

## DRAGONTAIL ENTERS INTO SCHEME IMPLEMENTATION DEED

27 May 2021: **Dragontail Systems Limited** (ASX: DTS, the “**Company**” or “**Dragontail**”), an innovative provider of technology solutions for the food industry, is pleased to announce that it has entered into a Scheme Implementation Deed with Yum! Connect Australia Pty Ltd (**YCA**), an entity controlled by Yum! Brands, Inc. (**Yum**), under which YCA undertakes to acquire 100% of the issued capital of the Company (on a fully diluted basis) for an aggregate consideration of A\$93.5M (**Transaction**). The Transaction in respect of the fully paid ordinary shares of Dragontail (**DTS Shares**), which is to be implemented by way of a share scheme of arrangement (**Scheme**), is not subject to a finance condition.

The unsolicited offer was received by the Company just as the Company was realizing its pre-arranged plans to deepen its hold especially in the US while investing its best resources and intentions in realizing this potential

Under the terms of the Scheme, Dragontail shareholders will be entitled to receive A\$0.235 per DTS Share (**Scheme Consideration**) subject to all applicable conditions being satisfied or waived and the Scheme being implemented.

The Dragontail Board of Directors unanimously recommends that all Dragontail shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to an Independent Expert expressing an opinion that the Scheme is in the best interests of Dragontail shareholders.

“With Dragontail, we expect to tap into the power of AI to accelerate and further enhance our delivery technology capabilities, especially at Pizza Hut, and optimize the end-to-end food preparation process,” said Chris Turner, Chief Financial Officer, Yum! Brands.

Dragontail's Managing Director, Ido Levanon commented, “Yum! Brands and Dragontail have been working in a fruitful collaboration for years. Dragontail's Board of Directors fully supports this transaction, which it considers to be an attractive opportunity for its shareholders. It will also provide Yum! Brands with innovative technology. The activities of Dragontail and Yum! Brands are complementary, the synergy is natural and we bless the completion of the acquisition.”

Full details of the Scheme are set out in the Scheme Implementation Deed, a copy of which is attached to this announcement.

### About Yum! Brands

Yum! Brands, Inc., based in Louisville, Kentucky, has over 50,000 restaurants in more than 150 countries and territories, making it a leader in global retail development primarily operating the company's brands – KFC, Pizza Hut and Taco Bell – global leaders of the chicken, pizza and Mexican-style food categories. The Company's family of brands also includes The Habit Burger Grill, a fast-casual restaurant concept specializing in made-to-order chargrilled burgers, sandwiches and more. Yum! Brands was included on the 2021 Bloomberg Gender-Equality Index. In 2020, Yum! Brands was named to the Dow Jones Sustainability Index North America and was ranked among the top 100 Best Corporate Citizens by 3BL Media.

### Board and major shareholder support

The Board of Dragontail has carefully considered the Scheme and has concluded that the Scheme is in the best interests of Dragontail shareholders.

The Board believes that the offer provides liquidity and certainty to Dragontail shareholders that they may not otherwise achieve by retaining their DTS Shares.

Each of the Directors of Dragontail unanimously recommend that all Dragontail shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to an Independent Expert expressing an opinion that the Scheme is in the best interests of Dragontail shareholders.

As a condition of the Scheme, Alceon Liquid Strategies Pty Ltd ACN 156 017 659 in its capacity as trustee of the Alceon High Conviction Absolute Return Fund ABN 70 299 388 630 (**Alceon**) and Eldridge Industries, LLC will, subject to shareholder approval (as required), each convert their DTS convertible preference shares (**CP Shares**) into DTS Shares prior to the Court-convened shareholder meeting for the Scheme. A separate notice of meeting to approve the conversion of the CP Shares is intended to be sent to Dragontail shareholders in or around July 2021.

#### **Next steps and indicative timetable<sup>1</sup>**

Subject to Court approval, Dragontail intends to send a Scheme Booklet to Dragontail shareholders in or around July 2021. The Scheme Booklet will contain information relating to the Scheme as well as an Independent Expert Report providing an assessment as to whether the Scheme is in the best interests of Dragontail shareholders. Dragontail shareholders should read the Scheme Booklet once it is available and seek independent advice before making a decision on how to vote.

The Scheme also remains subject to a number of regulatory approvals and waivers, including other regulatory approvals in certain jurisdictions where Dragontail operates. As such, the certainty of and timing for the completion of the Scheme cannot be determined at this time. Dragontail will continue to keep the market informed in accordance with its continuous disclosure obligations.

Dragontail shareholders do not need to take any action at this stage.

Thomson Geer is acting as legal adviser to Dragontail in relation to the Transaction.

- END -

*This ASX Announcement was approved and authorised by Dragontail's Managing Director.*

Ido Levanon, CEO  
P: +61 3 9010 5759

#### **About Dragontail Systems**

Dragontail is revolutionising the Quick Service Restaurant (QSR) and foodservice industry with its core technology offering being its patented **Algo Platform** and **QT AI camera system**, sold under a cloud-based monthly subscription-based Software-as-a-Service (SaaS) revenue model which results in time and cost savings, and improved customer satisfaction through:

- Optimising and managing kitchen process task flow and timing from order to delivery
- Checking food quality and consistency
- Providing customers visibility over their food orders
- Acting as a valuable training tool for staff
- Controlling for food hygiene and sanitisation
- Managing driver activities leading to increased efficiency

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<sup>1</sup> Dates are indicative only and may change.

The **Algo Platform** is the first system in the world to fully automate and streamline the kitchen flow to deliver an immediate and significant return on investment to fast food and quick service restaurants. The Algo integrates into a QSR's point of sale (POS) system.

The **QT AI camera** system's sensor and camera automatically monitor the preparation and cooking process in the kitchen. Using proprietary patented advanced AI machine-learning technology, the system keeps improving its diagnostics, becoming even more efficient. The QT has been upgraded in 2020 for hygiene and sanitisation checking. Dragontail's offering consists of:

1. **Total Technology solution:** Algo Platform + POS + online ordering developed by Dragontail in partnership, resulting in a full and ready integration).
2. **Algo Platform or full Algo:** Ready to integrate into an existing QSR POS system, managing the entire food preparation process from order to delivery.
3. **Algo Lite:** A delivery module – driver tracking and order aggregation. A QSR may begin with this system and migrate across to the full Algo over time.
4. **QT AI camera quality system:** Proprietary developed camera hardware and software used to quality control food preparation.

Dragontail is rolling out its technology globally and has signed contracts with leading QSR franchisors and franchisees including key contracts with Yum! Brands, TelePizza and household names like Dominos, Pizza Hut and KFC.

**Collaborations:** Developing relationships with Aggregators (third party delivery operators) to the QSR sector have been identified as integral to Dragontail's growth strategy. Collaborations now cover all leading operators globally (including Deliveroo, DoorDash, Grab and FOOD PANDA) which have been readied with integrations between the Algo Platform and Aggregators' technology systems, now being largely complete. Dragontail has worked for some time with point of sale (POS) operators to the QSR sector and has formed strong compatibility with a number of their systems. In addition, Dragontail has developed its own fully POS aligned offering found in its Total Technology solution product, under a joint venture. This product has a significantly stronger revenue model over Dragontail's other product lines and is positioned to support QSRs who are wanting a ready to go fully integrated system. In addition, Dragontail announced a number of collaborations in late 2020 in the areas of drone food delivery (Israel) and food trucks (US).

For more information, visit [www.dragontail.com](http://www.dragontail.com).

## Scheme Implementation Deed

between

**Yum Connect Australia Pty Ltd**  
ACN 650 324 146  
(Bidder)

and

**Dragontail Systems Limited**  
ABN 63 614 800 136  
(Target)

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**This deed** is made on 27 May 2021

between **Yum Connect Australia Pty Ltd** (ACN 650 324 146) of Level 1, 20 Rodborough Road, Frenchs Forrest, NSW 2086 (**Bidder**)

and **Dragontail Systems Limited** (ABN 63 614 800 136) of Level 24, 44 St Georges Terrace, Perth WA 6000, Australia (**Target**)

## Recitals

- A Bidder and Target have agreed that Bidder will acquire Target by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Participants.
- B The Target Board unanimously considers that the Scheme is in the best interest of the Target and Target Shareholders, subject to the findings of the Independent Expert and no Superior Proposal emerging.
- C Bidder and Target propose to implement the Scheme on and subject to the terms and conditions of this deed.
- D Bidder and Target have agreed certain other matters in connection with the proposed implementation of the Scheme as set out in this deed.

**Now it is covenanted and agreed** as follows:

## 1 Definitions and interpretation

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### 1.1 Definitions

In this deed:

**Accounts Payable** means:

- (a) all trade debts incurred in the ordinary course of business on arm's length terms; plus
- (b) all amounts payable to employees and contractors of the Target in the ordinary course of business on arm's length terms (which, for the avoidance of doubt, does not include bonuses or any other one-off payments whether in connection with Target Options or otherwise);

**Accounting Standards** means the accounting standards made or in force under the Corporations Act, being the Australian Accounting Standards and any authoritative interpretations issued by the Australian Accounting Standards Board, and if any matter is not covered by those accounting standards, generally accepted accounting principles;

**Announcement** means any press release or other public announcement (including any announcement to the ASX) in connection with the transactions contemplated by this deed, including the Scheme;

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

**ASIC Regulatory Guides** means the regulatory guides published by ASIC from time to time;

**ASX** means ASX Limited (ACN 008 624 691) or as the context requires the securities exchange which it operates;

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

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



**Bidder Break Fee** means an amount equal to \$935,000;

**Bidder Disclosed Information** means all information (in whatever form) provided by Bidder and its Representatives to Target and its Representatives in writing before the date of this deed in connection with the transactions contemplated in this deed, including the Scheme;

**Bidder Group** means the Bidder, Yum! Restaurants International, Inc. and its Subsidiaries prior to implementation of the Scheme;

**Bidder Indemnified Parties** means each member of the Bidder Group and its directors, officers and employees;

**Bidder Scheme Booklet Information** means all information regarding the Bidder Group that is provided by or on behalf of Bidder to Target or any of its Representatives in writing to enable the Scheme Booklet to be prepared and completed in accordance with clause 5.3 and any updates to that information prepared by or on behalf of Bidder (and, for the avoidance of doubt, the Bidder Scheme Booklet Information excludes the Target Scheme Booklet Information, the Independent Expert's Report and any other report or letter issued to Target by a Third Party);

**Business Day** means:

- (a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
- (b) for any other purpose, a day on which the banks are open for business in Sydney, New South Wales, Australia other than a Saturday, Sunday or public holiday in Sydney, New South Wales, Australia;

**CD Options** means the Target Options issued to:

- (a) Trident Capital Pty Ltd on 20 June 2018; and
- (b) Elad Zada on 29 October 2018 and 14 January 2020;

**Claim** means any claim, demand, legal proceeding or cause of action including any claim, demand, legal proceeding or cause of action under common law or under statute in any way relating to this deed or the Scheme, and includes a claim, demand, legal proceeding or cause of action arising from a breach of a warranty in clause 9.1 or under the indemnities in clause 9.2 of this deed;

**Competing Proposal** means any proposed or possible agreement, transaction or arrangement pursuant to which, if ultimately completed, a Third Party (either alone or together with any one or more of its associates) would:

- (a) directly or indirectly, acquire a Relevant Interest in, become the holder of, have a right to acquire or have an economic interest in more than 5% of the shares on issue in Target;
- (b) directly or indirectly acquire or become the holder of, or otherwise acquire, have a right to acquire or have a legal, beneficial or economic interest in or control of 20% or more by value of the business of the Target Group;
- (c) acquire control (within the meaning of section 50AA of the Corporations Act, disregarding sub-section 50AA(4)) of Target or a Subsidiary which represents 20% or more of the economic value of the Target Group; or
- (d) otherwise acquire or merge with Target or a Subsidiary which represents 20% or more of the economic value of the Target Group; or
- (e) require Target to abandon, or otherwise fail to proceed with, the Scheme,

whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger), or other transaction or arrangement;

**Conditions Precedent** means the conditions precedent set out in clause 3.1;

**Confidentiality Agreement** means the Mutual Confidentiality and Non-Disclosure Agreement between Yum! Restaurants International, Inc. and Target dated 4 February 2019;

**Convertible Preference Share** means a fully paid convertible preference share in the capital of the Target, the terms of issue of which are set out in the Annexure of the Target's notice of meeting dated 11 February 2021;

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

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

**Court** means an Australian court of competent jurisdiction under the Corporations Act;

**Current Debt Amount** means the aggregate amount of Debt (apart from, for this purpose, any Debt under limb (f) of that definition) of the Target Group as at the date of this deed, being A\$0;

**Debt** in respect of the Target Group, means the aggregate of the monetary liability or indebtedness (whether present or future, actual or contingent) of those persons for or in respect of:

- (a) money borrowed or raised from and debit balances at bank or financial institutions;
- (b) its obligations as lessee under any finance lease or capital lease, except a lease in the nature of an operating lease;
- (c) any indemnity obligation in respect of any guarantee, indemnity, bond or letter of credit or similar instrument issued by a financial institution, other than those issued or provided in the ordinary course of its business or provided for the benefit of the Target or any of its Subsidiaries;
- (d) any guarantee, indemnity, letter of credit or similar assurance in respect of financial loss given in connection with any indebtedness referred to in any other paragraph of this definition of another person, other than those issued or provided in the ordinary course of its business or provided for the benefit of the Target or any of its Subsidiaries;
- (e) any amount payable in connection with the issuance and/or the redemption of any preference share issued by that person (including for the avoidance of doubt the Convertible Preference Shares except for any interest payable on the Convertible Preference Shares if they are held by the Bidder);
- (f) all monies due from Target to holder of Target Options for the cancellation of Target Options on the terms set out in the Option Cancellation Deeds;
- (g) amounts raised under or in connection with any bill acceptance, endorsement or discounting arrangement;
- (h) amounts raised under or in connection with any bond, debenture, note, loan stock or similar instruments;
- (i) receivables sold or discounted (other than to the extent they are sold on a nonrecourse basis);
- (j) any futures contract, forward exchange or forward purchase contract, any swap, hedge, cap, collar, ceiling or floor or option contract in respect of any currency, interest

rates or any commodity or any similar transaction in connection with borrowings or the raising of money, except those arising in the ordinary course of its business;

- (k) the acquisition cost of any asset to the extent payable before or after the time of acquisition or possession where the advance or deferred payment is arranged primarily as a method of raising finance or financing or refinancing the acquisition of that asset;
- (l) amounts raised under any other transaction or series of transactions having the commercial effect of a borrowing or raising of money;
- (m) dividends declared and payable; and
- (n) accrued but unpaid interest, prepayment and redemption premiums or penalties (if any), unpaid fees or expenses and other monetary obligations on any financial indebtedness referred to in paragraphs (a) to (k) above,

but excludes Accounts Payable. This definition does not operate to double count any liability or indebtedness.

**Deed Poll** means a deed poll to be executed by Bidder in favour of the Scheme Participants, substantially in the form set out in Annexure B (or in such other form agreed between Bidder and Target in writing);

**Domino's Contract** means the Camera Supply & Licensing Agreement between Target and Domino's Pizza Enterprises Limited (ACN 010 489 326) dated 8 November 2017;

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

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

**End Date** means 30 September 2021 or such later date as Bidder and Target may agree in writing;

**Exclusivity Period** means the period commencing on the date of this deed and ending on the earlier of:

- (a) the termination of this deed in accordance with its terms;
- (b) the Implementation Date; and
- (c) the End Date;

**Financial Advisers** means any financial adviser retained by Target in relation to the Scheme or a Competing Proposal from time to time acting in its capacity as such;

**First Court Date** means the first day of hearing of an application made to the Court by Target for orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned or if the application is subject to appeal for any reason, means the first day of the adjourned hearing or the first day on which the appeal is heard (as the case may be);

**Government Agency** means any government, governmental, semi governmental, administrative, fiscal or judicial body department, commission, authority, tribunal, agency or entity including ASIC, the ASX, the Takeovers Panel, the Australian Taxation Office, the Australian Competition and Consumer Commission and the ITA;

**GST** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;

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

**GST Law** has the same meaning as in the GST Act;

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

**Implementation Date** means the date that is 5 Business Days after the Record Date, or such other date as Target and Bidder may agree in writing or as may be required by the ASX;

**Independent Expert** means an independent expert to be engaged by Target to express an opinion on whether the Scheme is in the best interests of Target Shareholders;

**Independent Expert's Report** means the report from the Independent Expert commissioned by Target for inclusion in the Scheme Booklet, and any update to such report that the Independent Expert issues prior to the Scheme Meeting;

**Insolvency Event** means the occurrence of any one or more of the following events in relation to any party to this deed:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up or dissolution of that party, and such meeting, resolution, petition or order is not withdrawn, struck out or dismissed within 21 days of it being convened or filed;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, liquidator, or other officer of the court, or other person of similar function has been appointed regarding all or any material asset of the party, and such appointment is not terminated within 21 days;
- (c) a security holder, mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or charger and any such attempt or action is not withdrawn or dismissed within 21 days;
- (d) the party has executed a deed of company arrangement;
- (e) the party has ceased, or has threatened to cease to, carry on substantially all the business conducted by it as at the date of this deed;
- (f) the party has been deregistered as a company or otherwise dissolved; or
- (g) an event has taken place with respect to the party which would make, or deem it to be, insolvent under any law applicable to it;

**ITA** means the Israeli Tax Authority;

**Material Adverse Event** means any effect, change, event, circumstance, occurrence or matter which individually, or when aggregated with all such effects, changes, events, circumstances, occurrences or matters, other than:

- (a) those required or expressly permitted to be done or procured by Target Group pursuant to the Scheme or the Transaction Documents;
- (b) those relating to changes in business conditions or financial or securities markets affecting:
  - (i) the industry in which the Target Group conducts business generally; and/or
  - (ii) the economy of any region in which the Target Group conducts business;
- (c) an event, occurrence or matter that was fairly disclosed in the Target Disclosed Information; or

(d) an event done with the prior written approval of Bidder (acting reasonably),

has, has had, or is reasonably likely to have, the effect of:

- (e) the Target Group being unable to carry on its business in substantially the same manner as carried on as at the date of this deed (including as a result of any Claim against the Target Group for breach of applicable law or infringement of third party intellectual property rights);
- (f) reducing the number of locations using the Target Group's technology products as at the date of this deed (including the Dragontail quality assurance camera and Algo dispatching system) by 10% or more (**Location Reduction Threshold**), but excluding for the purposes of determining whether the Location Reduction Threshold has been met, any reduction which results from the termination or variation of:
  - (i) the Domino's Contract; or
  - (ii) any other agreement with Domino's, Papa Johns or Cara Group (other than a member of the Bidder Group) which is in a country where the Bidder Group currently has operations; or
  - (iii) any arrangement where such reduction or termination is not a direct result of a breach by the Target Group of the terms of such arrangement, including a breach of any applicable service level obligations; or
  - (iv) any agreement between the Target Group and the Bidder Group (other than the termination or variation of any agreement as a result of a breach by the Target Group of the terms of such agreement, including a breach of any applicable service level obligations);
- (g) increasing the total comprehensive loss for the period ending 30 June 2021 attributable to the Target Shareholders to greater than US\$2,900,000 (excluding the one off cost of approximately US\$300,000 which will be incurred by the Target in connection with an agreement between the Target and the Bidder Group); or
- (h) increasing the consolidated total current liabilities of the Target Group as at 30 June 2021 to greater than US\$1,270,600 (excluding liabilities in connection with the Convertible Preference Shares, all monies due from Target to holders of Target Options for the cancellation of Target Options on the terms set out in the Option Cancellation Deeds and fees and expenses incurred in connection with the Transaction Documents).

**Material Contracts** means the Domino's Contract;

**Net Cash** means the aggregate amount, calculated in AUD, of any cash on hand or credited to an account with a bank or other financial institution to which the member of the Target Group is beneficially entitled less any Debt, calculated on a consolidated basis, and after deduction of all Transaction expenses (including legal fees) payable by the Target in connection with the Transaction (whether such expenses are due and/or payable prior to or after the Implementation Date), and for the purpose of converting amounts specified in any currency other than AUD into AUD, the rate of exchange shall be the rate for exchanges between them published on [www.oanda.com](http://www.oanda.com) for the nearest Business Day for which that rate is published on or before the date of the conversion;

**Officer** means, in relation to an entity, its directors, officers and company secretaries;

**Option Cancellation Deed** means a deed in relation to the cancellation of Target Options in substantially the form agreed between the parties;

**Paying Agent** means Advanced Share Registry Ltd (or such other person appointed by Target (with the prior approval of Bidder (such approval not to be unreasonably withheld or delayed))) which shall hold and distribute the Scheme Consideration to Scheme Participants under the terms of the Scheme;

**Paying Agent Agreement** means the agreement to be entered into between Target and the Paying Agent on or around the date of this deed;

**Prescribed Occurrence** means the occurrence of any of the following:

- (a) a member of the Target Group converting all or any of its securities into a larger or smaller number of securities;
- (b) a member of the Target Group resolving to reduce its capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its securities;
- (c) Target declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning to return any capital to its members, by way of dividend, capital reduction, buyback or otherwise, or announcing an intention to do any of these things;
- (d) a member of the Target Group:
  - (i) entering into a buyback agreement; or
  - (ii) resolving to approve the terms of a buyback agreement under the Corporations Act;
- (e) a member of the Target Group issuing securities or convertible instruments, or granting an option (including a performance right) over its securities (whether issued or unissued), or agreeing to make such an issue or grant such an option (including a performance right), other than securities being issued:
  - (i) pursuant to the Scheme; or
  - (ii) pursuant to or consistently with arrangements entered into before the date of this deed which have been disclosed in the Target Disclosed Information (including the issue of securities of Target approved at a general meeting of Target or following exercise of existing options or performance rights under Target's incentive plan for employees (or any further grant of options or performance rights under such plan as disclosed before the date of this deed and/or consistently with past practice) or pursuant to Target's dividend reinvestment plan in place as at the date of this deed);
- (f) a member of the Target Group making any change or amendment to its constitution;
- (g) a member of the Target Group:
  - (i) acquiring, or agreeing to acquire, the issued securities in or the business or assets of a Third Party; or
  - (ii) disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or assets;
- (h) a member of the Target Group creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property other than in the ordinary course of business;
- (i) other than in the ordinary course of business, a member of the Target Group providing financial accommodation other than to members of its group irrespective of what form of that financial accommodation takes;
- (j) an Insolvency Event occurring in relation to a member of the Target Group; or
- (k) a member of the Target Group making any significant change to its accounting practices or policies applied by it to report its financial position other than as a result of written advice received from its auditors or to comply with the Accounting Standards,

provided that a Prescribed Occurrence will not include a matter:

- (l) which is required to be done or procured by Target pursuant to the Scheme or the Transaction Documents;
- (m) the undertaking of which has the prior written consent of Bidder; or
- (n) that has been fairly disclosed in writing by Target to Bidder as part of the Target Disclosed Information;

**Record Date** means 7:00pm on the date that is 5 Business Days after the Effective Date, or such other date as may be agreed in writing between Bidder and Target or as may be required by the ASX;

**Regulatory Approvals** means those regulatory approvals referred to in clause 3.1(a);

**Related Body Corporate** has the meaning given to that expression in the Corporations Act;

**Relevant Interest** has the meaning given to that expression in the Corporations Act;

**Representatives** means, in relation to an entity:

- (a) each of the entity's Related Bodies Corporate; and
- (b) each of its directors, officers, employees, contractors, advisers (including legal, financial and other expert advisers) and agents, but excluding the Independent Expert;

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Participants substantially in the form set out in Annexure A to this deed or as otherwise agreed by Bidder and Target in writing;

**Scheme Booklet** means the explanatory material to be prepared in respect of the Scheme in accordance with the terms of this deed and to be despatched by Target to Target Shareholders, including the Independent Expert's Report, the Scheme, the Deed Poll and the notice convening the Scheme Meeting;

**Scheme Consideration** means the consideration to be provided by Bidder to the Paying Agent to be distributed under the terms of the Scheme to Scheme Participants for the transfer to Bidder of their Scheme Shares, being not less than \$0.235 for every one Scheme Share held by each Scheme Participant at the Record Date;

**Scheme Meeting** means the meeting(s) of Target Shareholders to be ordered by the Court in relation to the Scheme to be convened pursuant to section 411(1) of the Corporations Act, and includes any meeting convened following any adjournment or postponement of such meeting(s);

**Scheme Participant** means a Target Shareholder who is registered in the Target Register as at the Record Date;

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

**Second Court Date** means the first day of hearing of an application made to the Court by Target for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned or if the application is subject to appeal for any reason, means the first day of the adjourned hearing or the first day on which the appeal is heard (as the case may be);

**Subsidiary** has the meaning given to that expression in the Corporations Act;

**Superior Proposal** means, in relation to Target, an unsolicited, bona fide written Competing Proposal for Target, which the board of directors of Target determines, acting in good faith and after having taken written advice from its external legal advisers and Financial Advisers (if any):

- (a) is reasonably capable of being valued and completed in a timely fashion taking into account all aspects of the Competing Proposal, including any timing considerations, its conditions and the identity of the proponent; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to the Target Shareholders (as a whole) than the Transaction viewed in aggregate, taking into account all the terms and conditions of the Competing Proposal (including consideration, conditionality, funding, certainty and timing);

**Takeovers Panel** means the panel established by section 171 of the *Australian Securities and Investments Commission Act 1989* (Cth);

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

**Target Break Fee** means an amount equal to \$935,000;

**Target Disclosed Information** means all information (in whatever form) provided by Target and its Representatives to Bidder and its Representatives before 8:00am on the Business Day before the date of this deed in the online data room established for and on behalf of the Target (including management presentations and in response to requests for information provided in the online data room) in connection with the transactions contemplated in this deed (an index and CD of which has been initialled by the parties for the purpose of identification);

**Target Group** means Target and its Subsidiaries;

**Target Indemnified Parties** means each member of the Target Group and its directors, officers and employees;

**Target Options** means options to subscribe for new Target Shares;

**Target Performance Rights** means zero exercise price options to subscribe for new Target Shares referred to in resolution 9 of the notice of the Company's 2018 annual general meeting;

**Target Performance Shares** means the Class A performances shares issued by Target on 12 December 2016;

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

**Target Scheme Booklet Information** means all information regarding the Target Group that is prepared by or on behalf of Target or any of its Representatives and information otherwise required to be included in the Scheme Booklet (excluding the Bidder Scheme Booklet Information and the Independent Expert's Report) to enable the Scheme Booklet to be prepared and completed in accordance with clause 5.3 and any updates to that information prepared by or on behalf of Target;

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

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

**Tax Declaration** means a declaration in which the beneficial owner of Scheme Shares provides certain information and supporting documentation, as required by and in accordance with the Withholding Tax Ruling, that is necessary for the Withholding Agent to determine whether any amounts need to be withheld from the Scheme Consideration payable to such beneficial owner pursuant to Israeli tax law; the Withholding Tax Ruling may require certain groups of beneficial owners of Scheme Shares to provide different declarations and different supporting documentation, and a beneficial owner of Scheme Shares will be considered as providing a valid Tax Declaration for purposes of this Scheme only if such beneficial owner provides the proper information and documentation applicable to it under the Withholding Tax Ruling;



**Timetable** means the indicative timetable for the implementation of the Scheme set out in Schedule 1, subject to any amendments as the parties may agree in writing;

**Third Party** means any of the following:

- (a) a person other than any member of the Bidder Group; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which no member of the Bidder Group has agreed in writing to be a participant;

**Transaction** means the acquisition of all of the issued capital of Target by Bidder through implementation of the Scheme;

**Transaction Documents** means:

- (a) this deed;
- (b) the Scheme;
- (c) the Deed Poll; and
- (d) the Confidentiality Agreement.

**Withholding Agent** means IBI Trust Management (an Israeli Company), in its capacity as withholding agent with respect to Israeli taxes arising in connection with the Scheme;

**Withholding Agent Agreement** means the agreement to be entered into between Target, the Bidder and the Withholding Agent on or around the date of this Agreement, under which the Withholding Agent (in its capacity as such and also in its capacity as the 102 Trustee and the Reorganization Trustee (as such terms are defined in the Scheme)) will provide to Bidder the undertaking pursuant to Section 6.2.4.3 of the Israeli Income Tax Circular 19/2018 (Transaction for Sale of Rights in a Corporation that includes Consideration that will be Transferred to the Seller at Future Dates) with respect to all Scheme Consideration payable to Scheme Participants (including such portion of the Scheme Consideration payable to Scheme Participants through the 102 Trustee and/or the Reorganization Trustee);

**Withholding Tax Application** means an application for the Withholding Tax Ruling including all supporting documentation as may be necessary or desirable;

**Withholding Tax Ruling (or WTR)** means a ruling issued by the ITA:

- (a) providing for the deposit of all Scheme Consideration by the Bidder with the Paying Agent, free of any withholding or deduction of any taxes imposed under Israeli law, by no later than the Business Day before the Implementation Date and for the Withholding Agent to be treated as withholding agent for purposes of Israeli tax law for a period of 180 days after the Implementation Date;
- (b) instructing the Withholding Agent how its obligation to withhold Israeli tax at the source from any Scheme Consideration payable or otherwise deliverable pursuant to this deed and the Scheme is to be executed, and in particular, with respect to the classes or categories of holders of Target Shares from which tax is to be withheld (if any), the rate or rates of withholding to be applied and how to identify non-Israeli residents in connection thereto; and
- (c) providing such other instructions from the ITA with respect to the withholding of any taxes from Scheme Consideration payable pursuant to this deed and the Scheme;

**WTR Application Deadline** means 5.00pm on the date that is 5 Business Days after the date of this deed or such later date as Bidder and Target may agree in writing;

**WTR Deadline** means the later of:

- (a) WTR Target Date;

- (b) if the Withholding Tax Ruling has not been issued by the WTR Target Date and Target is in compliance with its obligations under clause 13, 16 July 2021; or
- (c) such later date as Bidder and Target may agree in writing; and

**WTR Target Date** means 2 July 2021.

## 1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) a reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this deed and references to this deed include any recital, schedule or annexure;
  - (iv) any contract (including this deed) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
  - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
  - (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
  - (viii) a group of persons is a reference to any 2 or more of them taken together and to each of them individually;
  - (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
  - (x) a reference to a day or a month means a calendar day or calendar month;
  - (xi) money (including '\$', 'AUD' or 'dollars') is to Australian currency; and
  - (xii) any time is to time in Sydney, New South Wales, Australia;
- (b) unless expressly stated, no party enters into this deed as agent for any other person (or otherwise on their behalf or for their benefit);
- (c) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (d) headings and the table of contents are for convenience only and do not form part of this deed or affect its interpretation;
- (e) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day;

- (f) a provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this deed or the inclusion of the provision in this deed; and
- (g) a reference to 'fairly disclosed' means disclosed to Bidder or any of its Representatives to the extent that, and in sufficient detail, so as to enable a reasonable bidder (or one of its Representatives) experienced in transaction processes similar to that applicable to the Transaction, and experienced in a business similar to any business conducted by the Target Group, to identify the nature and scope of the relevant matter, event or circumstance.

### 1.3 **Best and reasonable endeavours**

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

- (a) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any regulatory authority;
- (b) to commence any legal action or proceeding against any person; or
- (c) to agree to amend, vary or modify this document,

except in accordance with the express terms of this deed.

### 1.4 **Awareness**

Where a representation or warranty is given 'so far as Target is aware' or with a similar qualification as to Target's awareness or knowledge, Target's awareness or knowledge is limited to and deemed to only include those facts, matters or circumstances of which each of Yehuda Shamai, Ido Levanon, Guy Brandwine, Itzik Bachar, Chen Krichevsky, David Kotan, Haim Lazarov, Jordan Ferenz, Guy Klien and Noa Barak is actually aware as at the date of this deed, having turned their mind to the relevant representations and warranties.

## 2 **Agreement to propose the Scheme**

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### 2.1 **Proceed with Scheme**

Target and Bidder agree to implement the Scheme upon and subject to the terms and conditions of this deed.

### 2.2 **Proposal of Scheme**

- (a) Target agrees to propose the Scheme on and subject to the terms of this deed.
- (b) Bidder agrees with Target to assist Target to propose and comply with its obligations under the Scheme to give effect to the Scheme on and subject to the terms of this deed.

### 2.3 **Compliance with obligations**

The parties' obligations under this deed to propose the Scheme are subject to their compliance with their respective obligations, functions, powers and duties under this deed, Target's constitution, at law and under the ASX Listing Rules.

### 3 Conditions Precedent

#### 3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Target under clause 5.1(p) and Bidder's obligation to provide the Scheme Consideration in accordance with the Deed Poll and clause 4.2 will not become binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in clauses 3.2 and 3.3:

1	2	3	4	5
Condition Precedent	Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))	Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))	Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))	Party whose certificate must refer to the Condition Precedent (clause 3.7)
(a) <b>Regulatory Approvals:</b> before 8:00am on the Second Court Date, ASIC and the ASX have issued or provided (and not withdrawn, revoked or varied) such consents, waivers, modifications and/or approvals or have done such other acts which are necessary or reasonably necessary to implement the Scheme. If such consents, waivers, modifications and/or approvals are subject to conditions those conditions must be acceptable to Bidder and Target (acting reasonably).	Target and Bidder	Target and Bidder	Target and Bidder	Target and Bidder
(b) <b>No restraints:</b> no temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any court of competent jurisdiction or Government Agency or other legal restraint or prohibition preventing or materially restricting the Scheme or its implementation is in effect at 8:00am on the Second Court Date.	Target and Bidder	Target and Bidder	Target and Bidder	Target and Bidder – to the best of their respective knowledge
(c) <b>Independent Expert's Report:</b> the Independent Expert provides the draft Independent Expert's Report to Target prior to the date on which the Scheme Booklet is provided to ASIC, stating that	Target	Target and Bidder	Target and Bidder	Target

1	2	3	4	5
Condition Precedent	Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))	Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))	Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))	Party whose certificate must refer to the Condition Precedent (clause 3.7)
in its opinion the Scheme is in the best interests of Target Shareholders, and the Independent Expert does not change its conclusion in its final Independent Expert's Report to Target or withdraw the Independent Expert's Report by notice in writing to Target prior to 8:00am on the Second Court Date.				
(d) <b>Orders convening Scheme Meeting:</b> the Court orders the convening of the Scheme Meeting under section 411(1) of the Corporations Act.	Target and Bidder	Target and Bidder	None – Condition Precedent cannot be waived	None
(e) <b>Target Shareholder approval:</b> before 8:00am on the Second Court Date, the Scheme is approved by the requisite majorities of Target Shareholders under section 411(4)(a)(ii) of the Corporations Act.	Target	Target and Bidder	None – Condition Precedent cannot be waived	Target
(f) <b>Court approval:</b> the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act.	Target and Bidder	Target and Bidder	None – Condition Precedent cannot be waived	None
(g) <b>Court Order lodgement:</b> An office copy of the Court order approving the Scheme is lodged with ASIC as contemplated by section 411(10) of the Corporations Act before the End Date.	Target and Bidder	Target and Bidder	None – Condition Precedent cannot be waived	None
(h) <b>No Material Adverse Event:</b> no Material Adverse Event occurs or is discovered, announced, disclosed or otherwise becomes known to Bidder between (and including) the date of this deed and 8:00am on the Second Court	Target	Bidder	Bidder	Target

1	2	3	4	5
Condition Precedent	Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))	Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))	Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))	Party whose certificate must refer to the Condition Precedent (clause 3.7)
Date.				
(i) <b>No Prescribed Occurrence:</b> no Prescribed Occurrence occurs between (and including) the date of this deed and 8:00am on the Second Court Date.	Target	Bidder	Bidder	Target
(j) <b>No change of Target Board recommendation:</b> no member of the Target Board changes, qualifies or withdraws his or her recommendation to Target Shareholders to vote in favour of the Scheme or otherwise makes a public statement indicating that he or she no longer supports the Scheme between (and including) the date of this deed and the close of the Scheme Meeting, unless such change, qualification or withdrawal is as a result of the Court indicating at the First Court Hearing that it is not appropriate for that director to make a recommendation to vote in favour of the Scheme and that such recommendation made by the director must be changed, qualified or withdrawn.	Target	Bidder	Bidder	Target
(k) <b>Target representations and warranties:</b> each of the representations and warranties given by Target under clause 9.1 are true and correct in all material respects, in each case at the times set out in clause 9.5.	Target	Bidder	Bidder	Target
(l) <b>Bidder representations and warranties:</b> each of the representations and warranties given by Bidder under clause 9.3 are true and correct in all material respects, in each case	Bidder	Target	Target	Bidder

1	2	3	4	5
Condition Precedent	Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))	Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))	Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))	Party whose certificate must refer to the Condition Precedent (clause 3.7)
at the times set out in clause 9.5.				
(m) <b>Conversion of Convertible Preference Shares:</b> each holder of Convertible Preference Shares agrees to the conversion of all outstanding Convertible Preference Shares and such conversion occurs prior to the Scheme Meeting.	Target	Target and Bidder	Target and Bidder	Target
(n) <b>Cancellation of Options:</b> each holder of Target Options agrees to the cancellation of all outstanding Options on the terms set out in an Option Cancellation Deed on or before 8:00am on the Second Court Date.	Target	Bidder	Bidder	Target
(o) <b>Approval of Options cancellation:</b> Target satisfies or obtains a waiver from any requirement of the ASX Listing Rules that must be met to validly effect the cancellation of the Target Options on or before 8:00am on the Second Court Date.	Target	Bidder	Bidder	Target
(p) <b>No Competing Proposal</b> Between the date of this deed and 8.00am on the Second Court Date, Target does not enter into any agreement, arrangement or understanding with a third party in relation to a Competing Proposal where (i) such Competing Proposal has been announced by Target, and (ii) as at the end of the Relevant Period, Target has not announced that the Competing Proposal is a Superior Proposal.	Target	Bidder	Bidder	Target
For the purposes of this clause 3.1(p), <b>Relevant Period</b> means the 2 weeks				

1	2	3	4	5
Condition Precedent	Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))	Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))	Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))	Party whose certificate must refer to the Condition Precedent (clause 3.7)
commencing on the date on which the relevant Competing Proposal is announced, provided that (i) such 2 week period may be extended by up to a further 1 week period if Target notifies Bidder in writing that the Target Board (acting in good faith) requires additional time to determine whether the Competing Proposal is a Superior Proposal, and (ii) if the Competing Proposal is a revised or updated version of a previously announced Competing Proposal ( <b>Revised Proposal</b> ), then the Relevant Period will end on the later of (A) the last day of the Relevant Period as calculated based on the date on which the original Competing Proposal was announced, subject to any extension in accordance with sub-paragraph (i) of this definition (which extension may occur before or after the announcement of the Revised Proposal), and (B) 2 Business Days after the date on which the Revised Proposal is announced.				
(q) <b>Interest in Target:</b> Between the date of this deed and 8.00 am on the date of the Scheme Meeting, no person (other than a holder of Convertible Preference Shares or any existing institutional or portfolio investor who is a Target Shareholder at the date of this Agreement or Bidder or any of its Related Bodies Corporate) acquires an interest in securities so as to have voting power in 10% or more of Target Shares and the Bidder determines acting reasonably and in good faith (after consulting with the Target and considering its feedback) that such person has acquired that interest with an intention to vote against the Scheme at the Scheme Meeting.	Target	Bidder	Bidder	Target
(r) <b>Net Cash Certificate:</b> On the Business Day immediately	Target	Bidder	Bidder	Target



1	2	3	4	5
Condition Precedent	Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))	Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))	Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))	Party whose certificate must refer to the Condition Precedent (clause 3.7)
<p>prior to the Second Court Date, Target delivers to Bidder a certificate duly signed by two directors or a director and company secretary of Target, on terms reasonably satisfactory to Bidder, certifying that:</p> <p>(i) the Net Cash of the Target Group is, and it is expected, after having made reasonable enquiries, to be on Implementation:</p> <p>(A) if none of the CD Options are not exercised A\$3,200,000 or more; and</p> <p>(B) if any of the CD Options are exercised A\$3,200,000 or more plus the aggregate amount of the exercise price received by the Target (and if all of the CD Options are exercised at least A\$3,914,999.95 or more)</p> <p>(ii) the aggregate amount of Debt of the Target Group is the Current Debt Amount and no Debt of any kind will be incurred by the Target on or before the Implementation Date,</p> <p>and which certificate attaches evidence (on terms acceptable to Bidder acting reasonably) thereof.</p>				
<p>(s) <b>Withholding Tax Ruling:</b> before 8:00am on the Second Court Date, the ITA has issued or provided (and not withdrawn, revoked or varied) the Withholding Tax Ruling. If the Withholding Tax Ruling is subject to conditions those</p>	Target	Target and Bidder	Target and Bidder	Target

1	2	3	4	5
<b>Condition Precedent</b>	<b>Party responsible for satisfaction of the Condition Precedent (clause 3.3(a)(i))</b>	<b>Party entitled to benefit of the Condition Precedent (clauses 3.2(a) and 3.6(b)(iii))</b>	<b>Party entitled to exercise right to waive the Condition Precedent (clause 3.2(b))</b>	<b>Party whose certificate must refer to the Condition Precedent (clause 3.7)</b>
conditions must be acceptable to Bidder and Target (acting reasonably).				

### 3.2 Waiver

- (a) Each Condition Precedent is only for the benefit of:
  - (i) if one party is specified in column 3 of clause 3.1 opposite that Condition Precedent, that party; or
  - (ii) if both parties are specified in column 3 of clause 3.1 opposite that Condition Precedent, both parties.
- (b) Any breach or non-fulfilment of each Condition Precedent may be waived and may only be waived:
  - (i) if one party is specified in column 3 of clause 3.1 opposite that Condition Precedent, by that party by written notice to the other party; or
  - (ii) if both parties are specified in column 3 of clause 3.1 opposite that Condition Precedent, by written agreement between the parties.
- (c) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.2 may do so in its absolute discretion subject to the provision of written agreement between the parties.
- (d) If a waiver by a party of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.
- (e) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from bringing a claim against the other party for any breach of this deed that resulted in the breach or non-fulfilment of the Condition Precedent.
- (f) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same events or circumstances; or
  - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstance.

### 3.3 Best endeavours and co-operation

- (a) Without prejudice to any other obligations of the parties under this deed, in respect of any given Condition Precedent:

- (i) if one party is specified in column 2 of clause 3.1 opposite that Condition Precedent, that party must use its best endeavours to ensure that the Condition Precedent is satisfied as expeditiously as possible after execution of this deed and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
  - (ii) other than in the case of the Condition Precedent in clause 3.1(b), if both parties are specified in column 2 of clause 3.1 opposite that Condition Precedent, both parties must, to the extent that it is within their respective control or influence, use their best endeavours to ensure that the Condition Precedent is satisfied as expeditiously as possible after execution of this deed and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
  - (iii) each party must, to the extent that it is within its respective control or influence, use its best endeavours to ensure that there is no occurrence that would prevent the Condition Precedent being satisfied, and neither party will take any action that will or is likely to hinder or prevent the satisfaction of the Condition Precedent, except to the extent that such action is required to be done or procured pursuant to, or is otherwise permitted by, the Transaction Documents, or is required by law or by a competent Government Agency or court.
- (b) For the purposes of clause 3.3(a), the 'best endeavours' of a party will require that party to (among other things):
- (i) observe and comply with this deed; and
  - (ii) co-operate with the other party or a Government Agency or Third Party in good faith with a view to satisfying the Conditions Precedent, including providing all information reasonably required by the other party in relation to the Target Group or the Bidder Group (as applicable) in order to satisfy the Conditions Precedent and providing all information reasonably required by any Government Agency or other Third Party to such Government Agency or Third Party as appropriate.

### 3.4 Notifications

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent, and the specifically the Target must provide to the Bidder management accounts of the Target Group for the prior month on the:
  - (i) 24th day of every month up the Implementation Date; and
  - (ii) date that is at least 3 Business Days prior to the Second Court Hearing,
 containing all information reasonably required by the Bidder to monitor the Target's compliance with clause 3.1(h);
- (b) promptly notify the other party in writing if it becomes aware that any Condition Precedent has been satisfied, in which case the notifying party must also provide reasonable evidence that the Condition Precedent has been satisfied;
- (c) promptly notify the other party in writing of a failure to satisfy a Condition Precedent or of any fact or circumstance that results in that Condition Precedent becoming incapable of being satisfied or that may result in that Condition Precedent not being satisfied in accordance with its terms (having regard to the obligations of the parties under clause 3.3); and

- (d) promptly notify the other party in writing of any fact or circumstance which would cause or is reasonably likely to cause a material breach of this deed by a relevant party (including a breach of any representation or warranty) and must provide reasonable details of the relevant breach.

### 3.5 Regulatory Approvals

Without limiting the generality of clauses 3.3 and 3.4:

- (a) each party must promptly prepare and, subject to clause 3.5(b), lodge, each notice or application required to be given by that party for the purposes of obtaining all relevant Regulatory Approvals and take all steps it is responsible for as part of the approval process, including responding to requests for information at the earliest practicable time and using best endeavours to obtain such approvals as soon as practicable after the date of this deed;
- (b) each party must in good faith and on a timely basis consult with the other in advance in relation to all material communications with any Government Agency relating to any Regulatory Approval or implementation of the Scheme;
- (c) keep the other party informed of progress in relation to the Regulatory Approvals and of any material matters raised by, or conditions or other arrangements proposed by, or to, any Government Agency which relate to any Regulatory Approval; and
- (d) provide copies of all documents provided to and received from each Government Agency in relation to each Regulatory Approval (including before the date of this deed), on a confidential basis, to the other party,

provided that, in each case:

- (e) the party applying for the Regulatory Approval may withhold or redact information or documents if and to the extent that they are confidential to a third party or commercially sensitive and confidential to the applicant;
- (f) nothing in this clause 3.5 or any other provision of this deed requires a party to disclose materially commercially sensitive information to the other party; and
- (g) the party applying for the Regulatory Approval will not be prevented from taking (but will not be obligated to take) procedural steps or communicating with or providing documents to a Government Agency if the other party has not responded promptly under clause 3.5(b).

### 3.6 Failure of Conditions Precedent

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 3.2; or
  - (ii) a Condition Precedent becomes incapable of satisfaction, having regard to the obligations of the parties under clause 3.3 and the terms of clause 3.7 (and the breach or non-fulfilment of the Condition Precedent that would otherwise occur has not already been waived),

then either party (provided that a Superior Proposal has not been received and announced by Target, following compliance by Target at all times prior to such public announcement with its obligations under clause 8) may serve notice on the other party (**CP Failure Notice**), and the parties must then consult in good faith with a view to determining whether:

- (iii) the Scheme may proceed by way of alternative means or methods;
- (iv) to extend the relevant time or date for satisfaction of the Condition Precedent;

- (v) to change the date of the application to be made to the Court for orders under the Corporations Act approving the Scheme or to adjourn that application (as applicable) to another date agreed by the parties (being a date no later than 5 Business Days before the End Date); or
- (vi) to extend the End Date.
- (b) If the parties are unable to reach agreement under clauses 3.6(a)(iii) to 3.6(a)(vi) by the earlier of:
- (i) the 7<sup>th</sup> Business Day after the delivery of the CP Failure Notice; or
  - (ii) 5:00pm on the day before the Second Court Date,
- then unless that Condition Precedent is waived by Bidder or Target or both as provided in clause 3.2, either party (**First Party**) may terminate this deed without liability (except under clause 12, if applicable) by notice in writing to the other party (**Second Party**), provided that:
- (iii) the First Party is named in column 3 of clause 3.1 as having the benefit of the Condition Precedent to which the CP Failure Notice relates (whether or not that Condition Precedent is also for the benefit of the Second Party); and
  - (iv) there has been no failure directly or indirectly by the First Party to comply with its obligations under this deed, where that failure directly and materially contributed to the Condition Precedent to which the CP Failure Notice relates becoming incapable of satisfaction, or being breached or not fulfilled up until the last time it is to be satisfied,

in which case clause 14 will have effect.

### 3.7 Certificates in relation to Conditions Precedent

- (a) If Target is listed in column 5 of clause 3.1 alongside a Condition Precedent as having to provide a certificate in respect of that Condition Precedent, then Target must provide to the Court on the Second Court Date a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8:00am on the Second Court Date that Condition Precedent has been satisfied or waived in accordance with the terms of this deed.
- (b) If Bidder is listed in column 5 of clause 3.1 alongside a Condition Precedent as having to provide a certificate in respect of that Condition Precedent, then Bidder must provide to the Court on the Second Court Date a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8:00am on the Second Court Date that Condition Precedent has been satisfied or waived in accordance with the terms of this deed.
- (c) Subject to clause 3.6(b), each party must provide to the other party a draft of the relevant certificate to be provided by it pursuant to this clause 3.7 by 5:00pm on the day that is 3 Business Days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

## 4 Scheme

### 4.1 Outline of the Scheme

- (a) The Target must propose the Scheme and the parties agree that the Scheme, if approved by the Court, will be subject to any alterations or conditions that are made or required by the Court and approved in writing by each party.
- (b) If the Scheme becomes Effective, then on the Implementation Date:

- (i) all of the Scheme Shares will be transferred to Bidder in accordance with the terms of the Scheme; and
- (ii) in consideration for the transfer to Bidder of all Scheme Shares held by the Scheme Participants, the Scheme Participants will be entitled to receive the Scheme Consideration for each Scheme Share held by them at the Record Date in accordance with this clause 4 and the terms of the Scheme.

#### 4.2 Scheme Consideration

Bidder covenants in favour of Target (in its own right and as trustee on behalf of the Scheme Participants) that, if the Scheme becomes Effective, in consideration for the transfer to Bidder of each Target Share held by a Scheme Participant at the Record Date under the terms of the Scheme, Bidder will:

- (a) accept that transfer on the Implementation Date; and
- (b) pay the Scheme Consideration in accordance with this deed, the Scheme and the Deed Poll.

#### 4.3 Paying Agent and Withholding Agent

- (a) Target must:
  - (i) appoint the Paying Agent to hold and pay the Scheme Consideration to Scheme Participants; and
  - (ii) enter into the Paying Agent Agreement, in a form reasonably acceptable to Bidder, with the Paying Agent for the payment of the Scheme Consideration to Scheme Participants

in accordance with this deed and the Scheme.
- (b) Target and Bidder must:
  - (i) appoint the Withholding Agent to act as withholding agent with respect to all Israeli taxes arising in connection with the payment of Scheme Consideration to Scheme Participants in accordance with this deed and the Scheme; and
  - (ii) enter into the Withholding Agent Agreement with the Withholding Agent.
- (c) Target will procure that the Paying Agent:
  - (i) holds the Scheme Consideration on trust for the benefit of Scheme Participants; and
  - (ii) pays the Scheme Consideration to Scheme Participants, the Section 102 Trustee and the Reorganization Trustee (as such terms are defined in the Scheme), as applicable (in each case, less any amounts required to be withheld in accordance with clause 5.6 of the Scheme), in accordance with this deed and the Scheme.

#### 4.4 Timetable

- (a) The parties acknowledge the Timetable is an indicative timetable.
- (b) The parties must use their best endeavours to implement the Scheme and perform their respective obligations substantially in accordance with the Timetable (including executing all documents and doing all things as may be necessary or desirable).
- (c) Each party must keep the other informed about their progress against the Timetable and must notify each other if it believes that any of the dates in the Timetable are not achievable.

- (d) Subject to clause 13.3, to the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest timeframe reasonably possible.

#### 4.5 Withholding taxes

All payments in connection with this deed shall be subject to withholding taxes, as applicable, in accordance with the provisions of clause 5.6 of the Scheme.

## 5 Steps for Scheme implementation

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### 5.1 Target's obligations

Target must use its best endeavours to propose the Scheme and implement the Transaction in accordance with all applicable laws as soon as is reasonably practicable after the date of this deed and otherwise substantially in accordance with the Timetable (including doing any thing required on behalf of Target Shareholders), and in particular Target must:

- (a) **Withholding Tax Ruling:** instruct Target's Israeli counsel to prepare and file with the ITA an application for the Withholding Tax Ruling; and
- (b) **preparation of Scheme Booklet:** prepare and despatch the Scheme Booklet (which includes a copy of the Tax Declaration and instructions thereto) in accordance with clause 5.3;
- (c) **Independent Expert:** promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this deed), and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (d) **liaison with ASIC:** no later than 18 days before the First Court Date, provide an advanced draft of the Scheme Booklet (containing such Bidder Scheme Booklet Information as approved by Bidder) to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Bidder, and:
  - (i) liaise with ASIC as necessary during the regulatory review period; and
  - (ii) promptly notify, and consult with, Bidder in relation to any matters raised by ASIC in relation to the Scheme Booklet (and of any resolution of those matters), and use its best endeavours, in co-operation and consultation with Bidder, to resolve any such matters;
- (e) **indication of intent:** apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date;
- (f) **representation:** procure that it is represented by counsel at the Court hearings convened in connection with the Scheme, at which, through its counsel and if requested by the Court, Target will undertake to do all such things and use its best endeavours in order to ensure the fulfilment of its obligations under the Transaction Documents and the Scheme;
- (g) **approval of Scheme Booklet:** as soon as practicable after ASIC has provided its indication of intent in accordance with clause 5.1(e), procure that a meeting of the Target Board is convened to approve the Scheme Booklet for despatch to Target Shareholders subject to the approval of the Court (and provide Bidder with a copy of an extract of the applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);

- (h) **Court documents:** prepare (in consultation with Bidder in relation to the content) all documents necessary for the Court proceedings (including any appeals) relating to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) in accordance with all applicable laws, and provide Bidder in advance with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments on or suggested amendments to those documents from Bidder and its Representatives on those drafts prior to filing those documents with the Court;
- (i) **first Court hearing:** lodge all documents with the Court and use its best endeavours to ensure that an application is heard by the Court for orders under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (j) **registration of Scheme Booklet:** if the Court directs Target to convene the Scheme Meeting, as soon as practicable after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (k) **Scheme Meeting:** use its best endeavours to comply with the orders of the Court, including, as required, despatching the Scheme Booklet to Target Shareholders, convening and holding the Scheme Meeting in accordance with the Court's orders;
- (l) **Tax Declaration reminder announcements:** on the date that is two weeks after the date of despatch of the Scheme Booklet and each two weeks thereafter, make an Announcement reminding Target Shareholders to return the Tax Declaration (in a form approved by Bidder, with such approval not to be unreasonably withheld).
- (m) **update Scheme Booklet:** if it becomes aware of information after the date of despatch of the Scheme Booklet, that is material for disclosure to Target Shareholders in deciding whether to approve the Scheme or that is required to be disclosed to Target Shareholders under any applicable law, as expeditiously as practicable inform Target Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law;
- (n) **section 411(17)(b) statement:** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (o) **Court approval:** if the Scheme is approved by the requisite majorities of Target Shareholders under section 411(4)(a)(ii) of the Corporations Act and subject to all other Conditions Precedent (other than the Condition Precedent in clause 3.1(f)) being satisfied or waived in accordance with this deed, as soon as practicable after such time apply to the Court for orders approving the Scheme;
- (p) **implementation of the Scheme:** if the Court approves the Scheme:
- (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act, on the day such office copy is received (or such other date as is agreed in writing between the parties);
  - (ii) use best endeavours to ensure that the ASX suspends trading in Target Shares with effect from the close of trading on the Effective Date;
  - (iii) close the Target Register as at the Record Date to determine the identity of Scheme Participants and to determine their entitlements to the Scheme Consideration in accordance with the Scheme;
  - (iv) promptly execute proper instruments of transfer of, and register all transfers of, the Scheme Shares to Bidder in accordance with the Scheme;
  - (v) the Target will deliver to Bidder a certificate duly signed by two directors or a director and company secretary of Target, on terms reasonably satisfactory to



Bidder, certifying that the Net Cash of the Target Group is A\$500,000 or more on the Implementation Date and the aggregate amount of Debt of the Target Group is the Current Debt Amount and which certificate attaches evidence (on terms acceptable to Bidder acting reasonably) thereof; and

- (vi) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme and to effect the transfer of the Scheme Shares to Bidder including providing Bidder with all information reasonably requested in order to assist Bidder to pay (or procure payment of) the Scheme Consideration;
- (q) **keep Bidder informed:** from the First Court Date until the Implementation Date, promptly (in any event within one Business Day) inform Bidder if it becomes aware (or ought reasonably to have become aware, after making all reasonable and diligent enquiries) that the Scheme Booklet contains a statement that, in the form and context in which it appears in the Scheme Booklet, is or has become misleading or deceptive in a material respect or that contains a material omission and provide such further or new information to Bidder and Target Shareholders as is required to ensure that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;
- (r) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (s) **Bidder Scheme Booklet Information:** at any time (even after the Bidder Scheme Booklet Information becomes publicly available) only use the Bidder Scheme Booklet Information with the prior written consent of Bidder (not to be unreasonably withheld, conditioned or delayed);
- (t) **listing:** not do anything to cause Target Shares to cease being quoted on the ASX or to become permanently suspended from quotation prior to completion of the Transaction unless Bidder has agreed in writing; and
- (u) **delisting:** if directed by Bidder in writing at any time after the Implementation Date, Target must take all steps necessary for Target to be removed from the official list of ASX, including lodging a request for removal with ASX and satisfying any conditions reasonably requested by ASX for it to act on that request.

## 5.2 Bidder's obligations

Bidder must use its best endeavours to assist Target to implement the Transaction as soon as is reasonably practicable after the date of this deed and otherwise substantially in accordance with the Timetable, and in particular Bidder must:

- (a) **preparation of Scheme Booklet:** provide assistance reasonably requested by Target with the preparation of the Bidder Scheme Booklet Information in the Scheme Booklet in accordance with clause 5.3;
- (b) **Independent Expert information:** provide assistance and information relating to Bidder reasonably requested by Target or by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (c) **liaison with ASIC:** provide assistance reasonably requested by Target to assist Target to resolve any matter raised by ASIC regarding the Bidder Scheme Booklet Information in the Scheme Booklet or the Transaction during its review of the Scheme Booklet;
- (d) **approval of Scheme Booklet:** as soon as practicable after ASIC has provided its indication of intent as contemplated in clause 5.1(e), procure that a meeting of the Bidder Board is convened to approve those sections of the Scheme Booklet that comprise the Bidder Scheme Booklet Information as being in a form appropriate for despatch to Target Shareholders (and provide Target with a copy of an extract of the

applicable resolutions from the applicable minutes of meeting, as soon as practicable after those minutes have been prepared and signed);

- (e) **keep Target informed:** from the First Court Date until the Implementation Date, promptly (in any event within one Business Day) inform Target if it becomes aware (or ought reasonably to have become aware, after making all reasonable and diligent enquiries) that the Bidder Scheme Booklet Information contains a statement that, in the form and context in which it appears in the Scheme Booklet, is or has become misleading or deceptive in any material respect or that contains any material omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or does not contain any material omission;
- (f) **Court representation:** procure that, if requested by Target and / or reasonably considered necessary by Bidder, it is separately represented by counsel at the Court hearings convened in connection with the Scheme, at which, through its counsel and if requested by the Court, Bidder will undertake to do all such things and use its best endeavours in order to ensure the fulfilment of its obligations under the Transaction Documents and the Scheme;
- (g) **Deed Poll:** prior to the First Court Date, execute the Deed Poll; and
- (h) **Target Scheme Booklet Information:** at any time (even after the Target Scheme Booklet Information becomes publicly available) only use the Target Scheme Booklet Information with the prior written consent of Target (not to be unreasonably withheld, conditioned or delayed).

### 5.3 Preparing of Scheme Booklet

- (a) **Target to prepare:** Target must prepare the Scheme Booklet (other than Bidder Scheme Booklet Information) as soon as is reasonably practicable after the date of this deed and otherwise substantially in accordance with the Timetable.
- (b) **Compliance requirements:** Target must use its best endeavours to ensure that the Scheme Booklet complies in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, except that the obligation to do so in respect of the Bidder Scheme Booklet Information is subject to Bidder complying with its obligations under clauses 5.3(d) and 9.3(l).
- (c) **Content of Scheme Booklet:** without limiting clause 5.3(b), the Scheme Booklet will include or be accompanied by the Scheme, the Deed Poll, the Independent Expert's Report and the notice convening the Scheme Meeting.
- (d) **Bidder Scheme Booklet Information:** Bidder must provide the Bidder Scheme Booklet Information to Target as soon as is reasonably practicable after the date of this deed and otherwise substantially in accordance with the Timetable, in a form that, together with the Target Scheme Booklet Information, includes in all material respects the information regarding the Bidder Group that is required by the Corporations Act, the ASX Listing Rules and all ASIC Regulatory Guides applicable to members' schemes of arrangement under Part 5.1 of the Corporations Act, including the information that would be required under sections 636(1)(c), (h), (i), (j), (k)(ii), (l) and (m) of the Corporations Act to be included in a bidder's statement if Bidder were offering the Scheme Consideration as consideration under a takeover bid, and must provide to Target such assistance as Target may reasonably request in order to adapt such information for inclusion in the Scheme Booklet.
- (e) **Review by Bidder:** Target must:
  - (i) make available in advance to Bidder drafts of the Scheme Booklet (including any draft of the Independent Expert's Report, but excluding those sections containing the Independent Expert's opinions or conclusions);

- (ii) consult with Bidder in relation to the content of those drafts (including the inclusion of any Bidder Scheme Booklet Information and any information solely derived from, or prepared solely in reliance on, the Bidder Scheme Booklet Information); and
  - (iii) (acting reasonably and in good faith) take into account, for the purpose of amending the drafts of the Scheme Booklet, any comments from Bidder and its Representatives on them.
- (f) **Dispute as to Scheme Booklet:** if, after a reasonable period of consultation and compliance by Target with its obligations under clause 5.3(e), Bidder and Target, acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then, subject to applicable law:
  - (i) if the disagreement relates to the form or content of the Bidder Scheme Booklet Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Scheme Booklet Information), Target will, acting in good faith, make such amendments to that information in the Scheme Booklet as Bidder may reasonably require; and
  - (ii) if the disagreement relates to the form or content of the Target Scheme Booklet Information, Target will, acting in good faith, decide the final form of that information in the Scheme Booklet.
- (g) **Consent of Bidder:** without limiting clause 5.3(f), Target must obtain written consent from Bidder in relation to the form and context in which any Bidder Scheme Booklet Information (and any information solely derived from, or prepared solely in reliance on, the Bidder Scheme Booklet Information) is used, such consent not to be unreasonably withheld by Bidder.
- (h) **Verification:** Target must undertake appropriate verification processes in relation to the Target Scheme Booklet Information included in the Scheme Booklet, and Bidder must undertake appropriate verification processes in relation to the Bidder Scheme Booklet Information included in the Scheme Booklet.
- (i) **Responsibility statements:** the Scheme Booklet will contain a responsibility statement to the effect that:
  - (i) Target is responsible for the Target Scheme Booklet Information;
  - (ii) Bidder is responsible for the Bidder Scheme Booklet Information only; and
  - (iii) the Independent Expert is responsible for the Independent Expert's Report only.

#### 5.4 Conduct of Court proceedings

- (a) Target and Bidder are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) Nothing in this deed gives any party any right or power to make undertakings to the Court for or on behalf of another party without that party's written consent.
- (c) Each party agrees to give all undertakings to the Court in all Court proceedings which it is reasonably required to give (on an individual basis) to obtain Court approval and confirmation of the Scheme as contemplated by this deed.
- (d) If the Scheme is not approved by Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Target considers (acting reasonably) that:

- (i) the splitting by a holder of Target Shares of those Target Shares into two or more parcels of Target Shares whether or not it results in any change in beneficial ownership of the Target Shares; or
- (ii) some other abusive or improper conduct,

may have caused or contributed to the Headcount Test not having been satisfied, then Target must apply for an order of the Court of the type contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and use its best endeavours to seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied (including by making such submissions to the Court and file such evidence as counsel engaged by Target, in consultation with the Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test).

- (e) If the Court refuses to grant an order convening the Scheme Meeting or approving the Scheme, then Target and Bidder must consult with each other in good faith as to whether to appeal the Court's decision. If, in the opinion of senior counsel obtained by either party within 5 Business Days of the Court's decision, there are reasonable prospects of successfully appealing the Court's decision, then:
  - (i) Target must appeal the Court's decision, the cost of which is to be borne equally by Target and Bidder; and
  - (ii) the End Date is extended by 20 Business Days (or such fewer Business Days as may be agreed to by Target and Bidder in writing) to account for the period for determination of the appeal on an expedited basis.

## 5.5 Mutual co-ordination

- (a) Target and Bidder must each use all reasonable endeavours and utilise all necessary resources (including management, shareholder, marketing and corporate relations resources, as well as the resources of external advisers) to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable.
- (b) Each party must, and must procure that its Representatives, work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to implement the Scheme and to prepare all documents required relating to the Scheme.

## 5.6 Appointment of officers

On the Implementation Date, but subject to the Scheme Consideration having been paid to the Scheme Participants and receipt by Target of signed consents to act, Target must:

- (a) take all actions necessary to appoint the persons nominated by Bidder as new directors of Target and new directors of each member of the Target Group; and
- (b) procure that all Target directors (other than the new directors appointed pursuant to paragraph 5.6(a)) resign from the Target Board, by notice in writing which acknowledges that such Target director has no outstanding claims (other than any outstanding fees or expenses that accrued prior to the resignation) against any member of the Target Group as at the date of the resignation; and
- (c) ensure that all directors on the boards of the Target's Subsidiaries that Bidder requests prior to the Implementation Date resign from the respective board by notice in writing which acknowledges that such director has no outstanding claims in his or her capacity as a director against any member of the Target Group as at the date of the resignation,

in each case in accordance with the respective constitution (or equivalent constituent documents), the Corporations Act (or equivalent applicable local laws) and the ASX Listing Rules (to the extent applicable).

## **6 Conduct prior to Implementation Date**

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### **6.1 Conduct of business**

- (a) During the period from the date of this deed up to and including the Implementation Date, Target must, and must procure that each member of the Target Group must:
  - (i) conduct its business and operations in the ordinary and proper course, subject to and in compliance in all material respects with all applicable laws, regulations and Regulatory Approvals;
  - (ii) operates its businesses in a manner substantially consistent with the manner in which those businesses have been conducted in the 12 months prior to the date of this deed;
  - (iii) uses best endeavours to:
    - (A) preserve intact the Target Group's current business organisation;
    - (B) keep available the services of its current Officers and employees, except if Target determines that termination of an Officer or employee's engagement is appropriate due to alleged breach of contract or duties or if the employee on their own volition terminates their contract;
    - (C) maintain the condition of its business and assets in accordance with the ordinary course of its business consistent with past practices for the 12 months prior to the date of this deed, allowing for fair wear and tear;
    - (D) maintain and preserve their relationships with those Government Agencies having material business dealings with them;
    - (E) maintain at least their current level of insurance;
    - (F) keep Bidder informed of the conduct of the Target Group's business by providing in a timely manner to Bidder financial and operational reports provided to the Target Board (but excluding information relating to Target's directors' and management's consideration of the Scheme or any Competing Proposal); and
    - (G) preserve their relationships with material customers and suppliers, and others with whom the Target Group has material business dealings
    - (H) promptly notify Bidder of any Material Claim which may be threatened, brought, asserted or commenced against any member of the Target Group, or their officers, and consult with Bidder in relation to such matter to the extent reasonably required by the Bidder, and for this purpose a Material Claim is any Claim relating to the intellectual property rights of the Target Group or any other Claim in excess of A\$50,000,

in each case, except to the extent:

- (I) fairly disclosed in writing as part of the Target Disclosed Information prior to the date of this deed;

- (J) fairly disclosed in an announcement made by Target to the ASX prior to the date of this deed;
- (K) required by any applicable law or by a Government Agency (except where that requirement arises as a result of an action or inaction (deliberate or inadvertent) by a member of the Target Group or Officer of the Target Group;
- (L) required for any Target Group Director to comply with his or her fiduciary or statutory duties, provided that, to the extent possible in the circumstances, the Target first provides the Bidder with reasonable details and consults in good faith with the Bidder in relation to any act to be done (or not done) in reliance on this clause 6.1(a)(iii)(L);
- (M) in the reasonable opinion of the Target, is a necessary and prudent response to any emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property) that requires an immediate reaction;
- (N) required to be done or procured by Target Group pursuant to, or that is otherwise expressly permitted by, the Transaction Documents; or
- (O) the undertaking of which Bidder has approved in writing (such approval not to be unreasonably withheld or delayed).
- (b) Without limiting clause 6.1(a), but for the avoidance of doubt subject to clauses 6.1(a)(iii)(I) to 6.1(a)(iii)(O) (both inclusive), Target must not, and must ensure that its Related Bodies Corporate do not:
- (i) dispose, agree to dispose, offer to dispose or announce a bid for the disposal of:
- (A) any securities, business, interest in a joint venture, entity or undertaking, the price or value of which exceeds US\$100,000 (individually or in aggregate);
- (B) any asset, the price or value of which exceeds US\$200,000 (individually or in aggregate),
- to any person other than another entity within the Target Group, excluding:
- (C) sale of goods in the ordinary course of business; or
- (D) a disposal which was approved by the Target Board prior to the date of this deed and has been fairly and specifically disclosed to Bidder in the Target Disclosed Information;
- (ii) acquire, agree to acquire, offer to acquire or announce a bid for the acquisition of:
- (A) any securities, business, interest in a joint venture, strategic partnership, entity or undertaking, the price or value which exceeds US\$100,000 (individually or in aggregate),
- (B) any asset, the price or value of which exceeds US\$200,000 (individually or in aggregate),
- from another person other than another entity within the Target Group, excluding:
- (C) acquisition of goods in the ordinary course of business; or

- (D) an acquisition, or any capital expenditure or project expenditure which was approved by the Target Board prior to the date of this deed and has been fairly and specifically disclosed to Bidder in the Target Disclosed Information;
- (iii) declare or pay any dividend or make any other distributions to Target Shareholders;
- (iv) enter into a line of business which is materially different to the business in which the Target Group engages as at the date of this deed, whether by way of acquisition or otherwise;
- (v) license any intellectual property rights of the Target Group to a Third Party other than in the ordinary course of business where the licence is for a term of less than 6 months;
- (vi) terminate, enter into, renew, extend or materially alter or amend any:
- (A) Material Contract; or
- (B) other contract in the ordinary course of business requiring payments by the Target Group of more than US\$50,000 individually or US\$100,000 in aggregate under the contract,
- excluding any renewal or extension of any Material Contract which is expressly provided for in the Material Contract, and where such renewal or extension is in the ordinary course of business;
- (vii) either:
- (A) enter into a new contract with an officer, executive, contractor, consultant or employee of the Target Group (other than to replace an employee who has ceased to be an employee of the Target Group) in respect of which the fixed annual remuneration (being the total of base remuneration, car allowance and superannuation) or fees payable to that officer, executive, contractor, consultant or employee is in excess of US\$80,000 per annum (but excluding a new contract with not more than 2 employees each with a total remuneration or fees payable to each employee in excess of US\$80,000 per annum but not exceeding US\$180,000 which have a probation period of at least 6 months and a notice period of (except where required by applicable law) not more than 3 months); or
- (B) alter, vary or amend a contract with an existing director, officer, executive, contractor, consultant or employee of the Target Group to increase any compensation or benefits payable (other than in the ordinary course of business, pursuant to contractual arrangements in effect as at the date of this deed or otherwise pursuant to any statutory requirements);
- (viii) enter into, renew, alter, vary or amend any enterprise bargaining agreement other than pursuant to contractual arrangements in effect on the date of this deed;
- (ix) pay any of its directors or employees a termination or retention payment other than in accordance with contractual arrangements in effect on the date of this deed, which are fairly disclosed to Bidder in the Target Disclosed Information;
- (x) settle or offer to settle any legal proceedings, claim, investigation, arbitration or other like proceeding where the settlement amount exceeds US\$100,000 in the aggregate;

- (xi) waive any material third party default where the financial impact on the Target Group will be in excess of US\$20,000 individually or US\$100,000 in the aggregate;
- (xii) accept as a compromise of a matter less than the full compensation due to a member of the Target Group where the financial impact of the compromise on the Target Group is more than US\$100,000 in the aggregate;
- (xiii) provide financial accommodation other than to members of the Target Group (irrespective of what form of financial indebtedness that accommodation takes) in excess of US\$10,000 (individually or in aggregate), except in respect of security interests given in the ordinary course (such as guarantees under lease arrangements) and the accommodation given to trade creditors;
- (xiv) enter into, or resolve to enter into, a transaction with any related party of Target (other than a related party which is a member of the Target Group) as defined in section 228 of the Corporations Act;
- (xv) enter into, renew, extend, alter or vary any agreement or arrangement relating to:
- (A) the award of any payment, bonus, incentive, severance, pay or pension contribution to any director, officer or key management personnel of the Target Group; or
  - (B) the appointment of, or any fees payable to, any Financial Adviser, other than in accordance with contractual arrangements in effect on the date of this deed and which are fairly disclosed to Bidder in the Target Disclosed Information;
- (xvi) make any amendment to any accounting policy applied by them to report their financial position other than any change in policy required by a change in the accounting standards;
- (xvii) undertake or agree to undertake capital expenditure in excess of \$200,000 in aggregate in respect of the Target Group;
- (xviii) increase the aggregate amount of Debt of the Target Group above the Current Debt Amount;
- (xix) not take any action which would be reasonably expected to give rise to a Prescribed Occurrence;
- (xx) enter into an agreement, ruling or other commitment with regard to tax with a Government Agency, except as provided under this deed; settle or compromise any tax liability; make any new, or change or revoke any existing, election with respect to taxes; file any amended tax return, enter into any closing agreement (including any assessment agreement with the ITA); surrender any right to claim a refund of an amount of taxes, consent to any extension or waiver of the limitation period applicable to any tax claim or assessment; or adopt or change any method of accounting in respect of taxes, in each case that would adversely affect the Target or any of its Related Bodies Corporate after the date of this deed; or
- (xxi) authorise, commit or agree to do any of the matters set out above.

## 6.2 Integration planning

- (a) Target must, and must cause each of the members of the Target Group to, provide Bidder and its Representatives with reasonable and timely access to information (subject to any existing confidentiality obligations owed to third parties or any other applicable legal restriction) and members of the executive leadership team of Target



as reasonably requested by Bidder and agreed by Target's chief executive officer at mutually convenient times for the sole purpose of:

- (i) facilitating Bidder to develop plans for Target's operations following implementation of the Scheme;
- (ii) implementation of the Transaction; or
- (iii) any other purpose agreed between the parties in writing,

provided that:

- (iv) to the extent practicable, information will be made available via the data room;
  - (v) nothing in this clause will require Target to provide information concerning Target's directors and management's consideration of the Scheme or any Competing Proposal; and
  - (vi) it does not, in the reasonable opinion of Target, result in unreasonable disruptions to the Target Group's business, breach any law or regulation, or require Target to make further disclosure to any other entity or Government Agency.
- (b) The obligations pursuant to clause 6.2(a) commence from the date of this deed and cease to operate upon a majority of the Target Board changing or withdrawing their recommendation that Target Shareholders vote in favour of the Scheme, or recommending a Competing Proposal.

### 6.3 Co-operation

- (a) In relation to communications with customers from whom consent to change of control is not sought or notification given under clause 6.4, the parties will agree an appropriate communication protocol under which those customers will be informed of the Transaction.
- (b) In relation to communications to Target staff and contractors, the parties will agree an appropriate communications protocol under which those persons will be notified of the Transaction.
- (c) Target must release Bidder and its Representatives from the provisions of the Confidentiality Agreement to the extent necessary to permit Bidder and its Representatives to hold discussions with Target Shareholders for the purposes of a proxy solicitation agent of Bidder conducting a proxy solicitation campaign in relation to the Scheme.

### 6.4 Material Contracts

- (a) As soon as practicable after the date of this deed, Target and Bidder must seek to identify any change of control, unilateral termination rights or similar provisions in Material Contracts to which any one or more members of the Target Group is a party that may be triggered or exercised by the implementation of the Scheme. In respect of those Material Contracts:
  - (i) Target and Bidder must, each acting reasonably, agree a proposed course of action and then Target (together with Bidder) must initiate contact with the relevant counterparties to request that they provide any consents or confirmations required or appropriate. No member of the Bidder Group or its Representatives may contact any such counterparties (other than in the ordinary course of their business) without Target or its Representatives prior written consent (which is not to be unreasonably withheld, conditioned or delayed);

- (ii) Target must cooperate with, and provide reasonable assistance to, Bidder to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties (but nothing in this clause requires Target or Bidder to incur material expense or amend the key commercial terms of any Material Contract); and
  - (iii) Bidder must use all reasonable endeavours to comply with any requirements of the counterparties that are required under the relevant Materials Contracts to be complied with by an assignee, transferee or new controller of Target or the other relevant member of Target Group.
- (b) Subject to Target complying with this clause 6.4, a failure by a member of Target Group to obtain any third party consent or confirmation will not constitute a breach of this deed by Target and will, together with any resulting consequences, be disregarded when assessing the operation of any other part of this deed.

## 7 Target Board recommendations

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- (a) Target represents and warrants as at the date of this deed to Bidder that it has been advised by each director of Target in office as at the date of this deed that he or she will:
- (i) recommend that Target Shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert expressing an opinion that the Scheme is in the best interests of Target Shareholders;
  - (ii) make a public statement stating that he or she will vote any Scheme Shares in his or her control in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert expressing an opinion that the Scheme is in the best interests of Target Shareholders;
  - (iii) not subsequently change, withdraw or modify that recommendation before the date the Scheme is approved by Target Shareholders in the absence of a Superior Proposal and subject to the Independent Expert expressing an opinion that the Scheme is in the best interests of Target Shareholders;
  - (iv) include in the Target's Announcement of the signing of this deed, and the Scheme Booklet, a statement to the effect of clauses 7(a)(i) and 7(a)(ii); and
  - (v) not make any public statement or take any other action that contradicts the recommendation of the Scheme by the directors of Target to the effect of the statement in clause 7(a)(i) in the absence of a Superior Proposal and subject to the Independent Expert expressing an opinion that the Scheme is in the best interests of Target Shareholders;

in each case, unless the Court specifically indicates at the First Court Hearing that it is not appropriate for a director to make a recommendation to vote in favour of the Scheme and that such recommendation of the director must be changed, qualified or withdrawn, in which circumstances that director may change, qualify or withdraw their recommendation.

- (b) Target must use its best endeavours to procure that the Target Board collectively, and the Target Board members individually, do not change, withdraw or modify its, his or her recommendation to vote in favour of the Scheme, unless:
- (i) in respect of a Target Board Member individually, the Court indicates at the First Court Hearing that it is not appropriate for a director to make a recommendation to vote in favour of the Scheme and that such recommendation of the director must be changed, qualified or withdrawn;

- (ii) the Independent Expert provides a report to Target (including either the Independent Expert's Report or any update or supplement to it) that concludes that the Scheme is not in the best interest of Scheme Participants; or
  - (iii) Target has received, other than as a result of a breach of clause 11, a Superior Proposal.
- (c) To the extent practicable, Target will consult with Bidder if it becomes aware of any circumstances (including the receipt or expected receipt of an unfavourable report from the Independent Expert) which may lead to one or more Target Board members changing, withdrawing or modifying his or her recommendation to vote in favour of the Scheme.

## **8 Public announcements and confidentiality**

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### **8.1 Transaction Announcement**

Immediately after the execution of this deed, Target and Bidder must issue Announcements in a form agreed between the parties.

### **8.2 Announcements with consent**

Subject to clauses 5.1(I), 8.3 and 8.4, each party must not make any Announcements in connection with the Scheme without the prior written approval of the other party, with such approval not to be unreasonably withheld.

### **8.3 Announcements required by law or ASX Listing Rules**

Subject to clause 8.4, where a party is required by applicable law, the ASX Listing Rules or any other applicable stock exchange regulation to make any announcement or to make any disclosure in connection with this deed (including its termination) or the Scheme, it may do so only after it has given the other party as much notice as is reasonably practicable in the context of any deadlines imposed by law or applicable requirement, but in any event prior notice, and has consulted with the other party as to (and has given the other party a reasonable opportunity to comment on) the form and content of that announcement or disclosure and used its best endeavours to restrict that disclosure to the greatest extent possible. Nothing in this clause requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable law, the ASX Listing Rules or any other stock exchange regulation.

### **8.4 Disclosure on termination of this deed**

The parties agree that, if this deed is terminated under clause 14, either party may disclose by way of Announcement to the ASX the fact that this deed has been terminated, where such disclosure is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed, and provided, where reasonably practicable, that party consults with the other party as to (and gives the other party a reasonable opportunity to comment on) the form and content of the announcement prior to its disclosure.

## 8.5 Takeover bid

Nothing in this Agreement or the Confidentiality Agreement precludes Bidder from making a takeover bid for Target at an offer price per Target Share which is at least equal to the Scheme Consideration. In these circumstances, Bidder may disclose any information regarding the Target Group (other than the identity of any client or customer of the Target Group which as at the date the Bidder makes a takeover bid for Target has not been publicly disclosed) in a bidder's statement under the Corporations Act for this purpose and without complying with the requirements of this clause 8.

## 8.6 Confidentiality Agreement

Except as set out in clauses 8.4 or 8.5, the parties acknowledge and agree that:

- (a) they continue to be bound by the Confidentiality Agreement after the date of this deed; and
- (b) the rights and obligations of the parties under the Confidentiality Agreement survive termination of this deed.

# 9 Representations and warranties

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## 9.1 Target representations and warranties

Target represents and warrants to Bidder (on Bidder's own behalf and separately as trustee or nominee for each of the other Bidder Indemnified Parties) that:

- (a) **information in Scheme Booklet:** the Target Scheme Booklet Information as at the date the Scheme Booklet is despatched to Target Shareholders:
  - (i) has been prepared and included in the Scheme Booklet in good faith;
  - (ii) complies in all material respects with the requirements of the Corporations Act, Corporations Regulations, ASX Listing Rules and relevant ASIC Regulatory Guides; and
  - (iii) be provided on the understanding that each of the Bidder Indemnified Parties will rely on that information for the purposes of preparing the Bidder Scheme Booklet Information and implementing the Scheme;
- (b) **information provided to the Independent Expert:** all information provided by Target to the Independent Expert, as at the date that information is provided, has been provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing its report for inclusion in the Scheme Booklet;
- (c) **Scheme Booklet:** no information (other than the Bidder Scheme Booklet Information, the Independent Expert's Report or any other report or letter issued to Target by a third party) contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Target Shareholders, will contain any statement which is materially misleading or deceptive (including by way of omission from that statement);
- (d) **updating information:** it will, as a continuing obligation, ensure that the Scheme Booklet (but in respect of Bidder Scheme Booklet Information, subject to Bidder complying with its obligations to update Bidder Scheme Booklet Information) will be updated by all such further or new information which may arise after the Scheme Booklet has been despatched until the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including because of any omission);

- (e) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation and each member of the Target Group is a corporation validly existing under the laws of its place of incorporation;
- (f) **power:** it has the full corporate power and lawful authority to execute and deliver this deed without seeking the consent of any other person or persons, and to perform or cause to be performed its obligations under this deed and to carry out the transactions contemplated by this deed;
- (g) **corporate authorisations:** it has taken all necessary corporate action to authorise the execution and delivery of this deed and the Scheme and, subject to Target Shareholders approving the Scheme, has taken all necessary corporate action to authorise the performance of this deed and the Scheme and to carry out the transactions contemplated by this deed and the Scheme;
- (h) **binding obligations:** this deed is valid and binding upon it and is enforceable in accordance with its terms;
- (i) **solvency:** no Insolvency Event has occurred in relation to any member of the Target Group;
- (j) **regulatory action:** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this deed;
- (k) **no default:** this deed does not conflict with or result in the breach of or default under any provision of Target's constitution or other constituent documents, any material term or provision of any material agreement, or any writ, order or injunction, judgement, law, rule, regulation or instrument to which Target is party or subject or of which it or any member of the Target Group is bound;
- (l) **no Prescribed Occurrence:** no Prescribed Occurrence has occurred;
- (m) **no Material Adverse Event:** as at the date of this deed, Target is not aware of any matter, event or circumstance which would constitute a Material Adverse Event;
- (n) **continuous disclosure:** Target is in compliance with its continuous disclosure obligations under Listing Rule 3.1 and, except as fairly disclosed in the Target Disclosed Information and as relates to Bidder's proposal to acquire Target, as at the date of this deed Target is not withholding from disclosure to ASX any material information in reliance on Listing Rule 3.1A;
- (o) **not misleading:** all Target Disclosed Information and all information that is provided to Bidder in writing during the preparation of the Scheme Booklet are, to the best of its knowledge, true and accurate and not misleading or deceptive (including by omission) in any material respect and does not omit any material matters required to make the information provided to Bidder not misleading (when read as a whole);
- (p) **issued securities as at date of this deed:** the securities on issue in the capital of Target as at the date of this deed are:
- (i) 285,988,462 Target Shares;
  - (ii) 111,538,464 Convertible Preference Shares;
  - (iii) NIL Target Performance Shares;
  - (iv) NIL Target Performance Rights; and
  - (v) 10,437,501 Target Options,

and the Target Group has not issued, or agreed to issue, any other securities or instruments which are still outstanding (or become outstanding) and may convert into Target Shares or any other securities in Target.

- (q) **diluted capital:** as at 8:00am on the Second Court Date, there will be on issue no more than:
- (i) in the event the Condition Precedent in paragraph 3.1(m) is satisfied, 397,526,926 Target Shares, NIL Convertible Preference Shares, NIL Target Performance Shares, NIL Target Performance Rights and 10,437,501 Target Options
  - (ii) in the event the Condition Precedent in paragraph 3.1(m) is not satisfied, 285,988,462 Target Shares, 111,538,464 Convertible Preference Shares, NIL Target Performance Shares, NIL Target Performance Rights and 10,437,501 Target Options

in each case (except to the extent any Target Performance Shares or Target Options have been cancelled or have vested before that date) or any other securities, options, performance rights or instruments will be outstanding or become outstanding or convertible into Target Shares;

- (r) **indebtedness:** except as fairly disclosed in the Target Disclosed Information, so far as Target is aware:
- (i) no member of the Target Group has incurred or agreed to incur any material indebtedness under any bank facility or other similar material arrangement providing financial accommodation of any description; and
  - (ii) other than the Transaction, no event has occurred which would entitle any person to require the repayment of any borrowings of the Target Group or require any borrowings of the Target Group to be repaid before their due date for any reason.
- (s) **no material undisclosed liability:** as at the date of this deed, other than as fairly disclosed in the Target Disclosed Information, there is no current or pending claim, dispute, demand, action, litigation, prosecution, arbitration, investigation, mediation or other proceeding which could reasonably be expected to result in an award, settlement, fine, penalty, order, loss or other liability to the Target Group of more than US\$100,000, nor to the knowledge of Target are there any threatened;
- (t) **customer relations:** as at the date of this deed, Target is not aware of any information relating to any customer of the Target Group that has or could reasonably be expected to give rise to a reduction of orders with the Target Group's business to an extent which exceeds 10% of the Target Group's revenues;
- (u) **compliance:** as at the date of this deed, so far as Target is aware, each member of the Target Group has complied in all material respects with all laws applicable to them and have all material licenses, authorisations and permits necessary under laws of the relevant jurisdiction for them to conduct the business of the Target Group as presently being conducted;
- (v) **incentives disclosed:** Target has fairly disclosed in the Target Disclosed Information all:
- (i) arrangements for the award of any payment, bonus, incentive, severance pay or pension contribution to all directors and senior management of the Target Group;
  - (ii) fees payable to third party advisers (in aggregate) in connection with the Transaction; and

- (iii) other agreements or arrangements entered into by any member of the Target Group pursuant to which consideration becomes payable to any person in connection with the Transaction,

that are in place, or are payable, as at the date of this deed;

- (w) **material contracts and leases:** Target has fairly disclosed to Bidder, in the Target Disclosed Information, all material contracts and leases as at the date of this deed that contain a change of control or unilateral termination rights which may be triggered by or exercised in response to the implementation of the Transaction; and
- (x) **drone technology:** the drone delivery system is part of the “Algo” dispatching system and utility technology and all intellectual property rights (including any copyright, trade marks, designs, patents, circuit layouts or inventions and other results of intellectual activity in any field whether or not registrable, registered or patentable) subsisting in these systems and technology are legally and beneficially owned by Target free and clear of any encumbrance, security interest or any other interest of a third party.

## 9.2 Target's indemnity

Target agrees with Bidder (on Bidder's own behalf and separately as trustee or nominee for each of the other Bidder Indemnified Parties) to indemnify and keep indemnified the Bidder Indemnified Parties from and against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which any of the Bidder Indemnified Parties may suffer, incur or become liable for by reason of any breach of any of the representations and warranties in clause 9.1 of this deed.

## 9.3 Bidder representations and warranties

Bidder represents and warrants to Target (on Target's own behalf and separately as trustee or nominee for each of the other Target Indemnified Parties) that:

- (a) **information in Scheme Booklet:** the Bidder Scheme Booklet Information as at the date the Scheme Booklet is despatched to Target Shareholders:
  - (i) has been prepared and included in the Scheme Booklet in good faith; and
  - (ii) complies in all material respects with the requirements of the Corporations Act, Corporations Regulations, ASX Listing Rules and relevant ASIC regulatory guides;
- (b) **information provided to the Independent Expert:** all information provided by Bidder to the Independent Expert, as at the date that information is provided, has been provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing its report for inclusion in the Scheme Booklet;
- (c) **Scheme Booklet:** the Bidder Scheme Booklet Information, as at the date the Scheme Booklet is despatched to Target Shareholders, will not to the extent included in the Scheme Booklet in the form provided and approved by Bidder contain any statement which is materially misleading or deceptive including by way of omission from that statement;
- (d) **updating Bidder Information:** it will, as a continuing obligation, provide to Target all such further or new information which may arise after the Scheme Booklet has been despatched until the Scheme Meeting which is necessary to ensure that the Bidder Scheme Booklet Information is not misleading or deceptive in any material respect (including because of any material omission);
- (e) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation;

- (f) **power:** it has the full corporate power and lawful authority to execute and deliver this deed without seeking the consent of any other person or persons, and to perform or cause to be performed its obligations under this deed and to carry out the transactions contemplated by this deed;
- (g) **corporate authorisations:** it has taken all necessary corporate action to authorise the execution and delivery of this deed and the Scheme and has taken all necessary corporate action to authorise the performance of this deed and the Scheme and to carry out the transactions contemplated by this deed and the Scheme;
- (h) **binding obligations:** this deed is valid and binding upon it and is enforceable in accordance with its terms;
- (i) **solvency:** no Insolvency Event has occurred in relation to any member of the Bidder Group;
- (j) **regulatory action:** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this deed;
- (k) **no default:** this deed does not conflict with or result in the breach of or default under any provision of Bidder's constitution or other constituent documents, any material term or provision of any material agreement, or any writ, order or injunction, judgement, law, rule, regulation or instrument to which Bidder is party or subject or of which it or any member of the Bidder Group is bound;
- (l) **not misleading:** all Bidder Disclosed Information and all information that is provided to Target in writing during the preparation of the Scheme Booklet are, to the best of its knowledge, accurate and not misleading in any material respect and does not omit any material matters required to make the information provided to Target not misleading (when read as a whole); and
- (m) **Scheme Consideration:** by 8:00am on the Second Court Date, Bidder will have available to it sufficient cash amounts (whether from internal cash resources or external funding (including debt and equity financing) arrangements or a combination of both) to satisfy Bidder's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

#### 9.4 Bidder's indemnity

Bidder agrees with Target (on Target's own behalf and separately as trustee or nominee for each of the other Target Indemnified Parties) to indemnify and keep indemnified the Target Indemnified Parties from and against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which any of the Target Indemnified Parties may suffer, incur or become liable for by reason of any breach of any of the representations and warranties in clause 9.3 of this deed.

#### 9.5 Timing

Each representation and warranty made or given under clauses 9.1 and 9.3 is given at the date:

- (a) of this deed;
- (b) the Scheme Booklet is despatched to Target Shareholders;
- (c) the Scheme Meeting is held; and
- (d) of the Second Court Date,

unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.



## 9.6 Reliance by parties

Each party (**Representor**) acknowledges that:

- (a) in entering into this deed the other party has relied on the representations and warranties provided by the Representor under this clause 9;
- (b) it has not entered into this deed in reliance on any warranty or representation made by or on behalf of the other party except those warranties and representations set out in this deed. This acknowledgment does not prejudice the rights any party may have in relation to the Target Scheme Booklet Information, the Bidder Scheme Booklet Information, or any information filed by the other party with the ASX or ASIC; and
- (c) neither Bidder nor Target, nor their respective Representatives, nor any other person acting on behalf of or associated with them, has made any representation, given any advice or given any warranty or undertaking, promise or forecast of any kind in relation to the business of either the Bidder Group or the Target Group, including in relation to future matters, including future or forecast costs, prices, revenues or profits.

## 9.7 Notifications

Each party will promptly advise the other party in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 9.

## 9.8 Status of representations and warranties

Each representation and warranty in this clause 9:

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

## 9.9 Status of indemnities

- (a) Each indemnity in this deed (including those in clauses 9.2 and 9.4):
  - (i) is severable;
  - (ii) is a continuing obligation;
  - (iii) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
  - (iv) survives the termination of this deed.
- (b) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.

## 9.10 Claims

The liability of the Target under a Claim for any loss or amount described below will be reduced to the extent that such loss or amount:

- (a) **pre-completion actions:** arises from an act or omission by or on behalf of a Target Group member before 8:00am on the Second Court Date that was done or made with the written consent of Bidder or at the written direction or instruction of Bidder;
- (b) **no double Claim:** has actually been recovered by Bidder under another Claim or from some other person;

- (c) **satisfied at no cost:** has been satisfied by Bidder without cost or liability to Bidder; or
- (d) **forecast:** arises in connection with any forecast, estimate, projection or other financial statement made or given by Target which relates to the future.

#### 9.11 Disclosures

Each of the warranties provided by each party is subject to matters fairly and accurately disclosed in the Target Disclosed Information or the Bidder Disclosed Information (as the case may be).

#### 9.12 Mitigation of loss

If Bidder becomes aware of a breach of a warranty in clause 9.1 by Target, Bidder must, to the extent it is within Bidder's control, take reasonable actions to mitigate any loss for which it is entitled to recovery, provided that this does not mean and is not construed to mean that Bidder must litigate or initiate any action or Claim in order to mitigate losses, incur any costs in taking action or do, or omit to do, anything which may prejudice the ability or right of Bidder, a Bidder Group member or a Target Group member to recover under any available insurance.

#### 9.13 Exclusion of liability

To the maximum extent permitted by law all terms, conditions, warranties, indemnities and statements (whether express, implied, written, oral, collateral, statutory or otherwise) which are not expressly set out in this deed are excluded and, to the extent they cannot be excluded, Target disclaims all liability in relation to them.

#### 9.14 Bidder acknowledgements

Bidder acknowledges and agrees that:

- (a) it has received independent and professional advice (including legal, accounting, tax and/or financial advice) concerning this deed;
- (b) it has had the opportunity to conduct a due diligence review in relation to the Target Group (but makes no acknowledgement in relation to the adequacy of those enquiries or sufficiency of information disclosed by Target); and
- (c) except as expressly set out in this deed and except in the case of fraud or wilful misconduct, Bidder has not relied on any statement or representation made, any advice, warranty, undertaking, promise or forecast given or any conduct of any kind engaged in, in relation to the Target Shares, the Target Group, the Target Disclosed Information or this deed.

#### 9.15 No impact on Target Break Fee

The parties acknowledge and agree that nothing in clauses 9.10 to 9.14 will affect the Bidder's right to be paid the Target Break Fee in accordance with clause 12.

### 10 Releases

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#### 10.1 Target Indemnified Parties

- (a) Bidder:
  - (i) releases its rights; and
  - (ii) agrees with Target that it will not make, and that after the Implementation Date it will procure that each member of the Target Group does not make, any Claim,

against any Target Indemnified Party (other than Target and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:

- (iii) any breach of any representations and warranties of Target or any other member of the Target Group in this deed or any breach of any covenant given by Target in this deed;
- (iv) any disclosures containing any statement which is false or misleading whether in content or by omission; or
- (v) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has not acted in good faith, engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 10.1(a) limits Bidder's rights to terminate this deed under clause 14.

- (b) Clause 10.1(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Target receives and holds the benefit of this clause 10.1 to the extent it relates to each Target Indemnified Party as trustee for each of them.

## 10.2 Bidder Indemnified Parties

- (a) Target:

- (i) releases its rights; and
- (ii) agrees with Bidder that it will not make a Claim,

against any Bidder Indemnified Party (other than Bidder) as at the date of this deed and from time to time in connection with:

- (iii) any breach of any representations, covenants and warranties of Bidder or any other member of the Bidder Group in this deed or any breach of any covenant given by Bidder in this deed;
- (iv) any disclosures containing any statement which is false or misleading whether in content or by omission; or
- (v) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Bidder Indemnified Party has not acted in good faith, engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this clause 10.2(a) limits Target's rights to terminate this deed under clause 14.

- (b) Clause 10.2(a) is subject to any Corporations Act restriction and will be read down accordingly.
- (c) Bidder receives and holds the benefit of this clause 10.2 to the extent it relates to each Bidder Indemnified Party as trustee for each of them.

## 10.3 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and Implementation occurring, Bidder undertakes in favour of Target and each other Target Indemnified Party that it will:
  - (i) subject to clause 10.3(e), for a period of 7 years from the Implementation Date, ensure that the constitutions of Target and each other member of the Target Group continue to contain standard rules that provide for each

company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Target Group; and

- (ii) procure that Target and each other member of the Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and, without limiting the foregoing, ensure that directors' and officers' runoff insurance cover for such directors and officers is maintained, subject to clause 10.3(e), for a period of 7 years.
- (b) Each party acknowledges that, notwithstanding any other provision of this deed, Target may, prior to the Implementation Date, enter into an arrangement to secure directors and officers run-off insurance for up to such 7 year period (**D&O Policy**) provided that Target will use reasonable endeavours to obtain the most attractive commercial terms for the D&O Policy from a reputable insurer and that the D&O Policy is approved in writing by Bidder (acting reasonably).
- (c) The undertakings contained in clause 10.3(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (d) Target receives and holds the benefit of clause 10.3(a), to the extent it relates to the other Target Indemnified Parties, as trustee for each of them.
- (e) The undertakings contained in clause 10.3(a) are given until the earlier of the end of the relevant period specified in clause 10.3(a) or the relevant member of the Target Group Member ceasing to be part of the Bidder Group.

## 11 Exclusivity

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### 11.1 Termination of existing discussions

Target represents and warrants that, as at the time of execution of this deed, it and its Representatives (including for the avoidance of doubt any Financial Advisers) are not as at the date of this deed in any negotiations or discussions, and has ceased any existing negotiations or discussions, with any Third Party (whether individually or together with one or more associates) in relation to, or which could reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Proposal.

### 11.2 No shop restriction

During the Exclusivity Period, Target and its Subsidiaries must not, and must ensure that each of their Representatives (including for the avoidance of doubt any Financial Advisers) do not, except with the prior written consent of Bidder, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Proposal; or
- (b) communicate to any person an intention to do any of the things referred to in clause 11.2(a).

### 11.3 No talk restriction

Subject to clause 11.6, during the Exclusivity Period, Target must not, must procure that its Subsidiaries do not, and must ensure that each of their Representatives (including for the avoidance of doubt any Financial Advisers) do not, except with the prior written consent of Bidder, directly or indirectly enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in

relation to, or that may reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target, its Subsidiaries or any of its or their Representatives; or
- (b) the Competing Proposal has been publicly announced.

#### 11.4 No due diligence

Without limiting the general nature of clause 11.3, but subject to clause 11.6, during the Exclusivity Period, Target must not, must procure that its Subsidiaries do not, and must ensure that each of their Representatives (including for the avoidance of doubt any Financial Advisers) do not except with the prior written consent of Bidder, make available to any Third Party or permit any Third Party to receive any non-public information relating to any member of the Target Group in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, or otherwise solicit, initiate, facilitate or encourage any Third Party to undertake due diligence on Target or any member of the Target Group.

#### 11.5 Notification of approach

Subject to clause 11.6, during the Exclusivity Period, Target must promptly (but in any event within 3 Business Days) notify Bidder in writing if any member of the Target Group or any of their Representatives become aware of any approach by any Third Party (whether direct or indirect, solicited or unsolicited and in writing or otherwise) to take any action of a kind that would breach its obligations under clause 11.2, 11.3 or 11.4 (or that would breach its obligations under clause 11.2, 11.3 or 11.4 if it were not for clause 11.6), and Target must:

- (a) provide Bidder with information in all material respects of oral and written communication with the Third Party, and a description of the material terms and conditions of any actual, proposed or potential Competing Proposal (including the details of the proponent making or proposing the relevant actual, proposed or potential Competing Proposal); and
- (b) promptly (but in any event within 3 Business Days) provide all information as is reasonably necessary to keep Bidder informed in all material respects of all oral or written communications with the Third Party regarding, and the status and material details of, any actual, proposed or potential Competing Proposal as set out in clause 11.6.

#### 11.6 Exceptions

The obligations in clause 11.3, clause 11.4 and clause 11.5 do not apply to the extent that they restrict the Target Group, the Target Board or any of their Representatives from taking any action in respect of a bona fide written Competing Proposal for Target or the Target Group which was not encouraged, solicited, invited, facilitated or initiated by Target in contravention of clause 11.2, or to the extent that they require Target to provide the notification referred to in clause 11.5, where:

- (a) the Target Board, acting in good faith, after consulting with and considering written advice from its external legal advisers and Financial Advisers, determines that not undertaking that act or providing the relevant information would, or would be likely to, involve a breach of the fiduciary or statutory duties owed by any director of the Target Group; or
- (b) it would otherwise be unlawful.

#### 11.7 Matching right

- (a) Without limiting clauses 11.2 and 11.3 but subject to clause 11.6, during the Exclusivity Period:

(i) Target must not enter into any legally binding agreement, arrangement or understanding pursuant to which any Third Party, Target or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and

(ii) Target must use its best endeavours to procure that none of its directors publicly recommend an actual, proposed or potential Competing Proposal,

unless:

(iii) the Target Board, acting in good faith, after consulting with and considering written advice from its external legal advisers and Financial Advisers, and in order to satisfy what the Target Board considers to be its fiduciary or statutory duties, determines that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal;

(iv) a prior written notice is sent promptly (and in any event at least five clear Business Days prior to taking any action referred to in clause 11.7(a)(i)) from Target to Bidder stating:

(A) its intention to take such proposed action referred to in clause 11.7(a)(i) and its reasons for doing so;

(B) that it is relying on an exception out in clause 11.6; and

(C) a summary of material terms and conditions of such Competing Proposal (including the details of the proponent making or proposing the relevant actual, proposed or potential Competing Proposal); and

(b) Any information provided pursuant to clause 11.7(a) will be provided subject to the terms of the Confidentiality Agreement.

(c) If clause 11.7(a) overrides the restrictions in clause 11.4, Target must not provide any confidential information to a Third Party, before the Third Party has entered into a written agreement in favour of Target regarding the use and disclosure of the confidential information by the Third Party and that restricts the Third Party's ability to solicit the employees of Target and its Related Bodies Corporate.

(d) During the period of at least five clear Business Days referred to in clause 11.7(a)(iv), Bidder will have the right to offer to amend the terms of the Scheme (**Counterproposal**) so that the terms of the Scheme (as amended) would provide an equivalent or superior outcome for the Target Shareholders than the applicable Competing Proposal.

(e) The Target Board must consider any such Counterproposal and, if the Target Board determines, acting in good faith and after having taken advice from its external legal advisers and Financial Advisers:

(i) the Counterproposal is capable of being completed, taking into account all aspects of the Counterproposal, including its conditions; and

(ii) would, if completed substantially in accordance with its terms, be more or no less favourable to the Target Shareholders than the Competing Proposal viewed in aggregate, taking into account a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal,

then Target and Bidder must use their best endeavours to:

(iii) agree the amendments to the Transaction Documents that are reasonably necessary to reflect the Counterproposal (including any amendments to the Scheme Consideration that are reasonably necessary to reflect the Counterproposal); and

- (iv) enter into one or more appropriate amended agreements to give effect to those amendments and to implement the Counterproposal,

in each case as soon as reasonably practicable, and Target must use its best endeavours to procure that each of its directors makes a public statement recommending the Counterproposal to the Target Shareholders and not the applicable Competing Proposal.

- (f) Any material modification to any Competing Proposal (which will include any material 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 the parties must comply with their obligations under this clause 11.6.

#### 11.8 Normal provision of information

Subject to the Confidentiality Agreement, nothing in this clause 11 prevents a party from:

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information to its auditors, advisers, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law or any Government Agency; or
- (e) making presentations to brokers, portfolio investors, analysts and other third parties in the ordinary course of business.

#### 11.9 Legal advice

Target represents and warrants to Bidder that:

- (a) prior to entering into this deed, it has received legal advice on this deed and the operation of this clause 11; and
- (b) it and the Target Board consider this clause 11 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 11 in order to secure the significant benefits to it, and the Target Shareholders resulting from the transactions contemplated hereby.

### 12 Break fees

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#### 12.1 Payment of costs

- (a) The parties believe that the Scheme will provide benefits to Target, Bidder and their respective shareholders, and acknowledge that if they enter into this deed and the Scheme is subsequently not implemented, both parties will incur significant costs.
- (b) In the circumstances referred to in clause 12.1(a):
  - (i) both parties requested that provision be made for the payments referred to in clauses 12.2 and 12.3, without which neither party would have entered into this deed or otherwise agreed to assist in implementing the Scheme;
  - (ii) the Target Board and the Bidder Board believe that it is appropriate for both parties to agree to the payments referred to in clauses 12.2 and 12.3 in order to secure each other's participation; and
  - (iii) each party acknowledges that it has received advice from its external legal advisers in relation to this deed and the operation of this clause 12.

- (c) Target and Bidder acknowledge that the Target Break Fee and the Bidder Break Fee respectively are each intended to be compensatory in nature and represents a genuine and reasonable estimate of cost and loss that would be suffered by the other if this deed was entered into and the Scheme is subsequently not implemented, including to compensate the other for the following:
- (i) all advisory and other transaction costs (including costs of advisers other than success fees);
  - (ii) costs of management and directors' time;
  - (iii) all out of pocket expenses;
  - (iv) all commitment fees and other financing costs (whether associated with debt or equity finance); and
  - (v) reasonable opportunity costs in pursuing the Transaction or not pursuing other alternative acquisitions or strategic initiatives.

## 12.2 Target Break Fee

- (a) Subject to clauses 12.2(b), 12.2(c) and 12.4(a), Target must pay Bidder the Target Break Fee in accordance with clause 12.5, without withholding or set off, if:
- (i) any member of the Target Board:
    - (A) fails to state that they consider the Scheme to be in the best interests of Target Shareholders;
    - (B) fails to recommend that Target Shareholders approve the Scheme; or
    - (C) publicly changes (including by attaching qualifications to) or withdraws that statement or recommendation,
 in each case, other than where:
    - (D) the Independent Expert has concluded in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders other than where the reason for that conclusion is a Competing Proposal (including any update to its report); or
    - (E) the Court indicates at the First Court Hearing that it is not appropriate for that member of the Target Board to make a recommendation to vote in favour of the Scheme and that such recommendation of that member of the Target Board should be changed, qualified or withdrawn;
  - (ii) a Competing Proposal for Target is announced or made during the Exclusivity Period and is publicly recommended, promoted or otherwise endorsed by the Target Board or by a majority of the directors of Target during the Exclusivity Period;
  - (iii) a Competing Proposal for Target is announced or made during the Exclusivity Period and is completed at any time prior to the first anniversary of the date of this deed and, as a result, a Third Party:
    - (A) acquires control of Target or the Target Group within the meaning of section 50AA of the Corporations Act, disregarding sub-section 50AA(4); or
    - (B) acquires a Relevant Interest in, becomes the holder of, or otherwise acquires, directly or indirectly, 20% or more of Target Shares and that acquisition is unconditional and free of defeating conditions; or



- (C) acquires or becomes the holder of, or otherwise, acquires an economic interest in or control of 20% or more by value of the business of the Target Group (or acquires an equivalent shareholding or economic interest in Target pursuant to the implementation of a dual-listed company structure or reverse takeover, or acquires the whole or a substantial part or a material part of the business or assets of the Target Group); or
- (iv) Bidder terminates this deed in accordance with clause 14.1(b) or 14.3(d); or
- (v) a Material Adverse Event or a Prescribed Occurrence occurs between the date of this deed and 8:00am on the Second Court Date and Bidder terminates this deed in accordance with its terms prior to the Implementation Date.
- (b) Despite any other term of this deed, the Target Break Fee is only payable once.
- (c) Despite any other term of this deed, the Target Break Fee will not be payable to Bidder if:
  - (i) the Scheme becomes Effective notwithstanding the occurrence of any event in clause 12.2(a); or
  - (ii) provided it itself is not in breach of this deed, Target is entitled to terminate this deed under clause 14.1(b) or 14.1(c).

For the avoidance of doubt, the Target Break Fee will not be payable merely by reason that the Scheme is not approved by Target Shareholders at the Scheme Meeting.

#### 12.3 Bidder Break Fee

- (a) Subject to clauses 12.3(b), 12.3(c) and 12.4(b), Bidder must pay Target the Bidder Break Fee in accordance with clause 12.5, without withholding or set off, if:
  - (i) Bidder breaches a material term of this deed; or
  - (ii) provided it itself is not in breach of this deed, Target terminates this deed in accordance with clause 14.1(b).
- (b) Despite any other term of this deed, the Bidder Break Fee is only payable once.
- (c) Despite any other term of this deed, the Bidder Break Fee will not be payable to Target if:
  - (i) the Scheme becomes Effective notwithstanding the occurrence of any event in clause 12.3(a); or
  - (ii) Bidder is entitled to terminate this deed under clause 14.1(b), 14.1(c) or if a Material Adverse Event or a Prescribed Occurrence occurs.

#### 12.4 Compliance with law

- (a) If a court or the Takeovers Panel determines that any part of the Target Break Fee:
  - (i) constitutes or would, if performed, constitute:
    - (A) a breach of the fiduciary or statutory duties of the Target Board; or
    - (B) unacceptable circumstances within the meaning of the Corporations Act; or
  - (ii) is unenforceable or would, if paid, be unlawful for any reason,

then Target will not be obliged to pay such part of the Target Break Fee and, if such fee has already been paid, then Bidder must within 5 Business Days after receiving written demand from Target refund that part of the Target Break Fee to Target.

- (b) If a court or the Takeovers Panel determines that any part of the Bidder Break Fee:
  - (i) constitutes or would, if performed, constitute:
    - (A) a breach of the fiduciary or statutory duties of the Bidder Board; or
    - (B) unacceptable circumstances within the meaning of the Corporations Act; or
  - (ii) is unenforceable or would, if paid, be unlawful for any reason,
 then Bidder will not be obliged to pay such part of the Bidder Break Fee and, if such fee has already been paid, then Target must within 5 Business Days after receiving written demand from Bidder refund that part of the Bidder Break Fee to Bidder.
- (c) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in clauses 12.4(a) or 12.4(b).

## 12.5 Satisfaction of payment obligation

- (a) Target must pay Bidder the Target Break Fee, if it is payable pursuant to clause 12.2(a), within 5 Business Days after receiving a written notice from Bidder setting out the relevant circumstances and requiring payment of the Target Break Fee, except to the extent that a finding has been made by a court, Takeovers Panel, regulatory authority or tribunal as described in clause 12.4(a), or an application has been made to such a body seeking such a finding.
- (b) Bidder must pay Target the Bidder Break Fee, if it is payable pursuant to clause 12.3(a), within 5 Business Days after receiving a written notice from Target setting out the relevant circumstances and requiring payment of the Bidder Break Fee, except to the extent that a finding has been made by a court, Takeovers Panel, regulatory authority or tribunal as described in clause 12.4(b), or an application has been made to such a body seeking such a finding.
- (c) A written notice requiring payment of the Target Break Fee or the Bidder Break Fee, as applicable, may only be made after the Scheme fails to become Effective by the End Date or this deed is terminated in accordance with its terms.
- (d) A party's obligation to make the payment referred to in clauses 12.5(a) or 12.5(b) will be satisfied by the payment of the relevant amount in immediately available funds to the account nominated by the other party for the purposes of this clause.
- (e) For the avoidance of doubt, if any portion of the Target Break Fee or Bidder Break Fee is found to be unacceptable or unenforceable in accordance with clause 12.4, the relevant party must pay the other party that remaining portion of the Target Break Fee or Bidder Break Fee (as applicable) which is still acceptable or enforceable within 10 Business Days of a determination to that effect.

## 12.6 Other claims

The maximum aggregate amount that a party is required to pay in relation to this deed (including any breach of this deed by a party), other than in the case of wilful misconduct designed to frustrate the Transaction or fraud, is the Target Break Fee or the Bidder Break Fee (as applicable) and in no event will the aggregate liability of a party under or in connection with this deed exceed the Target Break Fee or the Bidder Break Fee (as applicable).

## 12.7 Exclusive remedy

Notwithstanding any other provision under this deed, where the Target Break Fee or the Bidder Break Fee (as applicable) is paid to a party under this deed (or would be payable if a demand was made), a party cannot make any claim against the other party or the Target Indemnified Parties or the Bidder Indemnified Parties (as applicable) in relation to any event or occurrence referred to in clauses 12.2 and 12.3.

## 13 Withholding Tax Ruling

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### 13.1 Lodgement of application by Target

(a) Target must:

- (i) prepare a draft Withholding Tax Application and provide to Bidder that draft Withholding Tax Application for its review and comment promptly following execution of this deed (and within sufficient time as to afford the Bidder at least 1 day to review and provide its comments to Target on the draft Withholding Tax Application);
- (ii) prepare and lodge a Withholding Tax Application (in a form approved by Bidder, acting reasonably) with the ITA by no later than the WTR Application Deadline;
- (iii) provide to Bidder the draft of the Withholding Tax Ruling (including any subsequent revised drafts and the final draft), prior to its conclusion and signing by the ITA, for Bidder's review and comment within sufficient time as to afford the Bidder at least 2 days to review and provide its comments to Target on any such draft Withholding Tax Ruling;
- (iv) use its best endeavours to obtain the Withholding Tax Ruling as expeditiously as possible following execution of this deed and in any event before the WTR Target Date, including by taking all steps required by, and responding to all requests for information from, the ITA at the earliest practicable time; and
- (v) following lodgement of the Withholding Tax Application, in good faith and on a timely basis:
  - (A) keep Bidder informed of progress in relation to the Withholding Tax Ruling and of any material matters raised by, or conditions or other arrangements proposed by, or to, the ITA in respect of the Withholding Tax Ruling;
  - (B) provide copies of all documents provided to and received from the ITA, on a confidential basis, to Bidder, in connection with the Withholding Tax Ruling; and
  - (C) consult with Bidder in advance of all material communications with the ITA and enable the Bidder (or its representatives) to participate in all discussions and meetings with the ITA (including those held by telephone or other electronic means) in respect of the Withholding Tax Ruling.

### 13.2 Time for obtaining Withholding Tax Ruling

By no later than 5.00pm on the WTR Target Date, Target must notify Bidder in writing whether it has received the Withholding Tax Ruling.

### 13.3 Inconsistency

If the Withholding Tax Ruling is obtained prior to the WTR Deadline, but is:

- (a) on terms different to those contemplated in this deed, the Scheme and the Deed Poll; or
- (b) withdrawn, revoked or varied by the ITA at any time prior to the Second Court Date, the parties must, for a period of 10 days from:
  - (c) in respect of clause 13.3(a), the date of receipt of the Withholding Tax Ruling; or
  - (d) in respect of clause 13.3(b), the date of receipt by a party of the notification by the ITA of the withdrawal, revocation or variation of the Withholding Tax Ruling,

negotiate in good faith any amendments to this deed, the Scheme and the Deed Poll necessary or desirable for the purposes of implementation of the Scheme consistent with the terms of the Withholding Tax Ruling or without the Withholding Tax Ruling (as the case may be).

## 14 Termination

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### 14.1 Termination by either party

Either party (**terminating party**) may terminate this deed by notice to the other:

- (a) in accordance with clause 3.6;
- (b) at any time before 8:00am on the Second Court Date if the other party is in material breach of any clause of this deed (including a material breach of a representation or warranty given by the other party under clause 9 but excluding clause 6.1(b)), provided that:
  - (i) the terminating party has given notice to the other party setting out the relevant circumstances and stating an intention to terminate this deed if the breach is not remedied; and
  - (ii) the breach is not remedied to the terminating party's reasonable satisfaction within 10 Business Days (or any shorter period ending at 5:00pm on the last Business Day before the Second Court Date) from the time such notice is given;
- (c) the Withholding Tax Ruling is not obtained by WTR Deadline;
- (d) if amendments to this deed, the Scheme or Deed Poll are not agreed within the timeframe contemplated in clause 13.3, provided that party is not in breach of its obligations under this deed;
- (e) if such termination is mutually agreed upon by the other party; or
- (f) if the Scheme has not become Effective by the End Date.

### 14.2 Termination by Target

Target may terminate this deed at any time before 8:00am on the Second Court Date by notice in writing to Bidder if:

- (a) the Target is itself not in breach of this deed;
- (b) the Target Break Fee is paid; and
- (c) a Target Board member:
  - (i) withdraws or adversely revises or modifies his or her recommendation to Target Shareholders to vote in favour of the Scheme; or

- (ii) determines and publicly announces that a Competing Proposal is a Superior Proposal, or recommends a Competing Proposal.

#### 14.3 Termination by Bidder

Bidder may terminate this deed at any time before 8:00am on the Second Court Date by notice in writing to Target if:

- (a) Target is in breach of the representations and warranties given in clauses 9.1(p) or 9.1(q) (other than a breach arising as a result of nominal variations in the number of Target Shares, Target Performance Shares or Target Options on issue);
- (b) Target is in breach of the obligations in clause 6.1(b)(iii), 6.1(b)(xviii) or 6.1(a)(iii)(H);
- (c) Target is in breach of the obligations in clause 6.1(b), excluding clauses 6.1(b)(iii) and 6.1(b)(xviii), and:
  - (i) Bidder has given notice to the Target setting out the relevant circumstances and stating an intention to terminate this deed if the breach is not remedied; and
  - (ii) the breach is not remedied to the Bidder's reasonable satisfaction within 5 Business Days (or any shorter period ending at 5:00pm on the last Business Day before the Second Court Date) from the time such notice is given;
- (d) the WTR Application is not lodged by Target with the ITA by the WTR Application Deadline and:
  - (i) Bidder has given notice to the Target setting out the relevant circumstances and stating an intention to terminate this deed if the breach is not remedied; and
  - (ii) the breach is not remedied to the Bidder's reasonable satisfaction within 3 Days from the time such notice is given; or
- (e) in any circumstance (including circumstances permitted by clause 11.7) where Target enters into a definitive agreement to implement a Competing Proposal.

#### 14.4 Notice of breach

Each party must give notice to the other as soon as practicable after it becomes aware of a breach by it of this deed (including in respect of any representation or warranty).

#### 14.5 Termination right

Any right to terminate this deed ceases at the earlier of:

- (a) the moment when the Scheme becomes Effective; and
- (b) where expressed, the deadline specified in the relevant termination right set out in this clause 14.

#### 14.6 Effect of termination

In the event of termination of this deed by either Bidder or Target pursuant to clauses 14.1, 14.2 or 14.3, this deed will have no further force or effect and the parties will have no further obligations under this deed, provided that:

- (a) this clause 14 and clauses 1, 8.4, 8.6, 9, 12, 15, 16 and 17 will survive termination; and
- (b) each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this deed.

## 15 GST

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This clause 15 applies if a party to this deed is, or becomes, liable to pay GST regarding any Supply of goods, services or anything else under this deed.

### 15.1 Definitions

Capitalised expressions which are not defined in this deed but which have a defined meaning in the GST Act have the same meaning in this clause.

### 15.2 GST payable in addition to consideration

If a party (**Supplier**) makes a Taxable Supply under this deed, then the Recipient of the Taxable Supply, must pay the Supplier the GST payable on the Taxable Supply in addition to the consideration for the Supply.

### 15.3 Tax Invoice

Within 5 Business Days of a Supply being made under this deed, the Supplier must provide to the Recipient a Tax Invoice or other documentation that complies with the requirements for a valid Tax Invoice under the GST Act.

### 15.4 Payment of GST

Subject to the Supplier issuing a Tax Invoice to the Recipient as required under clause 15.3, the Recipient must pay the GST on the Taxable Supply under this deed to the Supplier at the same time as the Recipient pays the consideration for the Supply to the Supplier.

### 15.5 Reimbursement or indemnity

Despite any other provision of this deed, if the whole or part of any consideration under this deed is a reimbursement or an indemnity to one party of an expense, loss, outgoing or liability incurred or to be incurred by the other party, the consideration excludes any GST included in such expense, loss, outgoing or liability incurred or to be incurred for which the other party can claim an Input Tax Credit. The other party will be assumed to be entitled to a full Input Tax Credit unless it can establish otherwise.

### 15.6 Adjustment Events

If an Adjustment Event occurs regarding a Supply under this deed, the Supplier must issue to the Recipient an Adjustment Note regarding the Adjustment Event within 5 Business Days of the Supplier becoming aware of the Adjustment Event.

### 15.7 Additional amount

If the Adjustment Note gives effect to an Increasing Adjustment, the Recipient must pay to the Supplier the GST component of the Increasing Adjustment not later than the 14th Business Day of the month following the month in which the Adjustment Note is issued to the Recipient.

### 15.8 Credit or refund

If the Adjustment Note gives effect to a Decreasing Adjustment, the Supplier must pay to the Recipient the GST component of the Decreasing Adjustment not later than the 14th Business Day of the month following the month in which the Adjustment Note is issued to the Recipient.

## 16 Notices

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### 16.1 Service of notices

A notice, consent, approval or other communication under this deed (**Notice**) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in clause 16.3; and
- (b) delivered by personal service, sent by pre-paid mail or sent by email, or any other lawful means.

## 16.2 Effect of receipt

- (a) A Notice given in accordance with this clause 16 is treated as having been given and received:
  - (i) if personally delivered, on delivery;
  - (ii) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia);
  - (iii) if emailed, when a delivery confirmation report is received by the sender which records the time that email was delivered to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee),

except that, if the delivery, receipt or communication is after 5:00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9:00am on the next Business Day.

## 16.3 Addresses

- (a) The particulars for delivery of Notices are initially:

### Target

Name: Dragontail Systems Limited

Attention: The Board of Directors

Address: Level 24, 44 St Georges Terrace, Perth WA 6000, Australia

Email: ido.levanon@dragontailsystems.com

with a copy to:

Name: Thomson Geer

Attention: Jason Marcus and Helen Jin

Address: Level 14, 60 Martin Place Sydney NSW 2000 Australia

Email: jmarcus@tglaw.com.au  
hjin@tglaw.com.au

### Bidder

Name: Vinod Mahboobani

Attention: Chief Legal Officer

Address: 7100 Corporate Drive  
Plano Texas 75024  
United States of America

Email: Vinod.Mahboobani@yum.com

with a copy to:

Name: Baker McKenzie

Attention: Kate Jefferson and Greg Smith

Address: Tower One - International Towers Sydney  
Level 46 - 100 Barangaroo Avenue  
Barangaroo NSW 2000  
Australia

Email: kate.jefferson@bakermckenzie.com  
greg.smith@bakermckenzie.com

- (b) A party may change its address for the delivery of Notices by notifying that change to each other party. The notification is effective on the later of the date specified in the Notice or five Business Days after the Notice is given.

## **17 General**

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### **17.1 Stamp duty**

Bidder must pay all stamp duty (including any penalties) payable on or arising out of this deed and any document required by or contemplated under this deed.

### **17.2 Legal costs**

Except as expressly stated otherwise in this deed, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this deed.

### **17.3 Governing law and jurisdiction**

- (a) This deed is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (c) Bidder irrevocably appoints Baker McKenzie to be its agent for service of process in connection with this deed and agrees that any service document in connection with this deed may be effectively served on it by service on its agent if sent to Kate Jefferson at Baker McKenzie, Tower One - International Towers Sydney, Level 46, 100 Barangaroo Avenue, Barangaroo, NSW, 2000, Australia.

### **17.4 Severability**

- (a) Subject to clause 17.4(b), if a provision of this deed is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this deed.



- (b) Clause 17.4(a) does not apply if severing the provision:
  - (i) materially alters the:
    - (A) scope and nature of this deed; or
    - (B) the relative commercial or financial positions of the parties; or
  - (ii) would be contrary to public policy.

#### 17.5 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this deed and to perform its obligations under it.

#### 17.6 Consents

Except as expressly stated otherwise in this deed, a party may give or withhold consent to be given under this deed and is not obliged to give reasons for doing so.

#### 17.7 Rights cumulative

Except as expressly stated otherwise in this deed, the rights, powers and remedies of a party under this deed are cumulative and are in addition to any other rights of that party.

#### 17.8 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (c) Any waiver or consent given by any party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (d) No waiver of a breach of any term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

#### 17.9 Survival

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

#### 17.10 Amendment

This deed may only be varied or replaced by a deed executed by each of the parties.

#### 17.11 Assignment

- (a) A party must not assign, novate or otherwise transfer any its interests, rights or obligations under this deed without the prior written consent of the other party.
- (b) Any purported dealing in breach of this clause is of no effect.

#### 17.12 Counterparts

This deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one deed. Satisfactory evidence of execution of this deed will include evidence by email of execution by the relevant party and in such case the executing party undertakes to

provide the other party with an original of the executing party's counterpart as soon as reasonably practicable after execution.

**17.13 Entire understanding**

This deed supersedes all previous agreements, understandings, negotiations or deeds (other than the Confidentiality Deed) in respect of its subject matter and it and the Confidentiality Deed embodies the entire agreement between the parties.

**17.14 Relationship of the parties**

- (a) Nothing in this deed gives a party authority to bind any other party in any way.
- (b) Nothing in this deed imposes any fiduciary duties on a party in relation to any other party.

## Schedule 1

### Timetable

The following timetable is indicative only.

Event	Date
Lodge Scheme Booklet with ASIC and the ASX	2 June 2021
Application in respect of the hearing to be held on the First Court Date, filed with the Court, served on ASIC and delivered to Bidder	2 June 2021
First Court Date	2 July 2021
Despatch of Scheme Booklet	5 July 2021
Scheme Meeting held	4 August 2021
Second Court Date	11 August 2021
Lodge Court order with ASIC (Effective Date)	12 August 2021
Record Date	16 August 2021
Implementation Date	19 August 2021

Executed as a deed.

Executed by Yum Connect Australia Pty Ltd  
ACN 650 324 146 in accordance with section  
127 of the Corporations Act 2001 (Cth):

  
\_\_\_\_\_  
Director

SALLY GLOVER  
\_\_\_\_\_  
Name of Director  
BLOCK LETTERS

  
\_\_\_\_\_  
\*Director/\*Company Secretary

ANDREW DEANE  
\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
BLOCK LETTERS  
\*please strike out as appropriate

Executed by Dragontail Systems Limited  
ABN 63 614 800 136 in accordance with  
section 127 of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Director  
BLOCK LETTERS

\_\_\_\_\_  
\*Director/\*Company Secretary

\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
BLOCK LETTERS  
\*please strike out as appropriate

**Executed** as a deed.

**Executed by Yum Connect Australia Pty Ltd**  
**ACN 650 324 146** in accordance with section  
127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Director

\_\_\_\_\_  
\*Director/\*Company Secretary

\_\_\_\_\_  
Name of Director  
BLOCK LETTERS

\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
BLOCK LETTERS  
\*please strike out as appropriate

**Executed by Dragontail Systems Limited**  
**ABN 63 614 800 136** in accordance with  
section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Director

\_\_\_\_\_  
\*Director/\*Company Secretary

\_\_\_\_\_  
IDO LEVANON

\_\_\_\_\_  
Name of Director  
BLOCK LETTERS

\_\_\_\_\_  
Stephen Hewitt-Dutton

\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
BLOCK LETTERS  
\*please strike out as appropriate

**Annexure A**  
**Scheme of Arrangement**

See over the page.

**Scheme of Arrangement**  
pursuant to section 411 of the *Corporations Act 2001* (Cth)

between

**Dragontail Systems Limited**  
ABN 63 614 800 136  
(Target)

and

**Scheme Participants**

**This Scheme** is made on 2021

between **Dragontail Systems Limited** (ABN 63 614 800 136) of Level 24, 44 St Georges Terrace, Perth WA 6000, Australia (**Target**)

and **Scheme Participants**

**Now it is agreed** as follows:

## **1 Definitions and interpretation**

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### **1.1 Definitions**

In this Scheme:

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

**ASX** means ASX Limited (ACN 008 624 691) or as the context requires the securities exchange which it operates;

**Bidder** means Yum Connect Australia Pty Ltd (ACN 650 324 146);

**Business Day** means:

- (a) for the purposes of receiving a Notice, a day which is not a Saturday, Sunday, public holiday or bank holiday in the city in which the Notice is to be received; and
- (b) for any other purpose not identified above, a day on which the banks are open for business in Sydney, New South Wales, Australia other than a Saturday, Sunday or public holiday in Sydney, New South Wales, Australia;

**CHES** means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited;

**Convertible Preference Share** means a fully paid convertible preference share in the capital of the Target, the terms of issue of which are set out in the Annexure of the Target's notice of meeting dated 11 February 2021;

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

**Court** means the Federal Court of Australia, or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Bidder and Target;

**Deed Poll** means the deed poll executed by Bidder in favour of the Scheme Participants dated 27 May 2021;

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

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

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

**Government Agency** means any government, governmental, semi governmental, administrative, fiscal or judicial body department, commission, authority, tribunal, agency or entity including ASIC, the ASX, the Australian Takeovers Panel, the Australian Taxation Office, the Australian Competition and Consumer Commission and the ITA;

**Implementation Date** has the meaning given to that term in the Implementation Deed;



**Implementation Deed** means the scheme implementation deed dated 27 May 2021 between Bidder and Target relating to (among other things) the implementation of this Scheme;

**ITA** means the Israeli Tax Authority;

**Israeli Income Tax Ordinance** means the Israeli Income Tax Ordinance [New Version], 5721-1961, and all the regulations, rules and orders and any other provisions promulgated thereunder, and any guidance issued by the ITA with respect thereto;

**Officer** means, in relation to an entity, its directors, officers and company secretaries;

**Paying Agent** means Advanced Share Registry Ltd. (or such other person appointed by Target (with the prior approval of Bidder)) which will hold and distribute the Scheme Consideration to Scheme Participants under the terms of the Scheme;

**Paying Agent Account means** an Australian dollar denominated trust account operated by the Paying Agent on trust for the benefit of Scheme Participants;

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

**Reorganization Tax Ruling** means the tax ruling dated November 8, 2016, issued by the ITA to Dragontail Systems Limited (Israel);

**Reorganization Trustee** means I.B.I. Trust Management (Israeli company), which serves as the trustee pursuant to the Reorganization Tax Ruling;

**Reorganization Shareholders** means such Scheme Participants who are subject to the Reorganization Tax Ruling and whose Target Shares are held by the Reorganization Trustee;

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Participants as set out in this document, subject to any alterations or conditions made or required by the Court and agreed to by Bidder and Target;

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

**Scheme Meeting** means the meeting(s) of Target Shareholders to be ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in relation to the Scheme, and includes any meeting convened following any adjournment or postponement of that meeting(s);

**Scheme Participant** means a Target Shareholder who is registered in the Target Register as at the Record Date;

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

**Scheme Transfer** means, in relation to each Scheme Participant, a proper instrument of transfer of their Scheme Shares for the purpose of section 1071B of the Corporations Act, in favour of Bidder as transferee, which may be a master transfer of all or part of all of the Scheme Shares;

**Second Court Date** means the first day of hearing of an application made to the Court by Target for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned or if the application is subject to appeal for any reason, means the first day of the adjourned hearing or the first day on which the appeal is heard (as the case may be);

**Section 102** means Section 102 of the Israeli Income Tax Ordinance;

**Section 102 Amount** means an aggregate amount equal to the allocable portion of the Scheme Consideration attributable to each Scheme Participant who is a Section 102 Holder for Section 102 Shares;

**Section 102 Holder** means a holder of a Section 102 Share;

**Section 102 Options** means Target Options granted and subject to tax under Section 102(b)(2) or 102(b)(3) of the Israeli Income Tax Ordinance;

**Section 102 Shares** means Target Shares issued pursuant to the exercise of Section 102 Options;

**Section 102 Trustee** means I.B.I. Trust Management (Israeli company), which serves as the trustee of the Target's Israeli share option plan and the awards granted thereunder pursuant to Section 102(b)(2) and 102(b)(3) of the Israeli Income Tax Ordinance;

**Target Options** means options to subscribe for new Target Shares;

**Target Performance Rights** means zero exercise price options to subscribe for new Target Shares referred to in resolution 9 of the notice of the Company's 2018 annual general meeting;

**Target Performance Shares** means the Class A performances shares issued by Target on 12 December 2016;

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

**Target Registry** means Advanced Share Registry Limited;

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

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

**Tax Declaration** means a declaration in which the beneficial owner of Scheme Shares provides certain information and supporting documentation, all in accordance with the Withholding Tax Ruling, that is necessary for the Withholding Agent to determine whether any amounts need to be withheld from the Scheme Consideration payable to such beneficial owner pursuant to Israeli tax law; the Withholding Tax Ruling may require certain groups of beneficial owners of Scheme Shares to provide different declarations and different supporting documentation, and a beneficial owner of Scheme Shares will be considered as providing a valid Tax Declaration for purposes of this Scheme only if such beneficial owner provides the proper information and documentation applicable to it under the Withholding Tax Ruling;

**Withholding Agent** means I.B.I. Trust Management (an Israeli Company), in its capacity as withholding agent with respect to Israeli taxes arising in connection with the Scheme; and

**Withholding Tax Ruling** (means a ruling issued by the ITA

- (a) providing for the deposit of all Scheme Consideration by the Bidder with the Paying Agent, free of any withholding or deduction of any taxes imposed under Israeli law, by no later than the Business Day before the Implementation Date and for the Withholding Agent to be treated as withholding agent for purposes of Israeli tax law for a period of 180 days after the Implementation Date,
- (b) instructing the Withholding Agent how its obligation to withhold Israeli tax at the source from any Scheme Consideration payable or otherwise deliverable pursuant to this Scheme is to be executed, and in particular, with respect to the classes or categories of holders of Target Shares from which tax is to be withheld (if any), the rate or rates of withholding to be applied and how to identify non-Israeli residents in connection thereto, and
- (c) providing such other instructions from the ITA with respect to the withholding of any taxes from Scheme Consideration payable pursuant to this Scheme.

## 1.2 Interpretation

In this Scheme, unless the context otherwise requires:

- (a) a reference to:
- (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a recital or clause is a reference to a clause of or recital to this Scheme and references to this Scheme include any recital;
  - (iv) any contract (including this Scheme) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
  - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
  - (vii) a person includes their legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
  - (viii) a group of persons is a reference to any 2 or more of them taken together and to each of them individually;
  - (ix) an entity which has been reconstituted or merged means the body as reconstituted or merged, and to an entity which has ceased to exist where its functions have been substantially taken over by another body, means that other body;
  - (x) a reference to a day or a month means a calendar day or calendar month;
  - (xi) a reference to any time is to time in Sydney, New South Wales, Australia; and
  - (xii) money (including '\$', 'AUD' or 'dollars') is to Australian currency;
- (b) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', 'for example' or similar words are not words of limitation;
- (c) headings and the table of contents are for convenience only and do not form part of this Scheme or affect its interpretation; and
- (d) if the last day for doing an act is not a Business Day, the act must be done instead on the next Business Day.

## 2 Preliminary matters

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- (a) Target is:
- (i) a public company limited by shares;
  - (ii) incorporated in Australia and registered in Victoria, Australia; and
  - (iii) admitted to the official list of ASX (ASX:DTS) and Target Shares are quoted on ASX.
- (b) As at the date of the Implementation Deed, there were on issue:
- (i) 285,988,462 Target Shares;

- (ii) 111,538,464 Convertible Preference Shares;
- (iii) Nil Target Performance Shares;
- (iv) Nil Target Performance Rights; and
- (v) 10,437,501 Target Options,
- (c) Bidder is:
  - (i) an Australian proprietary company; and
  - (ii) incorporated in New South Wales in Australia.
- (d) Bidder and Target have entered into the Implementation Deed pursuant to which they have agreed to (amongst other things) implement this Scheme.
- (e) If this Scheme becomes Effective:
  - (i) Bidder must provide, or procure the payment of, the Scheme Consideration to the Scheme Participants in accordance with the terms of this Scheme and subject to applicable tax withholding;
  - (ii) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder, and Target will enter the name of Bidder in the Target Register as holder of the Scheme Shares, on the Implementation Date; and
  - (iii) in consideration of the transfer of the Scheme Shares, Target (or Paying Agent, on behalf of Target) will pay or procure the payment of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of this Scheme and subject to applicable tax withholding.
- (f) This Scheme attributes actions to Bidder but does not itself impose an obligation on Bidder to perform those actions. Bidder has entered into the Deed Poll for the purpose of covenanting in favour of each Scheme Participant that it will, subject to the Scheme becoming Effective, observe and perform the obligations attributed to it under this Scheme, including the provision of the Scheme Consideration to the Scheme Participants.

### **3 Conditions precedent**

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#### **3.1 Conditions precedent**

This Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8:00am on the Second Court Date each of the conditions precedent set out in clause 3.1 of the Implementation Deed (other than the condition precedent relating to the approval of the Court set out in clause 3.1(f) of the Implementation Deed and the condition precedent relating to the lodgement with ASIC of the Court order set out in clause 3.1(g) of the Implementation Deed) has been satisfied or waived in accordance with the Implementation Deed;
- (b) as at 8:00am on the Second Court Date, the Implementation Deed has not been terminated;
- (c) as at 8:00am on the Second Court Date, the Deed Poll has not been terminated;
- (d) the Court makes orders approving the Scheme under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act and agreed to by Bidder and Target;

- (e) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme and agreed to by Bidder and Target have been satisfied or waived; and
- (f) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme come into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date,

and the provisions of clauses 4, 5 and 6 will not come into effect unless and until each of these conditions precedent has been satisfied.

### 3.2 **Certificate in relation to conditions**

At or prior to the hearing on the Second Court Date, each of Target and Bidder will provide the Court a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clause 3.1 of this Scheme (other than in relation to the conditions in clauses 3.1(d), 3.1(e) and 3.1(f) of this Scheme) have been satisfied or, as applicable, waived as at 8:00am on the Second Court Date.

### 3.3 **Certificate constitutes conclusive evidence**

The certificates given by each of Target and Bidder in accordance with clause 3.2 constitute conclusive evidence, in the absence of manifest error, for the purpose only of assessing whether the conditions precedent referred to in that certificate have been satisfied or waived.

### 3.4 **Termination**

If:

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

then, unless Bidder and Target otherwise agree in writing:

- (c) this Scheme will lapse and be of no further force or effect; and
- (d) subject to any rights and obligations arising pursuant to the Implementation Deed, each of Target and Bidder are released from:
  - (i) any further obligation to take steps to implement this Scheme; and
  - (ii) any liability with respect to this Scheme.

## 4 **Implementation of Scheme**

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### 4.1 **Effective Date of Scheme**

Subject to clause 3.4, this Scheme takes effect on and from the Effective Date.

### 4.2 **Lodgement of Court order**

Subject to the satisfaction of all conditions in clause 3.1 (other than the condition in clause 3.1(f)), following the approval of this Scheme by the Court in accordance with section 411(4)(b) of the Corporations Act, Target will, as soon as possible and in any event no later than 5:00pm on the Business Day following that approval or such later time as may be agreed in writing between Target and Bidder, lodge with ASIC under section 411(10) of the Corporations Act an office copy of the Court order under section 411(4)(b) of the Corporations Act approving this Scheme.

### 4.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to Bidder making (or procuring) payment of the Scheme Consideration to the Paying Agent in accordance with clause 5, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Bidder, without the need for any further act by any Scheme Participant (other than acts performed by Target or any of its Officers as attorney and agent for Scheme Participants under this Scheme), by Target effecting a valid transfer or transfers of the Scheme Shares to Bidder under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:
  - (i) Target delivering to Bidder for execution a duly completed and, if necessary, stamped Scheme Transfer to transfer all of the Scheme Shares to Bidder, duly executed by Target (or any of its Officers) as the attorney and agent of each Scheme Participant as transferor under clause 7.1; and
  - (ii) Bidder executing the Scheme Transfer as transferee and delivering it to Target for registration; and
- (b) immediately after receiving the Scheme Transfer under clause 4.3(a)(ii) or the transfer being effected under section 1074D of the Corporations Act (as the case may be), Target must enter, or procure the entry of, the name of Bidder in the Target Register in respect of all of the Scheme Shares transferred to Bidder in accordance with this Scheme.

## 5 Scheme Consideration

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### 5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme and the Scheme becoming Effective, each Scheme Participant is entitled to receive the Scheme Consideration (less any applicable withholding tax) in respect of each of the Scheme Shares held by that Scheme Participant.

### 5.2 Payment of Scheme Consideration

- (a) Bidder must, by no later than the Business Day before the Implementation Date, deposit (or procure the deposit of) in cleared funds of an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Participants with the Paying Agent to be held in the Paying Agent Account, provided that any interest on the amount deposited (less bank fees and other charges) will be credited to Bidder.
- (b) Target will notify Bidder of the details of the Paying Agent Account at least 3 Business Days prior to the Implementation Date.
- (c) Target must (or must procure the Paying Agent to) make available electronically and/or by mail to each holder of record (as of the Record Date), a copy of the Tax Declaration and instructions thereto.
- (d) Subject to Bidder complying with clause 5.2(a):
  - (i) each Scheme Participant is entitled to receive the Scheme Consideration attributable to that Scheme Participant, based on the number of Scheme Shares held by that Scheme Participant as at the Record Date, less any applicable withholding taxes payable in respect thereof in accordance with Section 5.6, if any, and Target must procure the Paying Agent to pay such amount to each such Scheme Participant in accordance with clause 5.6;

- (ii) notwithstanding the foregoing, on the Implementation Date the Target must procure the Paying Agent to pay, free of any withholding or deduction of any taxes imposed under Israeli law:
  - (A) the Section 102 Amount to the Section 102 Trustee, to be held and released in accordance with the provisions of Section 102 and/or any tax ruling issued by the ITA with respect to the Section 102 Amount; and
  - (B) an aggregate amount equal to the allocable portion of the Scheme Consideration attributable to each Reorganization Shareholder to the Reorganization Trustee, to be held and released in accordance with the provisions of the Reorganization Tax Ruling;
- (iii) Target must procure the Paying Agent to pay, and only release the Scheme Consideration for the sole purpose of satisfying Bidder's obligation to pay, from the Paying Agent Account, the Scheme Consideration pursuant to clause 5.2(d)(i); and
- (iv) the obligations of Target under clause 5.2(d)(i) will be satisfied by Target (in its absolute discretion, and despite any election referred to in clause 5.2(d)(iv)(A) or authority referred to in clause 5.2(d)(iv)(B) made or given by the Scheme Participant):
  - (A) if a Scheme Participant has, before the Record Date, made a valid election in accordance with the requirements of the Target Registry to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Scheme Participant, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
  - (B) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Participant by an appropriate authority from the Scheme Participant to Target; or
  - (C) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Participant by prepaid post to their registered address as shown in the Target Register (as at the Record Date), such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders, in accordance with the procedures set out in clause 5.3).

### 5.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 5.2(d)(iv), any Scheme Consideration payable in respect of those Scheme Shares is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Target, the holder whose name appears first in the Target Register as at the Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme will be forwarded to either, at the sole discretion of Target, the holder whose name appears first in the Target Register as at the Record Date or to the joint holders.

### 5.4 Unclaimed monies

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).

- (b) In the case of a deposit under clauses 5.2(d)(iv)(A) or 5.2(d)(iv)(B), if the deposit is rejected or refunded or a bank account which has previously been notified is no longer valid then Target may credit (or procure the Paying Agent to credit) the amount payable to a separate bank account of Target or the Paying Agent.
- (c) Target (or the Paying Agent) may cancel a cheque issued under clause 5.2(d)(iv)(C) if the cheque:
  - (i) is returned to Target (or its agents, including the Paying Agent); or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (d) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Participant to Target (or the Target Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Target must procure the Paying Agent to reinitiate a deposit that was unsuccessful or reissue a cheque that was previously cancelled under this clause 5.4.

#### 5.5 Remaining monies (if any) in Paying Agent Account

To the extent that, following satisfaction of Target's obligations under this clause 5, there is a surplus in the amount held by the Paying Agent as trustee for the Scheme Participants in the Paying Agent Account (**Remaining Monies**), then (subject to compliance with applicable laws, the other terms of this Scheme, the Deed Poll and the Implementation Deed) Target must procure the Paying Agent to transfer such portion of the Remaining Monies required to be deducted or withheld from such amount under the Israeli Income Tax Ordinance (as instructed by the Withholding Agent) to the Withholding Agent (to be paid to the ITA) and the remainder of such Remaining Monies (less any bank fees and other charges) to Bidder. For the avoidance of doubt, the following do not form part of Remaining Monies:

- (a) Funds which become 'unclaimed money' as contemplated in clause 5.4(a);
- (b) Deposits rejected or refunded as contemplated in clause 5.4(b);
- (c) Funds to satisfy cheques issued by the Paying Agent from the Paying Agent Account in accordance with this clause 5, but either:
  - (i) not yet presented for payment, or
  - (ii) cancelled under clause 5.4(c); and
- (d) Money deducted or withheld under clause 5.6 or clause 5.7.

#### 5.6 Withholding

- (a) Notwithstanding anything to the contrary hereunder but, subject to subsection clause 5.6(b) below, each of Bidder, the Withholding Agent, the Paying Agent and any of their respective agents (each, **Payor**) are entitled to deduct and withhold or cause to be deducted and withheld from any Scheme Consideration payable or otherwise deliverable to the Scheme Participants pursuant to, or in connection with, this Scheme such amounts as required to be deducted or withheld therefrom under the Israeli Income Tax Ordinance, the Withholding Tax Ruling, any provision of any applicable tax law or any instructions provided by a Government Agency, and if any amount is so required to be withheld, the Withholding Agent must pay such amount to the applicable tax authority in cash and such withheld amount will be reduced from the portion of the Scheme Consideration payable to the applicable Scheme Participant. To the extent any amounts were so deducted or withheld and remitted by each Payor to the applicable Government Agency in accordance with applicable law, such amounts will be treated for all purposes under this Scheme as having been paid to the Scheme Participant to whom such amounts would otherwise have been paid and Payor must provide as soon as reasonably possible to each Scheme Participant with respect of whom the deduction and withholding was made, a document evidencing the amount



so withheld and remitted to the applicable Government Agency with respect to the payment made to such Scheme Participant.

- (b) Notwithstanding the foregoing, and subject to any other provision to the contrary in the Withholding Tax Ruling with respect to any Israeli taxes, and in accordance with the Withholding Agent's undertaking provided to Bidder prior to the Implementation Date pursuant to Section 6.2.4.3 of the Israeli Income Tax Circular 19/2018 (Transaction for Sale of Rights in a Corporation that includes Consideration that will be Transferred to the Seller at Future Dates), the Scheme Consideration payable or otherwise deliverable under this Scheme on the Implementation Date to each Scheme Participant will be transferred, free of any withholding or deduction of any taxes imposed under Israeli law, to, and retained by, the Paying Agent for the benefit of each such Scheme Participant for a period of up to 180 days from the Implementation Date or an earlier date required in writing by such Scheme Participant or as otherwise directed by the ITA (**Withholding Drop Date**), during which time the Paying Agent must make no payments to any such Scheme Participant and neither the Paying Agent nor the Withholding Agent may withhold any amounts for Israeli taxes from the Scheme Consideration payable pursuant to this Scheme, except as provided below, and during which time each such Scheme Participant may obtain (or, if one already exists, present to the Withholding Agent (through the Paying Agent)) a valid certificate, ruling or other written instructions issued by the ITA regarding the withholding (or exemption from withholding) of Israeli tax that is applicable to the payments or other consideration payable in respect thereof in accordance with this Scheme or providing other instructions regarding such payments or withholding, to the Withholding Agent's reasonable satisfaction (**Valid Certificate**).

Subject to any other provision to the contrary in the Withholding Tax Ruling with respect to any Israeli taxes:

- (i) If any such Scheme Participant delivers, no later than three (3) Business Days prior to the Withholding Drop Date (A) a Valid Certificate to the Withholding Agent (through the Paying Agent), then the deduction and withholding of any Israeli Taxes must be made in accordance with the provisions of such Valid Certificate; or (B) a Tax Declaration identifying such Scheme Participant as an Israeli resident, then the Withholding Agent must deduct and withhold such amounts required to be deducted or withheld therefrom under the Israeli Income Tax Ordinance (or a Valid Certificate, if one was also provided by such Scheme Participant). In each case, any amount withheld must be delivered or caused to be delivered to the ITA by the Withholding Agent and the amount not so withheld must be transferred by the Paying Agent to such Scheme Participant. Any currency conversion commissions in respect of the remittance of such withheld amounts will be borne by the applicable Scheme Participant and deducted from payments to be made to such Scheme Participant.
- (ii) If any Scheme Participant delivers, no later than three (3) Business Days prior to the Withholding Drop Date, to the Withholding Agent (through the Paying Agent) a Tax Declaration identifying such Scheme Participant as a non-Israeli resident, all to the reasonable satisfaction of the Withholding Agent and subject to the terms of the Withholding Tax Ruling, then the Withholding Agent must instruct the Paying Agent to pay to such Scheme Participant the portion of the Scheme Consideration to which such Scheme Participant is entitled pursuant to this Scheme, free of any withholding or deduction of any taxes imposed under Israeli law, all in accordance with the instructions of the Withholding Tax Ruling.
- (iii) If any Scheme Participant (A) does not provide the Withholding Agent (through the Paying Agent) with a Valid Certificate or Tax Declaration, by no later than three (3) Business Days before the Withholding Drop Date, or (B) submits a written request with the Withholding Agent (through the Paying Agent) to release such Scheme Participant's applicable Scheme Consideration relevant thereto prior to the Withholding Drop Date but fails to

submit a Valid Certificate or Tax Declaration at or before such time, or (C) otherwise fails to submit any such other documents required by the Withholding Tax Ruling as may reasonably be required by the Withholding Agent and/or Paying Agent, then the Withholding Agent must deduct and withhold such amounts required to be deducted or withheld from the Scheme Consideration allocated to such Scheme Participant under the Israeli Income Tax Ordinance (and such amount withheld must be delivered or caused to be delivered to the ITA by the Withholding Agent) and the amount not so withheld must be transferred by the Paying Agent to such Scheme Participant.

- (c) In the event that the Withholding Agent receives a demand from the ITA to withhold any amount in respect of any Scheme Participant and transfer it to the ITA prior to the Withholding Drop Date, the Withholding Agent (i) must notify such Scheme Participant of such matter promptly after receipt of such demand, and provide such Scheme Participant with reasonable time to attempt to delay such requirement or extend the period for complying with such requirement as evidenced by a written certificate, ruling or confirmation from the ITA, in which time the Scheme Consideration deliverable must not be released to such Scheme Participant, and (ii) to the extent that any such certificate, ruling or confirmation is not timely provided by such Scheme Participant to the Withholding Agent, the Withholding Agent must transfer to the ITA any amount so demanded, including any interest, indexation and fines required by the ITA in respect thereof, and such amounts must be treated for all purposes of this Scheme as having been delivered and paid to such Scheme Participant.
- (d) Notwithstanding anything to the contrary herein, and subject to any other provision to the contrary in the Withholding Tax Ruling with respect to Israeli taxes, the Section 102 Amount paid to the Section 102 Trustee pursuant to clause 5.2(d)(ii)(A) must be paid by the Paying Agent to the Section 102 Trustee in full without any withholding of Israeli taxes, and the Section 102 Trustee must deduct and withhold from the Section 102 Amount such amounts as the Section 102 Trustee is required to deduct and withhold under any applicable Israeli tax law and the Withholding Tax Ruling.
- (e) Notwithstanding anything to the contrary herein, and subject to any other provision to the contrary in the Withholding Tax Ruling with respect to Israeli taxes, the portion of the Scheme Consideration payable to the Reorganization Trustee pursuant to clause 5.2(d)(ii)(B) must be paid by the Paying Agent to the Reorganization Trustee in full without any withholding of Israeli taxes, and the Reorganization Trustee must deduct and withhold from such portion of the Scheme Consideration such amounts as the Reorganization Trustee is required to deduct and withhold under the Reorganization Ruling and the Withholding Tax Ruling.
- (f) Any and all taxes duly withheld pursuant to clauses 5.6(d) and 5.6(e) by the Section 102 Trustee and the Reorganization Trustee are deemed, for all purposes, as having been paid to each relevant Scheme Participant on account of their applicable portion of Scheme Consideration payable under this Scheme.

## 5.7 Orders of a court or Government Agency

- (a) If written notice is given to Target (or the Paying Agent or Target Registry) of an order or direction made by a court or Government Agency that:
  - (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable or required to be issued to that Scheme Participant by Target (or the Paying Agent) in accordance with clause 5.2, then Target is entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (ii) prevents Target (or the Paying Agent) from providing consideration to any particular Scheme Participant in accordance with clause 5.2, or the payment of such consideration is otherwise prohibitive by applicable law, Target is entitled to (as applicable) retain an amount equal to the number of Scheme Shares held by that Scheme Participant multiplied by the Scheme

Consideration in accordance with clause 5.2 is permitted by that (or another) court or direction or otherwise by law.

- (b) To the extent that amounts are so deducted or withheld in accordance with clause 5.6, such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

## **6 Dealings in Target Shares**

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### **6.1 Dealings by Scheme Participants**

For the purpose of establishing the persons who are Scheme Participants, dealings in Target Shares or other alterations to the Target Register will only be recognised by Target if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Register as the holder of the relevant Target Shares before the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received before the Record Date at the place where the Target Register is kept,

and Target must not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Participants, any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### **6.2 Target Register**

- (a) Target must register all registrable transmission applications or transfers of the Scheme Shares in accordance with clause 6.1(b) before the Record Date.
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that Scheme Shareholder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Target is entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Target must maintain the Target Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Participants. The Target Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Target Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from the Record Date, each entry on the Target Register (other than entries on the Target Register in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (e) As soon as possible on or after the Record Date, and in any event within 1 Business Day after the Record Date, Target will ensure that details of the names, registered addresses and holdings of Target Shares for each Scheme Participant as shown in the Target Register as at the Record Date are available to Bidder in the form Bidder reasonably requires.

### **6.3 Suspension and termination of quotation of Target Shares**

- (a) Target must apply to the ASX to suspend trading of the Target Shares on the ASX with effect from the close of trading on the Effective Date.

- (b) On a date after the Implementation Date to be determined by Bidder, Target must apply to the ASX for:
  - (i) termination of the official quotation of the Target Shares on the ASX; and
  - (ii) the removal of Target from the official list of the ASX.

## **7 General**

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### **7.1 Appointment of Target as attorney for implementation of Scheme**

Upon this Scheme becoming Effective, each Scheme Participant, without the need for any further act by that Scheme Participant, irrevocably appoints Target and each of its Officers (jointly and severally) as that Scheme Participant's agent and attorney for the purposes of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfers) under clause 4.3; and

- (b) enforcing the Deed Poll against Bidder,

and Target accepts such appointment.

### **7.2 Enforcement of Deed Poll**

Target undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against Bidder on behalf of and as agent and attorney for the Scheme Participants.

### **7.3 Scheme Participant's agreements and consents**

Under this Scheme, each Scheme Participant:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of this Scheme;
- (b) irrevocably agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) irrevocably acknowledges that this Scheme binds Target and all Scheme Participants (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Target; and
- (d) irrevocably consents to Target and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental, expedient or desirable to the implementation and performance of this Scheme or to give full effect to the terms of this Scheme and the transactions contemplated by it,

without the need for any further act by that Scheme Participant.

### **7.4 Warranty by Scheme Participants**

- (a) Each Scheme Participant is deemed to have warranted to Bidder, and, to the extent enforceable, to have appointed and authorised Target as that Scheme Participant's agent and attorney to warrant to Bidder, that:
  - (i) all of their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the time of the transfer of them to Bidder pursuant to this Scheme, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities*

*Act 2009 (Cth))* and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and

- (ii) they have full power and capacity to sell and to transfer their Scheme Shares (together with any rights and entitlements attaching to those Scheme Shares) to Bidder pursuant to this Scheme.
- (b) Target undertakes in favour of each Scheme Participant that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Scheme Participant.

#### 7.5 Title to Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer of them to Bidder, vest in Bidder free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009 (Cth))* and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
- (b) Immediately upon payment of the Scheme Consideration in accordance with clause 5.2(d), Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Target of the name of Bidder in the Target Register as the holder of the Scheme Shares.

#### 7.6 Appointment of Bidder as sole proxy

- (a) Immediately upon payment of the Scheme Consideration in accordance with clause 5.2(d), and until Bidder is registered in the Target Register as the holder of all Scheme Shares, each Target Shareholder:
  - (i) is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any Officer or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution;
  - (ii) acknowledges that no Scheme Shareholder may itself, and undertakes not to, attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 7.6(a)(i));
  - (iii) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
  - (iv) acknowledges and agrees that in exercising the powers conferred in clause 7.6(a)(i), Bidder and any Officer or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.
- (b) Target undertakes in favour of each Scheme Shareholder that it will appoint the Officer or agent nominated by Bidder as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 7.6(a)(i).

#### 7.7 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Target, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Target's registered office or by the Target Registry, as the case may be.

- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Target Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

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

Each Scheme Participant agrees that neither Target, Bidder nor any of their respective Officers or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

#### **7.9 Further assurance**

Target will execute all documents and do all acts and things as may be necessary or expedient for the implementation of, and performance of its obligations under, this Scheme.

#### **7.10 Consent**

Each of the Scheme Participants consents to Target doing all things necessary or incidental to, or to give effect to, the implementation of this Scheme, whether on behalf of the Scheme Participants, Target or otherwise.

#### **7.11 Alterations and conditions to Scheme**

If the Court proposes to approve this Scheme subject to any alterations or conditions, Target may, by its counsel or solicitors, and with the prior consent of Bidder, consent on behalf of all persons concerned, including each Target Shareholder, to those alterations or conditions.

#### **7.12 Binding effect of Scheme**

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

#### **7.13 Costs and duty**

Bidder will pay all duty (including stamp duty and any related fines, penalties and interest) payable on or arising out of the transfer by Scheme Participants of the Scheme Shares to Bidder pursuant to this Scheme.

#### **7.14 Governing law and jurisdiction**

- (a) This Scheme is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## **Annexure B**

### **Deed Poll**

See over the page.

## Deed Poll

by

**Yum Connect Australia Pty Ltd**  
ACN 650 324 146  
(Bidder)

in favour of

**Each Scheme Participant**



**This deed poll** is made on 27 May 2021

by **Yum Connect Australia Pty Ltd** (ACN 650 324 146) of Level 1, 20 Rodborough Road, Frenchs Forrest, NSW 2086 (**Bidder**)

in favour of **Each Scheme Participant**

## Recitals

- A Bidder and Dragontail Systems Limited (ABN 63 614 800 136) (**Target**) have entered into a scheme implementation deed dated 27 May 2021 (**Implementation Deed**).
- B Pursuant to the Implementation Deed, Bidder proposes to acquire all of the Target Shares (other than Target Shares held by Bidder) pursuant to a members' scheme of arrangement under Part 5.1 of the Corporations Act.
- C In accordance with the Implementation Deed, Bidder is entering into this deed poll for the purpose of covenanting in favour of the Scheme Participants that it will observe and perform the obligations attributed to it under the Scheme.
- D The effect of the Scheme will be that the Scheme Shares, together with all rights attaching to them, will be transferred to the Bidder on the Implementation Date in exchange for the Scheme Consideration.

**Now it is covenanted and agreed** as follows:

## 1 Definitions and interpretation

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### 1.1 Definitions

Each capitalised term used but not defined in this deed poll has the meaning given to that expression in the Implementation Deed.

### 1.2 Interpretation

The provisions of clause 1.2 of the Implementation Deed form part of this deed poll as if set out in full in this deed poll, and on the basis that references to 'this deed' in that clause are references to 'this deed poll'.

## 2 Nature of deed poll

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Bidder acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Participants in accordance with its terms, even though the Scheme Participants are not party to it; and
- (b) under the Scheme, each Scheme Participant appoints Target and each of its Officers (jointly and severally) as its agent and attorney to enforce this deed poll against Bidder on behalf of that Scheme Participant.

## 3 Conditions Precedent

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### 3.1 Conditions Precedent

Bidder's obligations under this deed poll are subject to the Scheme becoming Effective.

### 3.2 Termination

The obligations of Bidder under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
  - (b) the Scheme is not Effective on or before the End Date,
- unless Bidder and Target otherwise agree in writing.

### 3.3 Consequences of termination

If this deed poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Bidder is released from its obligations under this deed poll, except those obligations under clauses 8.1 and 8.2; and
- (b) each Scheme Participant retains any rights, powers or remedies that that Scheme Participant has against Bidder in respect of any breach of its obligations under this deed poll that occurred before termination of this deed poll.

## 4 Compliance with Scheme obligations

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Subject to clause 3, Bidder covenants in favour of each Scheme Participant that Bidder will:

- (a) observe and perform all obligations attributed to it under, and otherwise comply with, the Scheme as if it were a party to the Scheme;
- (b) if and only to the extent that Bidder controls the board of directors of Target after the Effective Date, procure that Target observes and performs all obligations contemplated of it under the Scheme; and
- (c) without limiting the generality of clause 4(a), deposit with the Paying Agent, in cleared funds, an amount equal to the aggregate amount of Scheme Consideration payable to each Scheme Participant and procure payment to each Scheme Participant of, their entitlement to the Scheme Consideration (less any applicable withholding taxes payable in respect thereof, if any), subject to and in accordance with the terms of the Scheme.

## 5 Representations and warranties

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Bidder represents and warrants in favour of each Scheme Participant that:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation;
- (b) **power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **corporate authorisations:** it has taken all necessary corporate action to authorise its entry into this deed poll and has taken all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **binding obligations:** this deed poll is valid and binding upon it;
- (e) **solvency:** no Insolvency Event has occurred in relation to it;

- (f) **regulatory action:** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this deed poll; and
- (g) **no default:** this deed poll does not conflict with, or result in the breach of or default under, any provision of Bidder's constitution, any material term or provision of any material agreement, or any writ, order or injunction, judgement, law, rule, regulation or instrument to which Bidder is party or subject or of which it is bound.

## 6 Continuing obligations

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This deed poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) Bidder having fully performed its obligations under this deed poll; and
- (b) termination of this deed poll under clause 3.2.

## 7 Notices

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### 7.1 Service of notices

A notice, consent, approval or other communication under this deed (**Notice**) must be:

- (a) in writing and signed by the sender or its duly authorised representative, addressed to the recipient and sent to the recipient's address specified in clause 7.3; and
- (b) delivered by personal service, sent by pre-paid mail or sent by email, or any other lawful means.

### 7.2 Effect of receipt

- (a) A Notice given in accordance with this clause 7 is treated as having been given and received:
  - (i) if personally delivered, on delivery;
  - (ii) if sent by pre-paid mail, on the fifth clear Business Day after the date of posting (or the seventh Business Day after the date of posting if sent to or from an address outside Australia); and
  - (iii) if emailed, when a delivery confirmation report is received by the sender which records the time that email was delivered to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee),

except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a Business Day, it is taken to have been received at 9.00am on the next Business Day.

### 7.3 Addresses

- (a) The particulars for delivery of Notices are initially:

#### **Bidder**

Name: Vinod Mahboobani

Attention: Chief Legal Officer

Address: 7100 Corporate Drive

Plano Texas 75024  
United States of America

Email: Vinod.Mahboobani@yum.com

with a copy to:

Name: Baker McKenzie

Attention: Kate Jefferson and Greg Smith

Address: Tower One - International Towers Sydney  
Level 46 - 100 Barangaroo Avenue  
Barangaroo NSW 2000  
Australia

Email: kate.jefferson@bakermckenzie.com  
greg.smith@bakermckenzie.com

- (b) A party may change its address for the delivery of Notices by notifying that change to each other party. The notification is effective on the later of the date specified in the Notice or five Business Days after the Notice is given.

## 8 General

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### 8.1 Stamp duty

Bidder must pay all stamp duty (including any penalties) payable on or arising out of this deed poll and any document required by or contemplated under this deed poll.

### 8.2 Legal costs

Bidder must pay its own legal and other costs and expenses that it incurs in negotiating, preparing, executing and performing its obligations under this deed poll.

### 8.3 Governing law and jurisdiction

- (a) This deed poll is governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.
- (b) Bidder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (c) Bidder irrevocably appoints Baker McKenzie to be its agent for service of process in connection with this deed poll and agrees that any service document in connection with this deed poll may be effectively served on it by service on its agent if sent to Kate Jefferson at Baker McKenzie, Tower One - International Towers Sydney, Level 46, 100 Barangaroo Avenue, Barangaroo, NSW, 2000, Australia.

### 8.4 Severability

- (a) Subject to clause 8.4(b), if a provision of this deed poll is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this deed poll.
- (b) Clause 8.4(a) does not apply if severing the provision:
- (i) materially alters the:

- (A) scope and nature of this deed poll; or
- (B) the relative commercial or financial positions of the parties; or
- (ii) would be contrary to public policy.

#### 8.5 **Rights cumulative**

Except as expressly stated otherwise in this deed poll, the rights, powers and remedies of Bidder and each Scheme Participant under this deed poll are cumulative and are in addition to any other rights of that person.

#### 8.6 **Waiver and exercise of rights**

A single or partial exercise or waiver by Bidder or by any Scheme Participant of a right relating to this deed poll does not prevent any other exercise of that right or the exercise of any other right.

#### 8.7 **Amendment**

This deed poll may not be varied unless:

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

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

#### 8.8 **Assignment**

The rights and obligations of Bidder and of each Scheme Participant under this deed poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior written consent of Bidder and Target (which consent may be given or withheld in their absolute discretion).

#### 8.9 **Further assurances**

Bidder will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this deed poll and the transactions contemplated by it.

For personal use only

Executed as a deed poll

Executed by Yum Connect Australia Pty Ltd  
ACN 650 324 146 in accordance with section  
127 of the Corporations Act 2001 (Cth):

  
\_\_\_\_\_  
Director

SALLY GLOVER  
\_\_\_\_\_  
Name of Director  
BLOCK LETTERS

  
\_\_\_\_\_  
\*Director/\*Company Secretary

ANDREW DEANE  
\_\_\_\_\_  
Name of \*Director/\*Company Secretary  
BLOCK LETTERS  
\*please strike out as appropriate