) the Target terminates this deed under clause 3.8(b) due to a failure of the Conditions Precedent in clause 3.1(i) or clause 3.1(k).
- (b) The Bidder can only ever be liable to pay the Bidder Break Fee once.

### **14.3 Timing of payment**

If the Bidder Break Fee is payable under this clause 14, the Bidder must pay the Bidder Break Fee within five Business Days of receipt of a written demand for payment from the Target.

### **14.4 Compliance with law**

- (a) This clause 14 imposes obligations on the Bidder only to the extent that the performance of those obligations:
  - (i) does not constitute unacceptable circumstances as declared by the Takeovers Panel; and
  - (ii) is not otherwise unlawful or is held to be unenforceable by a court (including by virtue of it constituting a breach of the fiduciary or statutory duties of any member of the Bidder Board).
- (b) If the Bidder Break Fee has been paid by the Bidder and clause 14.4(a) applies, the Target must reimburse all (or the relevant portion specified by a court or the Takeovers Panel, as applicable) of that amount to the Bidder within ten Business Days after receipt of a written demand for reimbursement from the Bidder.
- (c) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 14.4(a).

#### **14.5 Limitation of liability**

- (a) Subject to clause 14.5(b) and notwithstanding any other provision of this deed:
  - (i) the payment of the Bidder Break Fee by the Bidder to the Target is the Target's sole and exclusive remedy in respect of the matter giving rise to the payment of the Bidder Break Fee and otherwise in respect of this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by the Bidder in respect of such matter or otherwise in connection with this deed;
  - (ii) the maximum liability of the Bidder to the Target and the maximum aggregate amount that the Bidder may be required to pay in relation to this deed, the Scheme and the Option Scheme (including any breach of this deed by the Bidder) is the amount of the Bidder Break Fee; and
  - (iii) the amount of the Bidder Break Fee payable to the Target under this clause 14 shall be reduced by the amount of any loss or damage recovered by the Target in relation to a breach of any other clause of this deed.
- (b) Clause 14.5(a) does not limit the liability of the Bidder under or in connection with this deed in respect of any fraud, wilful misconduct or wilful or intentional breach by the Bidder of this deed.

### **15. Termination**

#### **15.1 General rights**

- (a) Either party may terminate this deed by written notice to the other at any time before 8:00am on the Second Court Date:
  - (i) if:
    - (A) either:
      - (I) the other party is in material breach of any provision of this deed (other than a Bidder Representation and Warranty or a Target Representation and Warranty not being true and correct); or
      - (II) a representation and warranty given by the other party (being the Bidder Representations and Warranties where the "other party" is the Bidder, and being the Target Representations and

Warranties where the "other party" is the Target) is not true and correct, where that breach of representation and warranty is material in the context of the Transaction as a whole;

- (B) the party wishing to terminate has given written notice to the other party setting out the relevant circumstances and stating an intention to terminate this deed; and
  - (C) the relevant circumstances continue to exist for five Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5:00pm on the Business Day before the Second Court Date); or
- (ii) in the circumstances set out in, and in accordance with, clause 3.8(b).
- (b) The Bidder may terminate this deed by written notice to the Target at any time before 8:00am on the Second Court Date if any Target Director:
  - (i) fails to provide the Recommendation or Voting Statement;
  - (ii) has changed, withdrawn or adversely modified or qualified, or made a public statement that is inconsistent with, their Recommendation or Voting Statement; or
  - (iii) has recommended or made a statement indicating that he or she no longer supports the Transaction or is recommending, supporting or endorsing another transaction (including a Competing Proposal),in each case other than as permitted by this deed.
- (c) Either party may terminate this deed by written notice to the other at any time before 8.00am on the Second Court Date if:
  - (i) the Scheme is not Effective by the End Date;
  - (ii) the Court refuses to grant orders directing the Target to convene the Scheme Meeting or approving the Scheme, and either an appeal made in accordance with clause 6.2 is not successful or no appeal is made in accordance with clause 6.2;
  - (iii) a Court or other Government Agency has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Scheme; or
  - (iv) it is agreed to in writing by the parties.
- (d) Without limiting the Target's obligations under clause 8, the Target may terminate this deed by written notice to the Bidder at any time before 8:00am on the Second Court Date if a majority of the Target Board withdraws its recommendation that Target Shareholders vote in favour of the Scheme at the Scheme Meeting, or that the Scheme Optionholders vote in favour of the Option Scheme at the Option Scheme Meeting, and, if required to pay the Target Break Fee as a result of such withdrawal, the Target has paid Bidder the Target Break Fee.

## **15.2 Automatic termination**

Subject to clause 3.7, and without limiting any other term of this deed, this deed will terminate automatically if, at the Scheme Meeting, Target Shareholders do not pass the resolution to approve the Scheme in accordance with the requirements of section 411(4)(a)(ii) of the Corporations Act.

### **15.3 Effect of termination**

If this deed is terminated by a party under clause 3.8(b) or 15.1 or pursuant to clause 15.2, this deed will be of no force or effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued before termination and the provisions of this clause 15 and of clauses 1.1, 9.4, 10, 11, 13, 14, 16, 17, 18 and 19, which will remain in force after the termination.

### **15.4 Termination by written agreement**

The parties may terminate this deed by another written agreement between them.

## **16. Confidentiality**

The Confidentiality Deed continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency with the terms of this deed, in which case this deed prevails.

## **17. GST**

### **17.1 Definitions**

Words used in this clause 17 that have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.

### **17.2 GST**

- (a) Unless expressly stated otherwise, the consideration for any supply under or in connection with this deed is exclusive of GST.
- (b) To the extent that any supply made under or in connection with this deed is a taxable supply (other than any supply made under another deed that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under this deed for that supply (unless it expressly includes GST) plus an amount (**Additional Amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- (c) The recipient must pay the Additional Amount at the same time as the consideration to which it is referable, and upon the issue of an invoice relating to the supply.
- (d) Whenever an adjustment event occurs in relation to any taxable supply to which clause 17.2(b) applies:
  - (i) the supplier must determine the amount of the GST component of the consideration payable; and
  - (ii) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

### **17.3 Reimbursements**

If either party is entitled under this deed to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this deed, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member in respect of a GST group to which it belongs.

### **17.4 Survival**

This clause 17 will continue to apply after expiration or termination of this deed.

## **18. Notices**

Any notice, demand, consent or other communication (**Notice**) given or made under this deed:

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

to the Bidder:	Address:	Elixinol Wellness Limited Level 12, 680 George Street, Sydney, NSW, 2000, Australia
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Email:	<a href="mailto:company.secretary@elixinolwellness.com">company.secretary@elixinolwellness.com</a> ; with a copy to (which by itself does not constitute a Notice) to: <a href="mailto:shane.barber@twobirds.com">shane.barber@twobirds.com</a>
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Attention:	Global Chief Executive Officer
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to the Target:	Address:	The Sustainable Nutrition Group Ltd C/- Leydin Freyer, Level 4, 96-100 Albert Road, South Melbourne VIC 3205
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Email:	<a href="mailto:pauline@sustainablenutrition.com.au">pauline@sustainablenutrition.com.au</a>
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Attention:	Pauline Gately
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- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery by hand, when delivered;
  - (ii) in the case of delivery by post, six Business Days after the date of posting (if posted to an address in the same country) or ten Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of delivery by email, the earlier of:
    - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
    - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
    - (C) two hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be regarded as given and received outside the period between 9.00 am and 5.00 pm (addressee's time) on a Business Day (**Business Hours Period**), then the Notice will instead be regarded as given and received at the start of the following Business Hours Period.

## **19. General provisions**

### **19.1 Amendment**

An amendment or variation of any term of this deed must be in writing in the form of a deed executed by each party.

### **19.2 Assignment**

Any rights or obligations of a party that arise out of or under this deed are not assignable or able to be novated or otherwise dealt with by a party without the prior written consent of the other party.

### **19.3 Costs and stamp duty**

Except as otherwise provided in this deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed. The Bidder must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed or the steps to be taken under this deed and any instrument executed under or any transaction evidenced by this deed.

### **19.4 Payments**

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

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

### **19.5 Counterparts**

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

### **19.6 Electronic means**

The parties agree that:

- (a) this deed may be formed, and will in all respects be binding on the parties if so formed, by any electronic means; and
- (b) any requirement under this deed that a document or notice be given "in writing" may be satisfied by a document displayed, stored and retrieved by electronic means.

### **19.7 Entire agreement and reliance**

This deed, the Confidentiality Deed and any other documents specified by the parties for the purposes of this clause 19.7 contain the entire agreement between the parties with respect to their subject matter. Without prejudice to any rights a party may have in relation to information lodged by the other party with ASIC or ASX, no party has relied on any statement,

representation, assurance or warranty made or given by any other party, except as expressly set out in this deed.

**19.8 Further assurances**

Each party must at its own expense do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it and use its reasonable endeavours to procure that any third parties do the same.

**19.9 Governing law and jurisdiction**

This deed is governed by the laws in force in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction there and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed and waives any right it has to object to the venue of any legal process in those courts on the basis that the process has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**19.10 No merger**

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

**19.11 No waiver**

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

**19.12 Severability of provisions**

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

**Schedule 1**  
**Bidder Representations and Warranties**

1. **(Status)** It is a corporation duly incorporated and validly existing under the laws of the place of its incorporation.
2. **(Power)** It has the power to enter into and perform its obligations under this deed to carry out the transactions contemplated by this deed.
3. **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and the performance of this deed by it and to carry out the transactions contemplated by this deed.
4. **(Documents binding)** This deed is its valid and binding obligation enforceable in accordance with its terms.
5. **(Transactions permitted)** The execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
  - (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Subsidiaries; or
  - (b) its constituent documents.
6. **(Capital structure)**
  - (a) As at the date of this deed, the Bidder has:
    - (i) 316,265,571 Bidder Shares on issue; and
    - (ii) 14,617,944 Bidder Security Rights on issue,and there are no other securities issued and outstanding as at the date of this deed.
  - (b) No member of the Bidder Group is subject to any obligation (including any contingent obligation) to issue or have transferred to any person securities in or of it or any other member of the Bidder Group other than Bidder Shares that may be issued under the terms of the Bidder Security Rights that Bidder has issued and outstanding as at the date of this deed.
7. **(Diluted capital)** As at 8:00am on the Second Court Date, there will be on issue no more than 316,265,571 Bidder Shares, and other than as set out in paragraph 6(a)(iii) above, no Bidder Security Rights or any other securities, options, performance rights or instruments will be outstanding or become outstanding or convertible into Bidder Shares, and no ongoing



obligation to issue any further securities in Bidder under any agreement, arrangement or understanding entered into by any member of the Bidder Group.

8. **(Continuous disclosure)**

- (a) it has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1; and
- (b) as at the date of this deed, it is not withholding any information from public disclosure in reliance on ASX Listing Rule 3.1A (other than the information in relation to the Transaction).

9. **(Solvency)** No member of the Bidder Group is the subject of an Insolvency Event.

10. **(No material breach of laws)** Each member of the Bidder Group has complied in all material respects with all Australian or foreign laws and regulations applicable to them or orders of Australian or foreign Government Agencies having jurisdiction over it.

11. **(Material licences and authorisations)** The Bidder Group has all material licences, permits and franchises necessary for it to conduct its activities as they are conducted as at the date of this deed.

12. **(Bidder Data Room Material)** The Bidder Data Room Material has been collated and prepared in good faith, and the Bidder is not aware of any information contained in the Bidder Data Room Material that is false, misleading or deceptive in any material respect (including by omission). Other than where the Bidder has indicated to the Target that it is withholding particular information from disclosure to the Target on the basis that it is commercially sensitive information, the Bidder has not intentionally withheld information from disclosure to the Target which has been requested by the Target and its Representatives and could reasonably be expected to be material to the Target's evaluation of the Bidder Group and the merits of the Transaction. For the avoidance of doubt, the Bidder makes no representation or warranty whatsoever as to the adequacy or sufficiency of the Bidder Data Room Material for the purpose of the Target directors recommending the Scheme to Target Shareholders, which are matters of which the Target must satisfy itself.

13. **(No Regulatory Approvals)** No approval from any Government Agency is required to be obtained by the Bidder in order to execute and perform this deed, other than the Required Regulatory Approvals disclosed to the Target in writing prior to the date of this deed.

14. **(No regulatory action)** As at the date of this deed, no regulatory action of any nature of which the Bidder is aware has been taken or threatened that may prevent or in any way restrict its liability to fulfil its obligations under this deed, the Scheme or the Deed Poll.

15. **(Bidder Information)** The Bidder Information provided for inclusion in the Scheme Booklet (including in the Independent Expert's Report), as at the date the Scheme Booklet is despatched to Target Shareholders, complies with all applicable laws, will not be misleading or deceptive in any material respect (with any statement of belief or opinion having being formed on a reasonable basis), including by way of omission or otherwise.

16. **(Basis of Bidder Information)** The Bidder Information will be provided to the Target in good faith and on the understanding that the Target and each other Target Party will rely on that information for the purposes of preparing the Scheme Booklet and determining to proceed with the Transaction, and any information provided by the Bidder to the Independent Expert will, as at the date that information is provided, be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.

17. **(New information)** The Bidder will, as a continuing obligation, provide to the Target all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder

Information is not misleading or deceptive in any material respect (including by way of omission).

18. **(No material undisclosed liability)** Other than as Fairly Disclosed in the Bidder Due Diligence Material, so far as the Bidder Executive Team is aware as at the date of this deed, there is no current claim (and Bidder has not received notice of any pending claim), dispute, demand, action, litigation, prosecution, arbitration, investigation, mediation or other proceeding which could reasonably be expected to result in an award, settlement, fine, penalty, order, loss or other liability to the Bidder Group of more than \$100,000.00, and the Bidder Executive Team are not aware of any anticipated matter of this kind.
19. **(No defaults)** As at the date of this deed, no member of the Bidder Group is in material default under any material document, agreement or instrument binding on it or its assets nor has anything occurred of which Bidder is aware which is or would with the giving of notice or the lapse of time constitute an event of default, prepayment event or similar event.
20. **(Financial Indebtedness)** No member of the Bidder Group has incurred any Financial Indebtedness.
21. **(Security Interests)** There are no Security Interests over any asset or securities of a member of the Bidder Group.
22. **(Compliance)** Each member of the Bidder Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the Bidder Group as presently being conducted.
23. **(Financial Statements)** The Bidder's financial statements as disclosed to ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and there has not been any event, change, effect or development which would require the Bidder to restate its financial statements as disclosed to ASX.
24. **(Assets)** The Bidder Group owns, or has the right to use, all of the assets that are material for the conduct of the business of the Bidder Group and will continue to do so upon and immediately following the Implementation Date.
25. **(Contracts)** No agreement which is material to the business of the Bidder Group is to be terminated as a result of the Transaction including without limitation there are no contracts that are terminable as a result of a change of control.
26. **(No knowledge of Bidder Material Adverse Change)** As at the date of this deed, the Bidder is not aware of any information relating to the Bidder Group or its respective businesses or operations that has or could reasonably be expected to give rise to a Bidder Material Adverse Change that has not been Fairly Disclosed to ASX prior to the date of this deed or Fairly Disclosed in the Bidder Due Diligence Material.

## **Schedule 2**

### **Target Representations and Warranties**

1. **(Status)** Each member of the Target Group is duly incorporated and validly existing under the laws of the place of its incorporation.
2. **(Power)** It has the power to enter into and perform its obligations under this deed to carry out the transactions contemplated by this deed.
3. **(Corporate authorisations)** It has taken all necessary corporate action to authorise the entry into and performance of this deed by it and to carry out the transactions contemplated by this deed.
4. **(Deed binding)** This deed is its valid and binding obligation enforceable in accordance with its terms.
5. **(Transactions permitted)** The execution and performance by it of this deed and each transaction contemplated by this deed did not and will not violate any provision of:
  - (a) a law or treaty or a judgment, ruling, order or decree of a Government Agency binding on it or any of its Subsidiaries; or
  - (b) its Constitution or other constituent documents.
6. **(Capital structure)**
  - (a) As at the date of this deed, the Target has:
    - (i) 120,606,385 Target Shares on issue;
    - (ii) 15,480,430 Target Options on issue; and
    - (iii) 420,000 Target Performance Rights on issue,and there are no other securities issued and outstanding as at the date of this deed.
  - (b) No member of the Target Group is subject to any obligation (including any contingent obligation) to issue or have transferred to any person securities in or of it or any other member of the Target Group other than Target Shares that may be issued under the terms of the Target Options or Target Performance Rights that the Target has issued and outstanding as at the date of this deed.
7. **(Diluted capital)** As at 8:00am on the Second Court Date, there will be on issue no more than 120,746,385 Target Shares, and other than as set out in paragraph 6(a)(ii) and 6(a)(iii) above, no Target Security Rights or any other securities, options, performance rights or instruments will be outstanding or become outstanding or convertible into Target Shares, and no ongoing obligation to issue any further securities in Target under any agreement, arrangement or understanding entered into by any member of the Target Group.
8. **(Continuous disclosure):**
  - (a) it has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1; and
  - (b) as at the date of this deed, it is not withholding any information from public disclosure in reliance on ASX Listing Rule 3.1A (other than the information in relation to the Transaction).
9. **(Scheme Booklet)** At the time Target commenced sending the Scheme Booklet to Target Shareholders and Scheme Optionholders, the information contained in the Scheme Booklet

(other than the Bidder Information and the Independent Expert's Report) is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).

10. **(New Information)** Target will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that Bidder provides Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated or supplemented to include all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders and Scheme Optionholders until the date of the Scheme Meeting and Option Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including by way of omission).
11. **(Solvency)** No member of the Target Group is the subject of an Insolvency Event.
12. **(No material breach of laws)** Each member of the Target Group has complied in all material respects with all Australian or foreign laws and regulations applicable to them or orders of Australian or foreign Government Agencies having jurisdiction over it.
13. **(Material licences and authorisations)** The Target Group has all material licences, permits and franchises necessary for it to conduct its activities as they are conducted as at the date of this deed.
14. **(Target Data Room Material)** The Target Data Room Material has been collated and prepared in good faith, and Target is not aware of any information contained in the Target Data Room Material that is false, misleading or deceptive in any material respect (including by omission). Other than where Target has indicated to Bidder that it is withholding particular information from disclosure to Bidder on the basis that it is commercially sensitive information, Target has not intentionally withheld information from disclosure to Bidder which has been requested by Bidder and its Representatives and could reasonably be expected to be material to Bidder's evaluation of the Target Group and the merits of the Transaction. For the avoidance of doubt, Target makes no representation or warranty whatsoever as to the adequacy or sufficiency of the Target Data Room Material for the purpose of Bidder acquiring the Scheme Shares or for Bidder's funding of that acquisition, which are matters of which Bidder must satisfy itself.
15. **(Regulatory Approvals)** As far as Target is aware, no approval from any Government Agency is required to be obtained by Target in order to execute and perform this deed, other than, for the avoidance of doubt, approvals from ASIC and the Court, as contemplated by this deed.
16. **(No material undisclosed liability)** Other than as Fairly Disclosed in the Target Due Diligence Material, so far as the Target Executive Team is aware as at the date of this deed, there is no current claim (and Target has not received notice of any pending claim), dispute, demand, action, litigation, prosecution, arbitration, investigation, mediation or other proceeding which could reasonably be expected to result in an award, settlement, fine, penalty, order, loss or other liability to the Target Group of more than \$100,000.00, and the Target Executive Team are not aware of any anticipated matter of this kind.
17. **(No defaults)** As at the date of this deed, no member of the Target Group is in material default under any material document, agreement or instrument binding on it or its assets nor has anything occurred of which Target is aware which is or would with the giving of notice or the lapse of time constitute an event of default, prepayment event or similar event.
18. **(Financial Indebtedness)** No member of the Target Group has incurred any Financial Indebtedness other than the EXL secured loan.
19. **(Security Interests)** There are no Security Interests over any asset or securities of a member of the Target Group other than any Security Interest in relation to the EXL secured loan.
20. **(Compliance)** Each member of the Target Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them and have all material licenses,

authorisations and permits necessary for them to conduct the business of the Target Group as presently being conducted.

21. **(Financial Statements)** The Target's financial statements as disclosed to ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and there has not been any event, change, effect or development which would require the Target to restate its financial statements as disclosed to ASX.
22. **(Assets)** The Target Group owns, or has the right to use, all of the assets that are material for the conduct of the business of the Target Group and will continue to do so upon and immediately following the Implementation Date.
23. **(Contracts)** No agreement which is material to the business of the Target Group is to be terminated as a result of the Transaction including without limitation there are no contracts that are terminable as a result of a change of control.
24. **(No knowledge of Target Material Adverse Change)** As at the date of this deed, Target is not aware of any information relating to the Target Group or its respective businesses or operations that has or could reasonably be expected to give rise to a Target Material Adverse Change that has not been Fairly Disclosed to ASX prior to the date of this deed or Fairly Disclosed in the Target Due Diligence Material.

**Schedule 3**  
**Target Prescribed Occurrences and Bidder Prescribed Occurrences**

**Target Prescribed Occurrences**

1. Any member of the Target Group converts all or any of its shares into a larger or smaller number of shares.
2. Any member of the Target Group resolves to reduce its share capital in any way.
3. The Target:
  - (a) enters into a buy-back agreement; or
  - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
4. The Target issues shares, Target Security Rights or an option over its shares, or agrees to make such an issue or grant such a right or an option, other than pursuant to the exercise of an option or Target Security Right before the End Date where that option or Target Security Right was on issue immediately before the date of this deed.
5. Any member of the Target Group issues, or agrees to issue shares, performance rights, performance shares, options, convertible notes or any other security or instrument that is convertible into shares, other than to another member of the Target Group.
6. Any member of the Target Group makes any change to its constitution.
7. Any member of the Target Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property (whether by way of a single transaction or series of related transactions).
8. Any member of the Target Group agrees to pay, declares, determines, pays or makes, or incurs a liability to pay or make, a dividend or any other form of distribution of profits or capital (whether in cash or in specie) provided that a Target Prescribed Occurrence will not include any matter required to be done or procured by the Target pursuant to this deed or which is otherwise contemplated by this deed.
9. The Target Shares cease to be quoted on ASX.
10. The Target Representations and Warranties in paragraph 6 (**Capital Structure**) and 7 (**Diluted Capital**) of Schedule 2 being inaccurate.
11. Any member of the Target Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due.
12. Any member of the Target Group resolves to be wound up.
13. A liquidator or provisional liquidator of any member of the Target Group is appointed.
14. A court makes an order for the winding up of any member of the Target Group.
15. An administrator of any member of the Target Group is appointed under section 436A, 436B or 436C of the Corporations Act.
16. Any member of the Target Group executes a deed of company arrangement.

17. A receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any member of the Target Group.
18. Any member of the Target Group ceases, or threatens to cease to, carry on the business conducted as at the date of this deed, except in circumstances where this could not be reasonably expected to have a material adverse effect on the financial and operational performance or reputation of the Target Group.
19. Any member of the Target Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs 1 to 18 above.

### **Bidder Prescribed Occurrences**

1. Any member of the Bidder Group converts all or any of its shares into a larger or smaller number of shares.
2. Any member of the Bidder Group resolves to reduce its share capital in any way.
3. The Bidder:
  - (a) enters into a buy-back agreement; or
  - (b) resolves to approve the terms of a buy-back agreement under the Corporations Act.
4. The Bidder issues shares, Bidder Security Rights or an option over its shares, or agrees to make such an issue or grant such a right or an option, other than pursuant to the exercise of an option or Bidder Security Right before the End Date where that option or Bidder Security Right was on issue immediately before the date of this deed.
5. Any member of the Bidder Group issues, or agrees to issue shares, performance rights, performance shares, options, convertible notes or any other security or instrument that is convertible into shares, other than to another member of the Bidder Group.
6. Any member of the Bidder Group makes any change to its constitution.
7. Any member of the Bidder Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property (whether by way of a single transaction or series of related transactions).
8. Any member of the Bidder Group agrees to pay, declares, determines, pays or makes, or incurs a liability to pay or make, a dividend or any other form of distribution of profits or capital (whether in cash or in specie) provided that a Bidder Prescribed Occurrence will not include any matter required to be done or procured by the Bidder pursuant to this deed or which is otherwise contemplated by this deed.
9. The Bidder Shares cease to be quoted on ASX.
10. The Bidder Representations and Warranties in paragraph 6 (**Capital Structure**) and 7 (**Diluted Capital**) of Schedule 1 being inaccurate.
11. Any member of the Bidder Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due.
12. Any member of the Bidder Group resolves to be wound up.
13. A liquidator or provisional liquidator of any member of the Bidder Group is appointed.
14. A court makes an order for the winding up of any member of the Bidder Group.
15. An administrator of any member of the Bidder Group is appointed under section 436A, 436B or 436C of the Corporations Act.
16. Any member of the Bidder Group executes a deed of company arrangement.
17. A receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any member of the Bidder Group.
18. Any member of the Bidder Group ceases, or threatens to cease to, carry on the business conducted as at the date of this deed, except in circumstances where this could not be reasonably



expected to have a material adverse effect on the financial and operational performance or reputation of the Bidder Group.

19. Any member of the Bidder Group directly or indirectly authorises, commits or agrees to take or announces any of the actions referred to in paragraphs 1 to 18 above.

**Schedule 4  
Timetable**

<b>Event</b>	<b>Indicative Date</b>
Announcement and signing of Scheme Implementation Deed	At least 20 days prior to Start Date
Provide Scheme Booklet to ASIC for review	At least 14 days prior to the Start Date
Obtain ASIC no objection and registration of Scheme Booklet	At least the Business Day before the Start Date
First Court Hearing	<b>Start Date</b>
Dispatch Scheme Booklet to Target Shareholders	14 days after the Start Date
Scheme Meeting	50 days after the Start Date
Second Court Hearing	65 days after the Start Date
Effective Date (lodge office copy of Court order approving Scheme with ASIC)	70 days after the Start Date
Record Date for Scheme	5.00pm on the second Business Day following the Effective Date
Implementation Date	7 Business Days following the Effective Date

Executed and delivered as a Deed.

Executed as a deed in accordance with section  
127 of the *Corporations Act 2001* by  
**Elixinol Wellness Limited:**

.....  
Director Signature

.....  
Director/Secretary Signature

.....  
Print Name

.....  
Print Name

Executed as a deed in accordance with section  
127 of the *Corporations Act 2001* by  
**The Sustainable Nutrition Group Ltd:**

.....  
Director Signature

.....  
Director/Secretary Signature

.....  
Print Name

.....  
Print Name

**Annexure A**  
**Form of Scheme**

# Scheme of Arrangement

The Sustainable Nutrition Group Ltd  
(**“TSN”**)  
ABN 48 071 666 334

and

Each Scheme Shareholder

## Table of Contents

<b>1.</b>	<b>Definitions and interpretation</b>	<b>3</b>
1.1	Definitions	3
1.2	Interpretation	7
<b>2.</b>	<b>Preliminary</b>	<b>8</b>
2.1	TSN	8
2.2	Consequences of this Scheme becoming Effective	9
2.3	Scheme Implementation Deed and Deed Poll	9
<b>3.</b>	<b>Conditions, Effective Date and Sunset Date</b>	<b>9</b>
3.1	Conditions to the Scheme	9
3.2	Certificates	11
3.3	Effective Date	11
3.4	End Date	11
<b>4.</b>	<b>Implementation of the Scheme</b>	<b>11</b>
4.1	Lodgement	11
4.2	Transfer of Scheme Shares	12
4.3	Entitlement to Scheme Consideration	12
4.4	Title and rights in TSN Shares	12
4.5	Scheme Shareholders' agreements	12
4.6	Transfer free of Encumbrances	12
<b>5.</b>	<b>Scheme Consideration</b>	<b>13</b>
5.1	Scheme Consideration	13
5.2	Consideration under the Scheme	13
5.3	Ineligible Shareholders	13
5.4	Orders of a court or Regulatory Authority	15
5.5	Joint holders	16
5.6	Fractional entitlements and splitting	16
5.7	Trading	17
5.8	Definition of 'sending'	17
5.9	Unclaimed monies	17
<b>6.</b>	<b>Dealings in Scheme Shares</b>	<b>17</b>
6.1	Determination of Scheme Shareholders	17
6.2	Target Register	18
6.3	No disposals after Record Date	18
6.4	Maintenance of TSN Register	18
6.5	Effect of certificates and holding statements	18
6.6	Details of Scheme Shareholders	19
6.7	Quotation of TSN Shares	19
<b>7.</b>	<b>General Scheme provisions</b>	<b>19</b>
7.1	Title to and rights in the Scheme Shares	19
7.2	Appointment of agent and attorney	19
7.3	Appointment of sole proxy	19
7.4	Alterations to Scheme or condition	20
7.5	Further action by TSN	20

7.6	No liability when acting in good faith	20
7.7	Enforcement of Deed Poll	20
7.8	Binding effect of Scheme	20
7.9	Scheme Shareholders' consent	21
7.10	Warranty by Scheme Shareholders	21
7.11	Instructions and elections	22
<b>8.</b>	<b>General</b>	<b>22</b>
8.1	Notices	22
8.2	Nature of obligations	22
8.3	No variation	22
8.4	Duty	23
8.5	Further assurances	23
8.6	Governing law and jurisdiction	23

# Scheme of arrangement

## Date

## Parties

1. **The Sustainable Nutrition Group Ltd** ABN 48 071 666 334 of C/- Leydin Freyer, Level 4, 96-100 Albert Road, South Melbourne VIC 3205 (**TSN** or **Target**)
2. Each Scheme Shareholder

## Background

- A. TSN and EXL have entered into a Scheme Implementation Deed pursuant to which TSN has agreed to propose the Scheme to Scheme Shareholders and has agreed to take certain steps to implement the Scheme.
- B. EXL has executed the Deed Poll pursuant to which EXL covenants in favour of Scheme Shareholders to perform certain obligations to give effect to the Scheme.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Scheme:

**ASIC** means the Australian Securities and Investments Commission;

**ASX** means ASX Limited ABN 98 008 624 691 or the financial market known as the Australian Securities Exchange or ASX operated by it, as appropriate;

**ASX Listing Rules** means the official listing rules of ASX;

**ASX Settlement** means ASX Settlement Pty Limited ABN 49 008 504 532;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales Australia;

**Cancellation Option** has the meaning given to that term in the Scheme Implementation Deed;

**CHES** means the Clearing House Electronic Subregister System of security transfers operated by ASX Settlement;

**CHES Holding** has the meaning given in the Settlement Rules;

**Condition** has the meaning given in clause 3.1(a) of this Scheme;

**Consideration Shares** means the Shares to be issued under the Scheme as Scheme Consideration;



**Conversion** has the meaning given in the Settlement Rules;

**Corporations Act** means the *Corporations Act 2001 (Cth)*, as amended by any applicable ASIC Class Order, ASIC legislative instrument or ASIC relief;

**Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as TSN and EXL may agree in writing;

**Deed Poll** means the deed poll to be executed by EXL in substantially the form set out in Annexure B to the Scheme Implementation Deed under which EXL covenants in favour of each Scheme Shareholder to perform (amongst other things) the actions attributed to it under this Scheme;

**Duty** means any stamp, transaction or registration duty or similar charge which is imposed by any Regulatory Authority and includes any associated interest, penalty, charge or other amount which is imposed;

**Effective** means the coming into effect, under section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Scheme;

**Effective Date** means the date on which the Scheme becomes Effective;

**Encumbrance** means:

- (a) any:
  - (i) legal or equitable interest or power created, arising in or reserved in or over an interest in any property or asset; or
  - (ii) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or retention of title arrangement, right of set-off, assignment of income, garnishee order, monetary claim and flawed deposit arrangement);
- (b) any thing or preferential interest or arrangement of any kind giving a person priority or preference over claims or other persons with respect to any property or asset;
- (c) a PPSA Security Interest; or
- (d) any agreement or arrangement (whether legally binding or not) to grant or create anything referred to in paragraph (a), (b) or (c) of this definition;

**End Date** means 7 months after the date of the Scheme Implementation Deed or such other date and time agreed in writing between EXL and TSN;

**Excluded Option** has the meaning given to that term in the Scheme Implementation Deed;

**EXL or Bidder** means Elixinol Wellness Limited ABN 34 621 479 794 of C/- Company Matters Pty Limited, Level 12, 680 George Street, Sydney NSW 2000;

**Implementation Date** means, the fifth Business Day after the Record Date, or such other Business Day as EXL and TSN agree in writing or as may be required by ASX;

**Ineligible Foreign Shareholder** means a person who is (or is acting on behalf of) a Scheme Shareholder whose Registered Address as at the Record Date is a place outside of Australia and its external territories, unless EXL has determined prior to the Implementation Date that:

- (a) it is lawful and not unduly onerous or unduly impracticable to issue that Scheme Shareholder with the Consideration Shares on implementation of the Scheme; and
- (b) it is lawful for that Scheme Shareholder to participate in the Scheme by the law of the relevant place outside Australia and its external territories;

**Ineligible Shareholders** means Ineligible Foreign Shareholders and Unmarketable Parcel Shareholders;

**Issuer Sponsored Holding** has the meaning given in the Settlement Rules;

**Option Scheme** has the meaning given in the Scheme Implementation Deed;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**PPSA Security Interest** means a security interest as defined in the PPSA;

**Proceeds** means the gross proceeds of the sale of the Sale Shares under clause 5.3(a)(ii) after deducting applicable brokerage, Duty and other selling costs, taxes and charges;

**Record Date** means 7.00 pm on the date which is 2 Business Days after the Effective Date, or such other Business Day agreed in writing by EXL and TSN, or as may be required by ASX;

**Registered Address** means the address of a Scheme Shareholder (other than an Ineligible Foreign Shareholder) shown in the Target Register, and in relation to Ineligible Foreign Shareholders means the holding address nominated by the Sale Nominee to TSN prior to the Implementation Date;

**Regulatory Authority** means:

- (a) any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, tribunal, agency or entity;
- (b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; or
- (c) any regulatory organisation established under statute,

in any part of the world, and whether foreign, federal, state, territorial or local;

**Sale Nominee** means the agent (or any nominee of such agent) appointed by TSN and EXL (each acting reasonably and in good faith) to sell the Sale Shares under clause 5.3;

**Sale Shares** means the Consideration Shares to which Ineligible Shareholders would have been entitled under this Scheme but for the operation of clause 5.3;

**Scheme** means this scheme of arrangement pursuant to Part 5.1 of the Corporations Act between TSN and Scheme Shareholders in respect of the Scheme Shares, subject to:

- (a) any amendments agreed in writing by EXL and TSN, and approved by the Court; and
- (b) any amendments made or required by the Court under section 411(6) of the Corporations Act and approved by EXL and TSN in writing (such approval not to be unreasonably withheld or delayed);

**Scheme Consideration** means the Consideration Shares being 1.1225 ordinary shares in the capital of EXL credited as fully paid to be issued as consideration under the Scheme in exchange for one Scheme Share/s held as at the Record Date;

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 28 November 2022 between EXL and TSN;

**Scheme Meeting** means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme, including any adjournment or postponement of that meeting;

**Scheme Option** has the meaning given in the Option Scheme;

**Scheme Share** means a Target Share on issue as at the Record Date;

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

**Scheme Transfer** means, for each Scheme Shareholder, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Shareholder for the purposes of section 1071B of the Corporations Act, which may be in the form of a master transfer of all Scheme Shares;

**Second Court Date** means the first day on which the application to approve the Scheme under section 411(4)(b) of the Corporations Act is heard by the Court or scheduled to be heard or, if the application is adjourned for any reason, the date on which the adjourned application is heard or scheduled to be heard;

**Settlement Rules** means the ASX Settlement Operating Rules;

**Share or EXL Share** means one issued fully paid ordinary share in the share capital of EXL;

**Target Option** means an option granted by TSN to acquire by way of issue one or more TSN Shares;

**Target Performance Rights** has the meaning given to that term in the Scheme Implementation Deed;

**Target Register** means the register of securityholders of TSN maintained by or on behalf of TSN in accordance with section 168(1) of the Corporations Act;

**Target Share or TSN Share** means an issued fully paid ordinary share in the capital of TSN;

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

**Trust Account** means an Australian dollar denominated trust account operated by TSN as trustee for the benefit of Ineligible Shareholders;

**TSN Constitution** means the constitution of TSN, as amended from time to time;

**TSN Registry** means Link Market Services Limited or any replacement provider of share registry services to TSN;

**Unclaimed Money Act** means the *Unclaimed Money Act 1995* (NSW); and

**Unmarketable Parcel Shareholder** means a Scheme Shareholder (other than an Ineligible Foreign Shareholder) who, on the Record Date, holds less than a marketable parcel (as that term is defined in the ASX Listing Rules) of Target Shares (assessed using the price of Target Shares on ASX at close of trade on the Effective Date).

## 1.2 Interpretation

In this Scheme unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Scheme;
- (d) other grammatical forms of a defined word or expression have a corresponding meaning;
- (e) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- (f) a reference to a party is to a party to this Scheme and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;
- (g) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (h) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- (i) "month" means calendar month and "year" means 12 consecutive months;
- (j) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) is to that statute as amended, consolidated, re-enacted or replaced from time to time;
- (k) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- (l) money amounts are stated in Australian currency unless otherwise specified;

- (m) a reference to time is to Sydney, Australia time;
- (n) a reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (**defunct body**) is to the agency or body that performs most closely the powers or functions of the defunct body;
- (o) any provision in this Scheme which is in favour of more than one person benefits all of them jointly and each of them severally; and
- (p) any provision in this Scheme which binds more than one person binds all of them jointly and each of them severally.

## 2. Preliminary

### 2.1 TSN

- (a) TSN is a public company limited by shares, incorporated and registered in Queensland, Australia.
- (b) TSN is admitted to the official list of the ASX and Target Shares are officially quoted on the financial market operated by ASX.
- (c) As at the date of the Scheme Implementation Deed, TSN had the following securities on issue:

Number	Type
120,606,385*	Target Shares
15,480,430	Target Options comprising of: <ul style="list-style-type: none"> <li>• 11,750,008 Target Options expiring on 31 July 2023 with an exercise price of \$0.26;</li> <li>• 334,000 Excluded Options expiring on 22 October 2023 with an exercise price of \$0.26; and</li> <li>• 3,396,422 Cancellation Options expiring on various dates with exercise prices ranging from \$0.26 to \$0.65</li> </ul>
420,000	Target Performance Rights

*\*Whilst it is proposed that the Target Performance Rights are to be cancelled before the Scheme becomes Effective, the Target intends to issue 140,000 Target Shares before the Effective Date in lieu of the Target Performance Rights and those Target Shares will form part of the Scheme.*

## 2.2 Consequences of this Scheme becoming Effective

If the Scheme becomes Effective then:

- (a) on the Implementation Date, EXL will, in consideration of the transfer of each Scheme Share to EXL, provide or procure the issue of the Scheme Consideration to Scheme Shareholders in accordance with the terms of this Scheme;
- (b) on the Implementation Date, all the Scheme Shares held by Scheme Shareholders, and all the rights and entitlements attaching to them as at that date, will be transferred to EXL after EXL has provided or procured the issue of the Scheme Consideration to the Scheme Shareholders in accordance with the terms and conditions of this Scheme;
- (c) on the Implementation Date, TSN will enter EXL's name in the Target Register in respect of all of the Scheme Shares after EXL has provided or procured the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme;
- (d) on the Implementation Date, EXL will apply for Consideration Shares to be quoted on ASX;
- (e) it will bind TSN and all Scheme Shareholders, including those who do not attend the Scheme Meeting, those who do not vote at that meeting and those who vote against this Scheme at that meeting; and
- (f) it will override the TSN Constitution, to the extent of any inconsistency.

## 2.3 Scheme Implementation Deed and Deed Poll

- (a) EXL and TSN have agreed, by executing the Scheme Implementation Deed, to each take certain steps to implement the terms of this Scheme.
- (b) This Scheme attributes actions to EXL but does not itself impose an obligation on EXL to perform those actions. EXL has agreed by executing the Deed Poll for the benefit of the Scheme Shareholders to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide (or procure the provision of) the Scheme Consideration to Scheme Shareholders in accordance with the terms of this Scheme.

## 3. Conditions, Effective Date and Sunset Date

### 3.1 Conditions to the Scheme

- (a) The Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions (each a **Condition**):
  - (i) all conditions precedent in clause 3.1 of the Scheme Implementation Deed having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date (other than the conditions precedent in clause 3.1(d) (**Court approval**), clause 3.1(l) (**Option Scheme**));

- (ii) neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with their terms or otherwise on or before 8.00am on the Second Court Date;
  - (iii) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed to in writing by EXL and TSN (such agreement not to be unreasonably withheld or delayed);
  - (iv) such other conditions in respect of this Scheme as may be imposed by the Court under section 411(6) of the Corporations Act, and as are agreed to in writing by EXL and TSN (such agreement not to be unreasonably withheld or delayed), having been satisfied;
  - (v) the orders of the Court made under section 411(4)(b) (and if applicable section 411(6)) of the Corporations Act approving the Scheme coming into effect, under section 411(10) of the Corporations Act, on or before the End Date; and
  - (vi) unless the condition precedent in clause 3.1(l) (**Option Scheme**) of the Scheme Implementation Deed has been waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date:
    - (A) all conditions precedent in respect of the Option Scheme set out in clause 3.2 of the Scheme Implementation Deed being satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date (other than the condition precedent in clause 3.2(c) (**Court approval**) and clause 3.2(g) (**Scheme**));
    - (B) approval of the Option Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed in writing by EXL and TSN (such agreement not to be unreasonably withheld or delayed);
    - (C) such other conditions in respect of the Option Scheme as may be imposed by the Court in respect of the Option Scheme under section 411(6) of the Corporations Act, and as are agreed to in writing by EXL and TSN (such agreement not to be unreasonably withheld or delayed), having been satisfied; and
    - (D) the orders of the Court made under section 411(4)(b) (and if applicable section 411(6)) of the Corporations Act approving the Option Scheme coming into effect, under section 411(10) of the Corporations Act, on or before the End Date.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) of this document is a condition precedent to the operation of clauses 5 and 4.2(a) and the binding effect of this Scheme.

### 3.2 Certificates

- (a) EXL and TSN must each give to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not:
  - (i) the Conditions in clauses 3.1(a)(i) and 3.1(a)(ii) have been satisfied;
  - (ii) the condition precedent in clause 3.1(l) (**Option Scheme**) of the Scheme Implementation Deed has been waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date; and
  - (iii) if the condition precedent in clause 3.1(l) (**Option Scheme**) of the Scheme Implementation Deed has not been waived by 8.00am on the Second Court Date, the Condition in clause 3.1(a)(vi)(A) has been satisfied.
- (b) Unless the Court requires otherwise, the certificates referred to in clause 3.2(a) constitute conclusive evidence that such Conditions were satisfied or waived, as applicable, in accordance with the terms of the Scheme Implementation Deed.

### 3.3 Effective Date

Subject to clauses 3.1 and 3.4, the Scheme will take effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### 3.4 End Date

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

- (a) the Effective Date does not occur on or before the End Date; or
- (b) either or both of the Scheme Implementation Deed or Deed Poll is terminated in accordance with its terms,

unless TSN and EXL agree in writing otherwise, with the approval of the Court, if required.

## 4. Implementation of the Scheme

### 4.1 Lodgement

If all of the Conditions set out in clauses 3.1(a)(i) to (v) (inclusive) are satisfied or (if relevant) waived, all of the Conditions in clause 3.1(a)(vi)(A) to (C) (inclusive) are satisfied, or where relevant waived (other than the Conditions in clauses 3.1(a)(v) and 3.1(a)(vi)(D)), TSN must lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act, as soon as reasonably practicable after the Court approves this Scheme and in any event before 5.00pm on the Business Day after the Business Day the Court approves the Scheme or such other Business Day as TSN and EXL agree in writing.



## **4.2 Transfer of Scheme Shares**

On the Implementation Date and subject to the provision of the Scheme Consideration to Scheme Shareholders in accordance with clause 5.2(a):

- (a) all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to EXL, without the need for any further act by any Scheme Shareholder (other than acts performed by TSN as attorney and agent for Scheme Shareholders under clause 7.2 of this Scheme or otherwise) by:
  - (i) TSN delivering to EXL a duly completed and executed Scheme Transfer executed on behalf of the Scheme Shareholders; and
  - (ii) EXL duly executing the Scheme Transfer and delivering it to TSN for registration; and
- (b) promptly after receipt of the executed Scheme Transfer in accordance with clause 4.2(a)(ii), TSN must enter, or procure the entry of, the name of EXL in the Target Register as the holder of all of the Scheme Shares in accordance with this Scheme.

## **4.3 Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to EXL of the Scheme Shares:

- (a) each Scheme Shareholder who is not an Ineligible Shareholder will be entitled to receive the Scheme Consideration in respect of their Scheme Shares in accordance with clause 5.2(a) of this Scheme; and
- (b) the Sale Nominee will be entitled to be issued such Scheme Consideration as is attributable to Ineligible Shareholders.

## **4.4 Title and rights in TSN Shares**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 5.2(a) of this Scheme, on and from the Implementation Date, EXL will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by TSN of EXL in the Target Register as the holder of the Scheme Shares.

## **4.5 Scheme Shareholders' agreements**

Under this Scheme, each Scheme Shareholder agrees to the transfer of all of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

## **4.6 Transfer free of Encumbrances**

To the extent permitted by law, all Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred to EXL under this Scheme will, at the date of the transfer of them to EXL, vest in EXL free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind not referred to in this Scheme.

## **5. Scheme Consideration**

### **5.1 Scheme Consideration**

Subject to clauses 5.3, 5.4 and 5.6, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder.

### **5.2 Consideration under the Scheme**

- (a) Before 5.00pm on the Implementation Date, EXL must issue all of the Consideration Shares which it is required to issue to Scheme Shareholders and the Sale Nominee under this Scheme by:
  - (i) procuring that the name of each Scheme Shareholder entitled to receive Consideration Shares under this Scheme is entered in EXL's register of members (as maintained by EXL or its agent) as the holder of the Consideration Shares to which the Scheme Shareholder is entitled (using the same holding name and address and other details as the holding of the relevant Scheme Shares); and
  - (ii) procuring that the name of Sale Nominee is entered in EXL's register of members (as maintained by EXL or its agent) as the holder of the Sale Shares attributable to Ineligible Shareholders (using such holding details as are notified by the Sale Nominee to TSN prior to the Implementation Date).
- (b) Subject to this Scheme becoming Effective, EXL must ensure that each Consideration Share issued as Scheme Consideration will at the time it is issued:
  - (i) rank equally with all Shares then in issue;
  - (ii) be duly and validly issued in accordance with applicable laws and EXL's constitution; and
  - (iii) be issued fully paid and free from any Encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (c) Each Scheme Shareholder that becomes a shareholder of EXL will be taken, automatically through this Scheme, to have agreed to become a member of EXL in accordance with EXL's constitution.
- (d) On or before the date that is 2 Business Days after the Implementation Date, EXL must send, or procure the sending of, a certificate, allotment advice or holding statement (or equivalent document) to each Scheme Shareholder entitled to receive Consideration Shares under this Scheme, reflecting the issue of such Consideration Shares in accordance with clause 5.2(a).

### **5.3 Ineligible Shareholders**

- (a) EXL will be under no obligation under the Scheme to provide and will not provide, any Consideration Shares to Ineligible Shareholders, and instead:

- (i) subject to clauses 5.4 and 5.6, EXL must issue the Consideration Shares which would otherwise be required to be provided to the Ineligible Shareholders under the Scheme to the Sale Nominee;
- (ii) TSN must procure that, as soon as reasonably practicable after the Implementation Date and, in any event, not more than 15 Business Days after the Implementation Date, the Sale Nominee, sells or procures the sale, in the ordinary course of trading on the ASX, of all the Sale Shares issued to the Sale Nominee in such manner, at such price and on such other terms as the Sale Nominee determines in good faith;
- (iii) as soon as reasonably practicable after the last sale of Sale Shares in accordance with clause 5.3(a)(ii), TSN must procure that Sale Nominee remits the Proceeds into the Trust Account (for payment by TSN to the Ineligible Shareholders in accordance with clauses 5.3(a)(iv), 5.3(b) to 5.3(g) (inclusive) and 5.4 of this Scheme); and
- (iv) as soon as reasonably practicable following payment into the Trust Account of the Proceeds, TSN must pay, or procure the payment, from the Trust Account to each Ineligible Shareholder such proportion of the Proceeds to which that Scheme Shareholder is entitled in respect of their Sale Shares, being in the case of each such person the amount "A" calculated in accordance with the following formula and rounded to the nearest whole cent:

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

where

A = the proportion of the Proceeds to be paid to each relevant Ineligible Shareholder;

B = the number of Sale Shares attributable to that Ineligible Shareholder;

C = the total number of Sale Shares; and

D = the Proceeds.

- (b) None of TSN, EXL or the Sale Nominee gives any assurance as to the price that will be achieved for the sale of Sale Shares described in clause 5.3(a) above. The sale of Sale Shares by the Sale Nominee will be at the risk of the Ineligible Shareholders.
- (c) TSN, EXL and the Sale Nominee each expressly disclaim any fiduciary duty to any Ineligible Shareholder which may otherwise arise in connection with the matters set out in this clause 5.3.
- (d) The amount referred to in clause 5.3(a)(iv) must be paid by TSN doing any of the following at its election:
  - (i) sending it (or procuring that it is sent) to the Ineligible Shareholder's registered address as recorded in the Target Register as at the Record Date (or in the case of joint holders, in accordance with clause 5.5(b)) by cheque in AUD currency drawn out of the Trust Account; or

- (ii) depositing it via an electronic funds transfer (or procuring that it is deposited via an electronic funds transfer) into an account with any Australian ADI (as defined in the Corporations Act) notified to TSN (or TSN Registry) by an appropriate authority from the Ineligible Shareholder.
- (e) If there is any surplus in the amount held by TSN in the Trust Account, that surplus less any bank fees and other bank charges will be to the account of TSN. Any interest on the amounts deposited in the Trust Account (less bank fees and other charges) will be to TSN's account.
- (f) If any amount is required under any applicable law or by any Regulatory Authority to be:
  - (i) withheld from an amount payable under clause 5.3(a)(iv) or 5.3(d) and paid to any entity or authority; or
  - (ii) retained by TSN out of an amount payable under clause 5.3(a)(iv) or 5.3(d),

its payment or retention by or on behalf of TSN will constitute the full discharge of TSN's obligations under this clause with respect to the amount so paid or retained until, in the case of clause 5.3(f)(ii), it is no longer required to be retained.
- (g) Each Ineligible Shareholder appoints TSN as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) (or equivalent) that the Sale Nominee is required to provide to Ineligible Shareholders under the Corporations Act, or any other applicable law.
- (h) TSN agrees to appoint the Sale Nominee as soon as reasonably practicable after obtaining the Court's order under section 411(1) of the Corporations Act to convene the Scheme Meeting, and at least two weeks prior to the Scheme Meeting.

#### **5.4 Orders of a court or Regulatory Authority**

Notwithstanding any other provision of this Scheme, in the case of written notice having been given to TSN (or TSN Registry) of an order or direction made by a court of competent jurisdiction or Regulatory Authority, or TSN is aware of any law, that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) 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 by TSN or EXL in accordance with this clause 5 (including payment of proceeds otherwise payable to an Ineligible Shareholder), then TSN or EXL (as applicable) will be entitled to and must procure that the provision of that consideration is made in accordance with that order, direction or law; or
- (b) prevents TSN or EXL from providing consideration to any particular Scheme Shareholder in accordance with this clause 5 (including payment of proceeds otherwise payable to an Ineligible Shareholder), or the payment or issuance of such consideration is otherwise prohibited by applicable law, then TSN or EXL (as applicable) will be entitled to not pay or issue (or in the case of TSN, direct

EXL not to issue) the Scheme Consideration to the relevant Scheme Shareholder until such time as the provision of the Scheme Consideration in accordance with clause 5.2(a) is permitted by that (or another) order or direction or otherwise by the applicable law, or issue (or in the case of TSN, direct EXL to issue) to a permitted trustee or nominee, the Scheme Consideration to which the relevant Scheme Shareholder would otherwise be entitled under this Scheme,

and such actions will constitute full discharge of each of TSN and EXL's obligations in respect of the relevant Scheme Consideration.

## 5.5 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any Consideration Shares issued as Scheme Consideration, must be issued to and registered in the names of the joint holders;
- (b) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the holder whose name appears first in the Target Register as at the Record Date; and
- (c) any other document required to be sent under this Scheme, will be forwarded to the holder whose name appears first in the Target Register as at the Record Date.

## 5.6 Fractional entitlements and splitting

- (a) Subject to clause 5.6(b), where the calculation of the number of Consideration Shares to be issued to a particular Scheme Shareholder as Scheme Consideration would result in an entitlement to the issue of a fraction of an EXL Share which is 0.5 or greater, the fractional entitlement will, after aggregating all holdings of the Scheme Shareholder, be rounded up to the nearest whole number of Consideration Shares, otherwise the rounding will be down to the nearest whole number.
- (b) If EXL or TSN reasonably believe that two or more Scheme Shareholders, each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.6(a), have, on or before the Record Date, been party to shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for under clause 5.6(a), TSN must, if requested by EXL, send a notice to those Scheme Shareholders:
  - (i) setting out their names and Registered Addresses;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice (**Deemed Holder**) all of the Scheme Shares held by all of them,

and after such notice has been given, the Scheme Shareholder specifically identified in the notice as the Deemed Holder of the specified Scheme Shares will, for the purposes of this Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and Registered Addresses are set out in the notice will, for the purposes of this

Scheme, be taken to hold no Scheme Shares. EXL, in complying with the provisions of this Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the Deemed Holder of the specified Scheme Shares, will be taken to have satisfied and discharged its obligations under the terms of the Scheme to all the Scheme Shareholders named in the notice. For the avoidance of doubt, EXL must still issue the Scheme Consideration to the Deemed Holder, subject to the terms of this Scheme.

## **5.7 Trading**

Subject to this Scheme becoming Effective, EXL will apply for the Consideration Shares comprising the Scheme Consideration to be approved for conditional listing on the ASX and use its reasonable endeavours to ensure that on and from the Business Day after the Implementation Date, the Consideration Shares comprising the Scheme Consideration will be approved for listing on ASX.

## **5.8 Definition of 'sending'**

For the purposes of clause 5, the expression sending means, in relation to each Scheme Shareholder:

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

## **5.9 Unclaimed monies**

- (a) TSN may cancel a cheque issued under clause 5.3(d)(i) if the cheque:
  - (i) is returned to TSN; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque is sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from an Ineligible Shareholder to EXL (or the TSN Registry), which request must not be made until the date which is 20 Business Days after the Implementation Date, TSN must reissue a cheque that was previously cancelled under clause 5.9(a)(ii).
- (c) The Unclaimed Money Act will apply in relation to any Scheme Consideration which becomes “unclaimed money” as defined in that Act.

# **6. Dealings in Scheme Shares**

## **6.1 Determination of Scheme Shareholders**

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

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Register as the holder of the relevant TSN Shares on or before 7.00pm on the Record Date; and

- (b) in all other cases, registrable transmission applications or transfers in registrable form, or valid requests in respect of other alterations, in relation to those dealings or alterations are received on or before 5.00pm on the Record Date at the place where the Target Register is kept,

and TSN must not accept for registration, nor recognise for any purpose (except any transfer to or by EXL or its successors in title, following implementation of the steps set out in clause 4 of this Scheme), any transmission application, transfer or other alteration request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

## **6.2 Target Register**

TSN must register any registrable transmission applications or transfers, or other valid request in respect of other alterations, of the Scheme Shares received in accordance with clause 6.1(b) of this Scheme on or before the Record Date.

## **6.3 No disposals after Record Date**

If this Scheme becomes Effective:

- (a) from the Record Date until implementation of the steps set out in clause 4.2 of this Scheme, 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 in any way except as set out in this Scheme and any such disposal will be void and of no legal effect; and
- (b) TSN will not accept for registration or recognise for any purpose any transmission, application or transfer, or other valid request in respect of other alterations, in respect of TSN Shares received after 5.00pm on the Record Date (or 7.00pm on the Record Date in the case of dealings of the type effected by CHESS) (except for any transfer by EXL or its successors in title, following implementation of the steps set out in clause 4.2 of this Scheme).

## **6.4 Maintenance of TSN Register**

For the purpose of determining entitlements to the Scheme Consideration, TSN must maintain the Target Register in accordance with the provisions of this clause 6 until the Scheme Consideration has been provided to the Scheme Shareholders and the other steps set out in clause 4.2 of this Scheme have been completed. The Target Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

## **6.5 Effect of certificates and holding statements**

- (a) Any statements of holding in respect of Scheme Shares (other than statements of holding in favour of EXL or its successors in title) will cease to have effect after the Record Date as documents of title in respect of those TSN Shares.
- (b) As from the Record Date, each entry current on the Target Register as at the Record Date (other than entries in respect of EXL or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

## **6.6 Details of Scheme Shareholders**

As soon as practicable after the Record Date, and in any event on the first Business Day after the Record Date, TSN must ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder, as shown in the Target Register on the Record Date are available to EXL in such form as EXL reasonably requires.

## **6.7 Quotation of TSN Shares**

- (a) TSN must apply to ASX to suspend trading on ASX in TSN Shares, and use best endeavours to ensure ASX does so, with effect from the close of trading on ASX on the Effective Date.
- (b) On the next trading day after the Implementation Date (or such other date to be determined by EXL and notified to TSN in writing), and only after the transfer of all Scheme Shares has been registered in accordance with clause 4.2, TSN must apply:
  - (i) for termination of the official quotation of TSN Shares on ASX; and
  - (ii) to have itself removed from the official list of the ASX.

## **7. General Scheme provisions**

### **7.1 Title to and rights in the Scheme Shares**

On and from the Implementation Date, EXL will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by TSN of EXL in the Target Register as the holder of the Scheme Shares.

### **7.2 Appointment of agent and attorney**

On the Effective Date, each Scheme Shareholder, without the need for any further act:

- (a) irrevocably appoints TSN as its agent and attorney for the purpose of executing any document or form or doing any other act necessary or incidental to give effect to the terms of this Scheme and the transactions contemplated by it, including the Scheme Transfer and the giving of the Scheme Shareholder's consent under clause 7.9; and
- (b) irrevocably appoints TSN as its agent and attorney for the purpose of enforcing the Deed Poll against EXL,

and TSN accepts such appointment. TSN, as agent and attorney of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 7.2 to all or any of its directors and officers (jointly, severally or jointly and severally).

### **7.3 Appointment of sole proxy**

Immediately upon the provision of the Scheme Consideration to the Scheme Shareholders in the manner contemplated by clause 5.2(a), and until TSN registers EXL as the holder of all Scheme Shares in the Target Register, each Scheme Shareholder:



- (a) is deemed to have irrevocably appointed EXL as attorney and agent (and directed EXL in each such capacity) to appoint any director, officer, secretary or agent nominated by EXL as its sole proxy and, where applicable or appropriate, corporate representative, to attend Target Shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any Target Shareholders' resolution or document in any capacity;
- (b) must not attend or vote at any Target Shareholders' meetings or sign any Target Shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 7.3(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as EXL reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 7.3(a), EXL and any director, officer, secretary or agent nominated by EXL under clause 7.3(a) may act in the best interests of EXL as the intended registered holder of the Scheme Shares.

#### **7.4 Alterations to Scheme or condition**

TSN may, by its counsel or solicitors, and with the prior written consent of EXL (which must not be unreasonably withheld), consent on behalf of all persons concerned, including each Scheme Shareholder, to any alteration or condition to the Scheme which the Court thinks fit to impose. Each Scheme Shareholder agrees to any such alteration or condition consented to by TSN in accordance with this clause 7.4.

#### **7.5 Further action by TSN**

- (a) TSN must execute all documents and do all things (on its own behalf and on behalf of each Scheme Shareholder) necessary or expedient to implement, and perform its obligations under and give effect to, this Scheme and the transactions contemplated by it.
- (b) Each Scheme Shareholder consents to TSN executing all documents and doing all things necessary or expedient to implement and give effect to this Scheme and the transactions contemplated by it.

#### **7.6 No liability when acting in good faith**

Each Scheme Shareholder agrees that neither TSN, EXL nor any of their respective officers, employees and advisers (as applicable), will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

#### **7.7 Enforcement of Deed Poll**

TSN undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against EXL on behalf of and as agent and attorney for the Scheme Shareholders.

#### **7.8 Binding effect of Scheme**

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

## **7.9 Scheme Shareholders' consent**

Each Scheme Shareholder irrevocably, and without the need for any further act by that Scheme Shareholder:

- (a) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
- (b) consents to TSN and EXL doing all things and executing all deeds, instruments and other documents as may be necessary, incidental or expedient to the implementation and performance of the Scheme;
- (c) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from the Scheme;
- (d) who holds their Target Shares in a CHESS Holding, agrees to the Conversion of those Target Shares to an Issuer Sponsored Holding and irrevocably authorises TSN to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such Conversion;
- (e) agrees to, on the direction of EXL, destroy any holding statements or share certificates relating to their Scheme Shares;
- (f) agrees to become a shareholder of EXL, to have their name registered in the register of members of EXL as a holder of EXL Shares (in respect of the Consideration Shares which they are to be issued pursuant to this Scheme) and to be bound by EXL's constitution; and
- (g) acknowledges and agrees that the Scheme binds TSN and all of the Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme at that meeting) and, to the extent of any inconsistency, overrides the TSN Constitution.

## **7.10 Warranty by Scheme Shareholders**

- (a) Each Scheme Shareholder is deemed to have warranted to EXL on the Implementation Date that:
  - (i) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of their transfer to EXL pursuant to this Scheme, be fully paid and free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;
  - (ii) they have full power and capacity to sell and to transfer their Scheme Shares together with any rights and entitlements attaching to such Scheme Shares pursuant to the terms of this Scheme; and
  - (iii) it has no existing right to be issued any Target Shares, Target Options, Target Performance Rights, TSN convertible notes or any other TSN securities, other than, in the case of any Scheme Shareholder who is also the holder of Target Options, the right to be issued TSN Shares on

the exercise of those Target Options in accordance with their terms or in accordance with the Option Scheme.

- (b) To the extent permitted by law, Scheme Shares transferred under the Scheme will be transferred free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
- (c) TSN undertakes that it will provide the warranties in clause 7.10(b) to EXL as agent and attorney of each Scheme Shareholder.

## **7.11 Instructions and elections**

If not prohibited by law (and including where permitted or facilitated by relief granted by a Regulatory Authority), all instructions, notifications or elections by a Scheme Shareholder to TSN which are binding or deemed binding between the Scheme Shareholder and TSN relating to TSN or Target Shares (including any email addresses, instructions relating to communications from TSN, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from TSN) will be deemed from the Implementation Date (except to the extent determined otherwise by EXL in its sole discretion), by reason of this Scheme, to be made by the Scheme Shareholder to EXL and to be a binding instruction, notification or election to, and accepted by, EXL in respect of the Consideration Shares issued to that Scheme Shareholder until that instruction, notification or election is revoked or amended in writing addressed to EXL at its registry.

## **8. General**

### **8.1 Notices**

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

### **8.2 Nature of obligations**

Each obligation imposed on a party by this Scheme in favour of another is a separate obligation. Unless specified otherwise, the performance of one obligation is not dependent or conditional on the performance of any other obligation.

### **8.3 No variation**

This Scheme cannot be amended or varied except in writing signed by EXL and TSN and, if after orders have been made by the Court in accordance with section 411(1) of the Corporations Act, then only with the consent of the Court.

#### **8.4 Duty**

Any Duty (including related interest or penalties) payable in connection with the transfer of the Scheme Shares must be paid by EXL, and EXL is entitled to apply for and retain any refund of such Duty.

#### **8.5 Further assurances**

- (a) A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Scheme.
- (b) Each Scheme Shareholder consents to TSN and EXL doing all things necessary or incidental to give full effect to this Scheme and the transactions contemplated by it.

#### **8.6 Governing law and jurisdiction**

- (a) This Scheme is governed by and must be construed in accordance with the laws in force in New South Wales.
- (b) The parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of all matters arising out of or relating to this Scheme, its performance or subject matter.

**Annexure B**  
**Form of Deed Poll**

K&L GATES

## **Deed Poll**

**By Elixinol Wellness Limited**

ABN 34 621 479 794

in favour of each Scheme Shareholder

## Table of Contents

<b>1.</b>	<b>Defined terms and interpretation</b>	<b>1</b>
1.1	Defined terms	1
1.2	Interpretation	1
1.3	Nature of deed poll	1
<b>2.</b>	<b>Condition precedent and termination</b>	<b>2</b>
2.1	Condition precedent to obligations of the Scheme	2
2.2	Termination	2
2.3	Consequences of termination	2
<b>3.</b>	<b>Scheme obligations</b>	<b>2</b>
3.1	Undertaking Scheme obligations	2
3.2	Provision of Scheme Consideration	2
<b>4.</b>	<b>Representations and warranties</b>	<b>3</b>
<b>5.</b>	<b>Continuing obligations</b>	<b>3</b>
<b>6.</b>	<b>Notices</b>	<b>3</b>
<b>7.</b>	<b>General</b>	<b>5</b>
7.1	Waiver	5
7.2	Variation	5
7.3	Remedies cumulative	5
7.4	No assignment	5
7.5	Stamp duty	5
7.6	Further assurances	5
7.7	Governing law	6

## Deed Poll

Date 2022

## Parties

This Deed Poll is made by:

**Elixinol Wellness Limited** ABN 34 621 479 794 of C/- Company Matters Pty Limited, Level 12, 680 George Street, Sydney NSW 2000 (**EXL** or the **Bidder**)

in favour of:

Each registered holder of fully paid ordinary shares in The Sustainable Nutrition Group Ltd ABN 48 071 666 334 as at 5.00pm on the Record Date (each a **Scheme Shareholder**).

## Background

- A. On 28 November 2022, EXL and The Sustainable Nutrition Group Ltd ABN 48 071 666 334 (**TSN** or the **Target**) entered into a scheme implementation agreement with respect to the Scheme (as defined below) and associated matters (**Scheme Implementation Deed**).
- B. In the Scheme Implementation Deed, the Bidder agreed (amongst other things) to acquire all the Scheme Shares held by Scheme Shareholders and provide the Scheme Consideration to the Scheme Shareholders, subject to the satisfaction of certain conditions.
- C. The Bidder is entering into this Deed Poll to covenant in favour of the Scheme Shareholders that it will perform all actions attributed to it under the Scheme.

## Agreed terms

## 1. Defined terms and interpretation

### 1.1 Defined terms

In this Deed Poll, unless otherwise defined, capitalised words and phrases have the same meaning as given to them in the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between the Target and Scheme Shareholders in respect of all Scheme Shares substantially in the form set out in Annexure A to the Scheme Implementation Deed, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by the Bidder and Target (**Scheme**).

## 1.2 Interpretation

The provisions of clause 1.2 of the Scheme form part of this Deed Poll as if set out in full in this Deed Poll, except that references to 'Scheme' are to be read as references to 'Deed Poll'.

### 1.3 Nature of deed poll

The Bidder acknowledges that:



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

## **2. Condition precedent and termination**

### **2.1 Condition precedent to obligations of the Scheme**

The obligations of the Bidder under this Deed Poll are subject to the Scheme becoming Effective.

### **2.2 Termination**

The obligations of the Bidder under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if:

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

unless the Bidder and the Target agree in writing otherwise, with the approval of the Court, if required.

### **2.3 Consequences of termination**

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

- (a) the Bidder is released from its obligations to further perform this Deed Poll, except those obligations under clause 7.5; and
- (b) each Scheme Shareholder retains the rights it has against the Bidder in respect of any breach of this Deed Poll which occurs before it is terminated.

## **3. Scheme obligations**

### **3.1 Undertaking Scheme obligations**

Subject to clause 2, the Bidder covenants in favour of each Scheme Shareholder to perform all actions attributed to it under, and otherwise comply with, the Scheme as if it were a party to the Scheme, subject to and in accordance with the terms and conditions of the Scheme.

### **3.2 Provision of Scheme Consideration**

- (a) Subject to clause 2, the Bidder undertakes in favour of each Scheme Shareholder to, on the Implementation Date, issue (or procure the issue of) the Consideration Shares to the Scheme Shareholders (including the Sale Nominee) that are entitled

to receive the Scheme Consideration subject to and in accordance with the terms of the Scheme.

- (b) The obligations of the Bidder under clause 3.2(a) will be satisfied if, on or before 5.00pm on the Implementation Date, it issues all of the Consideration Shares which it is obliged to issue to Scheme Shareholders and to the Sale Nominee under the Scheme.

#### **4. Representations and warranties**

The Bidder represents and warrants in favour of each Scheme Shareholder that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) the entry into and performance of this Deed Poll by it does not and will not result in a contravention of its constitution, or any law, judgment, ruling, order, decree or authorisation binding on it;
- (e) it is not subject to an Insolvency Event (as defined in the Scheme Implementation Deed); and
- (f) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms.

#### **5. Continuing obligations**

This Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until the earlier of:

- (a) the Bidder having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 2.

#### **6. Notices**

Any notice, demand or other communication to the Bidder in respect of this Deed Poll:

- (a) must be given in accordance with this clause 6;
- (b) must be given to the intended recipient by personal service or prepaid post (if posted to an address in another country, by registered airmail) or by email;
- (c) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown below:

Address: Level 12, 680 George Street, Sydney NSW 2000  
 Attention: Global Chief Executive Officer

Email: [company.secretary@elixinolwellness.com](mailto:company.secretary@elixinolwellness.com) with a copy to (which by itself does not constitute notice) to [shane.barber@twobirds.com](mailto:shane.barber@twobirds.com)

or addressed in accordance with any updated details last notified by the Bidder;

- (d) must be signed:
  - (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate office holders of that corporation under section 127 of the *Corporations Act 2001 (Cth)*; or
  - (ii) in the case of a corporation registered outside of Australia, by a person duly authorised by the sender in accordance with the laws governing the place of registration of that corporation; and
- (e) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, at 9.00 am on the third Business Day after the date of posting to the addressee whether delivered or not; and
  - (iii) if by way of email, as specified in clause 6(g).
- (f) if any notice or other communication would be deemed to be delivered or received on a day which is not a Business Day or after 5.00 pm (addressee's time) on a Business Day, it is deemed to have been received at 9.00 am on the next Business Day;
- (g) if any notice or other communication is to be given under this Deed Poll by email:
  - (i) it may be given by email or attached (as an electronic scanned version of that notice or communication) to an email;
  - (ii) where it is given by email, the email must be signed by typing the signatory's name following the main substantive text of the email;
  - (iii) where it is attached to an email, the notice or other communication must be signed in accordance with clause 6(d) but the covering email does not itself need to be signed;
  - (iv) the subject line of the email must contain the following words or words to a similar effect:
 

"Notice to [Full name of addressee party] under the Notices clause 6 of the Deed Poll between Elixinol Wellness Limited and each Scheme Shareholder"
  - (v) the email must be in an appropriate and commonly used format; and
  - (vi) any attached file must be a pdf, jpeg, tiff or other appropriate and commonly used format; and
- (h) for the purposes of clause 6(e)(iii), any notice or other communication given under this Deed Poll by email in accordance with clause 6(g) is deemed to be delivered

and received immediately after the time the email is sent to the relevant email address unless the sender receives an automatic notification (other than an out of office greeting) that the email has not been delivered within 2 hours.

## **7. General**

### **7.1 Waiver**

- (a) A failure to exercise, a delay in exercising or partially exercising any power, right or remedy conferred on a party by or in respect of this Deed Poll does not operate as a waiver by that party of the power, right or remedy.
- (b) A single or partial exercise of any power, right or remedy does not preclude a further exercise of it or the exercise of any other power, right or remedy.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### **7.2 Variation**

This Deed Poll may not be varied unless:

- (a) if before the Second Court Date, the variation is agreed to by the Target; or
- (b) if on or after the Second Court Date, the variation is agreed to by the Target and the Court indicates that the variation would not of itself preclude approval of the Scheme,

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

### **7.3 Remedies cumulative**

The powers, rights and remedies of the Bidder and the Scheme Shareholders under this Deed Poll are cumulative with and not exclusive of any powers, rights or remedies provided by law independently of this Deed Poll.

### **7.4 No assignment**

- (a) The rights created by this Deed Poll are personal to the Bidder and each Scheme Shareholder and may only be assigned, charged, encumbered or otherwise dealt with at law or in equity with the prior written consent of the Bidder.
- (b) Any purported dealing in contravention of clause 7.4(a) is invalid.

### **7.5 Stamp duty**

The Bidder must pay any stamp duties and any related fines and penalties in respect of this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under or pursuant to this Deed Poll.

### **7.6 Further assurances**

The Bidder must, at its own expense, do all things reasonably necessary or expedient to be done by it to give full effect to this Deed Poll.

## **7.7 Governing law**

- (a) This Deed Poll is governed by and must be construed in accordance with the laws in force in New South Wales.
- (b) The Target and each Scheme Shareholder submits to the exclusive jurisdiction of the courts of New South Wales and courts of appeal from them in respect of all matters arising out of or relating to this Deed Poll, its performance or subject matter.

**Executed** as a deed poll.

**Executed** by **Elixinol Wellness Limited** )  
 ACN 621 479 794 in accordance with )  
 section 127(1) of the *Corporations Act 2001* )  
 (Cth): )

.....  
 Signature of director

.....  
 Signature of director or company secretary\*  
 \*delete whichever does not apply

.....  
 Name (please print)

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**Annexure C**  
**Form of Option Scheme**

# Option Scheme of Arrangement

The Sustainable Nutrition Group Ltd  
ABN 48 071 666 334  
(**“TSN”**)

and

Each Scheme Optionholder



## Table of Contents

<b>1.</b>	<b>Definitions and interpretation</b>	<b>3</b>
1.1	Definitions	3
1.2	Interpretation	6
<b>2.</b>	<b>Preliminary</b>	<b>7</b>
2.1	TSN	7
2.2	Consequences of this Option Scheme becoming Effective	8
2.3	Scheme Implementation Deed and the Option Scheme Deed Poll	8
<b>3.</b>	<b>Conditions, Effective Date and Sunset Date</b>	<b>9</b>
3.1	Conditions to the Option Scheme	9
3.2	Certificates	10
3.3	Effective Date	10
3.4	End Date	10
<b>4.</b>	<b>Implementation of the Scheme</b>	<b>10</b>
4.1	Lodgement	10
<b>5.</b>	<b>Option Scheme Consideration</b>	<b>11</b>
5.1	Option Scheme Consideration	11
5.2	Consideration under the Option Scheme	11
5.3	Orders of a court or Regulatory Authority	11
5.4	Joint holders	12
5.5	Fractional entitlements	12
5.6	Definition of 'sending'	12
<b>6.</b>	<b>Dealings in Scheme Options</b>	<b>13</b>
6.1	Determination of Scheme Optionholders	13
6.2	Target Register	13
6.3	No disposals after Record Date	13
6.4	Maintenance of Target Register	13
6.5	Effect of option certificates	13
6.6	Details of Scheme Optionholders	14
<b>7.</b>	<b>General Scheme provisions</b>	<b>14</b>
7.1	Appointment of agent and attorney	14
7.2	Alterations to Scheme or condition	14
7.3	Further action by TSN	14
7.4	No liability when acting in good faith	15
7.5	Enforcement of the Option Scheme Deed Poll	15
7.6	Binding effect of Option Scheme	15
7.7	Scheme Optionholders' consent	15
7.8	Warranty by Scheme Optionholders	16
7.9	Instructions and elections	16
<b>8.</b>	<b>General</b>	<b>16</b>
8.1	Notices	16
8.2	Nature of obligations	17
8.3	No variation	17
8.4	Duty	17

8.5	Further assurances	17
8.6	Governing law and jurisdiction	17

# Option scheme of arrangement

## Date

## Parties

1. **The Sustainable Nutrition Group Ltd** ABN 48 071 666 334 of C/- Leydin Freyer, Level 4, 96-100 Albert Road, South Melbourne VIC 3205 (**TSN** or **Target**)
2. Each Scheme Optionholder

## Background

- A. TSN and EXL have entered into a Scheme Implementation Deed pursuant to which TSN has agreed to propose the Option Scheme to Scheme Optionholders, and has agreed to take certain steps to implement the Option Scheme.
- B. EXL has executed the Option Scheme Deed Poll pursuant to which EXL covenants in favour of Scheme Optionholders to perform certain obligations to give effect to the Option Scheme.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Option Scheme:

**ASIC** means the Australian Securities and Investments Commission;

**ASX** means ASX Limited ABN 98 008 624 691 or the financial market known as the Australian Securities Exchange or ASX operated by it, as appropriate;

**ASX Listing Rules** means the official listing rules of ASX;

**ASX Settlement** means ASX Settlement Pty Limited ABN 49 008 504 532;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales Australia;

**Cancellation Option** has the meaning given to that term in the Scheme Implementation Deed;

**Cancellation Optionholder** has the meaning given to that term in the Scheme Implementation Deed;

**CHES** means the Clearing House Electronic Subregister System of security transfers operated by ASX Settlement;

**Condition** has the meaning given in clause 3.1(a) of this Option Scheme;

**Consideration Options** means the options to be issued by EXL under the Option Scheme as Option Scheme Consideration;

**Corporations Act** means the *Corporations Act 2001 (Cth)*, as amended by any applicable ASIC Class Order, ASIC legislative instrument or ASIC relief;

**Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as TSN and EXL may agree in writing;

**Duty** means any stamp, transaction or registration duty or similar charge which is imposed by any Regulatory Authority and includes any associated interest, penalty, charge or other amount which is imposed;

**Effective** means the coming into effect, under section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to the Option Scheme;

**Effective Date** means the date on which the Option Scheme becomes Effective;

**Encumbrance** means:

- (a) any:
  - (i) legal or equitable interest or power created, arising in or reserved in or over an interest in any property or asset; or
  - (ii) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or retention of title arrangement, right of set-off, assignment of income, garnishee order, monetary claim and flawed deposit arrangement);
- (b) any thing or preferential interest or arrangement of any kind giving a person priority or preference over claims or other persons with respect to any property or asset;
- (c) a PPSA Security Interest; or
- (d) any agreement or arrangement (whether legally binding or not) to grant or create anything referred to in paragraph (a), (b) or (c) of this definition;

**End Date** means 7 months after the date of the Scheme Implementation Deed or such other date and time agreed in writing between EXL and TSN;

**Excluded Option** has the meaning given to that term in the Scheme Implementation Deed;

**Excluded Optionholder** has the meaning given to that term in the Scheme Implementation Deed;

**EXL or Bidder** means Elixinol Wellness Limited ABN 34 621 479 794 of C/- Company Matters Pty Limited, Level 12, 680 George Street, Sydney NSW 2000;

**Implementation Date** means, the fifth Business Day after the Record Date, or such other Business Day as EXL and TSN agree in writing or as may be required by ASX;

**Option Scheme** means this scheme of arrangement pursuant to Part 5.1 of the Corporations Act, between TSN and Scheme Optionholders in respect of the Scheme Options, subject to:

- (a) any amendments agreed in writing by EXL and TSN and approved by the Court;
- (a) any amendments made or required by the Court under section 411(6) of the Corporations Act and approved by EXL and TSN in writing (such approval not to be unreasonably withheld or delayed).

**Option Scheme Consideration** means the Consideration Options being 1.1225 options in the capital of EXL to be issued as consideration under the Option Scheme in exchange for the cancellation of one Scheme Option held as at the Record Date on the terms set out in the Scheme Booklet;

**Option Scheme Deed Poll** means the deed poll to be executed by EXL in substantially the form set out in Annexure D to the Scheme Implementation Deed under which EXL covenants in favour of each Scheme Optionholder to perform (amongst other things) the actions attributed to it under this Option Scheme;

**Option Scheme Meeting** means the meeting of Scheme Optionholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Option Scheme, including any adjournment or postponement of that meeting;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**PPSA Security Interest** means a security interest as defined in the PPSA;

**Record Date** means 7.00 pm on the date which is 2 Business Days after the Effective Date, or such other Business Day agreed in writing by EXL and TSN, or as may be required by ASX;

**Registered Address** means the address of a Scheme Optionholder shown in the Target Register;

**Regulatory Authority** means:

- (a) any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, tribunal, agency or entity;
- (b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; or
- (c) any regulatory organisation established under statute,

in any part of the world, and whether foreign, federal, state, territorial or local;

**Scheme Booklet** means the explanatory booklet in respect of the Option Scheme to be dispatched to Target Shareholders and Scheme Optionholders, and includes the Option Scheme; a copy of the Option Scheme Deed Poll executed by EXL; an explanatory statement as that term is defined in section 412 of the Corporations Act; the Independent Expert's Report; and a notice of meeting and proxy form;

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 28 November 2022 between EXL and TSN;

**Scheme Optionholder** means a person who is registered in the Target Register as the holder of one or more Scheme Options as at the Record Date, other than an Excluded Optionholder and a Cancellation Optionholder;

**Scheme Options** means the Target Options on issue as at the Record Date, other than any Excluded Options and Cancellation Options;

**Second Court Date** means the first day on which the application to approve the Option Scheme under section 411(4)(b) of the Corporations Act is heard by the Court or scheduled to be heard or, if the application is adjourned for any reason, the date on which the adjourned application is heard or scheduled to be heard;

**Settlement Rules** means the ASX Settlement Operating Rules;

**Share or EXL Share** means one issued fully paid ordinary share in the share capital of EXL;

**Share Scheme** has the meaning given to 'Scheme' in the Scheme Implementation Deed;

**Target Option** means an option granted by TSN to acquire by way of issue one or more Target Shares;

**Target Performance Rights** has the meaning given to that term in the Scheme Implementation Deed;

**Target Register** means the register of securityholders of TSN maintained by or on behalf of TSN in accordance with section 168(1) of the Corporations Act;

**Target Share** means an issued fully paid ordinary share in the capital of TSN;

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

**TSN Constitution** means the constitution of TSN, as amended from time to time; and

**TSN Registry** means Link Market Services Limited or any replacement provider of share or options registry services to TSN.

## **1.2 Interpretation**

In this Option Scheme unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) headings are used for convenience only and do not affect the interpretation of this Option Scheme;
- (d) other grammatical forms of a defined word or expression have a corresponding meaning;

- (e) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- (f) a reference to a party is to a party to this Option Scheme and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;
- (g) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (h) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- (i) "month" means calendar month and "year" means 12 consecutive months;
- (j) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) is to that statute as amended, consolidated, re-enacted or replaced from time to time;
- (k) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;
- (l) money amounts are stated in Australian currency unless otherwise specified;
- (m) a reference to time is to Sydney, Australia time;
- (n) a reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (**defunct body**) is to the agency or body that performs most closely the powers or functions of the defunct body;
- (o) any provision in this Option Scheme which is in favour of more than one person benefits all of them jointly and each of them severally; and
- (p) any provision in this Option Scheme which binds more than one person binds all of them jointly and each of them severally.

## 2. Preliminary

### 2.1 TSN

- (a) TSN is a public company limited by shares, incorporated and registered in Queensland, Australia.
- (b) TSN is admitted to the official list of the ASX and Target Shares are officially quoted on the financial market operated by ASX.
- (c) As at the date of the Scheme Implementation Deed, TSN had the following securities on issue:

Number	Type
120,606,385*	Target Shares
15,480,430	Target Options comprising of: <ul style="list-style-type: none"> <li>• 11,750,008 Target Options expiring on 31 July 2023 with an exercise price of \$0.26; and</li> <li>• 334,000 Excluded Options expiring on 22 October 2023 with an exercise price of \$0.26;</li> <li>• 3,396,422 Cancellation Options expiring on various dates with exercise prices ranging from \$0.26 to \$0.65</li> </ul>
420,000	Target Performance Rights

*\*Whilst it is proposed that the Target Performance Rights are to be cancelled before the Scheme becomes Effective, the Target intends to issue 140,000 Target Shares before the Effective Date in lieu of the Target Performance Rights and those Target Shares will form part of the Scheme.*

## 2.2 Consequences of this Option Scheme becoming Effective

If the Option Scheme becomes Effective then:

- (a) on the Implementation Date, EXL will, in consideration of the cancellation of each Scheme Option, provide or procure the issue of the Option Scheme Consideration to Scheme Optionholders in accordance with the terms of this Option Scheme;
- (b) it will bind TSN and all Scheme Optionholders, including those who do not attend the Option Scheme Meeting, those who do not vote at that meeting and those who vote against this Option Scheme at that meeting; and
- (c) it will override the TSN Constitution, to the extent of any inconsistency.

## 2.3 Scheme Implementation Deed and the Option Scheme Deed Poll

- (a) EXL and TSN have agreed, by executing the Scheme Implementation Deed, to each take certain steps to implement the terms of this Option Scheme.
- (b) This Option Scheme attributes actions to EXL but does not itself impose an obligation on EXL to perform those actions. EXL has agreed by executing the Option Scheme Deed Poll for the benefit of the Scheme Optionholders to perform (or procure the performance of) its obligations as contemplated by this Option Scheme, including to provide (or procure the provision of) the Option Scheme Consideration to Scheme Optionholders, in accordance with the terms of this Option Scheme.



### 3. Conditions, Effective Date and Sunset Date

#### 3.1 Conditions to the Option Scheme

- (a) The Option Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions (each a **Condition**):
  - (i) all conditions precedent in clause 3.1 of the Scheme Implementation Deed having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date (other than the condition precedent in clause 3.1(d) (**Court approval**) and clause 3.1(l) (**Option Scheme**));
  - (ii) all conditions precedent in respect of the Option Scheme set out in clause 3.2 of the Scheme Implementation Deed being satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date (other than the condition precedent in clause 3.2(c) (**Court approval**) and clause 3.2(g) (**Scheme**));
  - (iii) neither the Scheme Implementation Deed nor the Option Scheme Deed Poll having been terminated in accordance with their terms or otherwise on or before 8.00am on the Second Court Date;
  - (iv) approval of this Option Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed to in writing by EXL and TSN (such agreement not to be unreasonably withheld or delayed);
  - (v) approval of the Share Scheme by the Court under section 411(4)(b) of the Corporations Act, including any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed to in writing by TSN and EXL (such agreement not to be unreasonably withheld or delayed);
  - (vi) such other conditions in respect of this Option Scheme as may be imposed by the Court under section 411(6) of the Corporations Act, and as are agreed to in writing by EXL and TSN (such agreement not to be unreasonably withheld or delayed), having been satisfied;
  - (vii) such other conditions in respect of the Share Scheme as may be imposed by the Court in respect of the Share Scheme under section 411(6) of the Corporations Act, and as are agreed to in writing by EXL and TSN (such agreement not to be unreasonably withheld or delayed) having been satisfied; and
  - (viii) the orders of the Court made under section 411(4)(b) (and if applicable section 411(6)) of the Corporations Act approving the Option Scheme and Share Scheme coming into effect, under section 411(10) of the Corporations Act, on or before the End Date.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) of this document is a condition precedent to the operation of clauses 4 and 5 and the binding effect of this Option Scheme.

### **3.2 Certificates**

- (a) EXL and TSN must each give to the Court on the Second Court Date a certificate confirming (in respect of matters within their knowledge) whether or not the Conditions in clauses 3.1(a)(i), 3.1(a)(iii) and 3.1(a)(iii) have been satisfied.
- (b) Unless the Court requires otherwise, the certificates referred to in clause 3.2(a) constitute conclusive evidence that such Conditions were satisfied or waived, as applicable, in accordance with the Scheme Implementation Deed.

### **3.3 Effective Date**

Subject to clauses 3.1 and 3.4, the Option Scheme will take effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### **3.4 End Date**

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

- (a) the Effective Date does not occur on or before the End Date; or
- (b) either or both of the Scheme Implementation Deed or Option Scheme Deed Poll is terminated in accordance with its terms,

unless TSN and EXL agree in writing otherwise, with the approval of the Court, if required.

## **4. Implementation of the Scheme**

### **4.1 Lodgement**

If all of the Conditions set out in clauses 3.1(a)(i) to 3.1(a)(viii) (inclusive) are satisfied or (if relevant) waived, TSN must lodge with ASIC an office copy of the orders approving the Option Scheme in accordance with section 411(10) of the Corporations Act, as soon as reasonably practicable after the Court approves this Option Scheme and in any event before 5.00pm on the Business Day after the Business Day the Court approves the Option Scheme or such other Business Day as TSN and EXL agree in writing.

### **4.2 Implementation of the Option Scheme**

On the Implementation Date:

- (a) all of the Scheme Options will be deemed to have been cancelled without any further act by any Scheme Optionholder (other than acts performed as attorney and agent for Scheme Optionholders under clause 7.1 or otherwise); and
- (b) subject to the cancellation of Scheme Options referred to in accordance with clause 4.2(a), EXL must immediately issue the Option Scheme Consideration with an exercise price of \$0.232 and otherwise on reasonably equivalent terms to the Scheme Options and as set out in the Scheme Booklet, and EXL must immediately update, or procure the update, of its options register accordingly.

### **4.3 Scheme Optionholders' agreements**

Under this Option Scheme, each Scheme Optionholder agrees to the cancellation of all of their Scheme Options, together with all rights and entitlements attaching to those Scheme Options, in accordance with the terms of this Option Scheme.

## **5. Option Scheme Consideration**

### **5.1 Option Scheme Consideration**

Subject to clauses 5.3 and 5.5, each Scheme Optionholder is entitled to receive the Option Scheme Consideration in respect of each Scheme Option held by that Scheme Optionholder.

### **5.2 Consideration under the Option Scheme**

- (a) Before 5.00pm on the Implementation Date, EXL must issue all of the Consideration Options which it is required to issue to Scheme Optionholders under this Option Scheme by procuring that the name of each Scheme Optionholder entitled to receive Consideration Options under this Option Scheme is entered in EXL's option register (as maintained by EXL or its agent) as the holder of the Consideration Options to which the Scheme Optionholder is entitled (using the same holding name and address and other details as the holding of the relevant Scheme Options).
- (b) Subject to this Option Scheme becoming Effective, EXL must ensure that each Consideration Option issued as Option Scheme Consideration will at the time it is issued:
  - (i) be duly and validly issued in accordance with applicable laws and EXL's constitution; and
  - (ii) be issued free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise.
- (c) Each Scheme Optionholder that becomes an option holder of EXL will be taken, automatically through this Option Scheme, to have agreed to be bound by EXL's constitution.
- (d) On or before the date that is 2 Business Days after the Implementation Date, EXL must send, or procure the sending of an option certificate (or equivalent document) to each Scheme Optionholder entitled to receive Consideration Options under this Option Scheme, reflecting the issue of such Consideration Options in accordance with this clause 5.

### **5.3 Orders of a court or Regulatory Authority**

Notwithstanding any other provision of this Option Scheme, in the case of written notice having been given to TSN (or TSN Registry) or EXL receives written notice of an order or direction made by a court of competent jurisdiction or Regulatory Authority, or TSN is aware of any law, that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Options held by a particular Scheme Optionholder, which would otherwise be payable or required to be issued to that Scheme Optionholder in accordance with this clause 5, then TSN or EXL (as applicable) will be entitled to and must procure that the provision of that consideration is made in accordance with that order, direction or law; or
- (b) prevents TSN or EXL from providing consideration to any particular Scheme Optionholder in accordance with this clause 5, or the payment or issuance of such Option Scheme Consideration is otherwise prohibited by applicable law, then TSN or EXL (as applicable) will be entitled to not pay or issue (or in the case of TSN, direct EXL not to issue) the Option Scheme Consideration to the relevant Scheme Optionholder until such time as the provision of the Option Scheme Consideration in accordance with this clause 5 is permitted by that (or another) order or direction or otherwise by the applicable law, or issue (or in the case of TSN, direct EXL to issue) to a permitted trustee or nominee, the Option Scheme Consideration to which the relevant Scheme Optionholder would otherwise be entitled under this Option Scheme,

and such actions will constitute full discharge of each of TSN and EXL's obligations in respect of the relevant Option Scheme Consideration.

#### **5.4 Joint holders**

In the case of Scheme Options held in joint names:

- (a) any Consideration Options issued as Option Scheme Consideration, must be issued to and registered in the names of the joint holders; and
- (b) any document required to be sent under this Option Scheme, will be forwarded to the holder whose name appears first in the option register of TSN as at the Record Date.

#### **5.5 Fractional entitlements**

Where the calculation of the number of Consideration Options to be issued to a particular Scheme Optionholder as Option Scheme Consideration would result in an entitlement to the issue of a fraction of an option in EXL which is 0.5 or greater, the fractional entitlement will, after aggregating all holdings of the Scheme Optionholder, be rounded up to the nearest whole number of Consideration Options, otherwise the rounding will be down to the nearest whole number.

#### **5.6 Definition of 'sending'**

For the purposes of clause 5, the expression sending means, in relation to each Scheme Optionholder:

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

## **6. Dealings in Scheme Options**

### **6.1 Determination of Scheme Optionholders**

- (a) To establish the identity of the Scheme Optionholders, to the extent that Scheme Options are otherwise permitted to be dealt with in accordance with their respective terms, dealings in Target Options or other alterations to the Target Register by Scheme Optionholders will only be recognised by TSN if registrable transmission applications or transfers in registrable form, or valid requests in respect of other alterations, in relation to those dealings or alterations are received on or before 5.00pm on the Record Date at the place where the Target Register is kept.
- (b) TSN must not accept for registration, nor recognise for any purpose (except any issue by EXL or its successors in title, following implementation of the steps set out in clause 4 of this Option Scheme), any transmission application, transfer or other alteration request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### **6.2 Target Register**

TSN must register any registrable transmission applications or transfers, or other valid request in respect of other alterations, of the Scheme Options received in accordance with clause 6.1(a) of this Option Scheme on or before the Record Date.

### **6.3 No disposals after Record Date**

If this Option Scheme becomes Effective:

- (a) from the Record Date until implementation of the steps set out in clause 4 of this Option Scheme, a holder of Scheme Options (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Options or any interest in them in any way except as set out in this Option Scheme and any such disposal will be void and of no legal effect; and
- (b) TSN will not accept for registration or recognise for any purpose any transmission, application or transfer, or other valid request in respect of other alterations, in respect of Target Options received after 5.00pm on the Record Date (or 7.00pm on the Record Date in the case of dealings of the type effected by CHES).

### **6.4 Maintenance of Target Register**

For the purpose of determining entitlements to the Option Scheme Consideration, TSN must maintain the Target Register in accordance with the provisions of this clause 6 until the Option Scheme Consideration has been provided to the Scheme Optionholders and the other steps set out in clause 4 of this Option Scheme have been completed. The Target Register in this form and the terms of this Option Scheme will solely determine entitlements to the Option Scheme Consideration.

### **6.5 Effect of option certificates**

- (a) Any statements of holding in respect of Scheme Options will cease to have effect after the Record Date as documents of title in respect of those Target Options.

- (b) As from the Record Date, each entry current on the Target Register as at the Record Date will cease to have effect except as evidence of entitlement to the Option Scheme Consideration in respect of the Scheme Options relating to that entry.

## **6.6 Details of Scheme Optionholders**

As soon as practicable after the Record Date, and in any event on the first Business Day after the Record Date, TSN must ensure that details of the names, Registered Addresses and holdings of Scheme Options for each Scheme Optionholder, as shown in the Target Register on the Record Date are available to EXL in such form as EXL reasonably requires.

## **7. General Scheme provisions**

### **7.1 Appointment of agent and attorney**

On the Effective Date, each Scheme Optionholder, without the need for any further act:

- (a) irrevocably appoints TSN as its agent and attorney for the purpose of executing any document or form or doing any other act necessary or incidental to give effect to the terms of this Option Scheme and the transactions contemplated by it, including:
  - (i) the cancellation of the Scheme Options and the giving of the Scheme Optionholder's consent under clause 7.7; or
  - (ii) as considered necessary by TSN to amend the terms of the Scheme Options to the extent necessary to give effect to the terms of this Option Scheme and the transactions contemplated by it; and
- (b) irrevocably appoints TSN as its agent and attorney for the purpose of enforcing the Option Scheme Deed Poll against EXL,

and TSN accepts such appointment. TSN, as agent and attorney of each Scheme Optionholder, may sub-delegate its functions, authorities or powers under this clause 7.1 to all or any of its directors and officers (jointly, severally or jointly and severally).

### **7.2 Alterations to Scheme or condition**

TSN may, by its counsel or solicitors, and with the prior written consent of EXL (which must not be unreasonably withheld), consent on behalf of all persons concerned, including each Scheme Optionholder, to any alteration or condition to the Option Scheme which the Court thinks fit to impose. Each Scheme Optionholder agrees to any such alteration or condition consented to by TSN in accordance with this clause 7.2.

### **7.3 Further action by TSN**

- (a) TSN must execute all documents and do all things (on its own behalf and on behalf of each Scheme Optionholder) necessary or expedient to implement, and perform its obligations under and give effect to, this Option Scheme and the transactions contemplated by it.

- (b) Each Scheme Optionholder consents to TSN executing all documents and doing all things necessary or expedient to implement and give effect to this Option Scheme and the transactions contemplated by it.

#### **7.4 No liability when acting in good faith**

Each Scheme Optionholder agrees that neither TSN, EXL nor any of their respective officers, employees and advisers (as applicable), will be liable for anything done or omitted to be done in the performance of this Option Scheme or the Option Scheme Deed Poll in good faith.

#### **7.5 Enforcement of the Option Scheme Deed Poll**

TSN undertakes in favour of each Scheme Optionholder that it will enforce the Option Scheme Deed Poll against EXL on behalf of and as agent and attorney for the Scheme Optionholders.

#### **7.6 Binding effect of Option Scheme**

This Option Scheme binds TSN and all Scheme Optionholders (including those who did not attend the Option Scheme Meeting, those who did not vote at that meeting, or voted against this Option Scheme at that meeting) and, to the extent of any inconsistency, overrides the TSN Constitution.

#### **7.7 Scheme Optionholders' consent**

Each Scheme Optionholder irrevocably, and without the need for any further act by that Scheme Optionholder:

- (a) agrees to the cancellation of their Scheme Options together with all rights and entitlements attaching to those Scheme Options in accordance with this Option Scheme;
- (b) consents to TSN and EXL doing all things and executing all deeds, instruments and other documents as may be necessary, incidental or expedient to the implementation and performance of the Option Scheme;
- (c) agrees to the variation, cancellation or modification of the rights attached to their Scheme Options constituted by or resulting from the Option Scheme (subject to ASX approval);
- (d) agrees to, on the direction of EXL, destroy any holding statements or option certificates relating to their Scheme Options;
- (e) agrees to become an optionholder of EXL, to have their name registered in the options register of EXL as a holder of EXL options (in respect of the Consideration Options which they are to be issued pursuant to this Option Scheme) and to be bound by EXL's constitution; and
- (f) acknowledges and agrees that the Option Scheme binds TSN and all of the Scheme Optionholders (including those who do not attend the Option Scheme Meeting, do not vote at that meeting or vote against the Option Scheme at that meeting) and, to the extent of any inconsistency, overrides the TSN Constitution.

## **7.8 Warranty by Scheme Optionholders**

- (a) Each Scheme Optionholder is deemed to have warranted to EXL on the Implementation Date that:
  - (i) all their Scheme Options (including any rights and entitlements attaching to those Scheme Options) will, at the date of their cancellation pursuant to this Option Scheme, be free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise;
  - (ii) they have full power and capacity to agree to the cancellation of their Scheme Options together with any rights and entitlements attaching to such Scheme Options pursuant to the terms of this Option Scheme; and
  - (iii) it has no existing right to be issued any Target Shares, Target Options, Target Performance Rights, TSN convertible notes or any other TSN securities, other than, as a holder of Scheme Options, the right to be issued Target Shares on the exercise of those Scheme Options in accordance with their terms or in accordance with this Option Scheme.
- (b) TSN undertakes that it will provide the warranties in clause 7.8(a) to EXL as agent and attorney of each Scheme Optionholder.

## **7.9 Instructions and elections**

If not prohibited by law (and including where permitted or facilitated by relief granted by a Regulatory Authority), all instructions, notifications or elections by a Scheme Optionholder to TSN which are binding or deemed binding between the Scheme Optionholder and TSN relating to TSN or Target Options (including any email addresses, instructions relating to communications from TSN, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from TSN) will be deemed from the Implementation Date (except to the extent determined otherwise by EXL in its sole discretion), by reason of this Option Scheme, to be made by the Scheme Optionholder to EXL and to be a binding instruction, notification or election to, and accepted by, EXL in respect of the Consideration Options issued to that Scheme Optionholder until that instruction, notification or election is revoked or amended in writing addressed to EXL at its registry.

## **8. General**

### **8.1 Notices**

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Option Scheme is sent by post to TSN (or the TSN Registry), it will be deemed to be received on the date (if any) on which it is actually received at TSN's registered office (or at the office of the TSN Registry), and will not be deemed to be received on any other date.
- (b) An accidental omission to give notice of the Option Scheme Meeting to any Scheme Optionholder, or the non-receipt of such a notice by any Scheme Optionholder may not, unless so ordered by the Court, invalidate the Option Scheme Meeting or the proceedings of the Option Scheme Meeting.



## **8.2 Nature of obligations**

Each obligation imposed on a party by this Option Scheme in favour of another is a separate obligation. Unless specified otherwise, the performance of one obligation is not dependent or conditional on the performance of any other obligation.

## **8.3 No variation**

This Option Scheme cannot be amended or varied except in writing signed by EXL and TSN and, if after orders have been made by the Court in accordance with section 411(1) of the Corporations Act, then only with the consent of the Court.

## **8.4 Duty**

Any Duty (including related interest or penalties) payable in connection with the cancellation of the Scheme Options must be paid by EXL, and EXL is entitled to apply for and retain any refund of such duty.

## **8.5 Further assurances**

- (a) A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Option Scheme.
- (b) Each Scheme Optionholder consents to TSN and EXL doing all things necessary or incidental to give full effect to this Option Scheme and the transactions contemplated by it.

## **8.6 Governing law and jurisdiction**

- (a) This Option Scheme is governed by and must be construed in accordance with the laws in force in New South Wales.
- (b) The parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of all matters arising out of or relating to this Option Scheme, its performance or subject matter.

**Annexure D**  
**Form of Option Scheme Deed Poll**

K&L GATES

## **Option Scheme Deed Poll**

**By Elixinol Wellness Limited**

ABN 34 621 479 794

in favour of each Scheme Optionholder

## Table of Contents

<b>1.</b>	<b>Defined terms and interpretation</b>	<b>1</b>
1.1	Defined terms	1
1.2	Interpretation	1
1.3	Nature of deed poll	1
<b>2.</b>	<b>Condition precedent and termination</b>	<b>2</b>
2.1	Condition precedent to obligations of the Option Scheme	2
2.2	Termination	2
2.3	Consequences of termination	2
<b>3.</b>	<b>Option Scheme obligations</b>	<b>2</b>
3.1	Undertaking Option Scheme obligations	2
3.2	Provision of Option Scheme Consideration	2
<b>4.</b>	<b>Representations and warranties</b>	<b>3</b>
<b>5.</b>	<b>Continuing obligations</b>	<b>3</b>
<b>6.</b>	<b>Notices</b>	<b>3</b>
<b>7.</b>	<b>General</b>	<b>5</b>
7.1	Waiver	5
7.2	Variation	5
7.3	Remedies cumulative	5
7.4	No assignment	5
7.5	Stamp duty	5
7.6	Further assurances	6
7.7	Governing law	6

## Deed Poll

**Date**                                **2022**

## Parties

This Deed Poll is made by:

**Elixinol Wellness Limited** ABN 34 621 479 794 of C/- Company Matters Pty Limited, Level 12, 680 George Street, Sydney NSW 2000 (**EXL** or the **Bidder**)

in favour of:

Each Scheme Optionholder.

## Background

- A. On 28 November 2022, EXL and The Sustainable Nutrition Group Ltd ABN 48 071 666 334 (**TSN** or the **Target**) entered into a scheme implementation agreement with respect to the Scheme (as defined below) and associated matters (**Scheme Implementation Deed**).
- B. In the Scheme Implementation Deed, the Bidder agreed (amongst other things) to acquire all the Scheme Shares held by Scheme Shareholders and provide the Option Scheme Consideration to the Scheme Optionholders, subject to the satisfaction of certain conditions.
- C. The Bidder is entering into this Deed Poll to covenant in favour of the Scheme Optionholders that it will perform all actions attributed to it under the Option Scheme.

## Agreed terms

### 1. Defined terms and interpretation

#### 1.1 Defined terms

In this Option Scheme Deed Poll, unless otherwise defined, capitalised words and phrases have the same meaning as given to them in the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act, between the Target and Scheme Optionholders, in respect of all Scheme Options substantially in the form set out in Annexure C to the Scheme Implementation Deed, subject to any alterations or conditions made or required by the Court under sub-section 411(6) of the Corporations Act and agreed to in writing by the Bidder and Target (**Option Scheme**).

#### 1.2 Interpretation

The provisions of clause 1.2 of the Option Scheme form part of this Deed Poll as if set out in full in this Deed Poll, except that references to 'Option Scheme' are to be read as references to 'Option Scheme Deed Poll'.

#### 1.3 Nature of deed poll

The Bidder acknowledges that:

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

## **2. Condition precedent and termination**

### **2.1 Condition precedent to obligations of the Option Scheme**

The obligations of the Bidder under this Option Scheme Deed Poll are subject to the Option Scheme becoming Effective.

### **2.2 Termination**

The obligations of the Bidder under this Option Scheme Deed Poll will automatically terminate, and the terms of this Option Scheme Deed Poll will be of no force or effect, if:

- (a) the Scheme Implementation Deed is terminated before the Effective Date in accordance with its terms; or
- (b) the Option Scheme is not Effective on or before the End Date,

unless the Bidder and the Target agree in writing otherwise, with the approval of the Court, if required.

### **2.3 Consequences of termination**

If this Option Scheme Deed Poll is terminated under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to them:

- (a) the Bidder is released from its obligations to further perform this Option Scheme Deed Poll, except those obligations under clause 7.5; and
- (b) each Scheme Optionholder retains the rights it has against the Bidder in respect of any breach of this Option Scheme Deed Poll which occurs before it is terminated.

## **3. Option Scheme obligations**

### **3.1 Undertaking Option Scheme obligations**

Subject to clause 2, the Bidder covenants in favour of each Scheme Optionholder to perform all actions attributed to it under, and otherwise comply with, the Option Scheme as if it were a party to the Option Scheme, subject to and in accordance with the terms and conditions of the Option Scheme.

### **3.2 Provision of Option Scheme Consideration**

- (a) Subject to clause 2, the Bidder undertakes in favour of each Scheme Optionholder to, on the Implementation Date, issue (or procure the issue of) the Consideration Options to the Scheme Optionholders that are entitled to receive the Option

Scheme Consideration subject to and in accordance with the terms of the Option Scheme.

- (b) The obligations of the Bidder under clause 3.2(a) will be satisfied if, on or before 5.00pm on the Implementation Date, it issues all of the Consideration Options which it is obliged to issue to Scheme Optionholders under the Option Scheme.

#### **4. Representations and warranties**

The Bidder represents and warrants in favour of each Scheme Optionholder that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Option Scheme Deed Poll and to carry out the transactions contemplated by this Option Scheme Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Option Scheme Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Option Scheme Deed Poll and to carry out the transactions contemplated by this Option Scheme Deed Poll;
- (d) the entry into and performance of this Option Scheme Deed Poll by it does not and will not result in a contravention of its constitution, or any law, judgment, ruling, order, decree or authorisation binding on it;
- (e) it is not subject to an Insolvency Event (as defined in the Scheme Implementation Deed); and
- (f) this Option Scheme Deed Poll is valid and binding on it and enforceable against it in accordance with its terms.

#### **5. Continuing obligations**

This Option Scheme Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until the earlier of:

- (a) the Bidder having fully performed its obligations under this Option Scheme Deed Poll; and
- (b) termination of this Option Scheme Deed Poll under clause 2.

#### **6. Notices**

Any notice, demand or other communication to the Bidder in respect of this Option Scheme Deed Poll:

- (a) must be given in accordance with this clause 6;
- (b) must be given to the intended recipient by personal service or prepaid post (if posted to an address in another country, by registered airmail) or by email;
- (c) must be in writing, legible and in English addressed (depending on the manner in which it is given) as shown below:

Address: Level 12, 680 George Street, Sydney NSW 2000  
 Attention: Global Chief Executive Officer  
 Email: [company.secretary@elixinolwellness.com](mailto:company.secretary@elixinolwellness.com) with a copy to  
 (which by itself does not constitute notice) to  
[shane.barber@twobirds.com](mailto:shane.barber@twobirds.com)

or addressed in accordance with any updated details last notified by the Bidder;

- (d) must be signed:
  - (i) in the case of a corporation registered in Australia, by any authorised representative or by the appropriate office holders of that corporation under section 127 of the *Corporations Act 2001 (Cth)*; or
  - (ii) in the case of a corporation registered outside of Australia, by a person duly authorised by the sender in accordance with the laws governing the place of registration of that corporation; and
- (e) is deemed to be given by the sender and received by the addressee:
  - (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, at 9.00 am on the third Business Day after the date of posting to the addressee whether delivered or not; and
  - (iii) if by way of email, as specified in clause 6(g).
- (f) if any notice or other communication would be deemed to be delivered or received on a day which is not a Business Day or after 5.00 pm (addressee's time) on a Business Day, it is deemed to have been received at 9.00 am on the next Business Day;
- (g) if any notice or other communication is to be given under this Option Scheme Deed Poll by email:
  - (i) it may be given by email or attached (as an electronic scanned version of that notice or communication) to an email;
  - (ii) where it is given by email, the email must be signed by typing the signatory's name following the main substantive text of the email;
  - (iii) where it is attached to an email, the notice or other communication must be signed in accordance with clause 6(d) but the covering email does not itself need to be signed;
  - (iv) the subject line of the email must contain the following words or words to a similar effect:
  - (v) "Notice to [Full name of addressee party] under the Notices clause 6 of the Option Scheme Deed Poll between Elixinol Wellness Limited and each Scheme Optionholder"
  - (vi) the email must be in an appropriate and commonly used format; and
  - (vii) any attached file must be a pdf, jpeg, tiff or other appropriate and commonly used format; and



- (h) for the purposes of clause 6(e)(iii), any notice or other communication given under this Option Scheme Deed Poll by email in accordance with clause 6(g) is deemed to be delivered and received immediately after the time the email is sent to the relevant email address unless the sender receives an automatic notification (other than an out of office greeting) that the email has not been delivered within 2 hours.

## **7. General**

### **7.1 Waiver**

- (a) A failure to exercise, a delay in exercising or partially exercising any power, right or remedy conferred on a party by or in respect of this Option Scheme Deed Poll does not operate as a waiver by that party of the power, right or remedy.
- (b) A single or partial exercise of any power, right or remedy does not preclude a further exercise of it or the exercise of any other power, right or remedy.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### **7.2 Variation**

This Option Scheme Deed Poll may not be varied unless:

- (a) if before the Second Court Date, the variation is agreed to by the Target; or
- (b) if on or after the Second Court Date, the variation is agreed to by the Target and the Court indicates that the variation would not of itself preclude approval of the Option Scheme,

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

### **7.3 Remedies cumulative**

The powers, rights and remedies of the Bidder and the Scheme Optionholders under this Option Scheme Deed Poll are cumulative with and not exclusive of any powers, rights or remedies provided by law independently of this Option Scheme Deed Poll.

### **7.4 No assignment**

- (a) The rights created by this Option Scheme Deed Poll are personal to the Bidder and each Scheme Optionholder and may only be assigned, charged, encumbered or otherwise dealt with at law or in equity with the prior written consent of the Bidder.
- (b) Any purported dealing in contravention of clause 7.4(a) is invalid.

### **7.5 Stamp duty**

The Bidder must pay any stamp duties and any related fines and penalties in respect of this Option Scheme Deed Poll, the performance of this Option Scheme Deed Poll and each transaction effected by or made under or pursuant to this Option Scheme Deed Poll.

## **7.6 Further assurances**

The Bidder must, at its own expense, do all things reasonably necessary or expedient to be done by it to give full effect to this Option Scheme Deed Poll.

## **7.7 Governing law**

- (a) This Option Scheme Deed Poll is governed by and must be construed in accordance with the laws in force in New South Wales.
- (b) The Target and each Scheme Optionholder submits to the exclusive jurisdiction of the courts of New South Wales and courts of appeal from them in respect of all matters arising out of or relating to this Option Scheme Deed Poll, its performance or subject matter.

**Executed** as a deed poll.

**Executed** by **Elixinol Wellness Limited** )  
 ACN 621 479 794 in accordance with )  
 section 127(1) of the *Corporations Act 2001* )  
 (Cth): )

.....  
 Signature of director

.....  
 Signature of director or company secretary\*  
 \*delete whichever does not apply

.....  
 Name (please print)

.....  
 Name (please print)