

This is an important document and requires your immediate attention. You should read it in its entirety before deciding whether or not to vote in favour of the Merger at the Scheme Meeting.

Viscopy Limited

(ACN 069 759 922)

If you do not know what to do, you should consult a professional adviser promptly.

Scheme Booklet

in relation to the recommended merger by Viscopy Limited into Copyright Agency Ltd
by scheme of arrangement under the Corporations Act

YOUR DIRECTORS UNANIMOUSLY RECOMMEND THAT YOU

✓ **VOTE IN FAVOUR**

OF THE SCHEME IN THE ABSENCE OF A SUPERIOR PROPOSAL



John Young, *Spectrumfigure II*, 2017 © John Young / Licensed by Viscopy 2017

If you have any questions about this booklet, the Merger or the Scheme Meeting, please call the Copyright Agency | Viscopy Information Line on 1800 066 844 (from within Australia) or +61 2 9394 7600 (from outside Australia) between 9am and 5pm (Sydney time) on Business Days. Alternatively, you may email info@copyright.com.au.

Important notices and disclaimers

Date of this booklet

This booklet is dated 6 October 2017.

What is this booklet for

This booklet provides Viscopy members with information about the proposed merger of Viscopy into Copyright Agency by scheme of arrangement under the Corporations Act (the **Merger**).

As the explanatory statement required by section 412 of the Corporations Act, this booklet explains the effect of the Merger and sets out certain prescribed information and other information that is a material to the making of a decision by Viscopy members whether or not to approve the Merger at the Scheme Meeting, being information that is within the knowledge of Viscopy directors and has not previously been disclosed to Viscopy members.

Responsibility for information

Viscopy has prepared, and is responsible for, this booklet except the Copyright Agency Information. Copyright Agency has prepared, and is responsible for, the Copyright Agency Information.

Forward-looking statements

Some of the information in this booklet comprise statements which relate to the future. Statements of this nature are referred to as 'forward looking statements'. All statements, other than statements of historical fact, are forward-looking statements. Generally, forward-looking statements may be identified by the use of words such as 'believe', 'aim', 'expect', 'anticipate', 'intend', 'foresee', 'likely', 'should', 'plan', 'may', 'estimate', 'potential' or similar words. Similarly, statements that describe Viscopy's or Copyright Agency's objectives, plans, goals or expectations or the impact of the Merger and its anticipated advantages and disadvantages are forward-looking statements.

All forward-looking statements reflect views only as at the date of this booklet and involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements to differ, sometimes materially, from those which were anticipated as at the date of this booklet.

Although Viscopy and Copyright Agency each believes that the views reflected in any forward-looking statements included in this booklet and for which it is responsible have been made on a reasonable basis, no assurance can be given that such views will prove to be correct.

None of Viscopy, Copyright Agency, their respective officers and persons involved in the preparation of this booklet give any representation, warranty or assurance as to the likelihood of fulfilment of any forward-looking statement, or any events or results expressed or

implied in any forward-looking statement. Viscopy members are cautioned not to place undue reliance on any forward-looking statement.

Role of ASIC

ASIC has registered a copy of this booklet for the purposes of section 412(6) of the Corporations Act. Viscopy has given ASIC an opportunity to comment on this booklet in accordance with section 411(2)(b) of the Corporations Act and has requested that ASIC provide a statement, in accordance with section 411(17)(b) of the Corporations Act, that it has no objection to the Merger. If ASIC provides that statement, it will be produced to the Court at the Second Court Hearing.

Neither ASIC nor any of its officers takes any responsibility for the contents of this booklet.

IMPORTANT NOTICE ASSOCIATED WITH COURT ORDER UNDER SECTION 411(1) OF CORPORATIONS ACT

The fact that under section 411(1) of the Corporations Act the Court has ordered that the Scheme Meeting be convened and has approved this booklet as the explanatory statement required to accompany the notices of the Scheme Meeting does not mean that the Court:

- has formed any view as to the merits of the Scheme or as to how Viscopy members should vote (on this matter Viscopy members must reach their own decision); or
- has prepared, or is responsible for the content of, the explanatory statement comprising this booklet.

Privacy

In the process of implementing the Merger, Viscopy and Copyright Agency may collect personal information of Viscopy members and their representatives.

The primary purpose of the collection of personal information is to assist Viscopy to convene the Scheme Meeting and Viscopy and Copyright Agency to implement the Merger, and for the purposes outlined in Viscopy's and Copyright Agency's respective privacy policy.

Personal information comprising the names and contact details of Viscopy members may be disclosed to print and mail service providers.

For further information about your privacy, including details of the types of personal information collected, collection sources, why it is collection and how it is used, and how it may be accessed and corrected, refer to Viscopy's and Copyright Agency's respective privacy policy which may be accessed online from the following webpages:

- Viscopy – <https://static-viscopy-net-au.s3.amazonaws.com/uploads/2016/02/Viscopy-Privacy-Policy-29012016.pdf>
- Copyright Agency – <https://www.copyright.com.au/privacy/>

Alternatively, call the Copyright Agency | Viscopy Information Line to request that copies of these policies be mailed to you.

Viscopy members who appoint a representative should inform the representative of these matters.

Foreign jurisdictions

This booklet has been prepared having regard to Australian disclosure requirements only. These requirements may be different from those in other jurisdictions.

Defined terms

Certain terms and abbreviations used in this booklet have the defined meanings set out in section 8. Some of the annexures to this booklet use their own terms and abbreviations, which may have different defined meanings to those set out in section 8.

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Key Dates

Deadline for receipt of Proxy Forms by Viscopy	10am on Wednesday, 1 November 2017
Time for determining eligibility to vote at the Scheme Meeting	5pm on Wednesday, 1 November 2017
Scheme Meeting to be held at Copyright Agency, Level 11, 66 Goulburn Street, Sydney	10am on Thursday, 2 November 2017
If the Scheme is approved by Viscopy Members at the Scheme Meeting:	
Second Court Hearing (for approval of the Scheme)	Wednesday, 8 November 2017
Effective Date	Wednesday, 8 November 2017
Record Date	5pm on Monday, 27 November 2017
Merger Date (also referred to as the Implementation Date)	Thursday, 30 November 2017

Unless otherwise stipulated, all references to time in this booklet are to the time in Sydney, Australia.

This timetable is indicative only. The actual timetable will depend on many factors, including the time at which Conditions Precedent are satisfied or (if applicable) waived and the Court approval process. Viscopy may vary the timetable subject to the approval (if required) of Copyright Agency or the Court. All dates following the date of the Scheme Meeting are subject to all necessary approvals from the Court and any other regulatory or judicial authority. Any changes to the timetable (which may include an earlier or later date for the Second Court Hearing) will be published on the [Viscopy website](#).

Letter from the Viscopy Chair

6 October 2017

Dear Viscopy members

On behalf of your Viscopy directors, I am pleased to provide you with this booklet, which contains information for your consideration in relation to the proposed merger of Viscopy into Copyright Agency.

For many years now, the day-to-day operations of the Viscopy business have been managed by Copyright Agency. This arrangement was carefully planned by our respective Boards during 2011 and 2012 and is subject to the Services Agreement between the two companies which was authorised by the ACCC and has operated since 2 July 2012.

The Services Agreement set out Key Performance Indicators (**KPIs**) for Copyright Agency to achieve in respect of the major segments of the Viscopy business. All have been met and in most cases surpassed well beyond our expectation.

Key Performance Indicator	Copyright Agency Achievement
1. Membership growth of 20% to be achieved between 1 July 2012 and 30 June 2015.	Copyright Agency achieved this KPI with a 33% increase in membership to 30 June 2015. As at 31 August 2017, there were 13,448 Viscopy members reflecting a 45% increase since 1 July 2012.
2. Direct licensing revenue growth of 25% to be achieved between 1 July 2012 and 30 June 2015.	Copyright Agency achieved this KPI with a 28.4% increase in direct licensing revenue for the 2015 financial year. For the 2017 financial year, direct licensing revenue was \$1.1 million reflecting a 63.7% increase since the 2012 financial year. Note: the above calculations are based on direct licensing revenue normalised for the 2012 financial year by excluding \$267,000 in revenue generated from a significant exhibition by the Art Gallery of New South Wales of Picasso masterpieces from the Musée National Picasso, Paris.
3. Development of a business case for an image bank service by 30 June 2015.	Copyright Agency achieved this KPI in March 2015. Ultimately, the Viscopy Board resolved to not proceed with the launch of an image bank service because of concerns about the costs of implementation and its commercial and functional viability.
4. Implement an Indigenous competency programme and copyright education programme by 30 June 2015.	Copyright Agency achieved this KPI in 2013. The Viscopy Indigenous Education Programme developed by Copyright Agency provides Indigenous artists in remote, rural and urban communities with practical skills for the protection, documentation and remuneration of their artwork, often delivered in local languages. One aspect of the programme is the Indigenous Artists' © Business Booklet, a copy of which can be accessed here or by visiting the Viscopy website .

In addition to its performance against KPIs, we are very pleased with Copyright Agency's achievements for Viscopy members over the last five years in all aspects of the Viscopy business. The following is a small selection of Copyright Agency's additional achievements.

- Viscopy's **distribution rate** for amounts it receives from Copyright Agency under statutory licence schemes has increased from 75% in 2012 to 90% since 1 July 2014.

Note: prior to making distributions to Viscopy of amounts it receives under the statutory licence schemes administered by it, Copyright Agency deducts an amount for its actual operating costs (this has been around 14% for the past five

financial years) and a 1.5% contribution to Copyright Agency's Cultural Fund. Inclusive of these deductions, the distribution rate to Viscopy members under the statutory licence schemes administered by Copyright Agency has increased from approximately 63.4% in FY2012 to approximately 76% since 1 July 2014. Viscopy members who are also Copyright Agency members receive distributions attributable to the statutory licence schemes administered by Copyright Agency direct from Copyright Agency.

- Access to Copyright Agency's **Cultural Fund** for organisations that support visual artists. Recent recipients of fund grants have included Artspace, National Gallery of Victoria, Art Gallery of New South Wales, Guildhouse, Bus Projects, Craft ACT: Craft + Design Centre, Australian Network for Art & Technology, National Association for the Visual Arts and Victorian College of the Arts.
- Ongoing support of the **John Fries Award** which recognises the talents of early career visual artists from Australia and New Zealand. Now in its eighth year, the John Fries Award was established by the Fries family in 2010 in memory of former Viscopy director and Honorary Treasurer, John Fries, who made a remarkable contribution to the life and success of Viscopy. The annual \$10,000 prize money is donated by the Fries family in his memory. Details of the 2017 John Fries Award can be accessed [here](#) or by visiting the [Viscopy website](#).
- Undertaking the **Voice of the Artist**, a three-part project to explore and discover more about the extent to which visual artists have been impacted by the online environment comprising:
 - independent research involving outreach to all visual arts members of Viscopy and Copyright Agency, as well as ten other arts organisations – the research results can be accessed [here](#) or by visiting the [Viscopy website](#);
 - in partnership with Rococo Productions, publication of the [Voice of the Artist](#) featuring articles by artists, academics and writers and which seeks to provide artists and other arts industry professionals with the opportunity to talk about their experiences with copyright, explore the effect digital technology has had on how artists' works are developed and used, and respond to issues that arose from the independent research; and
 - in partnership with Vivid Sydney, presenting the *Voice of the Artist: Age of the Image* forum to raise the question: how do we value the image and create opportunities for creators, users and consumers? Videos of all speakers can be accessed [here](#) or by visiting the [Viscopy website](#).

We believe Viscopy and the Copyright Agency are fortunate to have found a strong partner in each other; and Viscopy members have benefited from the strong relationship we have built over the last five years. There exists between the two organisations a strong foundation of trust and culture.

Merger proposal

The Services Agreement envisaged that a merger proposal would be considered for recommendation to Viscopy members within three to five years. We believe that it is now an appropriate time for Viscopy members to consider a merger proposal.

If implemented, the Merger will involve Viscopy merging into Copyright Agency, and thereby ceasing to exist as a separate entity. This will be achieved via a scheme of arrangement, a legal procedure which can provide for one company to be merged into another. Implementation of the Merger is subject to Viscopy member and Court approvals, and certain other conditions.

Key features of the Merger for Viscopy members include:

- ceasing to be Viscopy members;
- admission as Copyright Agency members (for those Viscopy members who are not already Copyright Agency members); and
- agreement to the Copyright Agency Membership Terms and Conditions which will provide for the licensing of members' rights in artistic works to Copyright Agency, instead of Viscopy. Refer to

section 3.8 for a comparison of Viscopy's and Copyright Agency's respective membership terms and conditions—I encourage you to read that information carefully.

You can avoid becoming a Copyright Agency member and agreeing to the Copyright Agency Membership Terms and Conditions by giving Viscopy written notice of your intention to terminate your membership. If you give (and do not revoke) this notice before the Record Date, you will not be subject to the Merger except only that your notice will become irrevocable after the Record Date and you will cease to be a Viscopy member on the Merger Date.

As a condition to the Merger, Copyright Agency is to modify its constitution in order to provide for recognition and representation of artist members within Copyright Agency.

Your Viscopy directors' recommendation

Your Viscopy directors recommend unanimously that, in the absence of a Superior Proposal, Viscopy members vote in favour of the Merger at the Scheme Meeting because we believe that it is in the best interests of Viscopy members. Those of us who are Viscopy members or who hold undirected proxies intend to vote in favour of the Merger at the Scheme Meeting.

We make this recommendation because we consider that the Merger represents an opportunity to access the benefits of association with a large, well-resourced copyright management organisation. Expected benefits for Viscopy members include:

- an overall reduction in deductions from copyright distributions;
- representation of Copyright Agency artist members on the Copyright Agency Board;
- continued access to Copyright Agency resources for direct licensing, assistance with copyright infringement, copyright education and policy advocacy; and
- less uncertainty and greater stability for the licensing business on which Viscopy members rely for distributions if it is a part of a larger organisation.

We expect these benefits to be far superior to those which would be available were Viscopy to revert to carrying on business on a stand-alone basis, continue the Services Agreement or adopt some other form of combined operating model with Copyright Agency or another organisation.

Scheme Meeting and how to vote

Approval of the Merger is being sought at the Scheme Meeting scheduled to be convened at 10am on Thursday, 2 November 2017. Your vote is important and I encourage you to vote by completing the Proxy Form accompanying this booklet or, alternatively, by attending the Scheme Meeting.

Further information

This booklet sets out important information regarding the Merger. Please read this booklet carefully and in its entirety, as it will assist you in making an informed decision on how to vote.

If you require any further information, please call the Copyright Agency | Viscopy Information Line (refer to the front cover for details).

Yours faithfully



Timothy Denny
Chair
Viscopy Limited

1. Key Considerations

1.1 Viscopy members are being asked to approve the Merger

At the Scheme Meeting, Viscopy members who attend and are eligible to vote will be asked to agree to a resolution approving the Merger. The Merger cannot proceed without this approval.

This booklet explains the effect of the Merger and sets out information that is a material to the making of a decision by Viscopy members whether or not to approve the Merger at the Scheme Meeting, being information that is within the knowledge of Viscopy directors and has not previously been disclosed to Viscopy members. You should read this booklet in its entirety before deciding how you will vote on the Merger at the Scheme Meeting.

Your Viscopy directors recommend unanimously that, in the absence of a Superior Proposal, Viscopy members vote in favour of the Merger at the Scheme Meeting. Those Viscopy directors who are Viscopy members or who hold undirected proxies intend to vote in favour of the Merger at the Scheme Meeting.

Viscopy directors have given this recommendation because they believe that the Merger is in the best interests of Viscopy members. In deciding on this recommendation, Viscopy directors weighed the reasons why they thought Viscopy members should vote in favour of the Merger (refer to section 1.2) against the reasons why they thought Viscopy members may wish to vote against the Merger (refer to section 1.3), and concluded that the reasons in favour were more compelling.

1.2 Why you should vote in favour of the Merger

✓ Overall reduction in deductions from copyright distributions

Viscopy funds its copyright distributions from the following sources:

- distributions it receives from Copyright Agency and Screenrights in respect of amounts collected by them under the statutory licence schemes (net of their deductions);
- direct licensing revenue; and
- distributions it receives from overseas copyright management organisations with which it has reciprocal arrangements.

Before making a distribution, Viscopy deducts a commission of 10% or 25% (depending on the source of the distribution) to cover its expenses.

The table on the following page summarises the deductions made to distributions before 2 July 2012 (the date Copyright Agency commenced to carry on the Viscopy business), as at the date of this booklet and post-Merger.

While the table shows that the deduction from overseas collections is expected to increase, this increase is overshadowed by the expected decrease in the deduction from statutory licence scheme collections: for the year ended 30 June 2017, Viscopy received \$1.34 million from statutory licence scheme collections compared to \$124,000 from overseas collections.

Copyright Agency proposes to maintain at 25% the commission deducted from direct licensing collections.

1. Key Considerations

Source / Viscopy collections	Deductions (as at 01-Jul-2012)	Deductions (current)	Deductions (post-Merger)
Statutory Licence Schemes (Copyright Agency) FY2017: \$0.85m	~14% (to cover Copyright Agency operating costs) ¹ 1.5% (Copyright Agency's Cultural Fund) 25% (Viscopy commission) ² Aggregate: ~36.6%	~14% (to cover Copyright Agency operating costs) ¹ 1.5% (Copyright Agency's Cultural Fund) 10% (Viscopy commission) ² Aggregate: ~23.95%	~14% (to cover Copyright Agency operating costs) ¹ 1.5% (Copyright Agency's Cultural Fund) Aggregate: ~15.5%
Statutory Licence Schemes (Screenrights) FY2017: \$0.49m	~14.7% (to cover Screenrights operating costs) ³ 0.25% (Screenrights IBNR Fund) 1.9% (Screenrights Artistic Works Fund) 25% (Viscopy commission) ⁴ Aggregate: ~37.4%	~14.7% (to cover Screenrights operating costs) ³ 0.25% (Screenrights IBNR Fund) 1.9% (Screenrights Artistic Works Fund) 25% (Viscopy commission) ⁴ Aggregate: ~37.4	~14.7% (to cover Screenrights operating costs) ³ 0.25% (Screenrights IBNR Fund) 1.9% (Screenrights Artistic Works Fund) ~14% (to cover Copyright Agency operating costs) ⁴ Aggregate: ~28.2%
Direct Licensing FY2017: \$1.10m	25% (Viscopy commission)	25% (Viscopy commission)	25% (Copyright Agency commission)
Overseas collections FY2017: \$0.12m	10% (Viscopy commission)	10% (Viscopy commission)	~14% (to cover Copyright Agency operating costs) ¹ 1.5% (Copyright Agency's Cultural Fund) Aggregate: ~15.5%

- Copyright Agency makes a deduction from the amounts it collects under the statutory licence schemes it administers and certain other sources to cover its operating costs. This deduction is not a fixed percentage and changes from year-to-year as a result of fluctuations in collections and operating costs. A constant deduction percentage of 14% has been presented because this reflects the average proportion of Copyright Agency's total expenditure to total collections in respect of its 2017 financial year and its four preceding financial years. Within those years, the proportion varied between a low of 12.94% (FY2016) and a high of 15.1% (FY2015).
- Viscopy members, who are also Copyright Agency members, receive distributions in respect of the statutory licence schemes administered by Copyright Agency directly from Copyright Agency. As a result, the Viscopy commission is not applied to their distributions.
- Screenrights makes a deduction from the amounts it collects under the statutory licence schemes it administers and certain other sources to cover its operating costs. This deduction is not a fixed percentage and changes from year-to-year as a result of fluctuations in collections and operating costs. There are also variations in deduction proportions applied to the different collection sources. A constant deduction percentage of 14.7% has been presented because this reflects the average proportion of Screenrights' total expenditure to total collections published by Screenrights in respect of its 2016 financial year and the four preceding financial years. Within those years, the proportion varied between a low of 14.2% (FY2015 and FY2013) and a high of 15.3% (FY2012).
- Viscopy members, who are also Screenrights members, receive distributions in respect of the statutory licence schemes administered by Screenrights directly from Screenrights. As a result, the Viscopy commission is not applied to their distributions nor will Copyright Agency make deductions.

It is important to note that the information presented in the table on the previous page and elsewhere in this booklet concerning future deductions is subject to change.

The deductions to be made by Copyright Agency post-Merger are based on Copyright Agency's current intentions and assume that its future operating costs will be commensurate with its current operating costs

1. Key Considerations

(as a proportion of collections). The actual deductions made by Copyright Agency from its future collections may differ – possibly materially – from those described in the table on the previous page as a result of a range of factors including:

- regulatory changes;
- future operating costs being higher or lower (as a proportion of collections) than current operating costs – historical operating costs and collections may not be indicative of future operating costs and collections; and
- changes in Copyright Agency's collection policies.

The deductions to be made by Screenrights post-Merger are based on Screenrights' current published distribution policy and assume that its future operating costs will be commensurate with its current operating costs (as a proportion of collections). Viscopy has not obtained any confirmation from Screenrights concerning its future distribution policy. The actual deductions made by Screenrights from its future collections may differ – possibly materially – from those described above including as a result of factors similar to those which may affect Copyright Agency's future distributions.

✓ Representation of Copyright Agency artist members on the Copyright Agency Board

On implementation of the Merger, Copyright Agency will expand its Board by adding a Copyright Agency artist member. The Viscopy Board will have the right to appoint the first Copyright Agency artist member, to serve as a Copyright Agency director until the 2018 annual general meeting of Copyright Agency. Thereafter, the artist member will be elected by Copyright Agency artist members or appointed by the Copyright Agency Board if there is a casual vacancy.

The Viscopy Board has appointed Oliver Watts to serve as the first artist member director and Dr Watts has consented to his appointment. Refer to section 5.3 for information about Dr Watts.

While all Copyright Agency directors, including the artist member director, will have a duty to act in good faith in the best interests of Copyright Agency as a whole, having an artist member director ensures that the perspectives of artist members will be heard and represented in Copyright Agency's decision making.

✓ Continued access to Copyright Agency resources for direct licensing, assistance with copyright infringement, copyright education and policy advocacy

Over the last five years, Viscopy members have benefited from the resources that Copyright Agency has invested in these areas, including through:

- a 63.7% increase in direct licensing revenue from the 2012 to the 2017 financial years;
Note: this increase is calculated based on direct licensing revenue normalised for the 2012 financial year by excluding \$267,000 in revenue generated from a significant exhibition by the Art Gallery of New South Wales of Picasso masterpieces from the Musée National Picasso, Paris.
- active assistance to Viscopy members in resolving copyright infringements—in FY2017, Copyright Agency resolved 39 separate infringement cases for visual artists;
- ongoing support of the John Fries Award;
- the *Voice of the Artist* project (refer to page 2 for details); and
- the Viscopy Indigenous Education Programme.

More recently, Copyright Agency has been at the forefront of defending the right of Australian artists, along with writers, musicians, filmmakers and other creators, to receive fair payment for their work, which has been threatened by the 'fair use' exemption proposal of the Commonwealth Government's Productivity Commission. Copyright Agency is concerned that the fair use exemption proposal will make it easier for large corporations to use Australian creative content without fair payment to creators. The Viscopy Board supports the strong stand Copyright Agency has taken on this issue through the FREE IS NOT FAIR

1. Key Considerations

campaign (www.freeisnotfair.org) and recognises that the voice of Australian artists on this vital issue has been amplified by Copyright Agency's strong advocacy.

✓ **Less uncertainty and greater stability for the licensing business on which Viscopy members rely for distributions if it is a part of a larger organisation**

Your Viscopy directors consider that Viscopy could not offer the extent of essential member services currently provided to them by Copyright Agency under the Services Agreement, if Viscopy were to trade alone. The economic performance of Viscopy over recent years has been due in no small part to the large pool of resources available to it from Copyright Agency, and the successful management of those resources. In and of itself Viscopy is in a vulnerable market position. It currently operates with no employees and premises or other physical assets as those resources are provided by Copyright Agency. In return for the use of those resources, Copyright Agency accepts certain risks and rewards of the Viscopy business.

If the Merger does not proceed, Viscopy members will continue to be subject to economic and legislative risks. The Merger reduces exposure to these risks and uncertainties for Viscopy members. Refer to section 6 for a discussion of certain risks identified by the Viscopy Board.

✓ **Copyright Agency has operated the Viscopy business successfully for more than five years**

The Services Agreement, under which Copyright Agency has managed the Viscopy business, has been in effect since 2 July 2012. Copyright Agency has demonstrated a strong commitment to the Viscopy business and Viscopy members throughout its stewardship.

Viscopy directors believe that the success of the Services Agreement reflects the strong alignment between, and cultural similarities of, our two organisations and that the Merger represents a natural progression for the organisations.

1.3 Why you may wish to vote against the Merger

While Viscopy directors acknowledge the following reasons why Viscopy members may wish to vote against the Merger, they believe the advantages of the Merger significantly outweigh the disadvantages.

✗ **You may disagree with your Viscopy directors' unanimous recommendation and believe that the Merger is not in your best interests**

Despite the view of your Viscopy directors, you may believe that the Merger is not in the best interests of Viscopy members or is not in your individual interest.

✗ **You may wish to manage your own copyright**

You may wish to manage your own copyright rather than licensing it to Copyright Agency. Against this, however, is that if the Merger proceeds, Copyright Agency will not hold your rights exclusively (which is currently the case with Viscopy). Refer to 'Nature of licence' in section 3.8 for more information.

✗ **You may not wish to become bound by the Copyright Agency Membership Terms and Conditions**

If the Merger proceeds, those Viscopy members who are admitted as Copyright Agency members will be taken to have agreed to the Copyright Agency Membership Terms and Conditions – even those who voted against or did not vote on the Merger.

Refer to section 3.8 for a discussion of the Copyright Agency Membership Terms and Conditions, including a comparison with Viscopy's current membership terms and conditions. There are important differences between the two sets of terms and conditions and Viscopy members should take particular note of the warranties, indemnities and termination requirements – in each case, the relevant provisions in the Copyright Agency Membership Terms and Conditions are more burdensome to the Copyright Agency member than the equivalent Viscopy membership terms and conditions. Viscopy members are encouraged to obtain professional advice on the impact of the Copyright Agency Membership Terms and Conditions.

1. Key Considerations

*** You may consider that there is potential for a Superior Proposal to be made in the foreseeable future**

It is possible that, if Viscopy were to continue as an independent entity, a corporate control proposal for Viscopy could materialise in the future. Your Viscopy directors view this as unlikely and have invested recent years in building a successful business model with Copyright Agency, founded on trust, transparency and a shared corporate culture. While Viscopy directors do not envisage a realistic alternative scenario where a superior arrangement would be possible with another organisation, you may hold a different view.

*** You may consider that it is in the interests of artists to be separately represented**

Copyright Agency brings together publishers and a broad group of creators including authors, poets and playwrights, journalists, visual artists, photographers, cartoonists, illustrators and surveyors.

There may be occasions where the interests of some Copyright Agency members conflict with the interests of some of its other members. In your Viscopy directors' experience, Copyright Agency manages such conflicts appropriately. Nevertheless, you may consider that, for this reason, visual artists would be better served by a separate organisation.

2. Frequently Asked Questions

Set out below are summary answers to some of the questions you may have regarding the Merger and where you may obtain more detailed information. The answers are not intended to address all relevant issues for Viscopy members and are not a substitute for reading this booklet in its entirety.

Question	Answer	More Information
What is being proposed?	That Viscopy be merged into Copyright Agency with Viscopy to cease to exist as a separate entity. This is to be achieved through the Merger.	Section 3.
What is the Merger?	<p>The Merger is a scheme of arrangement between Viscopy and Viscopy members as at the Record Date.</p> <p>A scheme of arrangement is a court-approved legal document which can provide for one company to be merged into another.</p> <p>Key features of the Merger for Viscopy members include:</p> <ul style="list-style-type: none"> ▪ ceasing to be Viscopy members; ▪ admission as Copyright Agency members (for those Viscopy members who are not already Copyright Agency members); and ▪ agreement to the Copyright Agency Membership Terms and Conditions which will provide for the licensing of members' rights in artistic works to Copyright Agency, instead of Viscopy. <p>In addition, the Merger will provide for:</p> <ul style="list-style-type: none"> ▪ the whole of the undertaking and property of Viscopy to be transferred to, and vested in, Copyright Agency; ▪ all liabilities of Viscopy to be transferred to, and become liabilities of, Copyright Agency; ▪ all legal proceedings pending by or against Viscopy (if any) to be continued as legal proceedings by or against Copyright Agency; and ▪ the deregistration of Viscopy by ASIC without a winding up. 	<p>Section 3.</p> <p>A copy of the Scheme of Arrangement is set out in Annexure C.</p>
What are the Copyright Agency Membership Terms and Conditions?	<p>Together with the Copyright Agency constitution, the Copyright Agency Membership Terms and Conditions will comprise the legal basis on which Viscopy members are admitted as Copyright Agency members if the Merger proceeds.</p> <p>There are important differences between the Copyright Agency Membership Terms and Conditions and the current Viscopy terms and conditions and Viscopy members should take particular note of the warranties, indemnities and termination requirements – in each case, the relevant provisions in the Copyright Agency Membership Terms and Conditions are more</p>	<p>Section 3.8.</p> <p>A copy of the Copyright Agency Membership Terms and Conditions is set out in the Annexure to the Scheme of Arrangement which is itself set out in</p>

2. Frequently Asked Questions

Question	Answer	More Information
	<p>burdensome to the Copyright Agency member than the equivalent Viscopy membership terms and conditions.</p> <p>You are encouraged to obtain professional advice on the impact of the Copyright Agency Membership Terms and Conditions.</p>	Annexure C.
Who is Copyright Agency?	<p>The Copyright Agency is an Australian not-for-profit organisation that has been representing creators and publishers of text and images for more than 40 years. Copyright Agency enables the reuse of copyright-protected words and images in return for fair payment to creators.</p> <p>Since 2 July 2012, Copyright Agency has managed the day-to-day operations of the Viscopy business pursuant to the Services Agreement.</p>	Section 5.
Are there any conditions to be satisfied?	<p>A number of Conditions Precedent must be satisfied (or, alternatively in some cases, waived) in order for the Merger to proceed. In summary, the Conditions Precedent include:</p> <ul style="list-style-type: none"> ▪ ACCC clearance; ▪ Viscopy members approving the Merger at the Scheme Meeting; ▪ Copyright Agency members approving modifications to Copyright Agency's constitution at an extraordinary general meeting (the modifications provide for recognition and representation of artist members within Copyright Agency); ▪ there being no legal restraint or prohibition preventing all or any part of the Merger; ▪ neither Copyright Agency nor Viscopy suffering an insolvency event; ▪ no 'Viscopy Prescribed Occurrence' occurring; and ▪ Court approval at the Second Court Hearing. 	<p>Refer to clause 3 of the Scheme Implementation Deed set out in Annexure A and clause 3 of the Scheme of Arrangement set out in Annexure C for the Conditions Precedent.</p> <p>Refer to section 7.2 for the status of the Conditions Precedent as at the date of this booklet.</p>
What is the Scheme Meeting?	<p>The Scheme Meeting is a meeting of Viscopy members convened by order of the Court for Viscopy members to consider and, if thought fit, pass a resolution agreeing to the Scheme of Arrangement.</p> <p>For the Merger to proceed, this resolution must be passed by a majority in number of Viscopy members present and voting (either in person or by proxy, attorney or, in the case of bodies corporate, body corporate representative) at the Scheme Meeting.</p> <p>The Scheme Meeting is to be held at the offices of Copyright Agency, Level 11, 66 Goulburn Street, Sydney on Thursday, 2 November 2017, commencing at 10am.</p>	Section 3.5 and Annexure D.

2. Frequently Asked Questions

Question	Answer	More Information
	Even if approved by Viscopy members, the Merger is still subject to other Conditions Precedent, including approval by the Court at the Second Court Hearing.	
Am I entitled to attend and vote?	Each person who is recorded as a Viscopy member in Viscopy's register of members at 5pm (Sydney time) on Wednesday, 1 November 2017 will be entitled to vote at the Scheme Meeting.	Annexure D.
How do I vote?	You can vote by appointing a proxy or attorney to attend the Scheme Meeting and vote on your behalf or by attending the Scheme Meeting in person. To appoint a proxy, complete the Proxy Form which accompanies this booklet and return it to Viscopy in accordance with the instructions therein. The deadline for receipt of Proxy Forms by Viscopy is 10am on Wednesday, 1 November 2017.	Annexure D and the Proxy Form.
What do Viscopy directors recommend that I do?	Your Viscopy directors recommend unanimously that, in the absence of a Superior Proposal, Viscopy members vote in favour of the Merger at the Scheme Meeting. Those Viscopy directors who are Viscopy members or who hold undirected proxies intend to vote in favour of the Merger at the Scheme Meeting.	Section 1.
Will a Superior Proposal emerge?	No Superior Proposal has been received by Viscopy despite the Merger being announced to the public on 19 June 2017.	N/A
Has an independent expert considered whether the Merger is in the best interests of Viscopy members?	No. It is common (and sometimes compulsory) for a company board considering a scheme of arrangement to commission an independent expert to prepare a report stating whether or not, in his or her opinion, the proposed scheme of arrangement is in the best interests of the company the subject of the scheme of arrangement and setting out his or her reasons for that opinion. While your Viscopy directors have not engaged an independent expert to report on the Merger, they nevertheless consider that the Merger is in the best interests of Viscopy members.	Section 3.6.
Will the Merger affect the distributions I receive from Viscopy or the rights in my works?	If the Merger proceeds, you will cease to receive distributions from Viscopy as it will have been merged into Copyright Agency and ceased to exist. However, if you are, or become, a Copyright Agency member, you may receive distributions from Copyright Agency. Other changes relevant to your distributions and the rights in your works include: <ul style="list-style-type: none"> ▪ Copyright Agency proposes to make an overall reduction in deductions from copyright distributions; 	Sections 1.2 and 3.8.

2. Frequently Asked Questions

Question	Answer	More Information
	<ul style="list-style-type: none"> ▪ whereas you have granted Viscopy an exclusive licence to collect and distribute all remuneration due to you for the exploitation of your rights in artistic works, you will grant Copyright Agency a non-exclusive right to sub license only; and ▪ you will give warranties and indemnities to Copyright Agency in respect of you and your artistic works that are more extensive than those you have given Viscopy. 	
<p>How will the Merger affect me if I am already a Copyright Agency member?</p>	<p>Viscopy members who are already Copyright Agency members will not benefit from the elimination of the 10% Viscopy commission on distributions sourced from Copyright Agency because they already receive those distributions from Copyright Agency directly.</p> <p>However, if they are not also Screenrights members, these members will benefit from a reduction in commissions on distributions sourced from Screenrights. Currently, Viscopy applies a 25% commission to such distributions. If the Merger proceeds, this commission will be eliminated and Copyright Agency will instead apply its general deduction (currently approximately 14%).</p> <p>Viscopy members who are already Copyright Agency members will also benefit from a streamlining of distributions in the sense that they will be dealing with a single distributor and receive consolidated distribution statements (once systems and process integrations are completed) whereas distributions and distribution statements are currently split between:</p> <ul style="list-style-type: none"> ▪ Copyright Agency in respect of distributions sourced from Copyright Agency's administration of the statutory licence schemes, Copyright Agency's commercial and other voluntary licences, and overseas copyright management organisations with whom Copyright Agency has reciprocal arrangements; and ▪ Viscopy in respect of distributions sourced from Screenrights (except for Viscopy members who are also Screenrights members), Viscopy's direct licences, and overseas copyright management organisations with whom Viscopy has reciprocal arrangements. <p>All Viscopy members, including those who are already Copyright Agency members, will share in the other benefits of the Merger including:</p> <ul style="list-style-type: none"> ▪ representation of Copyright Agency artist members on the Copyright Agency Board; and ▪ continued access to Copyright Agency resources for direct licensing, assistance with copyright infringement, copyright education and policy advocacy. 	<p>Sections 1.2 and 5.4</p>

2. Frequently Asked Questions

Question	Answer	More Information
What benefits will I give up upon ceasing to be a Viscopy member?	<p>For Viscopy members generally, Copyright Agency's operation of the Viscopy business will cease to be subject to the supervision of the Viscopy Board and will instead be supervised by the Copyright Agency Board. Although the Copyright Agency Board will include at least one Copyright Agency artist member director, the Viscopy Board includes five directors who are either artists in their own right or otherwise work in the arts industry.</p> <p>For Viscopy members who receive distributions sourced from overseas copyright management organisations, Copyright Agency will apply its general deduction on those distributions (currently approximately 14% plus 1.5% Cultural Fund levy, which is higher than the 10% commission applied by Viscopy).</p> <p>There are no benefits of Viscopy membership particular to Viscopy members who are also Copyright Agency members that they will lose upon ceasing to be Viscopy members.</p>	Sections 1.2, 1.3 and 5.4
What will happen if I do not vote, or if I vote against the Merger, but the Merger is approved by Viscopy members and the Court?	<p>If the Merger is approved by Viscopy members and the Court and becomes effective, it will proceed regardless of whether or how you voted. This means that, subject to the exception discussed below, if you are a Viscopy member as at the Record Date you will:</p> <ul style="list-style-type: none"> ▪ cease to be a Viscopy member; ▪ become a Copyright Agency member (if you are not already a Copyright Agency member); and ▪ agree to the Copyright Agency Membership Terms and Conditions which will provide for the licensing of your rights in artistic works to Copyright Agency, instead of Viscopy, <p>automatically without any action required from you.</p> <p>However, you can avoid becoming a Copyright Agency member and agreeing to the Copyright Agency Membership Terms and Conditions by giving Viscopy written notice of your intention to terminate your membership. If you give (and do not revoke) this notice before the Record Date, you will not be subject to the Merger except only that your notice will become irrevocable after the Record Date and you will cease to be a Viscopy member on the Merger Date.</p> <p>It is expected that you will have at least two weeks between when the Merger becomes effective and the Record Date to take this action.</p>	N/A
When will I know that the Merger has become effective?	<p>The result of the Scheme Meeting and (if applicable) confirmation that the Merger has become effective following its approval by the Court at the Second Court Hearing will be notified promptly to Viscopy members in the same manner that they received this booklet.</p>	N/A

2. Frequently Asked Questions

Question	Answer	More Information
What happens if the Merger does not proceed?	<p>If the Merger is not approved at the Scheme Meeting, or another Condition Precedent to the Merger is not satisfied or waived (where capable of waiver), the Merger will not proceed.</p> <p>In that case, Viscopy directors will seek to engage with Copyright Agency in order to agree a long term model for the operation of the Viscopy business. Copyright Agency has said that it will respond to any such engagement but there is no guarantee that the parties will be able to reach agreement as to a long term model.</p> <p>While there have been no discussions between Copyright Agency and the Viscopy Board to date concerning alternative operating models, any of the following are possibilities:</p> <ul style="list-style-type: none">▪ continuation of the Services Agreement either with or without modification;▪ a new merger proposal;▪ Viscopy reverting to a stand-alone operation; or▪ adoption of a new combined operating model. <p>While none have done so to date, it is also possible that another copyright management organisations may seek to engage with Viscopy directors on the possibility of entering into a merger or combined operating model with that organisation as an alternative to an arrangement with Copyright Agency or a stand-alone operation.</p> <p>Viscopy directors will also plan for the renewal of the Viscopy Board by seeking to identify candidates to fill the existing Viscopy Board vacancy and to replace existing Viscopy directors who may wish to retire. Viscopy anticipates that at least four of the seven existing Viscopy directors (Timothy Denny, Marcus Clark, Katherine Fries and Matthew Sleeth) will wish to retire by 30 June 2018 if the Merger does not proceed because they will have been directors, in each case, for six years or more and consider that it would be desirable for the Viscopy Board to be rejuvenated.</p>	Sections 4.6 and 5.7.
Who can I contact if I have more questions?	If you have any questions about this booklet, the Merger or the Scheme Meeting, please call the Copyright Agency Viscopy Information Line (refer to the front cover for details).	Front cover.

3. Overview of the Merger

3.1 Background to the Merger

The Services Agreement envisaged that a merger proposal would be considered for recommendation to Viscopy members within three to five years (i.e. between 2015 and 2017).

On 19 June 2017, Copyright Agency and Viscopy announced that they had agreed in principle to begin the formal arrangements to merge. The merger arrangements were formalised when the parties entered into the Scheme Implementation Deed on 26 July 2017.

3.2 Scheme Implementation Deed

The Scheme Implementation Deed sets out each of Copyright Agency's and Viscopy's rights and obligations in connection with the implementation of the Merger.

Certain key terms of the Scheme Implementation Deed are discussed in this section and elsewhere in this booklet, including Conditions Precedent (refer to sections 3.13 and 7.2), Viscopy's obligations to deal with Copyright Agency on an exclusive basis (refer to section 3.14), termination rights (refer to section 3.15) and Viscopy director benefits (refer to section 7.5).

Refer to Annexure A for a copy of the Scheme Implementation Deed.

3.3 Merger

The Merger is a scheme of arrangement between Viscopy and Viscopy members as at the Record Date.

A scheme of arrangement is a court-approved legal document which can provide for one company to be merged into another. In this case, it is proposed that Viscopy will merge into Copyright Agency.

Key features of the Merger for Viscopy members include:

- ceasing to be Viscopy members;
- admission as Copyright Agency members (for those Viscopy members who are not already Copyright Agency members); and
- agreement to the Copyright Agency Membership Terms and Conditions which will provide for the licensing of members' rights in artistic works to Copyright Agency, instead of Viscopy.

However, Viscopy members who give Viscopy written notice before the Record Date of their intention to terminate their membership will not be admitted as Copyright Agency members or be taken to have agreed to the Copyright Agency Membership Terms and Conditions.

In addition, the Merger will provide for:

- the whole of the undertaking and property of Viscopy to be transferred to, and vested in, Copyright Agency;
- all liabilities of Viscopy to be transferred to, and become liabilities of, Copyright Agency;
- all legal proceedings pending by or against Viscopy (if any) to be continued as legal proceedings by or against Copyright Agency; and
- the deregistration of Viscopy by ASIC without a winding up.

Refer to Annexure C for a copy of the Scheme of Arrangement.

3. Overview of the Merger

3.4 Deed Poll

On 4 October 2017, Copyright Agency executed the Deed Poll pursuant to which it undertakes, subject to the Merger becoming effective, to:

- admit each Transferring Scheme Member as a Copyright Agency member;
- accept the transfer and vesting of the whole of the undertaking and property of Viscopy;
- accept the transfer of all liabilities of Viscopy as its liabilities; and
- continue under its name any legal proceedings pending by or against Viscopy,

as at and with effect from the Merger Date, subject to and in accordance with the Scheme of Arrangement, and to perform all other actions attributed to it under the Scheme of Arrangement.

Refer to Annexure B for a copy of the Deed Poll.

3.5 Scheme Meeting

On 6 October 2017, the Court ordered that Viscopy convene the Scheme Meeting at the offices of Copyright Agency, Level 11, 66 Goulburn Street, Sydney on Thursday, 2 November 2017, commencing at 10am for the purposes of Viscopy members considering and, if though fit, passing a resolution agreeing to the Scheme of Arrangement.

For the Merger to proceed, this resolution must be passed by a majority in number of Viscopy members present and voting (either in person or by proxy, attorney or, in the case of bodies corporate, body corporate representative) at the Scheme Meeting.

A person who is recorded as a Viscopy member in Viscopy's register of members at 5pm (Sydney time) on Wednesday, 1 November 2017 may attend and vote at the Scheme Meeting.

Refer to Annexure D for a copy of the notice of Scheme Meeting and its explanatory notes. The explanatory notes include information on attendance and how to vote. You should also refer to the Proxy Form that accompanied this booklet. If you did not receive a Proxy Form or need a new one, call the Copyright Agency | Viscopy Information Line (refer to the front cover for details).

3.6 Absence of an independent expert's report

It is common (and sometimes compulsory) for a company board considering a scheme of arrangement to commission an independent expert to prepare a report stating whether or not, in his or her opinion, the proposed scheme of arrangement is in the best interests of the company the subject of the scheme of arrangement and setting out his or her reasons for that opinion.

The Viscopy Board did not commission an independent expert for this purpose because Viscopy directors did not consider that the information benefits to be obtained from an independent expert's report were worth the costs of his or her engagement for the following reasons:

- as Copyright Agency and Viscopy are both not-for-profit public companies limited by guarantee, their members do not have any right to participate in their profits or equity (whether by way of dividends or a distribution on winding up) with the result that membership in either organisation of itself does not carry any intrinsic economic value;
- the Viscopy Board comprises individuals from a diverse range of professional backgrounds including practising artists, marketing professionals, business owners, a solicitor and the chief financial officer of a copyright management organisation and considered that Viscopy directors had access to sufficient expertise within the Viscopy Board in order to make an informed recommendation in relation to the Merger; and

3. Overview of the Merger

- the reasons for Viscopy directors recommending the Merger (refer to section 1.2) are not solely economic and the principal economic reason (the overall reduction in deductions from copyright distributions) does not require a valuation to assess.

3.7 Comparison of Copyright Agency and Viscopy membership guarantees

As public companies limited by guarantee, neither Copyright Agency nor Viscopy has share capital. Instead, each of their members undertakes to contribute to the property of the company if it is wound up while he or she is a member or within one year afterwards for:

- payment of the debts and liabilities of the company contracted before the member ceased to be a member;
- the costs, charges and expended of winding up; and
- for an adjustment of the rights of contributories amongst themselves.

In the case of Viscopy, the maximum contribution that may be called on is \$2, whereas it is \$20 in the case of Copyright Agency.

3.8 Copyright Agency and Viscopy membership terms and conditions

On joining Viscopy, Viscopy members agreed to one or both of the following terms and conditions of membership:

- copyright licensing membership (excluding statutory licences); and
- statutory licensing membership.

A copy of Viscopy's current membership terms and conditions can be accessed [here](#), by visiting the [Viscopy website](#) or by calling the Copyright Agency | Viscopy Information Line (refer to the front cover for details).

If the Merger proceeds, all of Viscopy's rights under the terms and conditions of its memberships will be transferred to Copyright Agency. In addition, those Viscopy members who are admitted as Copyright Agency members will be taken to have agreed to the Copyright Agency Membership Terms and Conditions – even those who voted against or did not vote on the Merger.

Refer to the Annexure to the Scheme of Arrangement, which is itself set out in Annexure C for a copy of the Copyright Agency Membership Terms and Conditions.

Below is a comparison of the current Viscopy membership terms and conditions and the Copyright Agency Membership Terms and Conditions. There are important differences between the two documents and Viscopy members should take particular note of the warranties, indemnities and termination requirements – in each case, the relevant provisions in the Copyright Agency Membership Terms and Conditions are more burdensome to the Copyright Agency member than the equivalent Viscopy membership terms and conditions. Viscopy members are encouraged to obtain professional advice on the impact of the Copyright Agency Membership Terms and Conditions.

Topic	Viscopy	Copyright Agency
Nature of licence	Licence to collect and distribute all remuneration due to the Viscopy member from the exploitation of artistic works in which he or she owns copyright.	Licence to sub-licence third parties to exploit works under: <ul style="list-style-type: none">▪ the statutory licence schemes provided for in the Copyright Act; and▪ other licence schemes administered by Copyright Agency in which the Viscopy member

3. Overview of the Merger

Topic	Viscopy	Copyright Agency
		<p>elects to participate from time to time (which will include the voluntary licence scheme administered by Viscopy prior to the Merger Date).</p> <p>Note that the reference to 'works' covers artistic works as well as literary, dramatic and musical works.</p>
Geographic scope	World-wide.	World-wide.
Exclusivity	<p>Yes. The effect of this exclusivity is to entitle Viscopy to collect all remuneration due to a Viscopy member except:</p> <ul style="list-style-type: none"> ▪ for an artistic work that the Viscopy member expressly noted as being excluded on his or her membership application form or excludes by notice in writing within 90 days of its creation; and ▪ in the case of Viscopy members who do not elect statutory licensing membership, for artistic works under a statutory licensing scheme. <p>Note: in practice, Viscopy permits Viscopy members to license the exploitation of artistic works personally for a particular use if requested in advance.</p>	<p>No. A Copyright Agency member will be free to license the exploitation of works personally or through other agents.</p>
Limitation	<p>A Viscopy member may list commercial uses that he or she does not want Viscopy to license.</p>	<p>No equivalent provision.</p> <p>Note: Copyright Agency' will continue Viscopy's practice to consult with members in respect of any proposed exploitation of artistic works in a monograph, in advertising, merchandising and covers, and in relation to large scale or high-volume uses of artistic works of the same artist.</p>
Status of collections prior to distributions	Collected funds are held in trust.	Collected funds are held in trust.
Deductions	<p>Viscopy may deduct an administration fee for reimbursement of administration and operating expenses as determined by it.</p>	<p>Copyright Agency may deduct its administrative costs (including anticipated costs) and any other amounts authorised by the Copyright Agency constitution.</p> <p>The Copyright Agency constitution authorises deductions not exceeding 1.5% for special purposes determined by</p>

3. Overview of the Merger

Topic	Viscopy	Copyright Agency
		the Copyright Agency Board. Currently, Copyright Agency deducts 1.5% as a contribution to the Copyright Agency's Cultural Fund. Copyright Agency does not propose to deduct this contribution from distributions sourced from Screenrights.
Timing of distributions	Distributions must be made twice yearly but in practice are generally made quarterly.	No equivalent provision. The Copyright Agency constitution requires distributions to be made as soon as practicable after allocation. Copyright Agency's practice is to make distributions quarterly.
Warranties	That the artistic works are of the Viscopy member's own authorship, are original, are not libellous and do not infringe copyright or moral rights of any person.	<p>That the Copyright Agency member is eligible under the Copyright constitution to be admitted as a Copyright Agency member. (As a condition to the Merger, the Copyright Agency constitution is to be modified to provide for all Viscopy members to be eligible for admission as a Copyright Agency member.)</p> <p>That the Copyright Agency member can grant the rights granted and those rights do not infringe the copyright or other proprietary right of any other person.</p> <p>Where the Copyright Agency member is not the sole owner of copyright in the works, he or she has obtained the necessary consents to enter into the Copyright Agency Membership Terms and Conditions.</p> <p>Where the Copyright Agency member notifies Copyright Agency of payment splits for works, the information supplied is correct.</p>
Indemnities	Viscopy is indemnified by the Viscopy member for any loss whatsoever which Viscopy incurs as a consequence of any breach of the warranties.	<p>Copyright Agency is indemnified by the Copyright Agency member against any liability incurred by Copyright Agency arising out of:</p> <ul style="list-style-type: none"> ▪ a breach by the Copyright Agency member of; and ▪ an infringement of copyright or other proprietary right in the licensing of the rights granted by, <p>the Copyright Agency Membership Terms and Conditions.</p>
Termination	The licence granted by the Viscopy	The licence granted by the Copyright

3. Overview of the Merger

Topic	Viscopy	Copyright Agency
	<p>member terminates automatically upon him or her ceasing to be a Viscopy member.</p> <p>The Viscopy constitution requires a Viscopy member to give Viscopy at least six months notice of the termination of his or her membership.</p>	<p>Agency member continues for three years after he or she ceases to be a Copyright Agency member or withdraws from a particular licence scheme.</p> <p>The Copyright Agency constitution requires Copyright Agency members to give Copyright Agency at least three years notice of the termination of his or her membership.</p>

If the Merger is approved by Viscopy members and the Court, Viscopy members, who do not wish to agree to the Copyright Agency Membership Terms and Conditions, should give written notice to Viscopy of their intention to terminate their membership before the Record Date. Viscopy members who give (and do not revoke) this notice in time will not be admitted as Copyright Agency members nor will they be taken to have agreed to the Copyright Agency Membership Terms and Conditions. Otherwise, Viscopy members as at the Record Date will be admitted as Copyright Agency members and will be taken to have agreed to the Copyright Agency Membership Terms and Conditions.

3.9 Viscopy directors' recommendation and voting intentions

Viscopy directors recommend unanimously that, in the absence of a Superior Proposal, Viscopy members vote in favour of the Merger at the Scheme Meeting. Those Viscopy directors who are Viscopy members or who hold undirected proxies intend to vote in favour of the Merger at the Scheme Meeting.

At the date of this booklet, no Viscopy director is aware of any Superior Proposal.

Refer to section 1.2 for the reasons for this recommendation and section 1.3 for the reasons why Viscopy members may wish to vote against the resolution to agree to the Merger at the Scheme Meeting.

3.10 Second Court Hearing

At the Second Court Hearing, the Court will consider whether to approve the Merger following the vote at the Scheme Meeting.

Any Viscopy member may appear at the Second Court Hearing, expected to be held on Wednesday, 8 November 2017, at the Supreme Court of New South Wales, Law Courts Building, 184 Phillip Street, Sydney.

Any Viscopy member who wishes to oppose approval of the Merger at the Second Court Hearing may do so by filing with the Court and serving on Viscopy a notice of appearance in the prescribed form together with any affidavit upon which the Viscopy member proposes to rely.

3.11 Record Date

The Record Date for the Merger is expected to be 5pm on Monday, 27 November 2017 but may change. Any changes to the Record Date will be notified to Viscopy members and published on the [Viscopy website](#).

Only persons who are recorded in Viscopy's register of members as Viscopy members as at the Record Date will be subject to the Scheme of Arrangement. These Viscopy members are referred to as the Scheme Members.

3.12 Merger Date

The Merger Date (also referred to as the Implementation Date) is expected to be on Thursday, 30 November 2017. Any changes to the Merger Date will be notified to Viscopy members and published on the [Viscopy website](#).

3. Overview of the Merger

On this date the Scheme Members will cease to be Viscopy members, and the Transferring Scheme Members will be admitted as Copyright Agency members and taken to have agreed to the Copyright Agency Membership Terms and Conditions.

3.13 Conditions precedent to the Merger

A number of Conditions Precedent must be satisfied (or, alternatively in some cases, waived) in order for the Merger to proceed. In summary, the Conditions Precedent include:

- ACCC clearance;
- Viscopy members approving the Merger at the Scheme Meeting;
- Copyright Agency members approving modifications to Copyright Agency's constitution at an extraordinary general meeting (the modifications provide for recognition and representation of artist members within Copyright Agency);
- there being no legal restraint or prohibition preventing all or any part of the Merger;
- neither Copyright Agency nor Viscopy suffering an insolvency event;
- no 'Viscopy Prescribed Occurrence' occurring; and
- Court approval at the Second Court Hearing.

Refer to clause 3 of the Scheme Implementation Deed set out in Annexure A and clause 3 of the Scheme of Arrangement set out in Annexure C for the Conditions Precedent.

Refer to section 7.2 for the status of the Conditions Precedent as at the date of this booklet.

3.14 Exclusivity

Viscopy has agreed to certain exclusivity provisions that restrict it from encouraging, or engaging with, the proponent of a Competing Proposal between 26 July 2017 and the End Date or, if earlier, the termination of the Scheme Implementation Deed.

- (a) **No shop**—except with the prior consent of Copyright Agency, Viscopy must not, and must ensure that none of its directors or other officers, agents or advisers, directly or indirectly solicit, invite, facilitate, encourage or initiate any Competing Proposal or any enquiries or discussions with any person in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.
- (b) **No talk**—Viscopy must not, and must ensure that none of its directors or other officers, agents or advisers, enter into, continue or participate in discussions, or enter into any agreement or understanding, with any person in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:
 - the Competing Proposal was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by Viscopy; or
 - the Competing Proposal has been publicly announced,unless the Viscopy Board, acting in good faith, determines (after having taken legal advice) that:
 - where there is a Competing Proposal, the Competing Proposal is or is likely to be a Superior Proposal having regard to the steps which the Viscopy Board proposes to take; or
 - failing to respond to that Competing Proposal would be likely to constitute a breach of the Viscopy Board's fiduciary or statutory obligations.
- (c) **Notification of approach**—Viscopy must promptly notify Copyright Agency if it is approached, directly or indirectly, by any Third Party to enter into, continue or participate in discussions, or enter into any

3. Overview of the Merger

agreement or understanding, with any person in relation to, or that may reasonably be expected to lead to, a Competing Proposal.

- (d) **Notification of Competing Proposal**— if Viscopy receives a Competing Proposal, Viscopy must ensure that no Viscopy director nor the Viscopy Board publicly withdraws or adversely changes or modifies the recommendation or voting statement in section 1.1 (including by making an inconsistent recommendation or statement), unless the Viscopy Board, acting in good faith, has determined (after having taken legal advice) that the Competing Proposal is a Superior Proposal and Viscopy has:
- first given Copyright Agency five Business Days prior notice of the proposed withdrawal, change or modification; and
 - provided to Copyright Agency with that notice all material terms of the Competing Proposal.

3.15 Termination rights

Either Copyright Agency or Viscopy may terminate the Scheme Implementation Deed by notice to the other:

- (a) given at any time before 8am on the day of the Second Court Hearing if:
- the other has materially breached any provision of the Scheme Implementation Deed;
 - it has given notice to the other in a timely manner setting details of the relevant breach and stating an intention to terminate this document; and
 - the relevant breach continues to subsist for 10 Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5pm on the Business Day before the day of the Second Court Hearing);
- (b) the Scheme of Arrangement does not become effective, or any event occurs which results in a Condition Precedent being incapable of being satisfied, by the End Date (unless the failure is the result of a breach of the Scheme Implementation Deed by the party seeking to terminate);
- (c) given at any time before 8am on the day of the Second Court Hearing, if an independent expert concludes (whether in its original or any subsequent report) that the Merger is not in the best interests of Viscopy members; or
- (d) given at any time before 8am on the day of the Second Court Hearing, if a majority of the Viscopy Board has changed, withdrawn or modified their recommendation or statement in the recommendation or voting statement in section 1.1 (including by making an inconsistent recommendation or statement).

4. Information about Viscopy

4.1 Overview

Viscopy is a public company limited by guarantee formed in June 1995 as a not-for-profit copyright management organisation to provide copyright management services for visual artists.

As at 31 August 2017, Viscopy had 13,448 members most of whom resided in Australia or New Zealand. Approximately half of all Viscopy members are Indigenous artists.

4.2 Viscopy business

When artists or other holders of copyright in artistic works become Viscopy members, they may elect to do so for one or both of the following purposes.

- (a) *Direct licensing* whereby a Viscopy member grants Viscopy an exclusive world-wide licence to collect all remuneration due from the exploitation of rights in artistic works in which he or she owns copyright (subject to any specific exclusions specified in the membership application) which may include in books, websites, advertising, merchandise, exhibitions, catalogues, buildings and other structures, and other media.

Viscopy collects fees for the reproduction, publication and communication of artistic works either from Australian and New Zealand end-users or overseas copyright management organisations (Viscopy has reciprocal arrangements with 38 overseas copyright management organisations) who, in turn, collect licence fees from end-users in their jurisdictions. After deducting a commission (25% for amounts received from Australian and New Zealand end-users and 10% for amounts received from overseas copyright management organisations) to cover its expenses, Viscopy distributes the fees it collects to relevant Viscopy members.

- (b) *Statutory licensing* whereby a Viscopy member grants Viscopy an exclusive world-wide licence to collect all remuneration due under statutory licences for the exploitation of rights in artistic works in which he or she owns copyright (subject to any specific exclusions specified in the membership application).

In Australia, there are statutory licence schemes for educational institutions and the Commonwealth and the States and Territories. There is also a statutory scheme for the retransmission of free to air broadcasts. To the extent the administrators of these schemes (Copyright Agency and Screenrights) allocate an amount from the statutory licence fees they collect to a Viscopy member who is not also a Copyright Agency member or Screenrights member (as applicable), the administrator pays the amount to Viscopy. Similarly, copyright management organisations that administer statutory schemes in other countries pay Viscopy the amounts they allocate to Viscopy members. After deducting a commission (25% for amounts received from Screenrights and 10% for amounts received from Copyright Agency or overseas copyright management organisations) to cover its expenses, Viscopy distributes the fees it collects to relevant Viscopy members.

In addition, as part of its reciprocal arrangements with overseas copyright management organisations and arrangements it has with the estates of some overseas artists, Viscopy collects remuneration due for the exploitation within Australia and, in some cases, within New Zealand and/or other Pacific Island nations of rights in artistic works in which members of those organisations or the estates own copyright. After deducting a commission to cover its expenses, Viscopy distributes the fees it collects to the organisations and estates.

Until 2 July 2012, Viscopy carried on business on a standalone basis from its own premises and with its own employees. Since that date, Copyright Agency has managed the Viscopy business pursuant to an appointment under the Services Agreement.

Under the Services Agreement, Viscopy appoints Copyright Agency as its exclusive agent to do anything in respect of the Viscopy business as Copyright Agency can do in respect of its own affairs, business and

4. Information about Viscopy

property to the extent necessary to provide a range of services to Viscopy including direct licensing, distributions, business development, finance and treasury, membership promotion and administration, management of reciprocal arrangements with copyright management organisations in other countries, publicity and corporate affairs, information technology, corporate secretariat and compliance, policy and representation, education, the John Fries Memorial Prize, and ancillary services.

Copyright Agency reports to, and is subject to the supervision of, the Viscopy Board on its conduct of the Viscopy business. Viscopy directors are independent of Copyright Agency.

4.3 Background to Merger

The entry into the Services Agreement arose from a strategic review undertaken by the then Viscopy Board in 2011, who concluded that the interests of Viscopy members would be best met by Viscopy engaging a larger copyright management organisation to carry on the Viscopy business. Ultimately, Viscopy engaged Copyright Agency for this purpose with the Service Agreement entered into on 22 November 2011 and services being commenced under it on 2 July 2012 after an ACCC authorisation was obtained.

At the time the Services Agreement was being negotiated, Copyright Agency and Viscopy anticipated that the agreement may represent an intermediate step before a merger of the two organisations. To that end, the Services Agreement anticipated that Copyright Agency and Viscopy would develop a merger proposal to be submitted to Viscopy members for their approval. The Merger, as described in this booklet, reflects a merger proposal by Copyright Agency the approval of which is recommended by the Viscopy Board.

4.4 Viscopy Board

The Viscopy Board comprises the following directors (all non-executive):

- Timothy Denny – independent director (since 2010), Chair
- Marcus Clark – independent director (since 2012), Company Secretary
- Katherine Fries – Viscopy-member elected director (since 2010)
- Joyce Parszos – NAVA-appointed director (since 2015)
- Matthew Sleeth – NAVA-appointed director (since 2012)
- Leesa Watego – independent director (since 2012)
- Oliver Watts – NAVA-appointed director (since 2016)

At least one Viscopy director must be an Aboriginal or Torres Strait Islander. The Viscopy Board currently satisfies this requirement.

The Viscopy Board normally includes two Viscopy-member elected directors. Currently, there is a vacancy for one of these positions which the Viscopy Board has determined not to fill on account of the Merger.

Viscopy directors are not required (and, in some cases, are not eligible) to be Viscopy members. Currently, Katherine Fries is the only director who is a Viscopy member.

The Chair of Viscopy, Timothy Denny, is the Chief Financial Officer of the Australasian Performing Right Association Limited and the Australasian Mechanical Copyright Owners Society Limited.

4.5 Viscopy historical financial information

Viscopy's last published financial statements are for the year ended 30 June 2017. They are included in Viscopy's 2017 financial report which can be accessed [here](#), by visiting the [Viscopy website](#) or by calling the Copyright Agency | Viscopy Information Line (refer to the front cover for details).

Within the knowledge of Viscopy directors, the financial position of Viscopy has not materially changed since 30 June 2017.

4. Information about Viscopy

4.6 Intentions of Viscopy directors regarding Viscopy's business and employees

If the Merger proceeds, Viscopy will cease to exist and it will be for Copyright Agency – under the supervision of the Copyright Agency Board – to determine its intentions as to:

- (a) the continuation of the Viscopy business; and
- (b) major changes, if any, to be made to the Viscopy business.

Refer to section 5.6 for a statement by Copyright Agency of its intentions in relation to these matters.

Viscopy has had no employees since 2 July 2012.

If the Merger does not proceed, Viscopy directors will seek to engage with Copyright Agency in order to agree a long term model for the operation of the Viscopy business. Refer also to section 5.7 for a statement of Copyright Agency's intentions in relation to these matters including possible operating models.

Viscopy directors would also respond to any other copyright management organisation who may wish to explore with Viscopy directors the possibility of entering into a merger or combined operating model with that organisation as an alternative to an arrangement with Copyright Agency or a stand-alone operation.

There is no guarantee that Viscopy will be able to reach agreement with Copyright Agency or any other copyright management organisation as to a merger or combined operating model or establish a viable stand-alone operation.

Viscopy directors will also plan for the renewal of the Viscopy Board by seeking to identify candidates to fill the existing Viscopy Board vacancy and to replace existing Viscopy directors who may wish to retire. Viscopy anticipates that at least four of the seven existing Viscopy directors (Timothy Denny, Marcus Clark, Katherine Fries and Matthew Sleeth) will wish to retire by 30 June 2018 if the Merger does not proceed because they will have been directors, in each case, for six years or more and consider that it would be desirable for the Viscopy Board to be rejuvenated.

4.7 Publicly available information about Viscopy

As a company limited by guarantee, Viscopy is required to prepare and lodge with ASIC annual audited financial reports and directors' reports. A copy of Viscopy's annual audited financial report and directors' report for the 2017 financial year can be accessed [here](#), by visiting the [Viscopy website](#) or by calling the Copyright Agency | Viscopy Information Line (refer to the front cover for details).

Viscopy is a signatory to the Code of Conduct for Copyright Collecting Societies. A copy of the Code can be accessed [here](#) or by visiting the [Viscopy website](#). Viscopy's compliance with the Code of Conduct is reviewed each year by the Code Reviewer, currently Hon Dr Kevin Lindgren AM QC, formerly a judge of the Federal Court of Australia and President of the Copyright Tribunal of Australia. A copy of the most recent compliance report (covering 1 July 2015 to 30 June 2016) can be accessed [here](#) or by calling the Copyright Agency | Viscopy Information Line (refer to the front cover for details). The report considers compliance by Viscopy and Copyright Agency jointly.

5. Information about Copyright Agency

5.1 Introduction

The information contained in this section 5 has been prepared by Copyright Agency. Except to the extent the information comprises historical Viscopy financial information and commission rates, this and other information concerning Copyright Agency and the intentions, views and opinions of Copyright Agency contained in this booklet comprise the Copyright Agency Information and is the responsibility of Copyright Agency. Viscopy and its directors do not assume any responsibility for the accuracy or completeness of any Copyright Agency Information.

5.2 Overview of Copyright Agency operations

On behalf of creators and publishers of text and images, Copyright Agency negotiates, collects and distributes copyright fees and royalties. Copyright Agency is a public company limited by guarantee with more than 30,000 members, who include writers, artists and publishers.

Copyright Agency is appointed under the Copyright Act to manage statutory licence schemes (for use of certain content by government and education). The statutory licence schemes allow uses of content for certain purposes without permission but subject to fair compensation to rightsholders.

The statutory licences were introduced to cater for situations in which it was assumed that, if left to themselves, rightsholders and users of content may be unable to reach a satisfactory resolution of the terms for the access desired for reasons that include unacceptably high transaction costs in cases where individual uses would be too difficult to identify and control.

Copyright Agency is also appointed by statute to administer the resale royalty scheme, which pays artists a percentage of the sale price from certain resales of artworks.

Like Viscopy, Copyright Agency is a signatory to the Code of Conduct for Australian Collecting Societies. A copy of the Code can be accessed [here](#) or by visiting the [Copyright Agency website](#). Copyright Agency's licensing and distribution arrangements can also be referred to the Copyright Tribunal of Australia in the absence of resolution by agreement.

The following table sets out a high-level breakdown of Copyright Agency's revenue (unaudited) from rendering of services for the year ended 30 June 2017.

Copyright Agency – Revenue from rendering of services (audited)	FY2017 \$'000
Education	105,308
Commercial	25,453
Government	6,521
International	3,804
LearningField	2,962
Resale Royalty	810
Total	144,858

Education

The statutory licence schemes for education in the Copyright Act allow educational use of text and images provided there is fair compensation to content creators.

The schemes apply to both not-for-profit and for-profit educational institutions. The calculation of fair compensation can be determined by the Copyright Tribunal of Australia if it cannot be agreed between the

5. Information about Copyright Agency

parties. The last Tribunal determination on fair compensation from schools for text, images and print music was in 2002, and for universities in 1999.

Most schools (all government schools, and most Catholic and independent schools) are represented by the Copyright Advisory Group (**CAG**) in negotiations for fair compensation. Most Technical and Further Education colleges (apart from those in Victoria) are also represented by CAG. CAG represents schools on copyright matters to the Council of Australian Governments Education Council. CAG is assisted by the National Copyright Unit, based in the NSW Department of Education.

Australian universities are represented by Universities Australia. Copyright Agency also negotiates individual agreements with more than 1,000 independent educational institutions.

Commercial and other 'voluntary' licences

Copyright Agency members can appoint Copyright Agency as their agent to include their works in various licence schemes. The licences also cover the works of rightsholders represented by Copyright Agency's international affiliates. Licensees include organisations in the corporate and not-for-profit sectors.

There are 'blanket' annual licences, which cover uses of all works represented. There are also 'pay-per-use' (transactional) licences, including through an online automated facility.

Licence fees reflect a number of factors including the value to the user of the material used, industry standards, the costs of administering the licences, and comparable arrangements in local and other markets.

Licence fees for the commercial sector vary for different types of businesses.

Government statutory licence scheme

The statutory licence for governments allows Commonwealth, State and Territory government departments and agencies to make any use of any copyright content for the services of the government. Copyright Agency has been 'declared' by the Copyright Tribunal as the collecting society authorised to collect and distribute 'equitable remuneration' for government copying of text, images and print music. Copyright Agency also licenses, as agent for its members, the communication of text, images and print music.

International

The 'voluntary' licences offered by Copyright Agency are dependent upon the authorisation given by members to license their content, and the authorisation of foreign content creators through their copyright management organisations. Copyright Agency has agreements with overseas copyright management organisations that enable it to include foreign works in Australian licences, and those organisations to include Australian works in their licences. The maintenance of those agreements requires active management, affected by a range of external developments including changes in regulatory frameworks and business practices.

Copyright Agency is a member of the International Federation of Reproduction Rights Organisations (**IFRRO**) and a provisional member of the International Confederation of Societies of Authors and Composers (**CISAC**). For many years, Copyright Agency has played an active role on the IFRRO board and committees. It currently Chairs the Asia and Pacific Committee for IFRRO and is a member of the Legal and Policy Committee of IFRRO.

For more information about IFRRO and CISAC, refer to their respective websites: www.ifrro.org and www.cisac.org.

LearningField

LearningField is an online platform providing access to resources linked to the Australian curriculum and state curriculums. It is an 'all you can eat' annual subscription, allowing use of all LearningField resources: more than 12,000 chapters from 800 textbooks.

5. Information about Copyright Agency

LearningField is a joint venture between Copyright Agency and three founding publishers, and is open to other publishers who wish to participate.

Resale royalty

Copyright Agency was appointed by the Commonwealth Minister for the Arts to manage the artists' resale royalty scheme in May 2010, and the scheme commenced on 9 June 2010.

The scheme requires payment of a royalty equal to 5% of the sale price on certain resales of artworks by Australian artists. It also requires the reporting of all resales with a sales value of \$1,000 or more to Copyright Agency, with sufficient information to determine if a royalty is payable. A royalty is not payable if the seller acquired the work before the scheme commenced.

There is a dedicated website – www.resaleroyalty.org.au – which has an online reporting facility, and online registration facility for contact details for artists and art market professionals.

5.3 Copyright Agency Board

The Copyright Agency Board comprises up to ten directors:

- one author member elected by Copyright Agency author members or appointed by the Copyright Agency Board if there is a casual vacancy;
- one publisher member elected by Copyright Agency publisher members or appointed by the Copyright Agency Board if there is a casual vacancy;
- two appointees of the Australian Society of Authors Limited;
- two appointees of the Australian Publishers Association Limited; and
- up to four independent directors elected by the other Board members.

On implementation of the Merger, Copyright Agency will expand its Board by adding a Copyright Agency artist member. The Viscopy Board may appoint the first Copyright Agency artist member to serve as a Copyright Agency director until the 2018 annual general meeting of Copyright Agency. Thereafter, the artist member will be elected by Copyright Agency artist members or appointed by the Copyright Agency Board if there is a casual vacancy.

The Viscopy Board has nominated Oliver Watts LIB (Hons.), BA (Hons.), MFA (Painting), PhD to serve as the first artist member director and Dr Watts has consented to his appointment. Dr Watts is a Sydney-based artist, theorist and curator. He currently lectures at the National Institute of Dramatic Art and is an honorary associate of the Sydney College of the Arts, University of Sydney. He has curated exhibitions in Australia, Hong Kong, the United States and Singapore. As a critic and theorist, he has published in various magazines, including *Art and Australia*, *Art Monthly*, *Das Superpaper* and leading academic journals. As well being a founding member of The Chaser satirical team as its cartoonist and illustrator, Dr Watts is also a co-director of Chalk Horse Gallery in Darlinghurst, Sydney.

The current members of the Copyright Agency Board are as follows.

Bronwyn Bancroft Dip. VComms, Master of Studio Practice, MVA (Painting)

Experience: Australian artist who has served on the boards of Viscopy, the National Indigenous Arts Advocacy Association and the National Gallery of Australia. Currently a director of Boomalli Aboriginal Artists Co-operative, Designer Aboriginals Pty Ltd and the Australian Indigenous Mentoring Experience.

David Barnett BA, P Grad Dip HRM, FAICD

Experience: MD Pearson, Australia and over 25 years in publishing. Other directorships include Pearson Australia Group and Robert Menzies College (Chair).

Special responsibilities: Australian Publishers Association appointed Director from 2011. Convenor of Copyright Agency's Education Portal committee and member of its Audit and Finance

5. Information about Copyright Agency

<p><i>Special responsibilities:</i> Independent Director since 20 November 2008. Member of Copyright Agency's Cultural Fund committee and also an observer member of the Art Market Professionals Advisory Panel for the Resale Royalty Scheme managed by Copyright Agency.</p>	<p>and Nomination and Governance committees.</p>
<p>Anthony Bertini BA</p> <p><i>Experience:</i> long career in business, including starting own internet business in 1996, BMC Media. Chair of Thumper One Pty Ltd, working with scientists and inventors, focusing on global food security, value added products, clean water and renewable energy. Chair and founder of ARCA Group Investments Pty Ltd, operating in the clean technology sector; co-founder and Chair of Organic Technology Holdings Pty Ltd, a global producer of alternative proteins and pharmaceutical oils. Chair of Australian Omega Oils Pty Ltd and Hydrogen Assist Pty Ltd. Director of TBSx3, a block chain technology business, establishing and verifying provenance of goods from origin to destination. Former Australian deal maker for UK government as part of their Global Entrepreneur Program publisher of IPC Magazines Australia; former Group Sales Director of The Bulletin and Australian Business Magazines.</p> <p><i>Special responsibilities:</i> independent director since May 2010. Convenor of Copyright Agency's International Development committee until it was dissolved in 2015. Member of Copyright Agency's Audit and Finance, Cultural Fund and Remuneration committees.</p>	<p>Jane Curry BSc (Hons)</p> <p><i>Experience:</i> Jane has been Managing Director of Weldon Publishing, Macquarie Library, National Book Distributors, Quarto Australia, and published her own list at Pan Macmillan Australia. Jane founded the trade-publishing house Ventura Press in 2002 and Impact Press in 2015. Jane is a Director of the Australian Publishers Association and convenor of the APA's Independent Publishers Committee.</p> <p><i>Special responsibilities:</i> Member of the Cultural Fund Committee and the Education Portal Committee. Publisher elected Director since 2015.</p>
<p>Adele Ferguson BEcon, BA (Hons)</p> <p><i>Experience:</i> journalist and author with a wide range of experience, including as a business commentator and an investigative reporter for The Sydney Morning Herald, The Age and The Financial Review. Awards include The Gold Walkley, the Gold Quill, the Gold Kennedy awards and a Logie. Author of best-selling unauthorised biography Gina Rinehart: The Richest Woman in the World. On the board of the Melbourne Press Club.</p> <p><i>Special responsibilities:</i> author-elected director since 2015. Member of the Audit and Finance Committee and the Cultural Fund Committee.</p>	<p>Helen O'Neill BA (Hons)</p> <p><i>Experience:</i> internationally published, award-winning journalist and author. Former staff journalist with the Sydney Morning Herald, The Australian and Vogue Australia. Recent books include biographies of Harry Seidler and Florence Broadhurst, and histories of the daffodil and the department store David Jones.</p> <p><i>Special responsibilities:</i> Australian Society of Authors appointed Director since 2014. Member of Copyright Agency's Cultural Fund and Stakeholder Engagement committees.</p>
<p>Christopher Pash</p> <p><i>Experience:</i> Author, working journalist and media executive. A former Director of Content Strategy at Dow Jones Asia Pacific, CEO of Asia Pulse, a joint venture of Asia news companies, Editor in Charge,</p>	<p>Lucrezia Russell BA, CPA</p> <p><i>Experience:</i> former General Manager of John Wiley & Sons Higher Education Division and former Convenor of the APA Tertiary and Professional Committee. Over 20 years in Higher Education</p>

5. Information about Copyright Agency

<p>Correspondent and Bureau Chief at Australian Associated Press. Chris is a former Director of the Pacific Area Newspaper Publishers' Association and member of the Australian Institute of Company Directors. Author of <i>The Last Whale</i> (Fremantle Press, 2008), a narrative non-fiction book about the final days of whaling in Australia.</p> <p><i>Special responsibilities:</i> Australian Society of Authors appointed Director since November 2016 and member of the Cultural Fund Committee.</p>	<p>publishing.</p> <p><i>Special responsibilities:</i> APA appointed Director since 1 July 2010. Convenor of Copyright Agency's Audit and Finance committee and member of its Cultural Fund, Education Portal and Remuneration committees.</p>
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Kimberley Lynton Williams AM B.Mus, Hon Dlitt Chair

Experience: media executive and composer; former CEO of News Limited, Foxtel, the Australian Film Commission and Musica Viva. Kim Williams has also served as a member and chair of other boards including as Chair of the Sydney Opera House Trust, Musica Viva Australia, Sydney Symphony Orchestra and of the Australian Film Finance Corporation. Current other boards include being the Chair of the State Library of NSW Foundation and Cranlana, and a director of the Australian National Academy of Music, the University of Western Sydney Foundation, the Myer Foundation, the Australian Grape and Wine Authority and serving as a Commissioner of the Australian Football League. He is also a director of several private companies: Myer Family Investments, Mojo Power, VidCorp and the Executive Channel International.

Special responsibilities: independent director since January 2015 and Chair since June 2015; Convenor of Copyright Agency's Cultural Fund, Remuneration and Nominations and Governance committees and member of its Audit and Finance committee.

5.4 Copyright Agency's rationale for the Merger

Copyright Agency believes that there are many benefits that will pass to Viscopy members from the Merger, including:

(a) Overall reduction in deductions from copyright distributions

Viscopy members (who are not also a member of Copyright Agency) currently have administration fees deducted by both Viscopy and Copyright Agency with respect to the revenue from statutory licence schemes. This is due to the duplication required of processing the payment through two systems.

Due to the efficiencies delivered under the Services Agreement, the Viscopy commission on distributions sourced from Copyright Agency has steadily reduced since 2 July 2012. See the table below for an explanation of how the commission charged by Viscopy to its members has decreased with respect to statutory licence revenue collected by Copyright Agency immediately prior to the Services Agreement until now.

Before 2 July 2012	Since 2 July 2012		
	FY2013	FY2014	FY2015+
25%	25%	17%	10%

Note: refers to revenue earned in that financial year.

Note: Viscopy members who are also Copyright Agency members receive distributions attributable to the statutory licence schemes administered by Copyright Agency direct from Copyright Agency and, as a result, do not have a Viscopy commission deducted from their distributions.

The Viscopy commission on distributions sourced from Screenrights has remained 25%.

5. Information about Copyright Agency

Following the Merger, Copyright Agency will immediately remove these Viscopy commissions with the effect that members would only be charged the applicable Copyright Agency administration fee (currently approximately 14% plus (except in the case of distributions sourced from Screenrights) 1.5% Cultural Fund levy) on distributions sourced from the statutory licence schemes. Copyright Agency has decided that it will not apply the 1.5% Cultural Fund levy to distributions sourced from Screenrights because Screenrights already applies a 1.9% deduction for the Screenrights Artistic Works Fund.

There will be an increase in the deductions from collections received from overseas copyright management organisations. Currently, the Viscopy commission on distributions sourced from overseas copyright management organisations is 10%. Following the Merger, Copyright Agency will apply its general deduction (currently approximately 14% plus 1.5% Cultural Fund levy) to these collections. However, the collections from overseas copyright management organisations is much less than collections under the statutory licence schemes (refer to section 1.1 for details).

Copyright Agency proposes to maintain at 25% the commission deducted from direct licensing collections.

(b) Enhanced reach of repertoire – potential for participation in additional licensing schemes

Leveraging a more expansive repertoire for blanket licensing by including Viscopy artistic repertoire in Copyright Agency's licensing schemes, providing better and more extensive licences, making it easier for visual artists' work to be included in licensing schemes and providing a new potential revenue stream for their work, are all benefits that Copyright Agency believes would flow from the Merger.

With the agreement of the Copyright Agency member, contributing Copyright Agency's artistic repertoire to the voluntary individual licensing programme operated by Viscopy and Viscopy's reciprocal arrangements with overseas copyright management organisations, would increase the potential for licensing activity and provide an additional licensing revenue stream for Copyright Agency members who are visual artists.

(c) Greater efficiencies

Improved and more efficient operations within the merged entity, removing duplication of systems and processes. This would also allow for improved systems planning for the future.

(d) Greater resources for services to members: including advocacy, policy engagement and education

Providing greater resources and coordination for policy engagement and advocacy, ensuring that the voice and concerns of visual artists are represented in public discourse. Copyright Agency makes submissions to government on copyright related policy issues, gives information to members, licensees and the public regarding copyright management and copyright law and acts on behalf of its members in Copyright Tribunal of Australia proceedings and cases of infringement of copyright. Since Copyright Agency's establishment, it has been involved in a number of cases resulting in either a determination of the entitlement of its members to receive payment, or the amount of that payment.

Copyright Agency also provides other services to its members, including a range of publications to educate members about copyright and about Copyright Agency's activities. There would be better resources available to artist members to learn about protecting their rights and the options available to them.

Copyright Agency is well-placed amongst the international community of collecting societies to advocate for and represent the interests of visual artists. Copyright Agency was a founding member of the International Federation of Reproduction Rights Organisations (IFRRO). The immediately preceding Chief Executive Officer of Copyright Agency was a member of the IFRRO Board, and the current CEO and Secretary General of IFRRO was, until her appointment, the General Manager of Copyright Agency. A Copyright Agency employee is the Chair of the APAC Committee of IFRRO. In

5. Information about Copyright Agency

addition, Copyright Agency became a provisional member of the International Society of Authors and Composers (**CISAC**) in 2011 and management sit on the Executive Committee of CIAGP (the committee of CISAC representing visual artists).

(e) Success of current arrangements

Another compelling rationale for the Merger, apart from the benefits offered to Viscopy members set out above, is that the Merger would be a natural progression and was always contemplated by the Services Agreement. Copyright Agency has carried on the Viscopy business since 2 July 2012, managing its operations, licensing, finances and membership. The Services Agreement always contemplated that if this arrangement was successful, a merger proposal would be submitted to Viscopy members for their consideration. The Services Agreement has been successful, particularly in the following ways.

- Copyright Agency met the new member target set by Viscopy – to grow membership by 20% – a year ahead of schedule. Viscopy now has over 13,000 members.
- Domestic licensing income has been higher than the base year in each year, culminating in 2016 with 63.7% growth over the base year.

Note: the above calculation is based on direct licensing revenue normalised for the 2012 financial year by excluding \$267,000 in revenue generated from a significant exhibition by the Art Gallery of New South Wales of Picasso masterpieces from the Musée National Picasso, Paris.

- Improved customer relationships driven by improved service delivery and the development of rate cards with commercially viable rates for customers and artists, and reduced administrative burden.
- Copyright Agency worked with APRA AMCOS, Phonographic Performance Company of Australia Ltd (PPCA), Australian Recording Industry Association Limited (ARIA) and Viscopy on a joint agreement with an industry sector that uses content from our respective repertoires. The joint agreement streamlines the process for the licensee.
- Since undertaking management of the John Fries Award in 2012, Copyright Agency has helped develop the award into an internationally recognised prize. The Awards opening night is regularly attended by more than 500 people, and attendance figures throughout the exhibition in excess of 2500.
- An important research initiative was delivered: [Voice of the Artist](#). This research assessed the impact of the online environment on the rights of visual artists in Australia and New Zealand.
- A new website was developed for Viscopy with more artist education and support, plus a social media campaign was devised and delivered.

As a result of the extensive degree of integration between the two businesses, a complete merger is now the most sensible option to remove the duplication and inefficiencies of two boards of directors and duplicate audit and compliance costs.

(f) Benefits to current Copyright Agency members

The merger will also benefit existing Copyright Agency members. Primarily this benefit will be due to the reduced transaction costs of running the Viscopy business that may not be wholly recovered by the existing commission payment structure (in particular, management resources that may not be accounted for). Copyright Agency is targeting reduced transaction costs of between \$50,000 and \$150,000 per annum. However, Copyright Agency's ability to realise this target is subject to a range of factors including unanticipated increases in existing costs, the emergence of unanticipated new costs and its ability to secure identified cost savings. As such, Copyright Agency cannot guarantee that it will be able to achieve reduced transaction costs whether within this range or at all.

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To the extent that multiple societies and licences cause confusion amongst users of copyright, Copyright Agency members will benefit from the reduced number of copyright collection organisations operating in the market.

Copyright Agency members will have the benefit of the expertise of the artist member director on the Copyright Agency Board.

The unified voice of artists and authors in submissions to government, and in legal proceedings, will be of cumulatively greater force, which will benefit all Copyright Agency members.

5.5 Copyright Agency historical financial information

The Copyright Agency historical financial information set out in this section 5.5 has been extracted from the financial statements contained in Copyright Agency's 2017 financial report. The information does not provide as full an understanding of the financial performance, financial position and activities of Copyright Agency as does its 2017 financial report, which can be accessed [here](#), by visiting the [Copyright Agency website](#) or by calling the Copyright Agency | Viscopy Information Line (refer to the front cover for details).

COPYRIGHT AGENCY STATEMENT OF COMPREHENSIVE INCOME FOR THE YEAR ENDED 30 JUNE 2017 (AUDITED)		
	2017 (\$)	2016 (\$)
Revenue	147,446,848	139,724,144
Less: expenses		
Employee benefits expense	(12,808,632)	(12,815,146)
Depreciation and amortisation expense	(574,191)	(1,321,356)
Occupancy expense	(578,028)	(709,824)
Consultancy costs	(1,455,813)	(439,397)
Sampling costs	(1,304,084)	(1,222,291)
Legal costs	(340,283)	(306,443)
IT costs	(1,170,935)	(1,003,658)
Marketing and communications	(729,631)	(575,433)
Office running costs	(287,730)	(356,943)
Other expenses	1,597,653	(1,247,153)
	<hr/>	<hr/>
	(20,846,980)	(19,997,645)
Net surplus available for distribution	126,599,868	119,726,499
Less: distributions		
Distribution paid and payable to members	(123,875,992)	(111,326,570)
Transfer to Cultural Fund	(2,046,460)	(2,059,943)
Payments made from Reserves	(661,466)	(130,957)
	<hr/>	<hr/>
Surplus for the year	15,950	6,209,029
Other comprehensive income for the year	-	-
	<hr/>	<hr/>
Total comprehensive income before allocations to reserves	15,950	6,209,029

5. Information about Copyright Agency

COPYRIGHT AGENCY		
STATEMENT OF FINANCIAL POSITION		
AS AT 30 JUNE 2017 (AUDITED)		
	2017 (\$)	2016 (\$)
Current assets		
Cash and cash equivalents	7,930,917	4,406,132
Cash on deposit	52,112,658	44,562,248
Trade and other receivables	5,225,145	3,114,373
Other assets	15,688,364	16,245,089
Total current assets	80,957,084	68,327,842
Non-current assets		
Property, plant and equipment	2,477,344	2,030,832
Total non-current assets	2,477,344	2,030,832
Total assets	83,434,428	70,358,674
Current liabilities		
Payables	10,549,227	2,386,463
Provisions	846,425	1,087,440
Distributions payable	12,462,021	8,094,527
Deferred income	40,029,713	39,022,971
Total current liabilities	63,887,386	50,591,401
Non-current liabilities		
Payables	827,922	1,022,727
Provisions	297,108	338,484
Total non-current liabilities	1,125,030	1,361,211
Total liabilities	65,012,416	51,952,612
Net assets	18,422,012	18,406,062
Equity		
Retained earnings	-	-
Reserves	18,422,012	18,406,062
Total equity	18,422,012	18,406,062

5. Information about Copyright Agency

COPYRIGHT AGENCY					
STATEMENT OF CHANGES IN ACCUMULATED FUNDS					
FOR THE YEAR ENDED 30 JUNE 2017 (AUDITED)					
	Retained earnings (\$)	Future Fund reserve (\$)	Indemnity Fund reserve (\$)	Other reserves (\$)	Total equity (\$)
Balance at 1 July 2015	-	9,297,967	2,899,066	-	12,197,033
Surplus for the year	6,209,029	-	-	-	6,209,029
Payments made from reserves	130,957	(120,822)	(10,135)	-	-
Transfer surplus to reserves	(6,339,986)	6,284,671	55,315	-	-
Balance at 30 June 2016	-	15,461,816	2,944,246	-	18,406,062
Balance at 1 July 2016	-	15,461,816	2,944,246	-	18,406,062
Surplus for the year	15,950	-	-	-	15,950
Payments made from reserves	661,466	(160,510)	(500,956)	-	-
Transfer surplus to reserves	(125,732)	124,107	1,625	-	-
Transfers between reserves	(551,684)	(316,362)	500,956	367,090	-
Balance at 1 July 2017	-	15,109,051	2,945,871	367,090	18,422,012

5. Information about Copyright Agency

COPYRIGHT AGENCY STATEMENT OF CASH FLOWS FOR THE YEAR ENDED 30 JUNE 2017 (AUDITED)		
	2017 (\$)	2016 (\$)
Cash flow from operating activities		
Cash receipts from customers	144,696,305	142,812,577
Cash distributed to members and payments to suppliers and employees	(134,550,768)	(143,278,733)
Net cash provided by operating activities	10,145,537	(466,156)
Cash flow from investing activities		
Interest received	1,778,063	2,313,763
Proceeds from sale of property, plant and equipment	-	5,880
Payment for property, plant and equipment	(848,406)	(1,916,385)
Increase in cash on deposit	(7,550,410)	(1,304,641)
Net cash used in investing activities	(6,620,753)	(901,383)
Net increase / (decrease) in cash held	3,524,785	(1,367,539)
Cash at the beginning of the financial year	4,406,132	5,773,673
Cash at the end of the financial year	7,930,917	4,406,132

5.6 Copyright Agency's intentions if the Merger proceeds

Copyright Agency membership

If the Merger proceeds, unless they give notice in writing of the termination of their Viscopy membership before then, all Viscopy members as at the Record Date will automatically become Copyright Agency members (if they are not Copyright Members already). A new member category will be created for artists, which will cover:

- Viscopy members;
- entities who would be eligible to become Viscopy members; and
- Copyright Agency members who are currently designated as artist members rather than author members under the existing Copyright Agency categories.

Viscopy business

Copyright Agency has been operating the Viscopy business under the Services Agreement since 2 July 2012. Copyright Agency provides all management services to Viscopy including licensing, legal, marketing, finance and operations. For example, under the direction of the Viscopy Board, Copyright Agency currently:

- manages Viscopy's copyright licensing activities including the negotiation and processing of copyright licences;
- collects revenue from Viscopy licensees and makes distributions to Viscopy members;
- maintains and develops licensing tariffs;

5. Information about Copyright Agency

- manages the process for accepting new members, maintaining member records, responding to membership queries, and conducting education and training for members;
- provides all finance and treasury services such as all tax-related activity, management of accounts, budget, creditor and debtor management plus insurance and audit activities;
- provides internal legal, tax and accounting advice to support Viscopy's operations (including compliance and support for negotiations);
- develops and delivers the publicity and corporate communication requirements such as public relations, website, social media and media relations;
- actively represents the rights and interests of Viscopy members and visual artists generally through participation in national industry bodies and submissions to government; and
- manages the John Fries Award, under the direction of a Viscopy Board subcommittee.

Copyright Agency proposes to continue to provide these services in substantially the same manner after the Merger except that they will cease to be provided under the direction of the Viscopy Board. Over time, Copyright Agency expects that it will make further improvements and efficiencies for the benefit of all its members although it is difficult to quantify the nature of these improvements and efficiencies at this stage.

Copyright Agency will continue to represent artists at international forums and in bi-lateral negotiations with international partners. For example, the Chief Executive Officer of Copyright Agency and the Chair of Viscopy together attended the IFRRO Spring meetings in Helsinki and jointly met with many key partners. It is anticipated that the Chief Executive Officer of Copyright Agency will attend the IFRRO AGM in Tokyo in November 2017. As part of that forum, and in bi-lateral meetings, the Chief Executive Officer will represent the interests of all Copyright Agency members, including artist members.

Copyright Agency intends to continue Viscopy's support of the John Fries Award subject to periodic review and assessment of funding requirements.

Copyright Agency's use of net equity held by Viscopy

As at 30 June 2017, Viscopy had total equity of \$849,705 comprising:

1. \$36,689 in an indemnity fund reserve as a contingency to enable distributions to Viscopy members where the use of their works did not result in the collection of licence fees under Viscopy's existing processes;
2. \$57,148 in a development fund reserve which represents funds allocated by the Viscopy Board for future projects;
3. \$289,086 in a distributions rollover reserve which represents distributions received by Viscopy from other copyright management organisations where no information on works used is provided to enable identification of artists; and
4. \$466,782 in retained earnings.

As it is a public company limited by guarantee, Viscopy cannot pay dividends to Viscopy members.

If the Merger proceeds, all Viscopy's property will transfer to Copyright Agency, including its reserves and retained earnings.

Copyright Agency intends to credit the amounts in Viscopy's indemnity fund reserve and distributions rollover reserve to Copyright Agency's indemnity fund reserve. This fund has been established to meet future claims against the Copyright Agency, as approved from time to time by the Copyright Agency Board. As the Merger provides for the transfer of all Viscopy's liabilities, the Copyright Agency Board considers it prudent to put aside these reserves from Viscopy to address any future liability arising from Viscopy's operations or to cover liabilities in relation to claims by or against former Viscopy members.

5. Information about Copyright Agency

Copyright Agency intends to apply the amounts in Viscopy's development fund reserve and its retained earnings to Copyright Agency's retained earnings from which it will fund systems and process integrations that may be necessary as a result of the Merger proceeding.

5.7 Copyright Agency's intentions if the Merger is not implemented

If the Merger is not implemented, Copyright Agency will continue to operate the Viscopy business by way of the Services Agreement in the short term and seek to engage with the Viscopy Board in order to agree a longer term model for the operation of the Viscopy business. While there have been no discussions between Copyright Agency and the Viscopy Board to date concerning operating models, any of the following are possibilities:

- (a) continuation of the Services Agreement either with or without modification;
- (b) a new merger proposal;
- (c) Viscopy reverting to a stand-alone operation; or
- (d) adoption of a new combined operating model.

The nature of the operating model that ultimately emerges will depend on a range of factors including the financial standing of Copyright Agency and Viscopy, the extent to which there is agreement between Copyright Agency and the Viscopy Board, the reasons why the Merger was not implemented and whether the Copyright Agency Board supports Copyright Agency's ongoing involvement in Viscopy's business.

6. Risks

6.1 Introduction

If the Merger proceeds, Viscopy will be merged into Copyright Agency and Viscopy members as at the Record Date (other than those who give (and do not revoke) written notice to Viscopy of their intention to terminate their memberships before the Record Date) will cease to be Viscopy members and be admitted as Copyright Agency members (if they are not already Copyright Agency members).

If the Merger does not proceed, Viscopy will not be merged into Copyright Agency and Viscopy members will remain Viscopy members and no Viscopy Members will be admitted automatically as Copyright Agency members.

Each of these scenarios will involve Viscopy members being subject to risks, including certain risks identified by the Viscopy Board which are described in this section 6. Some of these risks are specific to Copyright Agency or Viscopy (as applicable) while others may apply regardless of whether or not the Merger proceeds.

6.2 Risks for Viscopy members if the Merger proceeds

If the Merger proceeds, those Viscopy members who become Copyright Agency members may be subject to the following risks.

(a) Events may occur which impact Copyright Agency's future copyright collections

Copyright Agency's future copyright collections for artists will be influenced by a range of factors, many of which will be beyond its control.

- Future direct licensing collections for artists are dependent on the market for direct licensing of copyright in artistic works, and Copyright Agency devoting the resources necessary to administer direct licensing and collections.
- Future statutory licensing collections for artists are dependent on the remuneration rates that Copyright Agency and Screenrights are able to achieve in remuneration agreements with government and education authorities and methodologies used to allocate collections among the different holders of copyright (e.g. artists, authors, photographers, publishers and surveyors etc.).
- Future collections for artists from overseas copyright management organisations are dependent on the schemes under which those organisations make distributions and, in the case of organisations with reciprocal arrangements with Viscopy but not Copyright Agency, those organisations being bound by, or consenting to, the Merger.
- Future collections for artists generally are dependent on the protections afforded copyright under Australian and overseas copyright legislation.

For example, the Viscopy Board is concerned that the introduction of the 'fair use' exemption proposal of the Commonwealth Government's Productivity Commission would result in a substantial decrease in copyright collections. After a fair use exemption was introduced in Canada in 2012, statutory licensing distributions dropped by over 40% (PricewaterhouseCoopers, *Economic Impacts of the Canadian Educational Sector's Fair Dealing Guidelines*, June 2015, p 43).

(b) Copyright Agency's future operating costs may be higher than its historical operating costs

Before Copyright Agency pays distributions to Copyright Agency members it makes a deduction to cover its operating costs. Except in the case of direct licensing collections (where a fixed 25% deduction will be made), the deduction as a proportion of total copyright collections varies from year-to-year based on Copyright Agency's operating costs and copyright collections. The average

6. Risks

deduction has been around 14% over the last five financial years with the actual annual proportion varying between a low of 12.94% (FY2016) and a high of 15.1% (FY2015).

Copyright Agency's historical deduction rates may not be indicative of its future deduction rates. If Copyright Agency's future operating costs increase without a commensurate increase in its future collections or its future collections decrease without a commensurate decrease in its future operating costs, Copyright Agency's deduction rates may increase with the result that Copyright Agency members will receive proportionately less of the distributions Copyright Agency collects on their behalf.

(c) There is no guarantee of future representation of Copyright artist members on the Copyright Agency Board

As a condition to the Merger, Copyright Agency is to modify its constitution in order to provide for an additional director who is a Copyright Agency artist member elected by Copyright Agency artist members (or appointed by the Copyright Agency Board if there is a casual vacancy).

There can be no guarantee that Copyright Agency artist members will be effectively represented on the Copyright Agency Board for the following reasons.

- Effective representation requires that there are over time Copyright Agency artist members who are willing to accept appointment as a Copyright Agency director and that those who are appointed are able to identify and articulate the interests of Copyright Agency members to other Copyright Agency directors.
- If the interests of Copyright Agency artist members conflict with the interest of Copyright Agency as a whole, the relevant director must to act in good faith in the best interests of Copyright Agency as a whole rather than in the interests of artist members.
- It is possible that the Copyright Agency constitution is modified in the future to remove separate Copyright Agency artists representation. However, such a modification would require approval by a 75% majority of those who attend and are eligible to vote at a meeting of Copyright Agency artist members.

6.3 Risks for Viscopy members if the Merger does not proceed

If the Merger does not proceed, Viscopy members may be subject to the following risks.

(a) Events may occur which impact Viscopy's future copyright collections

Viscopy's future copyright collections will be influenced by a similar range of factors, many of which will be beyond its control, as would have applied to Copyright Agency's future copyright collections had the Merger proceeded (refer to section 6.2(a)). However, those factors may be exacerbated by the following circumstances.

- Viscopy may not be able to procure from Copyright Agency or another organisation, or fund in its own right, the resources necessary to administer direct licensing and collections.
- Some Viscopy members may elect to become members of Copyright Agency and/or Screenrights on their own initiative in which case they will receive distributions of copyright collections from the statutory licence schemes directly from Copyright or Screenrights rather than via Viscopy. As a result, Viscopy would have a diminishing pool of copyright collections on which to levy commissions to fund its operations resulting in it having to increase commission rates or ceasing to carry on business.
- As a much smaller organisation with more modest financial resources, Viscopy has less capacity to withstand adverse external events such as fluctuations in copyright collections or legislative or other changes which result in a reduction in copyright collections.

6. Risks

(b) **Viscopy's future operating costs may be higher than its historical operating costs**

Although Viscopy deducts fixed commissions before making copyright distributions whereas Copyright Agency's deductions will generally vary from year-to-year depending on its operating costs and copyright collections, Viscopy members should not rely on the fixed nature of Viscopy's commissions as affording them protection from future fluctuations in deductions. This is because Viscopy may need to increase its commission rates in a number of scenarios including if its future operating costs increase without a commensurate increase in its future collections or its future collections decrease without a commensurate decrease in its future operating costs.

Since the Service Agreement commenced on 2 July 2012, Viscopy has been able to achieve reductions in some of its commission rates as a result of cost savings it has been able to secure from Copyright Agency operating the Viscopy business. If the Merger does not proceed, those savings may no longer be available to Viscopy including as a result of:

- Copyright Agency increasing the service fee it charges for operating the Viscopy business: or
- additional costs Viscopy would need to incur in order to operate the Viscopy business on a stand-alone basis.

(c) **Viscopy members may cease to have access to Copyright Agency resources**

Viscopy members rely on Copyright Agency resources for direct licensing, assistance with copyright infringement, copyright education and policy advocacy. If the Merger does not proceed, Viscopy may not be able to negotiate a new arrangement with Copyright Agency that affords Viscopy members ongoing access to these resources and the Viscopy Board considers it unlikely that Viscopy would be able to provide a similar level of services itself or obtain them from an alternative source.

(d) **Viscopy and the Viscopy business may cease to be viable**

Viscopy anticipates that at least four of the seven existing Viscopy directors (Timothy Denny, Marcus Clark, Katherine Fries and Matthew Sleeth) will wish to retire by 30 June 2018 if the Merger does not proceed because they will have been directors, in each case, for six years or more and consider that it would be desirable for the Viscopy Board to be rejuvenated.

Viscopy pays only a small honorarium to its directors (\$500 per Board meeting plus travel expenses). There is no guarantee that Viscopy will be able to attract new directors who are willing to devote the substantial time that is likely to be necessary in order to finalise agreement on a new arrangement with Copyright Agency (if agreement is possible) or a combined operating arrangement with another organisation or establish a stand-alone operation.

Further, even with a viable Viscopy Board, there is no guarantee that the Viscopy business will continue to be commercially viable. Particular risks to viability include:

- the terms (if any) on which Copyright Agency or another organisation may be willing to operate the Viscopy business;
- Viscopy members joining Copyright Agency and/or Screenrights on their own initiative in order to obtain distribution of statutory licence collections direct from those organisations; and
- if Viscopy is unable to negotiate a new arrangement with Copyright Agency or another potential operator of the Viscopy business, it may decide against re-establishing a stand-alone operation because it does not have the necessary resources to do so or lacks confidence in its ability to cover its costs.

7. Additional Information

7.1 Tax considerations

Viscopy members will not incur any Australian tax liability as a result of the Merger. However, this advice is general in nature and does not take into consideration the individual circumstances of any Viscopy member. Viscopy members should seek their own independent taxation advice as to the impact of the Merger on them.

7.2 Status of conditions precedent

Clause 3.1 of the Scheme Implementation Deed (refer to Annexure A) and clause 3 of the Scheme of Arrangement (refer to Annexure C) set out the Conditions Precedent which must be satisfied or waived in order for the Merger to proceed.

On 18 July 2017, the ACCC advised Copyright Agency that it did not intend to conduct a public review of the Merger pursuant to section 50 of the *Competition and Consumer Act 2010* (Cth). The ACCC reserved the right to review its decision should new information come to its attention, or should it become aware that any information upon which it has based its view is incorrect or incomplete.

Copyright Agency proposes to convene an extraordinary general meeting to consider modifications to the Copyright Agency constitution on Thursday, 2 November 2017 (the same day on which the Scheme Meeting is to be convened).

Viscopy directors are not aware of any Viscopy Insolvency Event or Viscopy Prescribed Occurrences (each as defined in clause 1.1 of the Scheme Implementation Deed) having occurred between the date of the Scheme Implementation Deed (26 July 2017) and the time of lodging this booklet with ASIC for registration.

7.3 Impact of Merger on Viscopy creditors

Neither Viscopy nor Copyright Agency believes that the Merger will materially prejudice the interests of the creditors of Viscopy.

7.4 Marketable securities

Neither Viscopy nor Copyright Agency has any marketable securities on issue and, therefore, no such marketable securities are held by or on behalf of a Viscopy director.

7.5 Benefits and agreements

Viscopy has granted rights of access, indemnification and insurance coverage to each current or former Viscopy director under the Viscopy constitution and, in some cases, under deeds of access, indemnity and insurance. Copyright Agency has acknowledged and agreed that, subject to and with effect from the implementation of the Scheme of Arrangement, all of Viscopy's rights and obligations in respect of such access, indemnification and insurance will transfer to it (refer to clause 6.3 of the Scheme Implementation Deed).

Copyright Agency has released its rights, and agreed to not make a claim, against any Viscopy director or other officer in connection with any breach by Viscopy of the Scheme Implementation Deed or any disclosure that contains any statement which is false or misleading whether in content or by omission, except to the extent the relevant Viscopy officer has not acted in good faith or has engaged in wilful misconduct (refer to clause 6.1 of the Scheme Implementation Deed).

The Viscopy Board proposes to take out run-off insurance cover, on terms that are no less advantageous to each then current or former Viscopy director and other officer than the coverage provided under Viscopy's existing director's and officer's insurance policy, insuring each Viscopy director or other officer for a period of seven years from the Merger Date. If, for any reason, this insurance cover ceases to be in place or available for any reason during the period of seven years from the Merger Date, then subject to the Merger proceeding, Copyright Agency must take out and maintain for the remainder of the period insurance cover

7. Additional Information

with a reputable insurer, and on terms that are no less advantageous to the beneficiaries than the coverage provided under Viscopy's existing director's and officer's insurance policy (refer to clause 6.2 of the Scheme Implementation Deed).

The Viscopy Board has nominated a current Viscopy director, Oliver Watts, to serve as the artist director on the Copyright Agency Board from the Merger Date until the 2018 annual general meeting of Copyright Agency. Dr Watts has consented to his appointment. If Dr Watts withdraws this consent, the Viscopy Board may nominate another person (possibly another current Viscopy director) to serve as the artist director. Copyright Agency pays director's fees to its directors, currently \$31,881 per annum (including superannuation contributions) with a higher amount paid to the Chair of Copyright Agency.

Except as disclosed in this section 7.5;

- (a) no payment or other benefit is proposed to be made or given to any director, or secretary of Viscopy as compensation for the loss of, or as consideration for or in connection with his or her retirement from, office in Viscopy;
- (b) there is no agreement or arrangement made between a Viscopy director and another person in connection with, or conditional on, the outcome of the Scheme except only on account of any Viscopy director being a member of Copyright Agency or Viscopy; and
- (c) no Viscopy director has an interest in any contract entered into by Copyright Agency except only on account of any Viscopy director being a member of Copyright Agency or Viscopy.

7.6 Consents and disclaimers

This booklet contains statements made by, or statements said to be based on statements made by, Copyright Agency in respect of the Copyright Agency Information only.

Copyright Agency has consented to the inclusion of each statement it has made in the form and context in which the statement appears in this booklet and has not withdrawn that consent before the time of registration of this booklet with ASIC.

Copyright Agency:

- (a) has not authorised or caused the issue of this booklet;
- (b) does not make, or purport to make, any statement in this booklet or any statement on which a statement in this booklet is based, other than the Copyright Agency Information; and
- (c) to the maximum extent permitted by law, expressly disclaims all liability in respect of, makes no representation regarding, and takes no responsibility for, any part of this booklet other than the Copyright Agency Information.

7.7 ASIC relief

The Corporations Act requires that an explanatory statement for a scheme of arrangement between a company and its members disclose whether, to the knowledge of the directors of the company, the financial position of the company has materially changed since the date of the last balance sheet laid before the company in general meeting or sent to shareholders in accordance with sections 314 or 317 of the Corporations Act.

As it is a public company limited by guarantee, section 314 of the Corporations Act does not apply to Viscopy. Further, as the Viscopy Board does not propose to convene an annual general meeting in 2017 because the deadline for holding the annual general meeting falls on the expected Merger Date, section 317 of the Corporations Act will not apply. The result is that the last balance sheet which satisfies these requirements is dated 30 June 2016.

7. Additional Information

In consideration of these matters, ASIC has consented to Viscopy confining its disclosure in this booklet concerning material changes to its financial position to events occurring after 30 June 2017 subject to the following conditions:

- (a) Viscopy has complied with Division 1 (Annual Financial Reports and Directors' Reports) of Part 2M.3 (Financial Reporting) of the Corporations Act in respect of the financial year ended 30 June 2017;
- (b) this booklet discloses all material changes in Viscopy's financial position since 30 June 2017 and prior to 6 October 2017; and
- (c) Viscopy discloses, on the [Viscopy website](#), all material changes to its financial position occurring after the date of lodgement of this booklet for registration with ASIC but prior to the Merger being approved by the Court.

Viscopy will give a copy of its financial report for the year ended 30 June 2017 free of charge to anyone who requests a copy before the Merger is approved by the Court. Such a request may be made by calling the Copyright Agency | Viscopy Information Line (refer to the front cover for details).

7.8 Other information material to the making of a decision in relation to the Scheme

Except as set out in this booklet, there is no other information material to the making of a decision in relation to the Merger, being information that is within the knowledge of any Viscopy director, at the time of lodging this booklet with ASIC for registration, which has not been disclosed previously to Viscopy members.

7.9 Supplementary information

If, between the date of lodgement of this booklet for registration by ASIC and the Effective Date, Viscopy becomes aware that:

- (a) a material statement in this booklet is false or misleading;
- (b) there is a material omission from this booklet;
- (c) a significant change affecting a matter in this booklet has occurred; or
- (d) a significant new matter has arisen which would have been required to be included in this booklet if it had arisen before the date of lodgement of this booklet for registration by ASIC,

Viscopy will issue a supplementary document to this booklet.

8. Glossary and Interpretation

The meanings of the terms used in this booklet are set out below:

Term	Meaning
ACCC	Australian Competition and Consumer Commission.
ASIC	Australian Securities and Investments Commission.
Business Day	A day that is not a Saturday, Sunday or public holiday in Sydney, New South Wales.
CISAC	International Confederation of Societies of Authors and Composers.
Competing Proposal	Refer to clause 1.1 of the Scheme Implementation Deed in Annexure A.
Condition Precedent	Refer to clause 1.1 of the Scheme Implementation Deed in Annexure A.
Copyright Act	<i>Copyright Act 1968</i> (Cth)
Copyright Agency	Copyright Agency Ltd (ACN 001 228 799).
Copyright Agency Information	<ul style="list-style-type: none"> (a) Copyright Agency historical financial information included in section 1.2. (b) The answer to the question 'Who is Copyright Agency?' in section 2. (c) The information contained in section 5 (except to the extent the information comprises historical Viscopy financial information and commission rates). (d) The information concerning Copyright Agency director's fees in section 7.5. (e) Any statement expressly attributed to Copyright Agency elsewhere in this booklet.
Copyright Agency website	www.copyright.com.au .
Copyright Agency Membership Terms and Conditions	The terms and conditions of Copyright Agency membership that will apply to Transferring Scheme Members, a copy of which is set out in the Annexure to the Scheme of Arrangement.
Copyright Agency Viscopy Information Line	The telephone numbers and email address which appear on the front cover of this booklet.
Corporations Act	<i>Corporations Act 2001</i> (Cth).
Court	The Supreme Court of New South Wales or such other Court of competent jurisdiction under the Corporations Act agreed between Copyright Agency and Viscopy.
Deed Poll	The deed Poll dated 4 October 2017 by Copyright Agency for the benefit of Scheme Members, a copy of which is set out in Annexure B.

8. Glossary and Interpretation

Term	Meaning
Effective Date	The date on which the Scheme of Arrangement comes into effect pursuant to section 411(10) of the Corporations Act.
End Date	30 November 2017 or such other date as may be agreed between Copyright Agency and Viscopy.
FY	Financial year. (The financial years of Copyright Agency and Viscopy run from 1 July to 30 June.)
IFRRO	International Federation of Reproduction Rights Organisations.
Merger Date	30 November 2017 or such other date as may be agreed between Copyright Agency and Viscopy.
NAVA	National Association for the Visual Arts Ltd (ACN 003 229 285).
Proxy Form	The proxy form which accompanies this booklet.
Record Date	5pm on 27 November 2017 or such other time or date as may be agreed between Copyright Agency and Viscopy.
Scheme of Arrangement	The scheme of arrangement between Viscopy and the Scheme Members, substantially in the form set out in Annexure C, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.
Scheme Implementation Deed	The scheme implementation deed dated 26 July 2017 between Copyright Agency and Viscopy, a copy of which is set out in Annexure A.
Scheme Meeting	The meeting of Viscopy members ordered by the Court to be convened under section 411(1) of the Corporations Act.
Scheme Member	A Viscopy member (other than Copyright Agency) at the Record Date.
Screenrights	Audio-Visual Copyright Society Limited (ACN 003 912 310), which trades as Screenrights.
Second Court Hearing	The hearing of the application made by Viscopy to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme of Arrangement.
Services Agreement	The services agreement dated 22 November 2011 between Copyright Agency and Viscopy, under which Viscopy has appointed Copyright Agency to manage the Viscopy business.
Superior Proposal	Refer to clause 1.1 of the Scheme Implementation Deed in Annexure A.
Transferring Scheme Member	Refer to clause 1.1 of the Scheme of Arrangement in Annexure C.
Viscopy	Viscopy Limited (ACN 069 759 922).
Viscopy Board	The Board of Directors of Viscopy.

8. Glossary and Interpretation

Term	Meaning
Viscopy director, we or us	A member of the Viscopy Board.
Viscopy Information	The information contained in this booklet, other than the Copyright Agency Information.
Viscopy Prescribed Occurrence	Refer to clause 1.1 of the Scheme Implementation Deed in Annexure A.
Viscopy website	www.viscopy.org.au .

8.2 Interpretation

In this booklet, unless a contrary intention appears:

- (a) any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this booklet;
- (b) the singular includes the plural and vice versa and a reference to a gender includes all other genders;
- (c) where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning;
- (d) the words 'include' and 'including' and similar expressions, when introducing a list of items, do not limit the meaning of the words to which the list relates to those items or to items of a similar kind; and
- (e) a reference to:
 - (i) a person includes an individual, corporation, firm, partnership, joint venture, unincorporated body, government and governmental authority or instrumentality;
 - (ii) a party to a document, includes that person's successors, permitted substitutes and permitted assigns;
 - (iii) a section or annexure is to a section of, or an annexure to, this booklet;
 - (iv) this booklet or another document includes that document as amended, varied, supplemented, novated or replaced from time to time;
 - (v) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision; and
 - (vi) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.

Annexure A—Scheme Implementation Deed

Copyright Agency Ltd

Viscopy Limited

Scheme Implementation Deed

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Scheme Implementation Deed

Date 26 July 2017

Parties

- 1** Copyright Agency Ltd (ACN 001 228 799) (**Copyright Agency**).
- 2** Viscopy Limited (ACN 069 759 922) (**Viscopy**).

Recitals

- A** Copyright Agency is a not-for-profit organisation that provides copyright management services to creators and publishers of copyright material in Australia.
- B** Viscopy is a not-for-profit organisation that provides rights management and copyright licensing services to visual artists, and those who own or control copyright in visual works of art, in respect of Australia and New Zealand.
- C** Since 2 July 2012, Copyright Agency has provided management services to Viscopy under the supervision of the Viscopy Board and pursuant to the Services Agreement. The respective Boards of Directors of the parties believe that it is now appropriate for Viscopy to unify its management, membership and operations with that of Copyright Agency.
- D** To this end, Viscopy has agreed to propose and implement a scheme of arrangement under Part 5.1 of the Corporations Act between Viscopy and its members and Copyright Agency has agreed to assist Viscopy in this endeavour and to propose and implement changes to its own constitution, the effect of which is that:
- (a) Copyright Agency will become a member of Viscopy;
 - (b) all Viscopy members (except Copyright Agency) will cease to be members of Viscopy and become members of Copyright Agency (to the extent they are not already members);
 - (c) the whole of the undertaking of Viscopy and of its property and liabilities will be transferred to Copyright Agency;
 - (d) any legal proceedings pending by or against Viscopy will be continued by or against Copyright Agency; and
 - (e) Viscopy will be deregistered by ASIC without winding up.

Operative part

1 Definitions and Interpretation

1.1 Definitions

In this document, the following definitions apply unless the context requires otherwise.

ACCC means the Australian Competition and Consumer Commission.

ASIC means the Australian Securities and Investments Commission.

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

Claim means any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Competing Proposal means any proposed transaction or arrangement under which, subject to satisfaction of conditions:

- (a) Viscopy will terminate the Services Agreement other than to give effect to the Scheme; and/or
- (b) a person other than Copyright Agency will:
 - (i) control (as defined in section 50AA of the Corporations Act) Viscopy;
 - (ii) acquire (whether directly or indirectly), become the holder of, have a right to acquire or have an economic interest in all or a material part of the assets or undertaking of Viscopy;
 - (iii) otherwise acquire or merge with Viscopy; or
 - (iv) enter into any agreement requiring Viscopy to abandon, or otherwise fail to implement, the Scheme.

Condition Precedent means a condition set out in clause 3.1.

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

Copyright Agency Board means the board of directors of Copyright Agency.

Copyright Agency Constitution Modification means the modification of the Copyright Agency constitution, substantially in the form set out in Schedule 4 or such other form as may be agreed between the parties.

Copyright Agency EGM means the extraordinary general meeting of Copyright Agency to be held on or about the date of the Scheme Meeting to consider and, if thought fit, pass a special resolution approving the Copyright Agency Constitution Modification.

Copyright Agency Information means information about Copyright Agency provided by Copyright Agency to Viscopy for inclusion and included in the Scheme Booklet.

Copyright Agency Member, at a relevant time, means a person who is registered as a member of Copyright Agency at that time.

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed between the parties.

Deed Poll means the deed poll by Copyright Agency substantially in the form set out in Schedule 2 or such other form as may be agreed between the parties.

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

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

End Date means 30 November 2017 or such other date as may be agreed between the parties.

Exclusivity Period means the period from (and including) the date of this document to the earlier of:

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

Government Agency means any government or any governmental, semi-governmental or judicial entity or authority. It includes any self-regulatory organisation established for public purposes under a statute.

Implementation Date means 30 November 2017 or such other date as may be agreed between the parties.

Independent Expert means any independent expert in respect of the Scheme appointed by Viscopy.

Insolvency Event, in relation to an entity, means:

- (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;
- (d) it has an administrator, controller or similar officer appointed;
- (e) an order is made or a resolution is passed 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 controller (as that term is defined in the Corporations Act) is appointed in respect of, a security interest becomes enforceable or is enforced over or a distress, attachment or other execution is levied or enforced 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.

Liability includes a Claim, loss, liability, cost or expense of any kind and however arising, including a penalty, fine and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Viscopy and the Scheme Members substantially in the form set out in Schedule 3 or such other form as may be agreed between the parties.

Scheme Booklet means the information described in clause 4.1(a) to be approved by the Court and despatched to Viscopy Members and which must include the Scheme, an explanatory statement complying with the requirements of the Corporations Act, notice of the Scheme Meeting and proxy form for the Scheme Meeting and, at Viscopy's election, may include an Independent Expert's report.

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

Scheme Member means a Viscopy Member (other than Copyright Agency) at the Scheme Record Date.

Scheme Record Date means 5pm on 27 November 2017 or such other date as may be agreed between the parties.

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

Services Agreement means the services agreement dated 22 November 2011 between the parties.

Superior Proposal means a bona fide Competing Proposal that the Viscopy Board determines, acting in good faith and in order to satisfy what it considers to be its fiduciary or statutory duties (and after having taken advice from its legal advisers):

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

after taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal.

Timetable means the indicative timetable for the implementation of the Transaction set out in Schedule 1.

Transaction means the implementation of the Copyright Agency Constitution Modification and the Scheme subject to and in accordance with this document.

Viscopy Board means the board of directors of Viscopy.

Viscopy EGM means the extraordinary general meeting of Viscopy to be held on or about the date of the Scheme Meeting to consider and, if thought fit, pass a special resolution to approve the Viscopy Constitution Modification.

Viscopy Member, at a relevant time, means a person who is registered as a member of Viscopy at that time.

Viscopy Prescribed Occurrence means, other than as required under this document to be done by Viscopy, approved by Copyright Agency or to the extent caused by any action of Copyright Agency (or delegate) in its capacity as agent of Viscopy (or subagent), any of the following occurrences.

- (a) Viscopy ceases to be a public company limited by guarantee.
- (b) The Viscopy constitution is repealed or modified or a change is made to the rights attached to any category of membership.
- (c) Viscopy gives a financial benefit to a related party (as those terms are defined in Part 2E.2 of the Corporations Act) other than a benefit that falls within an exception set out in section 210 to 216 of the Corporations Act.

- (d) Viscopy commits a breach of a material obligation under the Services Agreement.
- (e) Viscopy terminates or amends any agreement between Viscopy and a Viscopy Member which relates to dealings in the copyright in artistic works.
- (f) Viscopy terminates or amends, or waives any right to receive a payment under, any agreement with an overseas copyright collection agency which relates to dealings in the copyright in artistic works.
- (g) Viscopy incurs voluntarily any obligation to refrain from conducting any activities.
- (h) Viscopy commences carrying on business or maintaining a permanent establishment anywhere outside Australia.
- (i) Viscopy employs or makes an offer of employment to any person.
- (j) Viscopy changes any significant accounting policy other than to comply with applicable law.
- (k) Viscopy becomes a party to any material litigation.
- (l) Viscopy enters into any agreement under which it incurs:
 - (i) a Liability which may become due, or subsist for, more than three months after the Implementation Date; or
 - (ii) Liabilities which (together with all other Liabilities) will exceed its total cash and cash equivalents, in each case as at the Implementation Date.

Visual Artist Class means the new class of membership to Copyright Agency to be created in accordance with the changes to the Copyright Agency Constitution as contemplated by the Copyright Agency Notice of EGM.

Visual Artist Member means a member of Copyright Agency in the Visual Artists Class.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included. Nothing in this document is to be interpreted against a party solely on the ground that the party put forward this document or any part of it. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a *clause* or *Schedule* is a reference to a clause of, or Schedule to, this document.
- (f) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.

- (g) A reference to a party to this document or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to 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.
- (j) A reference to time is to Sydney, New South Wales time.

1.3 Consents, approvals and waivers

If the doing of any act, matter or thing under this document is dependent on the consent or approval of, or waiver by, a party or is within the discretion of a party, the consent, approval or waiver 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.

2 Agreement to Proceed

- (a) Viscopy agrees to:
 - (i) propose and implement the Scheme; and
 - (ii) assist Copyright Agency to propose and implement the Copyright Agency Constitution Modification,subject to and in accordance with this document.
- (b) Copyright Agency agrees to:
 - (i) propose and implement the Copyright Agency Constitution Modification; and
 - (ii) assist Viscopy to propose and implement the Scheme,subject to and in accordance with this document.

3 Conditions Precedent

3.1 Conditions Precedent

The Scheme shall not become Effective, unless each of the following conditions is satisfied or waived.

- (a) (ACCC) One of the following has occurred before 8am on the Second Court Date:
 - (i) Copyright Agency receives written notice (which is not revoked before that time) from the ACCC to the effect that the ACCC does not propose to oppose, intervene or seek to prevent the implementation of the Transaction under or by reference to section 50 of the *Competition and Consumer Act 2010* (Cth);
 - (ii) Copyright Agency is granted clearance (which is not revoked or stayed before that time) to implement the Transaction by the ACCC or the Australian Competition Tribunal;

- (iii) Copyright Agency is granted authorisation (which is not revoked or stayed before that time) to implement the Transaction by the Australian Competition Tribunal; or
 - (iv) a court of competent jurisdiction makes a declaration that the implementation of the Scheme does not contravene the Competition Act, and the notification, clearance, authorisation or declaration is unconditional or on conditions acceptable to Copyright Agency (in its absolute discretion).
- (b) **(Viscopy Member approval)** Viscopy Members approve the Scheme by the requisite majority under section 411(4)(a)(ii) of the Corporations Act at the Scheme Meeting.
 - (c) **(Copyright Agency Member approval)** Copyright Agency Members approve, subject to the Scheme becoming Effective, the Copyright Agency Constitution Modification by special resolution at the Copyright Agency EGM.
 - (d) **(No restraints)** No temporary restraining order, preliminary or permanent injunction or other order issued by any Government Agency of competent jurisdiction or other legal restraint or prohibition preventing all or any part of the Transaction is in effect at 8am on the Second Court Date.
 - (e) **(Court approval)** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
 - (f) **(Viscopy Insolvency Event)** Viscopy does not suffer an Insolvency Event between the date of this document and 8am on the Second Court Date.
 - (g) **(Copyright Agency Insolvency Event)** Copyright Agency does not suffer an Insolvency Event between the date of this document and 8am on the Second Court Date.
 - (h) **(No Viscopy Prescribed Occurrence)** No Viscopy Prescribed Occurrence occurs between the date of this document and 8am on the Second Court Date.

3.2 Satisfaction of Conditions Precedents

- (a) Each party must use all reasonable endeavours to procure that the Conditions Precedent in clauses 3.1(a) to (e) are satisfied and that it does not suffer an Insolvency Event before the End Date.
- (b) Viscopy must ensure that no action or omission within its control occurs which results in a Viscopy Prescribed Occurrence before the End Date.
- (c) Each party must notify the other party promptly upon it becoming aware:
 - (i) that a Condition Precedent (which is capable of being satisfied before 8am on the Second Court Date) has been satisfied; or
 - (ii) of any failure to satisfy a Condition Precedent or of any fact or circumstance that will result in a Condition Precedent becoming incapable of being satisfied or that may result in a Condition Precedent not being satisfied before the End Date.
- (d) Subject to clause 3.2(e), each party must consult with the other party on the form and content of any notification or submission it proposes to make to a Government Agency for the purposes of satisfying a Condition Precedent in clause 3.1(a), (d) or (e) and keep the other party regularly informed on the progress of such notifications and submissions.

- (e) A party is not required to disclose pursuant to this clause 3.2 any of its confidential information to the other party which it believes is likely to be commercially sensitive in nature or the disclosure of which is likely to be damaging to its commercial or legal interests. A party who proposes to withhold any of its commercial information from the other party on this basis, must inform the other party, who may instead require that the information be disclosed to the other party's external legal adviser on the condition that the information not be disclosed by that adviser to the other party.
- (f) Each party must give the Court (with a copy to the other party) on the Second Court Date a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent (other than in clause 3.1(e)) have been satisfied or waived.

3.3 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(b), (c) and (e) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(a) and (d) are for the benefit of both parties and may only be waived by both of them.
- (c) The Conditions Precedent in clauses 3.1(f) and (h) are for the sole benefit of Copyright Agency and may only be waived by Copyright Agency.
- (d) The Condition Precedent in clause 3.1(g) is for the sole benefit of Viscopy and may only be waived by Viscopy.

3.4 Termination on failure of a Condition Precedent

- (a) If:
 - (i) the Scheme has not become Effective by the End Date; or
 - (ii) any event occurs which results in a Condition Precedent being incapable of being satisfied by the End Date and the Condition Precedent is not waived or cannot be waived under clause 3.3,

then either party may terminate this document unless the failure of the Scheme to become Effective or the occurrence of the relevant event is the result of a breach of this document by that party.

- (b) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination of this document, on termination of this document no party has any rights against or obligations to the other party under this document except for those rights and obligations which accrued prior to termination.

4 Implementation

4.1 Viscopy's obligations

Viscopy must take all necessary steps to propose and implement the Transaction as soon as is reasonably practicable and, without limiting the foregoing, must use all reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and must consult with Copyright Agency on a regular basis about its progress in that regard), including by doing each of the following.

- (a) **(Preparation of Scheme Booklet)** Prepare the Scheme Booklet so that it complies with all applicable laws, including the Corporations Act and ASIC Regulatory Guide 60.

- (b) **(Consultation with Copyright Agency)** Consult with Copyright Agency as to the content and presentation of the Scheme Booklet, such consultation to include allowing Copyright Agency a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet, and obtaining Copyright Agency's consent to the inclusion of the Copyright Agency Information.
- (c) **(Review drafts of notice of Copyright Agency EGM)** As soon as practicable after delivery, review drafts of the notice of Copyright Agency EGM prepared by Copyright Agency and provide any comments on those drafts to Copyright Agency.
- (d) **(Section 411(17)(b) statement)** Apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme.
- (e) **(Court direction)** Apply to the Court for orders pursuant to section 411(1) of the Corporations Act directing Viscopy to convene the Scheme Meeting, and consult with Copyright Agency as to the content of all relevant originating process, affidavits, submissions and draft minutes of Court orders.
- (f) **(ASIC registration)** Request ASIC to register the Scheme Booklet in the form approved by the Court.
- (g) **(Despatch Scheme Booklet)** Despatch the Scheme Booklet to Viscopy Members in accordance with all applicable laws and, to the extent relevant, the Viscopy constitution.
- (h) **(Update Scheme Booklet)** If it becomes aware of information after the despatch of the Scheme Booklet that is material for disclosure to Viscopy Members in deciding whether to approve the Scheme or that is required to be disclosed to Viscopy Members under any applicable law, inform Viscopy Members of the information in an appropriate and timely manner, in accordance with applicable law, after consulting with Copyright Agency as to the content and presentation of that information.
- (i) **(Scheme Meeting)** Convene the Scheme Meeting to approve the Scheme (in accordance with any orders made by the Court).
- (j) **(Court approval)** Subject to all Conditions Precedent (other than that in clause 3.1(e)) being satisfied or waived in accordance with this document, apply to the Court for orders approving the Scheme, and consult with Copyright Agency as to the content of all relevant affidavits, submissions and draft minutes of Court orders.
- (k) **(Court order)** Lodge with ASIC an office copy of any Court order approving the Scheme in accordance with section 411(10) of the Corporations Act, promptly following its receipt.
- (l) **(Scheme Members)** If the Scheme becomes Effective, close its register of members from the Record Date to determine the identity of Scheme Members and inform Copyright Agency promptly of the name and address of each Scheme Member.
- (m) **(Implementation)** If the Scheme becomes Effective, admit Copyright Agency as a member prior to the Implementation Date by recording such admission in its register of members.

4.2 Copyright Agency's obligations

Copyright Agency must take all necessary steps to implement the Transaction as soon as is reasonably practicable and, without limiting the foregoing, must use all reasonable endeavours to

ensure that each step in the Timetable is met by the date set out beside that step (and must consult with Viscopy on a regular basis about its progress in that regard), including by doing each of the following.

- (a) **(Copyright Agency Information)** Prepare and provide the Copyright Agency Information to Viscopy for inclusion in the Scheme Booklet to comply with all applicable laws, including the Corporations Act and ASIC Regulatory Guide 60.
- (b) **(Preparation of notice of Copyright Agency EGM)** Prepare the notice of Copyright EGM so that it complies with all applicable laws, including the Corporations Act.
- (c) **(Consultation with Viscopy)** Consult with Viscopy as to the content and presentation of the Copyright Agency Information and the Notice of Copyright EGM, such consultation to include allowing Viscopy a reasonable opportunity to review and make comments on successive drafts of each.
- (d) **(Independent Expert)** Provide all assistance and information reasonably requested by any Independent Expert to enable it to prepare any report commissioned by Viscopy in respect of the Scheme.
- (e) **(Review drafts of Scheme Booklet)** As soon as practicable after delivery, review drafts of the Scheme Booklet prepared by Viscopy and provide any comments on those drafts to Viscopy.
- (f) **(Confirmation of Copyright Agency Information)** Before the Scheme Booklet is provided to ASIC pursuant to section 411(2) of the Corporations Act, either:
 - (i) confirm in writing to Viscopy that the Copyright Agency 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 Viscopy the changes required to ensure that the Copyright Agency 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.
- (g) **(Despatch notice of Copyright Agency EGM)** Despatch the notice of Copyright Agency EGM to Copyright Agency Members in accordance with all applicable laws and the Copyright Agency constitution.
- (h) **(Update notice of Copyright Agency EGM)** If it becomes aware of information after the despatch of the notice of Copyright Agency EGM that is material for disclosure to Copyright Agency Members in deciding whether to approve the Copyright Agency Constitution Modification or that is required to be disclosed to Copyright Agency Members under any applicable law, inform Copyright Agency Members of the information in an appropriate and timely manner, in accordance with applicable law, after consulting with Viscopy as to the content and presentation of that information.
- (i) **(Update Copyright Agency Information)** If at any time after the despatch of the Scheme Booklet, Copyright Agency becomes aware:
 - (i) of new information which, were it known at the time of despatch, should have been included in the Copyright Agency Information; or
 - (ii) that any part of the Copyright Agency Information is misleading or deceptive in any material respect (whether by omission or otherwise),

it must advise Viscopy so that Viscopy can determine whether supplementary disclosure to Viscopy Members is required.

- (j) **(Deed Poll)** Prior to the first Court hearing referred to in clause 4.1(e), enter into the Deed Poll.
- (k) **(Court representation)** Procure that it is represented at the Court hearings referred to in clauses 4.1(e) and (i), at which, through its counsel or solicitors, Copyright Agency 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 document and the Deed Poll.
- (l) **(Copyright Agency EGM)** Convene the Copyright Agency EGM to approve the Copyright Agency Constitution Modification.
- (m) **(Lodge Copyright Agency Constitution Modification)** If the Scheme becomes Effective, lodge a copy of the Copyright Agency Constitution Modification and the special resolution approving it with ASIC.
- (n) **(Implementation)** If the Scheme becomes Effective:
 - (i) apply for membership in Viscopy before the Implementation Date; and
 - (ii) admit each Scheme Member, who is not already a member, as a member of Copyright Agency on the Implementation Date by recording such admission in its register of members.

4.3 Conduct of business

From the date of this document up to and including the Implementation Date, Viscopy must:

- (a) not take any action that would result in Viscopy conducting its business other than in the ordinary and proper course and generally consistent with the manner in which it has been conducted since 1 July 2016; and
- (b) use all reasonable endeavours to maintain and preserve its relationships with Government Agencies, Viscopy Members, overseas copyright collection societies, the Australian Copyright Council, Arts Law Centre of Australia, The National Association for the Visual Arts, the International Federation of Reproduction Rights Organisations and others with whom it has dealings.

4.4 Change of Viscopy officers

If the Scheme becomes Effective, Viscopy must:

- (a) procure the resignation of such of its then current directors and company secretaries as Copyright Agency directs; and
- (b) subject to receiving signed consents from each nominee, appoint as its directors and company secretaries such persons as Copyright Agency may nominate by notice to Viscopy given at least five Business Days before the Implementation Date,

in each case, with effect from the Implementation Date.

4.5 Viscopy Board recommendation

Viscopy must:

- (a) procure that the Viscopy Board unanimously recommends that, in the absence of a Superior Proposal, Viscopy Members vote in favour of the Scheme at the Scheme Meeting;
- (b) procure that each Viscopy director who is a Viscopy Member and/or the proxyholder of a Viscopy Member states that he or she will vote personally and any undirected proxies in accordance with this recommendation;
- (c) include a statement to the effect of clauses 4.5(a) and (b) in the Scheme Booklet; and
- (d) procure that no Viscopy director changes, withdraws or modifies his or her recommendation in clause 4.5(a) or statement in clause 4.5(b) (including by making an inconsistent recommendation or statement), unless:
 - (i) there is a report by an independent expert that concludes that the Transaction is not in the best interests of Viscopy Members;
 - (ii) the Viscopy Board, acting in good faith, determines (after taking legal advice) that a Competing Proposal constitutes a Superior Proposal; or
 - (iii) the director, acting in good faith, determines (after taking legal advice) that he or she or the Viscopy Board, is by virtue of applicable fiduciary duties, required to change, withdraw or modify such recommendation or statement or make a recommendation or statement that is inconsistent with it.

4.6 Copyright Agency Board recommendation

Copyright Agency must:

- (a) procure that the Copyright Agency Board unanimously recommends that, subject to no Viscopy director changing, withdrawing or modifying his or her recommendation in clause 4.5(a) or statement in clause 4.5(b) (including by making an inconsistent recommendation or statement), Copyright Agency Members vote in favour of the Copyright Agency Modification Constitution at the Copyright Agency EGM;
- (b) procure that each Copyright Agency director who is a Copyright Agency Member and/or the proxyholder of a Copyright Agency Member states that he or she will vote personally and any undirected proxies in accordance with this recommendation;
- (c) include a statement to the effect of clauses 4.6(a) and (b) in the Scheme Booklet and the Notice of Copyright Agency EGM; and
- (d) procure that no Copyright Agency director changes, withdraws or modifies his or her recommendation in clause 4.6(a) or statement in clause 4.6(b) (including by making an inconsistent recommendation or statement), unless:
 - (i) a Viscopy director changes, withdraws or modifies his or her recommendation in clause 4.5(a) or statement in clause 4.5(b) (including by making an inconsistent recommendation or statement); or
 - (ii) the director, acting in good faith, determines (after taking legal advice) that he or she or the Copyright Agency Board, is by virtue of applicable fiduciary duties, required to change, withdraw or modify such recommendation or

statement or make a recommendation or statement that is inconsistent with it.

5 Warranties

Each party represents and warrants to the other party that as at the date of this document and 8am on the Second Court Date:

- (a) it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) it has the power to enter into and perform its obligations under this document and to carry out the transactions contemplated by it;
- (c) except for the approval of the Copyright Agency Constitution Modification or the Scheme (as applicable), it has taken all necessary corporate action to authorise the entry into and performance of this document and to carry out the transactions contemplated by it;
- (d) this document is its valid and binding obligation enforceable in accordance with its terms;
- (e) the execution and performance by it of this document and each transaction contemplated under this document does not violate in any respect a provision of:
 - (i) any law or a judgment, ruling, order or decree of a Government Agency binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document which is binding on it or its assets; and
- (f) in the case of Viscopy only, no legal proceedings are pending by or against it other than in respect of the Scheme.

6 Releases; D&O Insurance

6.1 Viscopy officers

Copyright Agency releases its rights against, and agrees to not make a Claim against, any director or other officer of Viscopy on or prior to the Implementation Date in connection with:

- (a) any breach by Viscopy of this document; or
- (b) any disclosure that contains any statement which is false or misleading whether in content or by omission,

except to the extent the relevant officer has not acted in good faith or has engaged in wilful misconduct.

6.2 D&O Insurance

- (a) Copyright Agency acknowledges and agrees that, prior to the Implementation Date, Viscopy may take out run-off insurance cover with a reputable insurer, on terms that are no less advantageous to each than current or former director and other officer of Viscopy than the coverage provided under its existing director's and officer's insurance

policy, insuring each director and other officer for a period of seven years from the Implementation Date.

- (b) If, for any reason, the insurance cover referred to in clause 6.2(a) ceases to be in place or available for any reason during the period of seven years from the Implementation Date, then subject to Implementation occurring, Copyright Agency must take out and maintain for the remainder of the period insurance cover with a reputable insurer, and on terms that are no less advantageous to the beneficiaries than the coverage provided under Viscopy's existing director's and officer's insurance policy.
- (c) Following the Implementation Date, Copyright Agency must use all reasonable endeavours to not do anything which prejudices any insurance cover taken out under clause 6.2(a) or (b).

6.3 Indemnification

Copyright Agency acknowledges and agrees that:

- (a) Viscopy has granted rights of access, indemnification and insurance coverage to each current or former director of Viscopy under its constitution and under deeds of access, indemnity and insurance;
- (b) subject to and with effect from the implementation of the Scheme, all of Viscopy's rights and obligations in respect of such access, indemnification and insurance will transfer to Copyright Agency; and
- (c) the rights of Viscopy's current and former directors and other officers under this clause 5 are in addition to and without prejudice to any rights to access, indemnification and insurance coverage which such an officer may have under the Viscopy constitution or any agreement between Viscopy and the officer.

6.4 Copyright Agency officers

Viscopy releases its rights against, and agrees to not make a Claim against, any director or other officer of Copyright Agency from time to time in connection with:

- (a) any breach by Copyright Agency of this document; or
- (b) any disclosure that contains any statement which is false or misleading whether in content or by omission,

except to the extent the relevant officer has not acted in good faith or has engaged in wilful misconduct.

6.5 Operation

This clause 6:

- (a) is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly; and
- (b) in addition to operating as a deed between the parties, operates as a deed poll by each party in favour of each officer of Viscopy or Copyright Agency (as applicable) from time to time.

7 Public Announcement

If it has not already been made, promptly after their entry into this document, the parties shall make a joint public announcement in the agreed form. The announcement must include the recommendations and statements contemplated by clauses 4.5 and 4.6.

8 Exclusivity

8.1 Termination of any existing discussions

Viscopy warrants that, as at the time of this document, it is not in any discussions, and has ceased any existing discussions, in respect of any Competing Proposal with any person.

8.2 No shop restriction

During the Exclusivity Period, except with the prior consent of Copyright Agency, Viscopy must not, and must ensure that none of its directors or other officers, agents or advisers, directly or indirectly solicit, invite, facilitate, encourage or initiate any Competing Proposal or any enquiries or discussions with any person in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to do any of those things.

8.3 No talk restriction

During the Exclusivity Period, Viscopy must not, and must ensure that none of its directors or other officers, agents or advisers, enter into, continue or participate in discussions, or enter into any agreement or understanding, with any person in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited, facilitated, encouraged or initiated by Viscopy; or
- (b) the Competing Proposal has been publicly announced,

unless the Viscopy Board, acting in good faith, determines (after having taken legal advice) that:

- (c) where there is a Competing Proposal, the Competing Proposal is or is likely to be a Superior Proposal having regard to the steps which the Viscopy Board proposes to take; or
- (d) failing to respond to that Competing Proposal would be likely to constitute a breach of the Viscopy Board's fiduciary or statutory obligations.

8.4 Notification by Viscopy

- (a) During the Exclusivity Period, Viscopy must promptly notify Copyright Agency if it is approached, directly or indirectly, by any Third Party to take any action of a kind referred to in clause 8.3.
- (b) If Viscopy receives a Competing Proposal, Viscopy must ensure that no director nor the Viscopy Board publicly withdraws or adversely changes or modifies a recommendation or statement contemplated by clause 4.5 (including by making an inconsistent recommendation or statement), unless the Viscopy Board, acting in good faith, has determined (after having taken legal advice) that the Competing Proposal is a Superior Proposal and Viscopy has:
 - (i) first given Copyright Agency five Business Days prior notice of the proposed withdrawal, change or modification; and

- (ii) provided to Copyright Agency with that notice all material terms of the Competing Proposal.
- (c) During the five Business Day period referred to in clause 8.4(b), Copyright Agency has the right to offer a counter proposal (a **Copyright Agency Counter Proposal**) that will provide an equivalent or superior outcome for Viscopy Members than the applicable Competing Proposal, and if Copyright Agency does offer a Copyright Agency Counter Proposal:
 - (i) the parties shall agree any amendments to this document that are reasonably necessary to reflect the Copyright Agency Counter Proposal; and
 - (ii) Viscopy must ensure the Viscopy Board recommend the Copyright Agency Counter Proposal to Viscopy Members and not the applicable Competing Proposal.
- (d) Any material modification to any Competing Proposal (which will include any modification relating to the price or value of any Competing Proposal) will be taken to make that proposal a new Competing Proposal in respect of which Viscopy must comply with its obligations under this clause 8.4.

8.5 Acknowledgement

Copyright Agency has required Viscopy to agree to the obligations set out in this clause 8 in consideration of it proceeding with the Transaction and incurring significant costs in doing so. In the absence of obtaining these obligations from Viscopy, Copyright Agency would not have agreed to the Transaction.

9 Termination

9.1 General rights

Either party may terminate this document by notice to the other party:

- (a) given at any time before 8am on the Second Court Date if:
 - (i) the other party has materially breached any provision of this document;
 - (ii) the party wishing to terminate has given notice to the other party in a timely manner setting details of the relevant breach and stating an intention to terminate this document; and
 - (iii) the relevant breach continues to subsist for 10 Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5pm on the Business Day before the Second Court Date);
- (b) in the circumstances set out in, and in accordance with, clause 3.4;
- (c) given at any time before 8am on the Second Court Date, if an Independent Expert concludes (whether in its original or any subsequent report) that the Scheme is not in the best interests of Viscopy Members; or
- (d) given at any time before 8am on the Second Court Date, if a majority of the Viscopy Board has changed, withdrawn or modified their recommendation in clause 4.5(a) or statement in clause 4.5(b) (including by making an inconsistent recommendation or statement).

9.2 Termination rights up to Implementation Date

Viscopy may terminate this document by notice to Copyright Agency given at any time before the Implementation Date if Copyright Agency suffers an Insolvency Event.

9.3 Effect of termination

If this document is terminated by a party under its terms, except to the extent that the termination results from a breach by a party of its obligations under this document, this document will be of no force or effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued prior to termination and the provisions of this clause and of clauses 1, 6.1, 6.4, 7, 10, 11 and 12, which will remain in force after the termination.

10 Services Agreement

- (a) The parties acknowledge and agree that the Services Agreement continues to apply until such time as the Transaction is implemented and that, upon such implementation, the Services Agreement will terminate in accordance with its terms.
- (b) Copyright Agency must provide such administrative support to Viscopy as the Viscopy Board may reasonably request in connection with Viscopy's proposal and implementation of the Transaction on the same basis as if such administrative support was a 'Service' under the Services Agreement except that Viscopy may acquire administrative support from other parties without the consent of Copyright Agency.
- (c) To the extent an act or omission would constitute a breach of its obligations under this document, Viscopy shall not be in breach if the act is by Copyright Agency (or a delegate) acting or purporting to act as an agent (or subagent) of Viscopy or the omission arises from a failure by Copyright Agency to comply with its obligations under the Services Agreement or clause 10(b).

11 Notices

Any notice, waiver, demand, consent or other communication (a **Notice**) given to or by a party in respect of this document:

- (a) must be in writing in English, legible and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to the intended recipient by express or registered post (with delivery confirmation) or by hand, fax or email to the address or email address below or that last notified by the intended recipient to the sender:
 - (i) to Copyright Agency: Level 11, 66 Goulburn Street, Sydney NSW 2000
Attention: Chief Executive Officer and General Counsel
Email: [Omitted to preserve privacy.]
 - (ii) to Viscopy: c/- Johnson Winter & Slattery, Level 24, 20 Bond Street, Sydney NSW 2000
Attention: [Omitted to preserve privacy.]

Email: [Omitted to preserve privacy.]

- (c) will be conclusively taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two business days after the date of posting (if posted to an address in the same country) or five business days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of email, the earlier of:
 - (A) when the sender receives a delivery confirmation report that records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient's email address, or the sender knows or reasonably ought to know that the email was not delivered to the recipient's email address or the recipient could not open the communication due to its format);
 - (B) the time the email becomes capable of being retrieved by the recipient's email address; and
 - (C) the time it is otherwise established that the email (including any attachment) came to the attention of the recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day or at a time that is later than 5pm in the place specified by the intended recipient as its postal address under clause 11(b), it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place.

12 General

12.1 Amendment

This document may be amended only by another agreement executed by all the parties.

12.2 Assignment

No party can assign, charge, encumber or otherwise deal with any rights or obligations under this document, or attempt, or purport to do so, without the prior written consent of the other party.

12.3 Costs

Each party must bear its own costs arising out of the negotiation, preparation and execution of this document.

12.4 Counterparts

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

12.5 Further assurances

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

12.6 Governing law and jurisdiction

This document and, to the extent permitted by law, all related matters (including non-contractual matters) is governed by the laws of New South Wales. In relation to such matters, each party submits to the non-exclusive jurisdiction of courts with jurisdiction there and waives any right to object to the venue on any ground.

12.7 No merger

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

12.8 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this document 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.

12.9 Severability of provisions

Any provision of this document 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 document nor affect the validity or enforceability of that provision in any other jurisdiction.

Schedule 1—Indicative Timetable

[Omitted—refer to Key Dates on page ii of this booklet.]

Schedule 2—Deed Poll

[Omitted—refer to Annexure B to this booklet.]

Schedule 3—Scheme

[Omitted—refer to Annexure C of this booklet.]

Schedule 4—Copyright Agency Constitution Modification

1 Interpretation

1.1 Amend paragraph (a) of Article 1 (Definitions) by adding the following definitions:

“**Artist**” means a creator of an Artistic Work who has copyright in that Artistic Work, including a body corporate through which the creator operates in respect of an Artistic Work over which the creator has copyright.

“**Artistic Work**” means artistic work as defined in section 10 of the Act.

1.2 Amend the following definitions in Article 1(a) to read as follows:

“**Copyright Material**” means a Work (including an Artistic Work) or Published Edition.

“**Trust Period**” in respect of moneys held in the Regulation Trust Fund means a period of four years, or such further period not exceeding two years as the directors may in their discretion determine prior to the expiration of four years from the date of allocation.

2 Members

2.1 Amend Article 3 (Eligibility for Membership) to read as follows:

3. *Eligibility for Membership*

Persons entitled to be Members of the Company shall be as follows:-

- (a) All persons who are Members at the time these Articles become binding upon the Company;
- (b) All persons who are members of Viscopy Limited ACN 069 759 922 immediately prior to the time at which this Article 3(b) becomes binding upon the Company;
- (c) All persons who have appointed the Company their agent for the Rights in some or all of their Copyright Material at the time these Articles become binding upon the Company;
- (d) Any Collecting Society; and
- (e) Any person to whom Article 3(a), 3(b), 3(c) or 3(ed) does not apply being:-
 - (i) any author of Copyright Material being the owner or holder of a Right in that Work, or the licensee or agent appointed in writing, executor, administrator, successor or assignee of such Right;

or

- (ii) any publisher of Copyright Material being the owner of a Right in that Work, or any licensee or agent appointed in writing, executor, administrator, successor or assignee of such Right.

2.2 Amend paragraph (b) of Article 4 (Application and Admission to Membership) to read as follows.

- (b) The Board shall consider each application and shall, if reasonably satisfied that the Applicant is eligible for membership, admit the applicant to membership with specific reference to the appropriate category of eligibility (i) or (ii) in Article 3(e). The Board may request the Applicant to furnish such further information as it thinks appropriate to determine the eligibility of the Applicant for membership.
 - (i) Any person who is eligible for membership under category (i) of Article 3(e) where the relevant Work is not an Artistic Work shall be an Author Member.
 - (ii) Any person who is eligible for membership under category (iii) of Article 3(e) where the relevant Work is an Artistic Work shall be an Artist Member.
 - (iii) Any person who is eligible for membership under category (ii) of Article 3(e) shall be a Publisher Member.
 - (iv) Any person who is eligible for membership under Category (c) of Article 3 and is the author of a Work and is an Artist or a licensee or agent appointed in writing, executor, administrator, successor or assignee of a Right in an Artistic Work shall be designated an Author Member and an Artist Member until such time if any as the Member notifies the Board that he is no longer eligible to be an Author Member or an Artist Member as the case may be.
 - (v) Any person who is eligible for membership under category (c) of Article 3 and is the publisher of a Work shall be designated a Publisher Member.
 - (vi) Any person who is eligible for membership under category (d) of Article 3 shall be a Collecting Society Member.
 - (vii) Any person who is eligible for membership under category (b) of Article 3 shall be an Artist Member.
 - (viii) Any person who is eligible for membership under category (a) of Article 3 and is an Artist or a licensee or agent appointed in writing, executor, administrator, successor or assignee of a Right in an Artistic Work shall be an Author Member and an Artist Member until such time if any as the Member notifies the Board that he is no longer eligible to be an Author Member or an Artist Member as the case may be.

2.3 Amend paragraphs (d) and (e) of Article 4 (Application and Admission to Membership) to read as follows.

- (d) Any eligible person may be admitted to membership as an Author Member and as an Artist Member and as a Publisher Member but may not be admitted to the same class of membership more than once.
- (e) A person who is a Member by virtue of category (a) or (b) of Article 3 may also be admitted to membership as any or all of an Author Member and an Artist Member and a Publisher Member but may not be admitted to the same class of membership more than once.

3 Proceedings at General Meetings

- 3.1 Amend Article 13 (Business of Annual General Meeting) by adding ", Artist Director" after "Author Director" wherever that term appears.
- 3.2 Amend Article 14 (Quorum) by:
- (a) changing "8 registered Members" to "9 registered Members" in paragraph (a); and
 - (b) adding the words ", 1 Artist Member" after "4 Author Members" in paragraph (b).

4 Directors, Appointments, Etc.

- 4.1 Amend Article 30 (Composition of Board) by adding a new paragraph (b) to read as follows and renumbering the other paragraphs accordingly:
- (b) 1 Director who is an Artist Member and an Artist, and who is elected by the Artist Members of the Company ("the Artist Director");
- 4.2 Amend paragraph c) of Article 31 (Definitions) by adding ", the Artist Director" after "the other APA Director ("the "C" APA Director)".
- Amend paragraph (a) of Article 32 (Prerequisites) by adding "Director other than an Artist" after "No".
- 4.3 Amend Article 34 (Election of the Author Director and Publisher Director) by:
- (a) adding ", the Artist Director" after "the Author Director" in the heading to that Article;
 - (b) adding a new paragraph (c) to read as follows and renumbering the other paragraphs accordingly:
 - (c) any 2 Artist Members may, by signed notice in writing to the Secretary at least 3 months before the annual general meeting held in 2018 and each "B" Year from and including 2021, nominate another Artist Member who is an Artist to serve as an Artist Director;
 - (c) adding ", the Artist Director" after "the Author Director" in the former paragraph (c) (now to be paragraph (d));
 - (d) adding ", Artist Members" after "Author Members" in the former paragraph (d) (now to be paragraph (e));
 - (e) adding a new sub-paragraph (ii) of the former paragraph (e) (now to be paragraph (f)) to read as follows and renumbering the other sub-paragraphs accordingly:
 - (ii) if the Member is an Artist Member, identify (in accordance with the instructions on the Voting Paper) the Artist Director nominee for whom the Member wishes to vote;
 - (f) adding a new paragraph (h) to read as follows and renumbering the other paragraphs accordingly:
 - (h) if an Artist Member purports to vote for more than 1 Artist Director, the vote is informal and must not be counted;

(g) adding "Artist Director or" after "Author Director or" and replacing the reference to "paragraphs (c) to (l)" with a reference to "paragraphs (d) to (m)" in the former paragraph (m) (now to be paragraph (n)); and

(h) amend the former paragraph (n) (now to be paragraph (o)) to read as follows:

(o) where an Author Member, Artist Member or a Publisher Member is not a natural person, in Article 30 and this Article 34 "Author Member", "Artist Member" and "Publisher Member" means the nominated representative of the Author Member or Artist Member or Artist Member or Publisher Member from time to time.

4.4 Amend paragraph (a) of Article 37 (Vacancy) by adding a new sub-paragraph (ii) to read as follows and renumbering the other sub-paragraphs accordingly:

(ii) in the case of an Artist Director - by appointment by the board of another Artist Member who is an Artist to be a Director;

4.5 Replace Article 37A (Transition Arrangements) with a new Article to read as follows:

37A. *Transition Arrangements*

Notwithstanding any other provision of these Articles, the Board of Directors of Viscopy Limited ACN 069 759 922 immediately prior to the date on which this Article 37A becomes binding upon the Company shall be entitled to nominate in writing to the Chair of the board one transitional director who will be deemed to be the Artist Director for the purposes of Article 30(b) and that director shall be entitled to hold office until the Artist Members elect an Artist Director as contemplated in Article 30(b).

Execution

EXECUTED as a deed in Sydney, New South Wales

Executed as a deed by **Copyright Agency Ltd** in accordance with section 127 of the Corporations Act:

/s/ Kim Williams

Director Signature

Kim Williams

Print Name

/s/ Josephine Johnston

~~Director~~/Secretary Signature

Josephine Johnston

Print Name

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

/s/ Timothy John Denny

Director Signature

Timothy John Denny

Print Name

/s/ Matthew Marcus Clark

Director/Secretary Signature

Matthew Marcus Clark

Print Name

Annexure B—Deed Poll

Date 4 October 2017

Deed poll by **Copyright Agency Ltd** (ACN 001 228 799) (**Copyright Agency**) in favour of the members of **Viscopy Limited** (ACN 069 759 922) (**Viscopy**) as at the Scheme Record Date (the **Scheme Members**).

Recitals

A On 26 July 2017, Copyright Agency and Viscopy entered into the Scheme Implementation Deed to provide for the implementation of a scheme of arrangement under Part 5.1 of the Corporations Act between Viscopy and its members as part of a transaction the effect of which is that:

- (a) Copyright Agency will become a member of Viscopy;
- (b) all Viscopy Members (except Copyright Agency) will cease to be members of Viscopy and all Transferring Scheme Members will become members of Copyright Agency;
- (c) the whole of the undertaking of Viscopy and of its property and liabilities is transferred to Copyright Agency; and
- (d) Viscopy shall be deregistered by ASIC without winding up.

B Copyright Agency has entered into this document to covenant in favour of the Scheme Members to perform the steps attributed to it under the Scheme.

Operative part

1 Definitions and Interpretation

1.1 Definitions

In this document, the definitions in the Scheme Implementation Deed and the following definitions apply unless the context requires otherwise.

Liabilities includes duties of any description, including duties that are of a personal character or are incapable under the general law of being transferred or performed vicariously.

Property includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

Scheme Implementation Deed means the scheme implementation deed dated 26 July 2017 between Copyright Agency and Viscopy.

Terminating Scheme Member means a Scheme Member who has given Viscopy notice of the termination of membership prior to the Scheme Record Date and not revoked all such notices prior to the Scheme Record Date.

Transferring Scheme Member means a Scheme Member who is not a Terminating Scheme Member.

1.2 Interpretation

Clause 1.2 (Interpretation) of the Scheme Implementation Deed forms part of this document as if set out at length in it but on the basis that a reference to a party to this document includes Copyright Agency and each Scheme Member.

1.3 Nature of this document

Copyright Agency acknowledges that this document may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholder has not entered into it.

2 Conditions

- (a) Copyright Agency's obligations under clause 3:
 - (i) are subject to the Scheme becoming Effective; and
 - (ii) automatically cease and this document will be of no further force or effect if the Scheme Implementation Deed is terminated in accordance with its terms or the Scheme is not Effective by the End Date, unless Copyright Agency otherwise agrees.
- (b) If clause 2(a)(ii) applies, in addition, and without prejudice, to any other rights, powers or remedies available to them:
 - (i) Copyright Agency is released from its obligations to further perform this document; and
 - (ii) Scheme Members retain the rights they have against Copyright Agency in respect of any prior breach of this document.

3 Implementation Obligations

Copyright Agency undertakes to:

- (a) admit each Transferring Scheme Member as a member of Copyright Agency;
- (b) accept the transfer and vesting of the whole of the undertaking and Property of Viscopy;
- (c) accept the transfer of all Liabilities of Viscopy as its Liabilities; and
- (d) continue under its name any legal proceedings pending by or against Viscopy,

as at and with effect from the Implementation Date, subject to and in accordance with the Scheme, and to perform all other actions attributed to it under the Scheme.

4 Warranties

Copyright Agency represents and warrants to each Scheme Member that:

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

- (c) except for the approval of the Copyright Constitution Modification, it has taken all necessary corporate action to authorise the entry into and performance of this document and to carry out the transactions contemplated by it;
- (d) this document is its valid and binding obligation enforceable in accordance with its terms;
- (e) the execution and performance by it of this document and each transaction contemplated under this document does not violate in any respect a provision of:
 - (i) any law or a judgment, ruling, order or decree of a Government Agency binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document which is binding on it or its assets.

5 Continuing Obligations

This document is irrevocable and, subject to clause 2, remains in full force and effect until Copyright Agency has fully performed its obligations under it.

6 Notices

Any notice, waiver, demand or other communication (a **Notice**) given to Copyright Agency in respect of this document:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to Copyright Agency by express or registered post (with delivery confirmation) or by hand or email to the address, fax number or email address below or that last notified by the intended recipient to the sender:

Level 11, 66 Goulburn Street, Sydney NSW 2000

Attention: Chief Executive Officer and General Counsel

Email: info@copyright.com.au

- (c) will be conclusively taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two business days after the date of posting (if posted to an address in the same country) or five business days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of email, the earlier of:
 - (A) when the sender receives a delivery confirmation report that records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient's email address, or the sender knows or reasonably ought to know that the email was not delivered to the recipient's email

address or the recipient could not open the communication due to its format);

- (B) the time the email becomes capable of being retrieved by the recipient's email address; and
- (C) the time it is otherwise established that the email (including any attachment) came to the attention of the recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day or at a time that is later than 5pm in the place specified by the intended recipient as its postal address under clause 6(b), it will be conclusively taken to have been duly given or made at the start of business on the next business day in that place.

7 General

7.1 Amendment

This document may be amended only by another document entered into by Copyright Agency, and then only if the amendment is agreed to by Viscopy and the Court indicates that the amendment would not itself preclude approval of the Scheme.

7.2 Assignment

The rights of each Scheme Member under this document are personal and cannot be assigned, charged, encumbered or otherwise dealt with at law or in equity without the consent of Copyright Agency.

7.3 Cumulative rights

The rights, powers and remedies of each Scheme Member under this document are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this document.

7.4 Governing law and jurisdiction

This document is governed by the laws of New South Wales. In relation to it and related non-contractual matters, Copyright Agency irrevocably submit to the non-exclusive jurisdiction of courts with jurisdiction there.

7.5 Further assurances

Copyright Agency must do anything necessary (including executing documents) to give full effect to this document and the transactions contemplated by it.

7.6 No waiver

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

7.7 Duty

Copyright Agency must:

- (a) pay or procure the payment of all duty (including fines, penalties and interest) in respect of the Scheme and this document and each transaction effected by or made under the Scheme or this document; and

- (b) indemnify each Scheme Member against any liability arising from failure to comply with clause 7.7(a).

Executed as a deed poll in Sydney, New South Wales.

Executed as a deed poll by **Copyright Agency Ltd**
in accordance with section 127 of the
Corporations Act:

/s/ Kim Williams

Director Signature

Kim Williams

Print Name

/s/ Josephine Johnston

Director/Secretary Signature

Josephine Johnston

Print Name

Annexure C—Scheme of Arrangement

Date _____ 2017

Scheme of arrangement under Part 5.1 of the Corporations Act.

Parties

- 1 **Viscopy Limited** (ACN 069 759 922) (**Viscopy**).
- 2 Each **Viscopy Member** as at the Scheme Record Date (each a **Scheme Member**).

Operative part

1 Definitions and Interpretation

1.1 Definitions

In this scheme of arrangement, the following definitions apply unless the context requires otherwise.

ASIC means the Australian Securities and Investments Commission.

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

Copyright Agency Membership Terms and Conditions means the terms and conditions of Copyright Agency membership as set out in the Annexure.

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed between the parties.

Deed Poll means the deed poll by Copyright Agency substantially in the form set out in Schedule 2 to the Implementation Deed or such other form as may be agreed between the parties.

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

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

End Date means 30 November 2017 or such other date as may be agreed between the parties.

Implementation Date means 30 November 2017 or such other date as may be agreed between the parties.

Liabilities includes duties of any description, including duties that are of a personal character or are incapable under the general law of being transferred or performed vicariously.

Property includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

Scheme Implementation Deed means the implementation deed dated 26 July 2017 between Copyright Agency and Viscopy.

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

Scheme Member means a Viscopy Member (other than Copyright Agency) at the Scheme Record Date.

Scheme Record Date means 5pm on 27 November 2017 or such other date as may be agreed between the parties.

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

Terminating Scheme Member means a Scheme Member who has given Viscopy notice of the termination of membership prior to the Scheme Record Date and not revoked all such notices prior to the Scheme Record Date.

Transfer Date means 11.59pm on 30 November 2017.

Transferring Scheme Member means a Scheme Member who is not a Terminating Scheme Member.

Viscopy Board means the board of directors of Viscopy.

Viscopy Member, at a relevant time, means a person who is registered as a member of Viscopy at that time.

Visual Artist Class means the new class of membership to Copyright Agency to be created in accordance with the changes to the Copyright Agency Constitution as contemplated by the Copyright Agency Notice of EGM.

Visual Artist Member means a member of Copyright Agency in the Visual Artists Class.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included. Nothing in this document is to be interpreted against a party solely on the ground that the party put forward this document or any part of it. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a *clause* or *Annexure* is a reference to a clause of or an Annexure to this scheme of arrangement.
- (f) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.

- (g) A reference to a party to this scheme of arrangement or an agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to 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.
- (j) A reference to time is to Sydney, New South Wales time.

2 Preliminary

2.1 Viscopy

Viscopy is a public company limited by guarantee, registered in New South Wales.

2.2 Copyright Agency

Copyright Agency is a public company limited by guarantee, registered in New South Wales.

2.3 Implementation of this scheme of arrangement

- (a) The Viscopy Board considers that it is in the best interests of Viscopy Members for Viscopy to unify its management, membership and operations with that of Copyright Agency in the manner contemplated by this scheme of arrangement.
- (b) Under the Scheme Implementation Deed, Copyright Agency and Viscopy have agreed to implement this scheme of arrangement.
- (c) Copyright Agency has agreed by entering into the Deed Poll to:
 - (i) admit each Scheme Member as a member of Copyright Agency;
 - (ii) accept the transfer and vesting of the whole of the undertaking and Property of Viscopy;
 - (iii) accept the transfer of all Liabilities of Viscopy as its Liabilities; and
 - (iv) continue under its name any legal proceedings pending by or against Viscopy,

as at and with effect from the Scheme Implementation Date (in the case of paragraph (c)(i)) or the Transfer Date (in the case of paragraphs (c)(ii), (iii) and (iv)), subject to and in accordance with this scheme of arrangement, and to perform all other actions attributed to it under this scheme of arrangement.

2.4 Consequence of this scheme of arrangement becoming Effective

If this scheme of arrangement becomes Effective, it will:

- (a) to the extent permitted by law, override the Viscopy constitution to the extent of any inconsistency; and
- (b) be implemented in accordance with clause 4.

3 Conditions Precedent

- (a) This scheme of arrangement is conditional on:
- (i) each condition set out in clause 3.1 of the Scheme Implementation Deed (other than the condition in clause 3.1(e) of the Scheme Implementation Deed) having been satisfied or waived in accordance with the Scheme Implementation Deed by 8am on the Second Court Date;
 - (ii) the Court approving this scheme of arrangement in accordance with section 411(4)(b) of the Corporations Act before the End Date; and
 - (iii) each condition (if any) imposed by the Court under section 411(6) of the Corporations Act having been satisfied in accordance with the orders which imposed them.
- (b) This scheme of arrangement will lapse and be of no further force or effect if:
- (i) it does not become Effective before the End Date or any later date as the Court (with the consent of Copyright Agency and Viscopy) may order; or
 - (ii) the Scheme Implementation Deed is terminated in accordance with its terms before the Implementation Date.

4 Implementation

4.1 Lodgement of Court orders

Viscopy must lodge with ASIC an office copy of each Court order under sections 411(4)(b) or 413(1) of the Corporations Act as soon as practicable after the Court order is available.

4.2 Scheme Members

On the Implementation Date:

- (a) each Scheme Member ceases to be a Viscopy Member;
- (b) pursuant to its obligations under the Deed Poll, Copyright Agency admits each Transferring Scheme Member as a member of Copyright Agency; and
- (c) each Transferring Scheme Member agrees to be bound by the Copyright Agency Membership Terms and Conditions (if not already bound by them),

in each case, without the need for any further act or deed.

4.3 Terminating Scheme Members

A Terminating Scheme Member may not revoke after the Scheme Record Date a notice of the termination of membership given before the Scheme Record Date.

4.4 Transfers

On the Transfer Date:

- (a) the whole of the undertaking and Property of Viscopy is transferred to, and vested in, Copyright Agency who, pursuant to its obligations under the Deed Poll, accepts such transfer and vesting;

- (b) all Liabilities of Viscopy are transferred to, and become Liabilities of, Copyright Agency who, pursuant to its obligations under the Deed Poll, accepts such transfer; and
- (c) all legal proceedings pending by or against Viscopy (if any) are continued as legal proceedings by or against Copyright Agency who, pursuant to its obligations under the Deed Poll, accepts such continuation,

pursuant to orders of the Court under section 413(1) of the Corporations Act, in each case without the need for any further act or deed other than, in the case of clause 4.4(c), appropriate amendment of the record of the relevant court or tribunal.

4.5 Deregistration of Viscopy

Following the Scheme Implementation Date, Viscopy shall be deregistered by ASIC without winding up pursuant to an order of the Court under section 413(1)(d) of the Corporations Act.

5 General Provisions

5.1 Consent to alterations or conditions

If the Court proposes to approve this scheme of arrangement subject to any alterations or conditions, Viscopy may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which Copyright Agency has consented.

5.2 Viscopy register of members

- (a) For the purposes of determining the Scheme Members and their entitlements under this scheme of arrangement, Viscopy must maintain its register of members, in accordance with its constitution and all applicable laws, until such time as all Scheme Members have been admitted as members of Copyright Agency.
- (b) The register of members of Viscopy shall, in the absence of manifest error, be the sole determinant of the Scheme Members and their entitlements under this scheme of arrangement.
- (c) From the Implementation Date, to the extent it relates to Scheme Members, the register of members of Viscopy shall cease to have any effect other than as evidence of the Scheme Members and their entitlements under this scheme of arrangement.

5.3 Scheme of arrangement binding on Scheme Members

Each Scheme Member acknowledges and agrees that this scheme of arrangement binds Viscopy and the Scheme Member regardless of whether or how the Scheme Member voted at the Scheme Meeting.

5.4 Authority to Viscopy

- (a) Each Scheme Member authorises Viscopy (who may authorise others) to do and execute all acts, matters, things and documents for or on behalf of the Scheme Member which Viscopy (or its delegate) considers necessary or expedient to implement and give full effect to this scheme of arrangement and the transactions contemplated by it.
- (b) Each Scheme Member, without the need for any further act or deed, irrevocably appoints Viscopy (who may authorise others) as its agent and attorney for the purpose of executing any document and to do and execute all other acts, matters, things and documents for or on behalf of the Scheme Member which Viscopy (or its delegate)

considers necessary or expedient to implement and give full effect to this scheme of arrangement and the transactions contemplated by it.

5.5 Enforcement of Deed Poll

- (a) Each Scheme Member, without the need for any further act or deed, irrevocably appoints Viscopy (who may appoint others) as its agent and attorney to enforce the Deed Poll against Copyright Agency.
- (b) Viscopy undertakes in favour of each Scheme Member that it will enforce the Deed Poll against Copyright Agency as the agent and attorney of the Scheme Member.

5.6 Further assurances

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

5.7 Governing law and jurisdiction

This scheme of arrangement is governed by the laws of New South Wales. In relation to it and related non-contractual matters, Viscopy and each Scheme Member irrevocably submit to the non-exclusive jurisdiction of courts with jurisdiction there.

5.8 Notices

The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Viscopy Member may not, unless so ordered by the Court, invalidate this scheme of arrangement or the proceedings of the Scheme Meeting.

Annexure to Scheme of Arrangement Copyright Agency Membership Terms and Conditions

1 Grant of licence

- 1.1 Where the Nominated Licence Schemes include a Copyright Agency Licence Scheme, you grant Copyright Agency the non-exclusive right to sublicense third parties (including foreign and Australian collecting societies) to Reproduce, Publish and Communicate Copyright Material under that Copyright Agency Licence Scheme.
- 1.2 The licence referred to in clause 1.1 is a worldwide licence.
-

2 Appointment as agent and RCTI authority

- 2.1 You appoint Copyright Agency as your non-exclusive agent in all matters relevant to the use of the Copyright Material under the Nominated Licence Schemes.
- 2.2 You authorise Copyright Agency to issue Recipient Created Tax Invoices (RCTI) and Adjustment Notes for Taxable Supplies made by you under the Agreement.
-

3 Administrative costs

Copyright Agency may deduct its administrative costs (including anticipated costs) and any other amounts authorised by the Constitution from moneys it collects.

4 Remuneration

- 4.1 Subject to clause 4.2, Copyright Agency will notify you of any money allocated to you in accordance with the method of allocation determined by Copyright Agency from time to time.
- 4.2 You acknowledge that the payment of money allocated to you will be subject to requirements reasonably imposed by Copyright Agency from time to time.
-

5 Warranties, indemnities & waiver

- 5.1 You warrant that:
- (a) You are eligible under the Constitution to be admitted as a member of Copyright Agency;
 - (b) You can grant the rights granted by the Agreement and those rights do not infringe the copyright or other proprietary right of any other person;
 - (c) Where you are not the sole owner of copyright in the Copyright Material, you have obtained the necessary consents to enter into the Agreement; and
 - (d) Where you have notified Copyright Agency of payment splits for the Copyright Material, the information supplied is correct.
- 5.2 You undertake to notify Copyright Agency of any changes in the control of the Copyright Material including reversions of rights and, where you have notified Copyright Agency of any payment splits, including any changes to those payment splits.

- 5.3 You indemnify Copyright Agency against any liability incurred by Copyright Agency arising out of:
- (a) a breach by you of the Agreement; or
 - (b) an infringement of copyright or other proprietary right in the licensing of the rights granted by the Agreement.
- 5.4 The warranties and indemnities given in this clause 5 extend for the benefit of the Licensees.
- 5.5 You waive any claim of copyright infringement you may have against a Licensee in relation to any act or omission done under a licence granted under the Nominated Licence Schemes.

6 Term and termination

- 6.1 This Agreement starts on the date you are admitted to membership of Copyright Agency and ends when the membership terminates in accordance with the Constitution.
- 6.2 Subject to the Corporations Act 2001, Copyright Agency may at any time terminate your membership of Copyright Agency if you cease to be eligible for membership under the Constitution.
- 6.3 If:
- (a) the Agreement is terminated, or
 - (b) you seek to withdraw Copyright Material from a Copyright Agency Licence Scheme, Copyright Agency may, except as otherwise provided in the Constitution, continue to license the rights granted by you for a further three years.

7 Constitution

You acknowledge that, on admission as a member of Copyright Agency, you will be an Artist Member of Copyright Agency and subject to the terms of the Constitution.

8 Glossary of terms

Act means the Copyright Act 1968;

Adjustment Note, Recipient Created Tax Invoice and Taxable Supply have the same meaning as in the A New Tax System Act 1999 legislation;

Agreement means the agreement between you and Copyright Agency formed by your admission as a member of Copyright Agency on the terms set out in this application;

Artistic Work has the same meaning as in the Act;

Copyright Agency means Copyright Agency Ltd ABN 53 001 228 799;

Copyright Agency Licence Schemes means the schemes administered by Copyright Agency from time to time where a specified category of user is licensed by Copyright Agency to Reproduce, Publish or Communicate Works;

Communicate has the same meaning as in the Act;

Constitution means the Copyright Agency constitution;

Copyright Material means the Works in which you own, control or represent copyright from time to time;

Licensee means any person licensed or authorised by Copyright Agency to Reproduce or Communicate Works;

Nominated Licence Schemes means the Statutory Licence Schemes, any other Copyright Agency Licence Schemes in which you elect to participate from time to time and, if you are a former member of Viscopy Limited, the voluntary licence scheme previously administered by Viscopy Limited in respect of Artistic Works;

Reproduce has the same meaning as in the Act;

Statutory Licence Schemes means the schemes in the Act under which bodies may Reproduce and Communicate Works; and

Work has the same meaning as in the Act.

Unless otherwise stated in this application, words and phrases in this application have the same meaning as in the Act and the Constitution. The Agreement is subject to the Constitution and the terms of the Constitution prevail over the Agreement to the extent of any inconsistency. In this application, the singular includes the plural. The Agreement binds the parties and their respective successors and assignees. The Agreement is governed by the laws of New South Wales.

Annexure D—Notice of Scheme Meeting



Viscopy Limited
(ACN 069 759 922)

6 October 2017

To: Viscopy members

Notice of Court-ordered meeting of Viscopy members

By an order of the Supreme Court of New South Wales made on 6 October 2017 pursuant to section 411(1) of the Corporations Act, a meeting of Viscopy members will be held at the offices of Copyright Agency, Level 11, 66 Goulburn Street, Sydney on Thursday, 2 November 2017, commencing at 10am.

The Court has ordered that Timothy John Denny (Chair of Viscopy) or, failing him, Matthew Marcus Clark (Director and Company Secretary of Viscopy), act as chairman of the meeting and has directed the chairman to report the result of the resolution to the Court.

Proposed business

To consider and, if thought fit, to pass the following resolution agreeing to a scheme of arrangement proposed between Viscopy and its members:

THAT, pursuant to and in accordance with section 411 of the *Corporations Act 2001* (Cth), the scheme of arrangement proposed between Viscopy Limited and its members, as contained in and more particularly described in the booklet of which the notice convening this meeting forms part, is agreed to (with or without modification as approved by the Supreme Court of New South Wales).

A copy of the scheme of arrangement and the explanatory statement required by section 412 of the Corporations Act in relation to it are contained in the booklet of which this notice forms part.

By order of the Board of Directors of Viscopy Limited

Matthew Marcus Clark
Company Secretary

Explanatory Notes to Notice of Scheme Meeting

1 General

This notice should be read in conjunction with the entire document of which it forms part. The document contains important information to assist you in determining how to vote on the resolution.

Terms used in this notice have the same meaning as set out in section 8 of the booklet of which this notice forms part.

A copy of the Scheme of Arrangement is set out in annexure C to the booklet of which this notice forms part.

2 Court approval

Under section 411(4)(b) of the Corporations Act, the Scheme of Arrangement (with or without modification) is subject to the approval of the Court. If the resolution put to the meeting is passed by the requisite majority and the other Conditions Precedent (other than approval by the Court) are satisfied or waived by the time required under the Scheme, Viscopy intends to apply to the Court for the necessary orders to give effect to the Scheme of Arrangement.

3 Required voting majority

Under section 411(4)(a) of the Corporations Act, unless the Court orders otherwise, the resolution to agree to the Scheme of Arrangement must be passed at the meeting by a majority in number of Viscopy members present and voting at the meeting (either in person or by proxy, attorney or, in the case of bodies corporate, body corporate representative).

4 Entitlement to vote

Under section 411 of the Corporations Act and all other enabling powers, the Court has determined that the time for determining eligibility to vote at the meeting is 5pm (Sydney time) on Wednesday, 1 November 2017. Only those Viscopy members entered on the Viscopy register of members at that time will be entitled to attend and vote at the meeting. The remaining comments in these explanatory notes are addressed to Viscopy

members entitled to attend and vote at the meeting.

5 How to vote

Voting will be by poll. You may vote at the meeting by:

- attending and voting in person;
- appointing a proxy to attend and vote on your behalf, using the Proxy Form that accompanied the booklet of which this notice forms part;
- appointing an attorney to attend and vote on your behalf, using a power of attorney; or
- in the case of a body corporate, appointing a body corporate representative to attend and vote on your behalf, using a certificate of appointment of body corporate representative.

6 If voting by proxy

You may appoint one proxy to attend the meeting and vote on your behalf. Your proxy need not be another Viscopy member and will have the right to vote on a poll and also to speak at the meeting.

To appoint a proxy, you should complete and return the Proxy Form that accompanied the booklet of which this notice forms part in accordance with the instructions on that form.

The deadline for receipt of Proxy Forms by Viscopy is 10am on Wednesday, 1 November 2017.

You should consider how you wish your proxy to vote. That is, whether you want your proxy to vote 'For' or 'Against', or abstain from voting on, the resolution, or whether to leave the decision to the proxy after he or she has considered the matters discussed at the meeting.

If you do not direct your proxy how to vote, the proxy may vote, or abstain from voting, as he or she thinks fit. If you instruct your proxy to abstain from voting on an item of business, he or she is directed not to vote on your behalf, and you will not be counted in computing the required majority.

If you return your Proxy Form:

- without identifying a proxy on it, you will be taken to have appointed the chairman of the meeting as your proxy to vote on your behalf; or
- with a proxy identified on it but your proxy does not attend the meeting, the chairman of the meeting will act in place of your nominated proxy and vote in accordance with any directions on your Proxy Form.

The chairman of the meeting and all other Viscopy directors intend to vote all valid undirected proxies which nominate them in favour of the resolution, in the absence of a Superior Proposal.

Your proxy will be admitted to the meeting and given a voting card on providing at the point of entry to the meeting written evidence of their name and address.

Your appointment of a proxy does not preclude you from attending in person, revoking the proxy and voting at the meeting.

7 If voting by attorney

You may appoint an attorney to attend and vote at the meeting on your behalf. Your attorney need not be another Viscopy member and will have the right to vote on the poll and also to speak at the meeting.

The power of attorney appointing your attorney to attend and vote at the meeting must be duly executed by you and specify your name, the company (that is, Viscopy) and the attorney, and also specify the meetings at which the appointment may be used. The appointment may be a standing one.

The power of attorney, or a certified copy, must be lodged with Viscopy before the meeting or at the registration desk on the day of the meeting.

Attorneys of eligible Viscopy members will be admitted to the meeting and given a voting card on providing at the point of entry to the meeting written evidence of their appointment, their name and address, and the name of their appointors.

Your appointment of an attorney does not preclude you from attending in person and voting at the meeting.

8 If voting by body corporate representative

If you are a body corporate, you may appoint an individual to act as your body corporate representative. The appointment must comply with the requirements of section 250D of the Corporations Act, meaning that Viscopy will require a certificate of appointment of body corporate representative to be executed by you in accordance with the Corporations Act. The certificate should be lodged with Viscopy before the meeting or at the registration desk on the day of the meeting.

If a certificate is completed by an individual or a corporation under power of attorney, the power of attorney, or a certified copy, must accompany the completed certificate unless the power of attorney has previously been noted by Viscopy.

Body corporate representatives of eligible Viscopy members will be admitted to the meeting and given a voting card on providing at the point of entry to the meeting written evidence of their appointment, their name and address, and the name of their appointors.

Corporate Directory



Viscopy Limited
(ACN 069 759 922)
Level 11, 66 Goulburn Street
Sydney NSW 2000
Australia
info@copyright.com.au
www.viscopy.org.au

Viscopy Directors

Timothy Denny (Chair)
Marcus Clark
Kath Fries
Joyce Parszos
Matthew Sleeth
Leesa Watego
Oliver Watts

Company Secretary

Marcus Clark

Copyright Agency | Viscopy Information Line

1800 066 844 (from within Australia)
+61 2 9394 7600 (from outside Australia)
(between 9am and 5pm (Sydney time) on Business Days)