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10 August 2017

## ASX Announcement Pepper Group Limited (“Pepper” or the “Company”) Enters into Scheme Implementation Deed

### Key Points:

- Pepper has entered into a scheme implementation deed with Red Hot Australia Bidco Pty Ltd (“Bidco”), an entity owned by certain funds, clients or accounts managed or advised by KKR Credit Advisors (US) LLC or its affiliates, under which it is proposed that Bidco will acquire all the Pepper shares by way of a scheme of arrangement (“Scheme”)<sup>1</sup>
- Pepper shareholders will receive a cash payment of \$3.60 per share, representing a premium of 25.6% to the 1-month volume weighted average price of Pepper shares during the 1 month period leading up to and including 26 May 2017<sup>2</sup>, or an equity alternative (“Scrip Option”) which will enable Pepper shareholders to retain an interest in the Pepper business if they wish to do so
- In addition, under the scheme implementation deed, the Pepper Board is entitled to pay a fully franked interim dividend of up to 3 cents per share before implementation of the Scheme without this reducing the cash offer, or the consideration under the Scrip Option. The Board intends to determine and pay a dividend of 3 cents per share, subject to compliance with all relevant laws and the operating performance and financial condition of the Company at the relevant time
- Pepper Directors unanimously recommend shareholders vote in favour of the Scheme, and each Director intends to vote all the Pepper shares held or controlled by them in favour of the Scheme, in each case in the absence of a Superior Proposal<sup>3</sup> and subject to an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Pepper shareholders
- Pepper established an Independent Board Committee that has considered the transaction and, if applicable, will consider any Superior Proposal
- The Scheme meeting is expected to be held in early November 2017, with the Scheme expected to complete later that month
- The Scheme is subject to various conditions including that eligible shareholders holding at least 35% of total shares<sup>4</sup> elect to take one of the Election Options<sup>5</sup>
- Mr Seumas Dawes, Chairman of Pepper, Mr Michael Culhane, Group Chief Executive Officer and Mr Cameron Small, Group Chief Financial Officer, and each of their respective affiliates, who together hold or control 35.5% of total shares have each indicated they intend to vote in favour of the Scheme, in the absence of the Board recommending a Superior Proposal and subject to an independent expert concluding (and continuing to conclude) that the Scheme is in the best interest of Pepper shareholders, and to take one of the Election Options

<sup>1</sup> Except those subject to the Retention Option (described below)

<sup>2</sup> The trading day prior to speculation in the media that Pepper may be the subject of a change of control transaction

<sup>3</sup> As defined in the scheme implementation deed

<sup>4</sup> Pepper shares on issue are expected to be approximately 184.06 million upon implementation of the Scheme. All references to percentages of shares are on the basis of this total number

<sup>5</sup> “Election Options” means the Scrip Option or the Retention Option

## Details:

The Board of Pepper today announced that it has entered into a scheme implementation deed (the "SID") with Red Hot Australia Bidco Pty Ltd ("Bidco"), an entity owned by certain funds, clients or accounts managed or advised by KKR Credit Advisors (US) LLC or its affiliates ("KKR"), under which it is proposed that Bidco will acquire all of the Pepper shares<sup>6</sup>, by way of a scheme of arrangement (the "Scheme"). The full form of the SID accompanies this announcement.

If the Scheme is implemented, Pepper shareholders not electing one of the Election Options will receive a cash payment of \$3.60 per Pepper share ("Cash Consideration").

The Scheme includes an equity alternative to the Cash Consideration ("Scrip Option") allowing shareholders (other than certain foreign ineligible shareholders) to instead receive one share in Red Hot Australia Holdco Pty Ltd ("Holdco"), which is the owner of 100% of the shares in Bidco, for each Pepper share they hold.<sup>7</sup>

Commenting on the proposed transaction, Pepper Group Chairman, Seumas Dawes said "After careful consideration we believe this offer is consistent with the Board's efforts to deliver maximum value for shareholders. We believe it represents a compelling opportunity for shareholders, allowing them to choose to either obtain liquidity for their shares at an attractive valuation or remain invested in the Pepper business."

Under the SID, the Pepper Board is also entitled to determine and pay to all shareholders a fully franked interim dividend in respect of the half year ended 30 June 2017 of up to 3 cents per share on or before implementation of the Scheme. Such a dividend will not reduce the Cash Consideration of \$3.60 per share under the Scheme or the amount of the scrip consideration under the Scrip Option. The Pepper Board intends to determine and pay an interim dividend of 3 cents per share, subject to compliance with relevant laws and the operating performance and financial condition of the Company at the relevant time.

For Pepper shareholders, the Cash Consideration of \$3.60 per share values Pepper's fully diluted equity<sup>8</sup> at approximately \$675.9 million and represents:

- a premium of 25.6% to the 1-month volume weighted average price ("VWAP")<sup>9</sup> of Pepper shares up to and including 26 May 2017 of \$2.87 (26 May 2017 being the trading day prior to speculation in the media that Pepper may be the subject of a change of control transaction);
- a premium of 29.1% to the 3-month VWAP up to and including 26 May 2017; and
- a premium of 44.7% to the 12 month VWAP up to and including 26 May 2017.

## Alternatives to receiving Cash Consideration

The default consideration under the Scheme is the Cash Consideration. However, subject to certain conditions, Pepper shareholders (other than certain foreign ineligible

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<sup>6</sup> Except those the subject of the Retention Option

<sup>7</sup> Or alternatively to retain their Pepper shares by electing the Retention Option

<sup>8</sup> Fully diluted equity includes the 184.06m Pepper shares on issue at Scheme implementation plus an additional 3.7m employee share rights

<sup>9</sup> Volume weighted average price based on cumulative trading volume

shareholders) may instead elect the Scrip Option. Such an election must be in respect of all of their shares. The Scrip Option enables Pepper shareholders to retain an interest in the Pepper business if they wish to do so.

In addition, any shareholders whose receipt of a Holdco share under the Scrip Option would otherwise result in a tax becoming payable without an equivalent of rollover relief under a foreign tax jurisdiction applicable to that shareholder or the relevant beneficial holder, will have the option of retaining their Pepper shares (the “Retention Option”). Following implementation of the Scheme, Holdco will explore alternative means of acquiring those Pepper shares in a manner which has less adverse tax consequences including, potentially, some deferral of tax.<sup>10</sup> The Retention Option is subject to:

- a pro rata scale back if shareholders holding an aggregate of 9.9% or more of total shares elect this option, in which case Cash Consideration will be paid in respect of the excess shares; and
- the possibility that retained Pepper shares may be compulsorily acquired by Bidco at any time in the 3 year period from the Implementation Date at their then fair market value if they have not otherwise been acquired by Holdco or its nominee.

#### Scale back if maximum elections exceeded

There will be a separate pro rata scale back if aggregate elections for the Election Options<sup>11</sup> relate to more than 48.5% of total shares. If scaling back is required, electing shareholders will receive a reduced amount of Holdco shares and the balance of their Scheme consideration in cash. As a result, KKR will hold shares in Holdco on implementation of the Scheme equal to at least 51.5% of the total shares in Holdco.

#### Minimum election condition

It is also a condition of the Scheme that shareholders holding at least 35% of the total shares elect to take one of the Election Options.

Mr Seumas Dawes, Chairman of Pepper (who controls 29.7% of total shares), Mr Michael Culhane, Global Chief Executive Officer (who controls 4.6% of total shares, excluding certain incentive shares in respect of which he does not currently have voting rights), and Mr Cameron Small, Global Chief Financial Officer (who controls 1.2% of total shares, excluding certain incentive shares in respect of which he does not currently have voting rights and certain shares in a trust of which he is a director but does not control the votes), have each indicated they or their respective affiliates (as applicable) intend to vote in favour of the Scheme, in the absence of the Board recommending a Superior Proposal and subject to an independent expert concluding (and continuing to conclude) that the Scheme is in the best interest of Pepper shareholders. Those individuals have further indicated that if the Scheme is approved they or their affiliates will elect the Scrip Option (in the case of Mr Dawes and Mr Small) and the Retention Option (in the case of Mr Culhane).

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<sup>10</sup> There can be no assurance that Holdco will be able to identify and / or implement such alternative means of Holdco acquiring Pepper shares subject to the Retention Option

<sup>11</sup> Determined after the 9.9% Retention Option scale back referred to above, if applicable

Pepper shareholders that make one of the Election Options will become parties to a Shareholders Deed which is included as a schedule to the SID.

### **Directors Recommendation**

The Pepper Board unanimously recommends shareholders vote in favour of the Scheme at the Scheme meeting.

Each Director intends to vote all the Pepper shares held or controlled by them (including shares which may be received on exercise of options) in favour of the Scheme.

The Directors' recommendation and voting intentions as set out above are subject to no Superior Proposal emerging and an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Pepper shareholders.

Pepper shareholders should read the Scheme Booklet to be sent to all shareholders in September, and seek appropriate advice before deciding how to vote and whether to elect either of the Election Options.

The Scheme is subject to certain conditions that must be satisfied or waived for the Scheme to be implemented. These include that each counterparty to each of the Pepper Debt Facilities consents to the change of control arising from the implementation of the Scheme.<sup>12</sup> In this regard, the Board notes that there is no assurance that the requisite consents will be obtained.

In addition, the Scheme is subject to a number of other conditions including shareholder approval, Court approval, no material adverse change or prescribed occurrences, as well as the approval of the Foreign Investment Review Board (FIRB) and certain other local and foreign regulatory bodies (including in Ireland, Korea and the UK).

Unless every condition to the Scheme is satisfied or waived, the Scheme will not be implemented.

KKR has advised Pepper that it expects the Scheme proposal to be fully funded by equity financing provided by certain funds, clients or accounts managed or advised by KKR Credit Advisors (US) LLC or its affiliates.

The SID contains customary exclusivity provisions including no shop restrictions, a notification obligation, no talk restrictions and a matching right, the latter two of which are subject to Pepper Directors' fiduciary obligations. The SID also details circumstances under which a break fee may be payable to Bidco or any other person Bidco directs, or a reverse break fee payable to Pepper.

### **Independent Board Committee**

An Independent Board Committee (the "IBC") has been established and has considered the transaction and, if applicable, will consider any Superior Proposal. The IBC comprises Melanie Willis (Chair), Matthew Burlage and Des O'Shea.

Ms Willis said: "We are pleased to present this transaction to shareholders for their consideration. It provides the opportunity to take cash at a premium for those

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<sup>12</sup> "Pepper Debt Facilities" means the existing corporate debt facilities of the Pepper Group as at the date of the SID and certain of the existing Pepper warehouse facilities as at the date of the SID.



shareholders who desire certainty, or the opportunity to stay invested for those shareholders who desire to support Pepper as it enters a new phase of possible growth which is expected to be capital intensive.”

Ms Willis added: “Pepper undertook an extensive process to maximise shareholder value and evaluated numerous alternatives and proposals from a range of potential local and global players. Potential bidders were offered the opportunity to undertake limited due diligence to firm up their respective offers. KKR was selected on the basis of it delivering the highest cash alternative to Pepper shareholders.”

The IBC engaged its own financial and legal advisers to assist it with its review of the various transaction proposals that had been received, and to assist the IBC negotiate transaction terms with KKR.

### **Indicative Timetable and Next Steps**

Pepper shareholders do not need to take any action at the present time.

A Scheme Booklet containing information relating to the Scheme, reasons for the Directors’ unanimous recommendation, details of the Scheme meeting and the Independent Expert’s Report is expected to be sent to shareholders in late September 2017.

Shareholders will be given the opportunity to vote on the Scheme at a meeting which is expected to be held in early November 2017. Subject to shareholder approval and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented in November 2017.

Pepper is being advised by Citigroup and Jones Day. The IBC is being advised by Highbury Partnership and Herbert Smith Freehills.

ENDS

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## **About Pepper Group Limited**

Pepper Group offers a unique, diversified, global portfolio of financial services including Lending, Advisory and Asset Servicing across the residential and commercial property sectors - as well as in consumer, auto and equipment finance.

As a people focused lender, Pepper specialises in flexible loan solutions based on individual credit assessment. It enables us to support many borrowers who fall outside the credit criteria of the major banks. As a third party servicer, we administer loan books on behalf of other banks and financial institutions – when they don't have the capacity. We step in, using our own processes or expertise to administer loan payments or manage the arrears and recovery process.

Pepper is a global leader in alternative solutions with over 600,000 customers worldwide and \$50.8 billion in assets under management as at 31 March 2017 – comprising \$7.7 billion in lending assets and a servicing portfolio of \$43.1 billion.

## **About KKR**

KKR is a leading global investment firm that manages multiple alternative asset classes, including private equity, energy, infrastructure, real estate, credit and, through its strategic partners, hedge funds. KKR aims to generate attractive investment returns by following a patient and disciplined investment approach, employing world-class people, and driving growth and value creation with KKR portfolio companies. KKR invests its own capital alongside its partners' capital and provides financing solutions and investment opportunities through its capital markets business. References to KKR's investments may include the activities of its sponsored funds. For additional information about KKR & Co. L.P. (NYSE: KKR), please visit KKR's website at [www.kkr.com](http://www.kkr.com) and on Twitter @KKR\_Co.



## Scheme Implementation Deed

Pepper Group Limited (**Pepper**)

Red Hot Australia Bidco Pty Limited (**Bidder**)

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**DATE** 10 August 2017

**PARTIES**

- (1) **Pepper Group Limited** (ACN 094 317 665) (**Pepper**)
- (2) **Red Hot Australia Bidco Pty Limited** (ACN 620 321 600) (**Bidder**)

**RECITALS**

- (A) Pepper and Bidder have agreed to implement the Transaction on the terms and conditions of this deed.
- (B) Pepper and Bidder have agreed certain other matters in connection with the Transaction as set out in this deed.

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

The following definitions apply unless the context requires otherwise.

**Accounting Standards** means:

- (a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of the Corporations Act relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a).

**Affiliate** means in respect of a person (**Primary Person**), a person:

- (a) Controlled directly or indirectly by the Primary Person;
- (b) Controlling directly or indirectly the Primary Person; or
- (c) directly or indirectly under the common Control of the Primary Person and another person or persons.

Control as used in this definition with respect to any person (other than an individual), means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise, and includes the following:

- (a) direct or indirect ownership of more than 50% of the voting rights of such person; or
- (b) the right to appoint the majority of the members of the board of directors of such person (or similar governing body) or to manage on a discretionary basis the assets of such person.

and, for the avoidance of doubt, and, solely for the purposes of this definition:

- (c) a general partner is deemed to Control a limited partnership;

- (d) a fund, client or account advised or managed, directly or indirectly, by a person will also be deemed to be Controlled by such person; and
- (e) a fund, client or account will be deemed to be an Affiliate of the Primary Person if the fund, client or account is advised or managed, directly or indirectly, by a person Controlling directly or indirectly the Primary Person or a person directly or indirectly under the common Control of the Primary Person and another person or persons.

**Amended** means, in relation to the terms on which Pepper Rights are issued, amended such that:

- (a) in the case of Pepper Rights which are unvested Long Term Incentive Plan Performance Rights, any or all of the following amendments are made, any of which may be made conditional on the happening of an event referred to in the relevant amending document:
  - (i) the removal of vesting conditions relating to return on equity or net profit after tax;
  - (ii) the entitlement of a holder of such a Pepper Right to receive a Pepper Share on satisfaction of vesting conditions being replaced by an entitlement to receive a HoldCo Share on satisfaction of those vesting conditions; and
  - (iii) the insertion of a right of a holder of the Pepper Right to the replacement of such Pepper Right (as amended as set out under paragraph (a)(ii)) held by the holder with a HoldCo Share, provided that such share will be subject to forfeiture conditions substantially the same as the then current vesting conditions of the Pepper Right; and
- (b) in the case of Pepper Rights which are Long Term Incentive Plan Loan Shares, any or all of the following amendments are made, any of which may be made conditional on the happening of an event referred to in the relevant amending document:
  - (i) the removal of any vesting conditions relating to return on equity or net profit after tax; and
  - (ii) in respect of each Pepper Share which is subject to a lien in connection with a loan from a Pepper Group Member and which is to be transferred in exchange for a HoldCo Share under the Scheme pursuant to a HoldCo Election, the substitution of the relevant HoldCo Share for that Pepper Share as collateral under that loan, effective on the Implementation Date,

in each case on terms acceptable to Bidder (acting reasonably) and **Amendment** has a corresponding meaning.

**Anti-Corruption Laws** means:

- (a) the U.S. Foreign Corrupt Practices Act of 1977, as amended;
- (b) the UK Bribery Act 2010;
- (c) the *Criminal Code Act 1995* (Cth); and
- (d) any similar applicable law that has as its objective the prevention of corruption, including without limitation legislation enacted in furtherance of the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions 1997.

**Anti-Money Laundering Laws** means anti-money laundering laws and regulations applicable to the Pepper Group from time to time, including without limitation the Anti-Money Laundering and Counter-Terrorism Financing Act 2006.

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

**Associate** has the meaning given in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this deed and Pepper was the designated body.

**ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as the context requires.

**Bidder Break Fee** means \$6,626,047(exclusive of GST).

**Bidder Counterproposal** has the meaning given in clause 9.9.

**Bidder Group** means Bidder and each of its Related Bodies Corporate, and a reference to a **Bidder Group Member** or a **member of the Bidder Group** is to Bidder or any one of its Related Bodies Corporate.

**Bidder Indemnified Party** means:

- (a) each Bidder Group Member and its Affiliates; and
- (b) each director, officer, employee, adviser, general or limited partner, manager, agent, member, stockholder and representative of each Bidder Group Member and each of its Affiliates.

**Bidder Information** means the information regarding Bidder and HoldCo as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60. Bidder Information does not include information about the Pepper Group (except to the extent it relates to any statement of intention relating to the Pepper Group following the Effective Date).

**Bidder Representations and Warranties** means the representations and warranties of Bidder set out in clause 12.5.

**Business Day** means a business day as defined in the Listing Rules.

**Change of Control Requirements** has the meaning given in clause 7.3(a).

**Competing Proposal** means a proposal, transaction or arrangement which, if entered into or completed, would mean a person (other than Bidder or its Related Bodies Corporate) whether alone or together with its Associates would:

- (a) directly or indirectly, acquire a Relevant Interest in, become the holder of, or otherwise acquire, have the right to acquire or have an economic interest in more than 20% of the Pepper Shares;
- (b) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all or a material part of the assets of or business conducted by the Pepper Group;
- (c) acquire Control of Pepper; or
- (d) otherwise acquire or merge with Pepper,

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 each of the conditions precedent set out in clause 3.1.

**Confidentiality Deed** means the confidentiality deed between KKR Credit Advisors (US) LLC and Pepper dated 24 April 2017.

**Consolidated Group** has the same meaning as in the Tax Act.

**Control** has the meaning given in section 50AA of the Corporations Act.

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

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

**Court** means the Federal Court of Australia (Sydney registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Pepper and Bidder.

**Court Documents** means the documents required for the purposes of a Court Hearing, including (as applicable) originating process, affidavits, submissions and draft minutes of Court orders.

**Court Hearing** means the First Court Hearing or Second Court Hearing (as applicable), and **Court Hearings** means both of them.

**Deed Poll** means the deed poll to be executed by Bidder and HoldCo in favour of the Scheme Shareholders substantially in the form set out in Annexure B or in such other form as agreed in writing between Pepper and Bidder.

**Disclosure Letter** means the letter identified as such provided by Pepper to Bidder and countersigned by Bidder on or about the date of this deed.

**Disclosure Materials** means the information in relation to the Pepper Group disclosed in writing by or on behalf of Pepper to Bidder and its Representatives in:

- (a) the documents and information contained in the data room made available by Pepper to Bidder and its Representatives, the index of which has been initialled by, or on behalf of, the parties for the purposes of identification;
- (b) any written answers to requests for further information made by Bidder and its Representatives as contained in the data room, a copy of which has been initialled by, or on behalf of, the parties for the purposes of identification; and
- (c) the Disclosure Letter.

**EBITDA** means earnings from ordinary continuing activities of the Pepper Group before interest, tax, depreciation and amortisation calculated in accordance with the accounting policies and principles applied by Pepper as at the date of this deed, excluding all costs and expenses incurred by Pepper associated with the Scheme process and the Scheme, including all fees payable to external advisers of Pepper.

**Effective** means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Election** has the meaning given in the Scheme.

**Election Form** has the meaning given in the Scheme.

**Encumbrance** means:

(a) any legal or equitable interest or power reserved in or over any asset (or any interest in any asset) or created or otherwise arising or subsisting in or over any asset (or interest in any asset) under a charge, transfer, mortgage, pledge, lien, trust or power by way of security for the payment of a debt or the performance of any obligation; and

(b) any "security interest" as defined in section 12(1) and 12(2) of the PPSA,

and includes any agreement to create any of them or allow them to exist.

**End Date** means 31 December 2017 or such other date as is agreed in writing by Bidder and Pepper.

**Equity Commitment Letter** means the separate, binding, executed commitment letter dated on or around the date of this deed addressed to Bidder from the KKR Funds.

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

(a) the termination of this deed in accordance with its terms;

(b) the Effective Date; and

(c) the End Date.

**Fairly Disclosed** means, in relation to a matter, event or circumstance, publicly disclosed to the ASX or disclosed to the relevant party or its Representatives to the extent, and in reasonably sufficient detail, so as to allow a reasonable and sophisticated bidder (or one of its Representatives) experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the Pepper Group to identify or otherwise determine the nature and scope of the relevant matter, event or circumstance.

**FCA** means the Financial Conduct Authority.

**FIRB** means the Foreign Investment Review Board.

**FIRB Act** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**First Court Date** means the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

**Foreign Scheme Shareholder** means a Scheme Shareholder whose address in the register of members of Pepper as at the Record Date is a place outside Australia or New Zealand unless Pepper and Bidder agree in writing that it is lawful and not unduly onerous or impracticable to issue HoldCo Shares to that Scheme Shareholder if the Scheme Shareholder so elects under the Scheme.

**FSMA** means Financial Services and Markets Act 2000 as amended (UK).

**Funding SPV** means each entity, trust, subsidiary or special purpose vehicle, the sole or predominant business purpose of which is for financing warehouse securitisations, term securitisation transactions or the acquisition of securities from term securitisation transactions for the purpose of satisfying the prescribed risk retention requirements of any relevant jurisdiction.



**Government Agency** means ASX, ASIC, the Australian Competition and Consumer Commission, the Takeovers Panel, FIRB, the Central Bank of Ireland, the Competition and Consumer Protection Commission (Ireland), the Overseas Investment Office (New Zealand), the Fair Trade Commission of Korea, the Financial Conduct Authority (United Kingdom), any governmental, semi-governmental, statutory or judicial entity or authority, supervisory body or any minister, department, office, commission, agency or delegate of any government, whether in Australia or elsewhere, and includes any regulatory organisation established under statute or any stock exchange.

**Government Official** means:

- (a) an officer, agent or employee of a government, government-owned enterprise (or any agency, department or instrumentality thereof), political party or public international organization;
- (b) a candidate for government or political office; or
- (c) an agent, officer, or employee of any entity owned by a government.

**HoldCo** means Red Hot Australia Holdco Pty Limited ACN 620 321 351.

**HoldCo Constitution** means the constitution in relation to HoldCo in the form set out in Annexure D or as otherwise agreed between Pepper and Bidder.

**HoldCo Election** has the meaning given in the Scheme.

**HoldCo Prescribed Occurrence** means the occurrence of an Insolvency Event in relation to HoldCo or Bidder.

**HoldCo Share** means a fully paid ordinary share in the capital of HoldCo having the rights specified in the HoldCo constitution and Shareholders Deed.

**Implementation Date** means the fifth Business Day after the Record Date or such other date as Pepper and Bidder agree in writing.

**Incoming Directors** means the persons nominated in writing to Pepper by Bidder no later than 3 Business Days before the Implementation Date.

**Independent Expert** means the independent expert appointed by Pepper in respect of the Scheme.

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether or not in the Independent Expert's opinion the Scheme is in the best interests of the Pepper Shareholders.

**Insolvency Event** means, in relation to an entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (b) the entity being in liquidation, in provisional liquidation, under administration or wound up or a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets;
- (c) the entity being subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved or the entity executing a deed of company arrangement (in each case, other than to carry out a reconstruction or

amalgamation while solvent on terms approved by the other parties to this document);

- (d) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;
- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act;
- (f) an application or order having been made (an in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, or any other action having been taken, in each case in connection with that person, in respect of any of the things described in paragraph (a), (b), (c), (d) or (e);
- (g) the entity being taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (h) the entity being subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or the entity making a statement from which another party to this document reasonably deduces it is so subject); or
- (i) the entity being deregistered as a company or otherwise dissolved.

**Key Employees** means the Global Chief Executive Officer, the Global Chief Financial Officer, the Chief Executive Officer of the Pepper Group's business in South Korea, Spain, the United Kingdom and Ireland, the Head of the Australian Mortgage business and the Head of the Australian Asset Finance business.

**KKR Funds** means:

- (a) KKR Special Situations (Domestic) Fund II L.P.;
- (b) KKR Private Credit Opportunities Partners II (EEA) L.P.;
- (c) KKR Private Credit Opportunities Partners II (EEA) Euro L.P.;
- (d) KKR TFO Partners L.P.;
- (e) Polar Bear Fund L.P.;
- (f) Prisma Pelican Fund LLC; and
- (g) KKR-Milton Co-Investments II L.P.

**Listing Rules** means the official listing rules of ASX, modified to the extent of any express written waiver by ASX.

**Losses** means all claims, demands, damages, losses, costs, expenses and liabilities.

**Material Contract** means a contract or commitment requiring payments by a Pepper Group Member or by Pepper Group Members together to the same party or a group of related parties over the term of the contract in excess of \$10 million.

**Maximum Share Number** means 184,056,874 Pepper Shares, or such higher number as is agreed between Pepper and the Bidder.

**Outgoing Directors** means the Pepper Board Members advised in writing to Pepper by Bidder no later than 5 Business Days before the Implementation Date.

**Pepper Board** means the board of directors of Pepper or any relevant board committee authorised by the board of directors to exercise powers of the full board, and a reference to a Pepper Board Member means any director of Pepper comprising part of the Pepper Board.

**Pepper Break Fee** means \$6,626,047(exclusive of GST).

**Pepper Consolidated Tax Group** means the Consolidated Group of which Pepper is the head company (as defined for the purposes of the Tax Act).

**Pepper Debt Facilities** means:

- (a) the existing corporate debt facilities of the Pepper Group as at the date of this deed; and
- (b) each of the existing Pepper Warehouse Facilities as at the date of this deed.

**Pepper Group** means Pepper and each of its Subsidiaries, and a reference to a **Pepper Group Member** or a **member of the Pepper Group** is to Pepper or any of its Subsidiaries.

**Pepper Indemnified Party** means:

- (a) each Pepper Group Member; and
- (b) each director, officer, employee, adviser, general or limited partner, manager, agent, member, stockholder and representative of each Pepper Group Member.

**Pepper Information** means all information contained in the Scheme Booklet other than the Bidder Information, the Independent Expert's Report and any information in respect of which a statement that a third party assumes responsibility for that information is included in the Scheme Booklet.

**Pepper Material Adverse Change** means an event, change, matter or circumstance that occurs, is announced or becomes known to Bidder (including a person announcing, commencing or threatening any claim, dispute or litigation against a Pepper Group Member, whether or not it becomes public, after the date of this deed which (in each case determined in accordance with the Accounting Standards) has, has had or would reasonably be expected to result in, either individually or when aggregated with any other events, changes, matters or circumstances of a similar kind or category:

- (a) a diminution in the consolidated net assets of the Pepper Group by at least \$47 million, and calculated on a pro forma basis excluding limited recourse funding vehicles in a manner consistent with the basis of presentation contained on page 24 of the Pepper Group's Investor Presentation in respect of the 2016 calendar year and released to the ASX on 24 February 2017, against what it would reasonably have been expected to have been but for such event, change, matter or circumstance; or
- (b) a diminution in the EBITDA such that, if the change occurred as at 1 October 2017, there would have been a reduction by at least 15% (on a projected basis) of the EBITDA of the Pepper Group over the period from 1 October 2017 to 30 September 2018 against what it would reasonably have been expected to have been but for such event, change, matter or circumstance.

but does not include any event, change, matter or circumstance:

- (c) required to be done or procured by Pepper, or expressly permitted, under this deed or the Scheme or the transactions contemplated by either;
- (d) which Bidder has previously approved in writing;

- (e) that was Fairly Disclosed in the Disclosure Materials;
- (f) that was Fairly Disclosed in documents that were publicly available prior to the date of this deed from public filings of Pepper with ASX;
- (g) relating to the costs and expenses incurred by Pepper associated with the Scheme Process, including all fees payable to external advisers of Pepper, to the extent such amounts or estimates of such amounts are Fairly Disclosed in the Disclosure Materials; or
- (h) comprising or resulting from a change (including the implementation or introduction of a previously announced or made change) in any applicable law or governmental policy, any Accounting Standards, general or political conditions (including changes in foreign exchange rates and commodity prices) or financial markets, whether in Australia or elsewhere.

**Pepper Option** means an option over an unissued ordinary share in Pepper.

**Pepper Prescribed Occurrence** means, other than as:

- (a) required or expressly permitted by this deed, the Scheme or the transactions contemplated by either;
- (b) Fairly Disclosed in the Disclosure Materials;
- (c) Fairly Disclosed in documents that were publicly available prior to the date of this deed from public filings of Pepper with ASX; or
- (d) agreed to in writing by Bidder (in the case of paragraph (r), such agreement not to be unreasonably withheld or delayed);

the occurrence of any of the following events after the date of this deed:

- (e) Pepper converts all or any of its shares into a larger or smaller number of shares;
- (f) Pepper resolves to reduce its share capital in any way;
- (g) Pepper reclassifies, combines, splits or redeems or repurchases directly or indirectly any of its shares, other than any on market acquisition of shares to satisfy:
  - (i) the vesting, or release of forfeiture conditions in respect of (or the making of provision for either of these occurrences in respect of), any Pepper Rights listed in Schedule 2 in accordance with their terms, including as amended as contemplated by clause 3.1(b); or
  - (ii) the exercise of any Pepper Options listed in Schedule 2 in accordance with their terms, including as amended as contemplated by clause 3.1(b);
- (h) Pepper:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (i) a member of the Pepper Group issues shares, or grants an option over its shares (including the issue of any shares in respect of any Pepper Rights or Pepper Options not listed in Schedule 2), or agrees to make such an issue or grant such an option, other than:

- (i) to Pepper or a directly or indirectly wholly-owned Subsidiary of Pepper; or
- (ii) the issue of shares upon either:
  - (A) the vesting, or release of forfeiture conditions in respect of (or the making of provision for either of these occurrences in respect of) Pepper Rights in accordance with their terms (but only in respect of Pepper Rights for which Pepper Shares are not on issue at the date of this deed); or
  - (B) the exercise of any Pepper Options in accordance with their terms, (but only in respect of Pepper Options for which Pepper Shares are not on issue at the date of this deed and as provision for their exercise),

and in both cases provided that the total number of shares on the Implementation Date does not exceed the Maximum Share Number;

- (j) a member of the Pepper Group issues or agrees to issue securities or other instruments convertible into shares or debt securities (including any issue or grant of Pepper Rights) other than:

- (i) to Pepper or another Pepper Group Member; or
- (ii) the issue of shares upon either:
  - (A) the vesting, or release of forfeiture conditions in respect of (or the making of provision for either of these occurrences in respect of) Pepper Rights in accordance with their terms (but only in respect of Pepper Rights for which Pepper Shares are not on issue at the date of this deed) or
  - (B) the exercise of any Pepper Options in accordance with their terms (but only in respect of Pepper Options for which Pepper Shares are not on issue at the date of this deed as provision for their exercise),

and in both cases provided that the total number of shares on the Implementation Date does not exceed the Maximum Share Number;

- (k) Pepper adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (l) any member of the Pepper Group disposes, or agrees to dispose of the whole or a substantial part of its business or property (but for the avoidance of doubt excluding any sale of loans as part of a Whole Loan Sale);
- (m) any member of the Pepper Group creates, or agrees to create, any Encumbrance over the whole, or a substantial part, of its business or property other than:
  - (i) to Pepper or another Pepper Group Member;
  - (ii) any security required in connection with Pepper's debt facilities Fairly Disclosed in the Disclosure Materials;
  - (iii) a lien which arises by operation of law or legislation securing an obligation that is not yet due; or
  - (iv) by a Funding SPV in its ordinary course of business and consistent with past practice.

- (n) any member of the Pepper Group:
  - (i) hiring or terminating the employment or engagement of any Key Employees or director other than any termination for serious cause entitling immediate dismissal;
  - (ii) pays any of its directors or Key Employees a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this document).
- (o) an Insolvency Event occurs in relation to a member of the Pepper Group; or
- (p) Pepper makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), other than the Permitted Dividend or to a Pepper Group Member;
- (q) a Pepper Group Member:
  - (i) enters into, agrees to enter into, or terminates a Material Contract;
  - (ii) terminates or amends in a material manner (other than due to default by the counterparty with which the Pepper Group Member has contracted, due to illegality or on the basis that the continuation of the contract may cause damage to Pepper's reputation):
    - (A) one or more servicing contracts (where a Pepper Group Member is the servicer or performs a similar role) which, in aggregate, over the 12 months following the respective date of termination or amendment, would have entitled the Pepper Group (but for the termination or the amendment) to revenue of an amount equal to 7.5% of the Pepper Group's revenue in the 12 months immediately preceding the date of this deed; or
    - (B) any other contract which is material to the conduct of the Pepper Group's business or which involves revenue of more than \$10 million over the term of the contract; or
  - (iii) waiving any material third party default where the financial impact of the waiver on the Pepper Group as a whole will be in excess of \$2.5 million (individually or in aggregate) other than in the ordinary course of the Pepper Group's lending business; or
  - (iv) accepting as a settlement or compromise of a material matter (relating to an amount in excess of \$5 million) less than 80% of the full compensation due to Pepper or a Pepper Group Member (unless based on advice of appropriate legal counsel and a determination by Pepper that it would be in the best interests of the Pepper Group Member to accept such amount);
- (r) a member of the Pepper Group entering into a contract or commitment, other than as Fairly Disclosed in the Disclosure Materials, which materially restrains a member of the Pepper Group from competing with any person or conducting activities in any material market;
- (s) a member of the Pepper Group entering into or resolving to enter into a transaction with any related party of Pepper (other than a related party which is a member of the Pepper Group) as defined in section 228 of the Corporations Act which would require shareholder approval under Chapter 2E or under Chapter 10 of the Listing Rules; or



- (t) a member of the Pepper Group doing anything that would result in a de-consolidation of the Pepper Consolidated Tax Group, other than acquiring or disposing of a wholly owned subsidiary (subject always to the other provisions of this deed).

**Pepper Representations and Warranties** means the representations and warranties of Pepper set out in clauses 9.1 and 12.1.

**Pepper Right** means a right or other entitlement granted under a Pepper employee incentive scheme or plan to acquire by way of issue or transfer (or have vesting or forfeiture conditions satisfied in respect of) one or more Pepper Shares subject to the terms of such scheme or plan.

**Pepper Share** means a fully paid ordinary share in the capital of Pepper.

**Pepper Shareholder** means a person registered in the Share Register as a holder of Pepper Shares.

**Pepper Warehouse Facilities** means each of the warehouse funding facilities used by any member of the Pepper Group for funding the origination and holding of loans and which the parties agree in writing are "Pepper Warehouse Facilities" for the purpose of this deed.

**Permitted Dividend** means a fully franked (to the extent franking credits are available) interim dividend on Pepper Shares in respect of the half-year ending 30 June 2017 of up to \$0.03 per Pepper Share.

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

**Recommendation** has the meaning given in clause 6.1.

**Record Date** means 5.00pm on the date that is three Business Days after the Effective Date, or such other date as may be agreed in writing between Bidder and Pepper or as may be required by ASX.

**Regulator's Draft** means the draft of the Scheme Booklet in a form which is agreed to between the parties and that is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

**Regulatory Approval** means any waiver, consent, approval or ruling (binding or non binding) of a Government Agency necessary to implement the Scheme or which the parties agree acting reasonably and in good faith should be obtained in connection with the Scheme.

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act, as modified by any legislative instrument issued by ASIC.

**Relevant Regulatory Approvals** means each of the following:

- (a) **Central Bank of Ireland approval:** the Central Bank of Ireland has provided a written notification of no objection or approval, either without conditions or with conditions acceptable to Bidder (acting reasonably), to the proposed material indirect change of ownership in Pepper Finance Corporation (Ireland) Designated Activity Company, arising out of the proposed Scheme, pursuant to a notification submitted pursuant to section 7.1 of the "Authorisation Requirements & Standards for Retail Credit Firms";
- (b) **Competition and Consumer Protection Commission (Ireland) (CCPC) approval:** to the extent that the Irish Competition Act 2002 (2002 Act) is applicable, one of the following events having occurred:

- (i) the CCPC shall have informed Bidder of its determination pursuant to either section 21(2)(a) or section 22(3)(a) of the 2002 Act that the proposed Scheme may be put into effect;
  - (ii) the CCPC shall have informed Bidder of its determination pursuant to section 22(3)(c) of the 2002 Act that the proposed Scheme may be put into effect, either without conditions or with conditions acceptable to Bidder (acting reasonably);
  - (iii) the period specified in section 21(2) of the 2002 Act has lapsed without the CCPC having informed Bidder of its determination (if any) under section 21(2)(a) or (b) of the 2002 Act; or
  - (iv) where applicable, if 120 working days after the appropriate date (as defined by section 19(6) of the 2002 Act) have elapsed without the CCPC having informed Bidder of its determination (if any) under section 22 of the 2002 Act in relation to proposed Scheme;
- (c) **Korea approval:** the acceptance and approval (excluding any conditional acceptance or approval) by the Fair Trade Commission of Korea of the business combination report submitted to it by the Bidder in connection with the Transaction, pursuant to Article 12 of the Monopoly Regulation and Fair Trade Act of Korea and the completion of any pending review, approval or test undertaken by any Government Agency of Korea without any adverse decision in respect of any Pepper Group Member;
- (d) **FCA approval:** the FCA has given written notice (and such notice not having expired or been withdrawn) in accordance with:
- (i) section 189(4) of the FSMA that it approves unconditionally Bidder and any other person who would, on implementation of the Scheme, become a controller (as defined in the FSMA) of Pepper as a consequence of their relationship with Bidder, parent undertakings of Bidder or otherwise (in each case, an **Additional Controller**) acquiring control of Pepper pursuant to this deed; or
  - (ii) section 189(7) of the FSMA that it approves Bidder and any Additional Controller acquiring control of Pepper pursuant to this deed subject to conditions and those conditions are reasonably acceptable to Bidder; and
- (e) **Existing licences or approvals:** each Pepper Group Member which is material to the Pepper Group has maintained each licence or approval of any Governmental Agency it holds as at the date of this deed in connection with the holdings or ownership of any Pepper Group Member and which is material to that Pepper Group Member.

**Representative** means, in relation of a party:

- (a) its Related Bodies Corporate;
- (b) a director, officer, employee of the party or any of the party's Related Bodies Corporate;
- (c) an adviser to the party or to any of the party's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity in the ordinary course of its business and who has been engaged by that entity in that capacity in connection with the Transaction.

**Retained Shares** has the meaning given in the Scheme.

**Retention Election** has the meaning given in the Scheme.

**Sanctioned Person** means at any time:

- (a) any person or entity listed on any Sanctions-related list of designated or blocked persons;
- (b) any person resident in, or entity organized under the laws of, a country or territory that is the subject of comprehensive Sanctions (including without limitation Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region); or
- (c) any person or entity majority-owned or controlled by or acting on behalf of any of the foregoing.

**Sanctions** means those economic and financial sanctions and trade embargoes imposed, administered or enforced from time to time by:

- (a) the European Union and implemented by its member States;
- (b) the United Nations Security Council;
- (c) Her Majesty's Treasury of the United Kingdom; or
- (d) the U.S. government, including those administered by the U.S. Treasury, Office of Foreign Assets Control.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Pepper and the Scheme Shareholders in respect of all Scheme Shares, substantially in the form of which is attached as Annexure A or such other form as is agreed in writing between the parties subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to in writing by Bidder and Pepper.

**Scheme Booklet** means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Pepper Shareholders which includes the Scheme, the Deed Poll, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report, notices of meeting and proxy forms, and, if requested, an Election Form.

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

**Scheme Meeting** means the meeting of Pepper Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Shareholder** means a holder of Pepper Shares recorded in the Share Register as at the Record Date.

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

**Scrip Consideration** means for each Pepper Share (other than a Retained Share) in respect of which a Scheme Shareholder makes a valid Election, 1 HoldCo Share, subject to any applicable scale back applied in accordance with the Scheme.

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

hearing of such application is adjourned or appealed for any reason, the first day on which the adjourned application or appeal is heard.

**Share Register** means the register of members of Pepper maintained by or on behalf of Pepper in accordance with the Corporations Act.

**Share Rights Agreement** means the letter agreement titled "Share Rights Agreement" to be entered between Bidder and HoldCo, and in the form initialled by Bidder and Pepper or their solicitors on their behalf for the purpose of identification prior to entry into this deed.

**Shareholders Deed** means the shareholders deed in relation to HoldCo in the form set out in Annexure C or as otherwise agreed between Pepper and Bidder.

**Subsidiary**, in relation to an entity, has the meaning given in Division 6 of Part 1.2 of the Corporations Act but so that:

- (a) an entity will also be deemed to be a "Subsidiary" of an entity if that entity is required by the accounting standards to be consolidated with that entity;
- (b) a trust or fund may be a "Subsidiary", for the purposes of which any units or other beneficial interests will be deemed shares; or
- (c) a corporation or trust or fund may be a "Subsidiary" of a trust or fund if it would have been a Subsidiary if that trust or fund were a corporation.

**Superior Proposal** means a bona fide Competing Proposal which the Pepper Board, acting in good faith, and after taking written advice from its legal advisers and advice from its financial advisers, determines:

- (a) is reasonably capable of being valued and completed, taking into account all aspects of the Competing Proposal, including its conditions, the identity, reputation and financial condition of the person making such proposal, and legal, regulatory and financial matters; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Pepper Shareholders than the Transaction viewed in aggregate, taking into account all terms and conditions of the Competing Proposal (including consideration, conditionality, funding, certainty and timing).

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

**Third Party** means a person other than Bidder and its Associates.

**Timetable** means the indicative timetable in relation to the Scheme set out in Schedule 1, or such other indicative timetable as Bidder and Pepper may agree in writing or as may be required by ASX.

**Transaction** means:

- (a) the proposed acquisition of the Scheme Shares (excluding Retained Shares) by Bidder through implementation of the Scheme in accordance with the terms of this deed; and
- (b) all associated transactions and steps contemplated in this deed.

**Whole Loan Sale** means a sale by a Pepper Group Member of a portfolio of loans to a third party in the ordinary course of the Pepper Group's business.

## 1.2 Interpretation

In this deed, headings are for ease of reference only and do not affect interpretation and, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a person includes a natural person, body corporate, corporation, trust, partnership, incorporated body or other entity;
- (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (f) a reference to a document (including this deed) includes any agreement, deed or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (g) a reference to a document (including this deed) includes any variation, replacement or novation of it;
- (h) a reference to dollars or \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to time is to Sydney, Australia time;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) the meaning of general words is not limited by using the words including, for example or similar expressions;
- (l) a reference to conduct includes a reference to any omission, statement or undertaking, whether or not in writing;
- (m) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) nothing in this deed is to be construed to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it, or put the relevant part of the agreement forward;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this deed.

## 2. AGREEMENT TO PROPOSE AND IMPLEMENT SCHEME

- (a) Pepper agrees to propose and implement the Scheme on and subject to the terms of this deed.

- (b) Bidder agrees with Pepper to assist Pepper to propose and implement the Scheme on and subject to the terms of this deed.

### 3. CONDITIONS PRECEDENT

#### 3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme are not binding, until and unless each of the following Conditions Precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **Regulatory Approvals:** before 8.00am on the Second Court Date:
- (i) **ASIC and ASX:** ASIC and ASX issue or provide all reliefs, waivers, confirmations, exemptions, consents or approvals, and have done all other acts, necessary, or which Pepper and Bidder agree are desirable, to implement the Scheme and such reliefs, waivers, confirmations, exemptions, consents, approvals or other acts (as the case may be) have not been withdrawn, suspended or revoked at 8.00am on the Second Court Date;
  - (ii) **FIRB approval:** either:
    - (A) the Treasurer (or the Treasurer's delegate) has provided a written no objection notification to the Scheme either without conditions or with conditions acceptable to Bidder (acting reasonably); or
    - (B) following notice of the proposed Scheme having been given under the FIRB Act, the Treasurer has ceased to be empowered to make any order under Part 3 of the FIRB Act because the applicable time limit on making orders and decisions under the FIRB Act has expired; and
  - (iii) **Relevant Regulatory Approvals:** all Relevant Regulatory Approvals are obtained and those approvals have not been withdrawn or revoked.
- (b) **Pepper Rights and Pepper Options:** before 8.00am on the Second Court Date, all Pepper Rights, all Pepper Options and any other securities convertible into Pepper Shares are converted, exercised, Amended, cancelled, exchanged or acquired or subject to legally binding arrangements for their conversion, exercise, Amendment, cancellation, exchange or acquisition prior to the Record Date, on terms acceptable to Bidder (acting reasonably), conditional only on the Scheme becoming Effective;
- (c) **Shareholder approval:** Pepper Shareholders agree to the Scheme at the Scheme Meeting by requisite majorities under section 411(4)(a)(ii) of the Corporations Act;
- (d) **Valid Elections:** Pepper Shareholders holding at least 35% of the issued Pepper Shares make valid Elections under the Scheme;
- (e) **Independent Expert:** the Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Pepper Shareholders before the time when the Scheme Booklet is registered by ASIC;
- (f) **Court approval:** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (g) **Continuation of Pepper Debt Facilities:** each relevant counterparty to each of the Pepper Debt Facilities consents to the change of control arising from the

implementation of the Scheme and such consent is not withdrawn or revoked before 8.00am on the Second Court Date;

- (h) **No Pepper Prescribed Occurrences:** no Pepper Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date;
- (i) **No Pepper Material Adverse Change:** no Pepper Material Adverse Change occurs between (and including) the date of this deed and 8.00am on the Second Court Date;
- (j) **No HoldCo Prescribed Occurrences:** no HoldCo Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date;
- (k) **Enforcement:** no material enforcement action or material investigation is announced or commenced by a Government Agency specifically against or specifically in respect of a Pepper Group Member which relates to a material contravention or alleged material contravention of applicable laws or regulations by the Pepper Group Member (or any of its staff) and which has or is likely to have an adverse financial impact on the consolidated net assets or EBITDA of the Pepper Group of at least \$47 million (including for this purpose any fines and penalties) or has or is likely to have a sustained detrimental and sustained public adverse impact on the market reputation of the Pepper Group;
- (l) **No restraints:** no Court or Government Agency has issued or announced that it has taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second Court Date;
- (m) **Shareholders Deed:** the Shareholders Deed is executed by HoldCo and the persons named as "KKR Investors" in that deed and remains in force, unamended;
- (n) **HoldCo Constitution:** the HoldCo Constitution is adopted by Red Hot Singapore I Pte. Ltd. and remains in force, unamended; and
- (o) **Share Rights Agreement:** the Share Rights Agreement is executed by HoldCo and BidCo and remains in force, unamended.

### 3.2 Benefit and waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a)(ii), 3.1(a)(iii), 3.1(c) and 3.1(f) cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(d), 3.1(h), 3.1(i) and 3.1(k) are for the sole benefit of Bidder and may only be waived by Bidder in writing.
- (c) The Conditions Precedent in clauses 3.1(e), 3.1(j), 3.1(m), 3.1(n) and 3.1(o) are for the sole benefit of Pepper and may only be waived by Pepper in writing.
- (d) The Conditions Precedent in clauses 3.1(a)(i), 3.1(b), 3.1(g) and 3.1(l) are for the benefit of both Pepper and Bidder, and may only be waived by written agreement between Pepper and Bidder.
- (e) 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.
- (f) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this deed that resulted in the breach or non-satisfaction of the relevant Condition Precedent.

- (g) 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 Reasonable endeavours**

Each of Pepper and Bidder agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent:
  - (i) is satisfied as soon as practicable after the date of this deed; and
  - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being satisfied.

### **3.4 Regulatory matters**

Without limiting clause 3.3, each party must:

- (a) promptly apply for all relevant Regulatory Approvals contemplated by the Conditions Precedent in clause 3.1(a);
- (b) take all steps it is responsible for as part of the applicable approval or consent process in respect of the relevant Regulatory Approvals, including responding to requests for information at the earliest practicable time;
- (c) consult with the other party in advance in relation to all material communications (whether written or oral, and whether direct or via a Representative) with any Government Agency relating to any approval or consent required to satisfy a Condition Precedent, or any action taken or proposed by, or any enquiries made by, a Government Agency in relation to the Scheme;
- (d) provide the other party with drafts of any material written communications to be sent to a Government Agency and taking any reasonable comments made by the other party into account in good faith when making any amendments; and
- (e) provide copies of any material written communications sent to or received from a Government Agency to the other party promptly upon despatch or receipt (as the case may be), in each case to the extent it is reasonable to do so,

provided that neither party is required to disclose materially commercially sensitive information to the other party or information which would be damaging to the commercial or legal interests of the discloser or any of its Related Bodies Corporate, or disclose information which is not permitted by law.

### **3.5 Conditions of Regulatory Approvals**

- (a) Subject to clause 3.5(b), a Regulatory Approval will be regarded as having been obtained notwithstanding that one or more conditions may have been attached to that Regulatory Approval, if such conditions are reasonably satisfactory to all parties.



- (b) Bidder acknowledges that, for the purposes of clause 3.1(a)(ii)(A), the tax conditions issued by FIRB as set out in Parts A and B of Attachment A to Guidance Note 47 issued by FIRB will be acceptable to Bidder if included in the "no objections" notification.

### **3.6 Notifications**

Each party must:

- (a) promptly notify the other party of the satisfaction of a Condition Precedent, and must keep the other party informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) promptly give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will or is reasonably likely to prevent a Condition Precedent being satisfied;
- (c) upon receipt of a notice given under clause 3.6(b), give written notice to the other party as soon as possible (and in any event by no later than 8.00am on the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question; and
- (d) if a Condition Precedent is not satisfied by the time and date satisfied for satisfaction of that Condition Precedent, then, unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date, Pepper must make an application to defer the Second Court Date until such time (being not later than the Business Day before the End Date) as reasonably required to enable the relevant Condition Precedent to be satisfied.

### **3.7 Failure of Conditions Precedent**

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this deed by the time or date specified in this deed for the satisfaction of the Condition Precedent;
  - (ii) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this deed for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this deed); or
  - (iii) the Scheme has not become Effective by the End Date,the parties must consult in good faith with a view to determining whether:
  - (iv) the Scheme may proceed by way of alternative means or methods;
  - (v) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
  - (vi) to extend the End Date.
- (b) If the parties are unable to reach agreement under clause 3.7(a) within 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) either party may terminate this deed by notice in writing to the other party before 8.00am on the Second Court Date provided that:

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

in which case the termination will be in accordance with clause 13.1(a)(ii).

#### **4. SCHEME**

##### **4.1 Scheme**

Pepper must propose a scheme of arrangement under which:

- (a) all of the Pepper Shares held by Scheme Shareholders at the Record Date (other than Retained Shares) will be transferred to Bidder; and
- (b) each Scheme Shareholder who holds Pepper Shares to be transferred to Bidder will be entitled to receive the Scheme Consideration in respect of those transferred Pepper Shares.

##### **4.2 Scheme Consideration**

Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Pepper Share held by that Scheme Shareholder at the Record Date (other than Retained Shares) subject to and in accordance with this deed and the Scheme.

##### **4.3 Payment of Scheme Consideration**

Subject to this deed and the Scheme, Bidder undertakes to Pepper (in its own right and separately as trustee or nominee of each Scheme Shareholder) that, in consideration of the transfer to Bidder of each Pepper Share held by a Scheme Shareholder at the Record Date (other than Retained Shares), Bidder will, on the Implementation Date:

- (a) accept that transfer; and
- (b) provide and will procure HoldCo to provide to each Scheme Shareholder whose Pepper Shares are transferred to Bidder the relevant component of the Scheme Consideration in accordance with the Scheme.

##### **4.4 Issue of HoldCo Shares**

- (a) Subject to the Scheme becoming Effective, Bidder must:
  - (i) issue (or procure the issue of) the HoldCo Shares to the Scheme Shareholders who have made valid Elections to receive the Scrip Consideration in accordance with the Scheme on terms that each HoldCo Share will rank equally in all respects with each other HoldCo Share and will have the rights set out in the HoldCo Constitution and the Shareholders Deed; and
  - (ii) ensure that on issue each HoldCo Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.
- (b) To facilitate the issue of the HoldCo Shares to Scheme Shareholders, Pepper must provide to Bidder, or procure the provision to Bidder of, a complete copy of the

Pepper register of members as at the Record Date (which must include the name, address and registered holding of each Scheme Shareholder as at the Record Date), within two Business Days after the Record Date. The details and information to be provided under this clause must be provided in such form as Bidder may reasonably require.

- (c) Bidder will not issue (or procure the issue of) any HoldCo Shares to Foreign Scheme Shareholders.

#### **4.5 Pepper Rights and Pepper Options**

Pepper must take all actions necessary to ensure that:

- (a) before 8.00am on the Second Court Date, all Pepper Rights, all Pepper Options and any other securities convertible into Pepper Shares are converted, exercised, Amended, cancelled, exchanged or acquired, or subject to legally binding arrangements for their conversion, exercise, cancellation, exchange or acquisition prior to the Record Date, in each case on terms acceptable to Bidder (acting reasonably) and conditional only on the Scheme becoming Effective;
- (b) by no later than the Record Date no more than the number of Pepper Rights and Pepper Options set out in Schedule 2 have vested and/or have any restrictions on their exercise waived; and
- (c) any Pepper Rights and any Pepper Options that do not vest or have not had any restrictions on their exercise waived in accordance with paragraph (b) above or are not otherwise converted, exercised, Amended, cancelled, exchanged or acquired in accordance with paragraph (a) above, in each case before the Record Date, lapse or are cancelled for no consideration on or prior to the Record Date.

Pepper's obligation in paragraph (a) in respect of:

- (d) 3,691,192 Pepper Rights which are (as at the date of this Deed) unvested Long Term Incentive Plan Performance Rights and in respect of which Pepper Shares are not on issue as at the date of this Deed, and are not expected to be on issue as at the Record Date; and
- (e) Pepper Rights which are (as at the date of this Deed) Long Term Incentive Plan Loan Shares,

in either case granted by Pepper in 2015, 2016 or 2017 (**Relevant Rights**) is subject to Bidder procuring HoldCo to agree to grant holders of the Relevant Rights (other than Relevant Rights which are Long Term Incentive Plan Loan Shares in respect of which the relevant holder has notified Pepper of its intention to make a Retention Election), as and from the Implementation Date, rights in respect of HoldCo Shares which are equivalent to the rights such holders had in respect of Pepper Shares under the Relevant Rights immediately before the Implementation Date.

#### **4.6 Election mechanism**

- (a) Pepper must ensure that an Election Form is made available to Pepper Shareholders to whom the Scheme Booklet is sent.
- (b) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by the parties in writing.
- (c) Pepper must procure that, to the extent practicable, Pepper Shareholders who acquired Pepper Shares after the date of the despatch of the Scheme Booklet receive an Election Form on request to Pepper.

#### 4.7 No amendment to Scheme without consent

Pepper must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Bidder (such consent not to be unreasonably withheld or delayed).

### 5. IMPLEMENTATION

#### 5.1 General obligations

Pepper and Bidder must each:

- (a) use all reasonable endeavours and commit reasonably necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

#### 5.2 Pepper's obligations

Pepper must take all reasonable steps to implement the Scheme on a basis consistent with this deed and as soon as reasonably practicable in accordance with the Timetable, including each of the following:

- (a) **announce directors' recommendation:** following execution of this deed, announce in a form agreed between Pepper and Bidder (on the basis of statements made to Pepper by each member of the Pepper Board) that:
  - (i) the Pepper Board intends to unanimously recommend to Pepper Shareholders that the Scheme be approved; and
  - (ii) each Pepper Board Member who holds Pepper Shares, intends to vote his or her Pepper Shares in favour of the Scheme,subject to:
  - (iii) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Pepper Shareholders; and
  - (iv) there being no Superior Proposal;
- (b) **preparation of Scheme Booklet:** subject to clause 5.2(e)(i), as soon as practicable after the date of this deed, prepare (other than the Bidder Information and the Independent Expert's Report) and dispatch the Scheme Booklet:
  - (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules; and
  - (ii) unless there has been a change of recommendation permitted by clause 6.2 and having regard to the provisions of clause 6.1, include in the Scheme Booklet a statement by the Pepper Board:

- (A) unanimously recommending that Pepper Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Pepper Shareholders and there being no Superior Proposal; and
  - (B) that each Pepper Board Member who holds Pepper Shares intends to vote his or her Pepper Shares in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Pepper Shareholders and there being no Superior Proposal;
- (c) **Independent Expert:** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report as soon as practicable;
- (d) **section 411(17)(b) statement:** apply to ASIC for the production of:
- (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
  - (ii) a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (e) **consultation with Bidder:** consult with Bidder as to the content and presentation of:
- (i) the Scheme Booklet, which includes:
    - (A) providing Bidder with drafts of the Scheme Booklet for the purpose of providing Bidder reasonable opportunity to review and make comments on drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy including of those parts that include information relating to Bidder);
    - (B) taking any reasonable comments made by Bidder and its Representatives on those drafts into account in good faith when producing a revised draft of the Scheme Booklet, provided that such comments are provided to Pepper in a timely manner (however, in relation to the Independent Expert's Report, Pepper makes no representation as to the extent to which the Independent Expert will receive or consider those comments);
    - (C) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Bidder to review the Regulator's Draft before the date of its submission; and
    - (D) obtaining Bidder's consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) in accordance with clause 5.3(g); and
  - (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any reasonable comments on, or suggested amendments to, those documents from Bidder or its Representatives prior to filing those documents with the Court;

- (f) **lodgement of Regulator's Draft:**
- (i) no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder promptly thereafter; and
  - (ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and use reasonable endeavours, in consultation with Bidder, to resolve any such matters;
- (g) **supplementary disclosure:** if, after dispatch of the Scheme Booklet, Pepper becomes aware:
- (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to Pepper Shareholders under any applicable law but was not included in the Scheme Booklet,
- promptly consult with Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Pepper Shareholders, and make any disclosure that Pepper considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 12.1(g) if it applied as at the date that information arose;
- (h) **Court application:** apply to the Court for an order under section 411(1) of the Corporations Act directing Pepper to convene the Scheme Meeting;
- (i) **send Scheme Booklet:** send the Scheme Booklet to Pepper Shareholders as soon as practicable after the Court orders Pepper to convene the Scheme Meeting;
- (j) **Scheme Meeting:** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (k) **director's voting:** use its reasonable endeavours to procure that each Pepper Board Member votes any Pepper Shares in which they have a Relevant Interest in favour of the Scheme at the Scheme Meeting;
- (l) **Court approval:** subject to all Conditions Precedent, other than the Condition Precedent in clause 3.1(f), being satisfied or waived in accordance with this deed, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (m) **Certificate:** at the hearing on the Second Court Date, provide to the Court (through its counsel):
- (i) a certificate confirming (in respect of matters within Pepper's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.1 (other than clause 3.1(f)), have been satisfied or waived in accordance with this deed, a draft of which must be provided by Pepper to Bidder by 4.00pm on the date that is 3 Business Days prior to the Second Court Date; and
  - (ii) any certificate provided to it by Bidder under clause 5.3(g);
- (n) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order approving the Scheme in accordance with section 411(10) of the Corporations Act no

later than the Business Day after that office copy is received (or any later date agreed in writing by Bidder);

- (o) **Share Register:** if the Scheme becomes Effective, finalise and close the Share Register as at the Record Date to determine the identity of Scheme Shareholders and their entitlements to Scheme Consideration in accordance with the Scheme and the Deed Poll;
- (p) **transfer and registration:** if the Scheme becomes Effective and subject to Bidder having issued the Scheme Consideration in accordance with the Scheme and Deed Poll, on the Implementation Date:
  - (i) execute, on behalf of the Scheme Shareholders, proper instruments of transfer and effect the transfer of Pepper Shares to Bidder in accordance with the Scheme; and
  - (ii) register all transfers of Pepper Shares held by Scheme Shareholders to Bidder on the Implementation Date;
- (q) **suspension of trading:** apply to ASX to suspend trading in Pepper Shares with effect from the close of trading on the Effective Date;
- (r) **listing:** subject to clause 5.2(p), take all reasonable steps to maintain Pepper's listing on ASX, notwithstanding any suspension of the quotation of Pepper Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC;
- (s) **information:** promptly provide to Bidder any information regarding the Pepper Group that Bidder reasonably requires to prepare the Bidder Information for inclusion in the Scheme Booklet; and
- (t) **other steps:** if the Scheme becomes Effective, do all things contemplated of it under the Scheme and all other things (if any) reasonably necessary for the Pepper to do to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

### 5.3 Bidder's obligations

Bidder must take all reasonable steps to assist Pepper to implement the Scheme on a basis consistent with this deed and as soon as reasonably practicable in accordance with the Timetable, and in particular must:

- (a) **Bidder Information:**
  - (i) prepare and promptly provide to Pepper for inclusion in the Scheme Booklet the Bidder Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet; and
  - (ii) provide Pepper with drafts of the Bidder Information in a timely manner and, acting reasonably and in good faith, take into account all reasonable comments from Pepper and its Representatives on those drafts, provided that such comments are provided to Bidder in a timely manner;
- (b) **confirmation of Bidder Information:** subject to Pepper complying with clause 5.2(e) and 5.2(f), promptly after Pepper requests that it does so, confirm in writing to Pepper that:

- (i) it consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears; and
  - (ii) the Bidder Information in the Scheme Booklet is not misleading or deceptive in any material respect (whether by omission or otherwise), and the inclusion of such Bidder Information, in that form and context, has been approved by Bidder;
- (c) **further Bidder Information:** promptly:
- (i) advise Pepper in writing if it becomes aware:
    - (A) of information which should have been but was not included in the Bidder Information in the Scheme Booklet (including if known at the time), and promptly provide Pepper with the omitted information; or
    - (B) that the Bidder Information in the Scheme Booklet is misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide Pepper with any information required to correct the misleading or deceptive statements; and
  - (ii) provide to Pepper any further or new Bidder Information as may arise after the Scheme Booklet has been sent to Pepper Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 12.5(g) if it applied as at the date on which such further or new Bidder Information arose;
- (d) **assistance with Scheme Booklet and Court Documents:** provide any assistance or information reasonably requested by Pepper or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Pepper Shareholders) or any Court Documents, including reviewing the drafts of the Scheme Booklet prepared by Pepper and provide comments in a timely manner on those drafts in good faith;
- (e) **Independent Expert information:** provide any assistance or information reasonably requested by Pepper or its Representatives, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report;
- (f) **Deed Poll:** by no later than the Business Day prior to the First Court Date, sign and deliver to Pepper the Deed Poll and procure that HoldCo sign and deliver to Pepper the Deed Poll;
- (g) **Certificate:** before 8.00am on the Second Court Date, provide to Pepper for provision to the Court at the hearing on that date a certificate confirming (in respect of matters within Bidder's knowledge) whether or not the Conditions Precedent for which Bidder is responsible, as noted in clause 3.1, have been satisfied or waived in accordance with this deed, a draft of which must be provided to Pepper by 5.00pm on the Business Day prior to the Second Court Date;
- (h) **Share transfer:** if the Scheme becomes Effective, accept a transfer of the Pepper Shares as contemplated by clause 4.3(a) and execute (or procure the execution of) proper instruments of transfer of the Pepper Shares to Bidder in accordance with the Scheme;



- (i) **Scheme Consideration:** if the Scheme becomes Effective, procure the provision of the Scheme Consideration in the manner and amount contemplated by clause 4.3 and the terms of the Scheme and the Deed Poll;
- (j) **Share Rights Agreement:** by no later than the Business Day prior to the First Court Date execute, and procure that Holdco executes, the Share Rights Agreement and ensure that the Share Rights Agreement remains in force, unamended, from the time of its execution until the Implementation Date;
- (k) **other steps:** do everything reasonably within its power to ensure that the Scheme is effected in accordance with all applicable laws, regulations and policy;
- (l) **Shareholders Deed:** procure that the Shareholders Deed is executed by HoldCo and the persons named as "KKR Investors" in that deed as contemplated by clause 3.1(m), and that the Shareholders Deed remains in force, unamended, from the time of its execution until the Implementation Date; and
- (m) **tax:** take all reasonable actions necessary to facilitate the Scheme Shareholders who make valid Elections to receive the Scrip Consideration to qualify for roll-over relief under subdivision 124-M of the Tax Act.

#### **5.4 Scheme Booklet responsibility statement**

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect that:

- (a) Pepper has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Bidder Information, the Independent Expert's Report or any other report or letter issued to Pepper by a third party; and
- (b) Bidder has prepared, and is responsible for, the Bidder Information in the Scheme Booklet (and no other part of the Scheme Booklet).

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

If Bidder and Pepper disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of the Bidder Information contained in the Scheme Booklet, Pepper will make any amendments as Bidder, acting in good faith, reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Pepper Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

#### **5.6 Verification**

Each party must undertake appropriate verification processes for the information supplied by that party which is included in the Scheme Booklet.

#### **5.7 No partnership or joint venture**

Subject to this deed, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

## **5.8 Conduct of Court proceedings**

- (a) Pepper and Bidder are entitled to separate representation at all Court proceedings relating to the Scheme.
- (b) This deed does not give Pepper or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's prior written consent.
- (c) Each party must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this deed.
- (d) Each of Bidder and Pepper must defend, or cause to be defended, any lawsuit or other legal proceeding brought against it (or any of its Subsidiaries) challenging this deed or the completion of the Scheme, unless Pepper has in good faith determined that such action is not in the best interests of Pepper Shareholders.

## **5.9 Appointment of Pepper directors**

On the Implementation Date, but subject to the Scheme Consideration having been despatched to the Scheme Shareholders in accordance with the Scheme and receipt by Pepper of signed consents to act, Pepper must use its reasonable endeavours to:

- (a) cause the appointment of each Incoming Director to the Pepper Board; and
- (b) procure that each of the Outgoing Directors retire from the Pepper Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Pepper (provided that nothing in this clause 5.9 requires any Outgoing Director to forego any rights they may have under any deed of access and indemnity or policy of insurance),

in each case, in accordance with Pepper's constitution, the Corporations Act and the Listing Rules.

## **5.10 Directors' and officers' insurance**

- (a) Subject to the Scheme becoming Effective and subject to the Corporations Act, Bidder undertakes in favour of Pepper and each other person who is a Pepper Indemnified Party that it will:
  - (i) subject to clause 5.10(b), for a period of 7 years from the Implementation Date, ensure that the constitutions of Pepper and each other member of the Pepper Group continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its current and former 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 Pepper Group; and
  - (ii) procure that Pepper and each other member of the Pepper 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 the directors' and officers' run-off insurance cover for those directors and officers is maintained,

subject to clause 5.10(b), for a period of 7 years from the retirement date of each director and officer. Nothing in this clause prevents any amendment to the constitutions of Pepper and each other member of the Pepper Group where the

amendment does not result in the indemnity coverage applicable to current and former directors and officers being less favourable.

- (b) The undertakings contained in clause 5.10(a) are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Pepper Group ceasing to be part of the Bidder Group.
- (c) Pepper acknowledges that it receives and holds the benefit of clause 5.10(a) to the extent it relates to each director and officer of a member of the Pepper Group on behalf of each of them.
- (d) Bidder acknowledges that, notwithstanding any other provision of this deed, Pepper may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such 7 year period, and that any actions to facilitate that insurance or in connection therewith will not be a Pepper Prescribed Occurrence or breach any provision of this deed.

## **6. PEPPER BOARD RECOMMENDATION**

### **6.1 Reasonable endeavours**

- (a) Pepper must use its reasonable endeavours to procure that none of its directors withdraws or changes their recommendation that Pepper Shareholders vote in favour of the Scheme at the Scheme Meeting, unless:
  - (i) there is a Superior Proposal; or
  - (ii) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of Pepper Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of Pepper Shareholders,

#### **(Recommendation).**

For the purposes of this clause, customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of the Scheme to the effect that the recommendation is made in the absence of a superior proposal from a third party will not be regarded as a failure to make or withdraw the making of a recommendation in favour of the Scheme.

- (b) The parties acknowledge and agree that the Pepper Board Members may, in their discretion, as part of the Recommendation:
  - (i) recommend only the cash component of the Scheme Consideration and make no recommendation in relation to the Scrip Consideration or the making of an Election; or
  - (ii) make no recommendation at all in relation to whether Pepper Shareholders should make an Election or receive the cash component of the Scheme Consideration.

### **6.2 Withdrawal or change of recommendation**

Without limiting clause 9, other than in the circumstances described in clauses 6.16.1(a)(i) or 6.1(a)(ii), if Pepper receives notice from (or is otherwise aware that) a Pepper Board Member that that Member proposes to withdraw, change or modify his or her Recommendation to vote in favour of the Scheme:

- (a) Pepper must notify Bidder in writing promptly; and
- (b) the parties must consult in good faith for 2 Business Days after the date on which the notification in clause 6.2(a) is received by Bidder to consider and to determine whether there are any steps that can be taken to avoid such withdrawal, change or modification (as applicable). That recommendation cannot be withdrawn or changed in accordance with clause 6.1 until the end of the consultation period.

## **7. CONDUCT OF BUSINESS**

### **7.1 Conduct of business**

- (a) Subject to clause 7.1(b), from the date of this deed up to and including the Implementation Date:
  - (i) Pepper must, and must cause each other Pepper Group Member to, conduct the business of the Pepper Group in the ordinary course consistent with business plans and budgets and other information Fairly Disclosed to Bidder and otherwise in substantially the same manner in which such business has been conducted in the 12 months prior to the date of this deed and regularly keep the Bidder informed of conduct of the business;
  - (ii) Pepper must, and must cause each other Pepper Group Member to, to the extent it is reasonably able, maintain and preserve its relationships with Government Agencies, customers, suppliers, and others having business dealings with any Pepper Group Member, and retain the services of all officers and Key Employees;
  - (iii) Pepper must ensure that there is no material decrease in the amount of cash in the Pepper Group other than in the ordinary course of business and consistent with forecasts Fairly Disclosed prior to the date of this deed;
  - (iv) Pepper must not take any action that constitutes a Pepper Prescribed Occurrence or that could reasonably be expected to result in a Pepper Prescribed Occurrence; and
  - (v) Bidder must not take any action that constitutes a HoldCo Prescribed Occurrence or that could reasonably be expected to result in a HoldCo Prescribed Occurrence.
- (b) Nothing in this clause 7.1(a) restricts the ability of Pepper to take any action which:
  - (i) is required or expressly permitted by this deed or the terms of the Scheme;
  - (ii) has been agreed to in writing by Bidder (such agreement not to be unreasonably withheld or delayed);
  - (iii) is required by law, the rules of a recognised stock exchange, or a Government Agency;
  - (iv) has been Fairly Disclosed prior to the date of this deed as being an action that Pepper will carry out between (and including) the date of this deed and the Implementation Date; or
  - (v) take any action which ensures that directors' and officers' run-off insurance cover for the directors and officers of Pepper and each member of the Pepper Group is maintained in accordance with clause 5.10(d).

- (c) For the avoidance of doubt, nothing in clause 7.1(a) restricts the ability of Pepper to respond to a Competing Proposal to the extent permitted in accordance with clause 9.

## 7.2 Access

Between the date of this deed and the Implementation Date, Pepper must:

- (a) as soon as reasonably practicable provide Bidder and its officers and advisers with any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) reasonably requested by them; and
- (b) provide Bidder and its officers and advisers with reasonable, non-disruptive access during normal business hours and on reasonable notice to Pepper's officers and advisers which Bidder reasonably requires for the purposes of:
  - (i) implementing the Scheme;
  - (ii) preparing for carrying on the business of the Pepper Group following implementation of the Scheme; and
  - (iii) any other purpose which is agreed in writing between the parties,

provided in every case that such access is reasonably necessary to Bidder and, in the reasonable opinion of Pepper, does not place an unreasonable burden on the ability of Pepper to run its business, and provided that (without limiting clause 6.2) nothing in this clause 7.2 shall require Pepper to provide Bidder with any information:

- (iv) in breach of confidentiality obligations owed to third parties or applicable privacy laws; or
  - (v) concerning the consideration of the Scheme or of any actual or potential Competing Proposal by the Pepper Board or Pepper management.
- (c) The parties acknowledge that all information that is provided pursuant to this clause 7.2 will be provided subject to the terms of the Confidentiality Deed.

## 7.3 Change of control

As soon as practicable after the date of this deed, the parties must:

- (a) seek to identify any change of control or similar provisions in material contracts, joint venture documentation and leases to which a Pepper Group Member is a party which may be triggered by the implementation of the Scheme (**Change of Control Requirements**); and
- (b) unless otherwise agreed between Pepper and Bidder, use all reasonable endeavours to obtain any material consents required in accordance with the terms of any identified Change of Control Requirements as soon as practicable and in any event before the Second Court Date.

A failure by a Pepper Group Member to obtain any landlord or third party consent as part of the Change of Control Requirements will not constitute a breach of this deed by Pepper and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

## **8. RELEASES**

### **8.1 Release of Bidder and Bidder Indemnified Parties**

Subject to the Corporations Act, Pepper releases its rights, and agrees with Bidder that it will not make a claim, against any Bidder Indemnified Party (other than Bidder and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:

- (a) any breach of any representations and warranties of Bidder or any other member of the Bidder Group in this deed;
- (b) any disclosure made to the Pepper containing any statement which is false or misleading whether in content or by omission in connection with Scheme,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except when the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 8.1 limits Pepper's rights to terminate this deed under clauses 13.1 and 13.2.

### **8.2 Benefit for Bidder Indemnified Parties**

Bidder receives and holds the benefit of clause 8.1 to the extent it relates to each Bidder Indemnified Party on behalf of each of them.

### **8.3 Release of Pepper and Pepper Indemnified Parties**

Subject to the Corporations Act, Bidder releases its rights, and agrees with Pepper that it will not make a claim, against any Pepper Indemnified Party (other than Pepper and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:

- (a) any breach of any representations and warranties of Pepper or any other member of the Pepper Group in this deed;
- (b) any disclosure made to the Bidder containing any statement which is false or misleading whether in content or by omission in connection with Scheme,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except when the Pepper Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 8.3 limits Bidder's rights to terminate this deed under clauses 13.1 and 13.2.

### **8.4 Benefit for Pepper Indemnified Parties**

Pepper receives and holds the benefit of clause 8.3 to the extent it relates to each Pepper Indemnified Party on behalf of each of them.

## **9. EXCLUSIVITY**

### **9.1 Termination of existing discussions**

- (a) Pepper represents and warrants that, as at the date of this deed, it is not in negotiations or discussions in respect of any Competing Proposal with any person.
- (b) As soon as practicable following the execution of this deed, to the extent it has not already done so or as otherwise agreed by Pepper and Bidder, Pepper must promptly request the return or destruction of Pepper's confidential information that has been provided to a Third Party under a confidentiality agreement in relation to a Competing

Proposal in accordance with, but only to the extent provided by, the terms of that confidentiality agreement.

- (c) Subject to clause 9.5, Pepper agrees not to waive, and to enforce to the extent commercially reasonable, any standstill obligations of any such party. Pepper acknowledges that costs (internal and external) may need to be incurred to enforce a standstill obligation and that the incurrence of such costs is a commercially reasonable consequence of enforcing a standstill obligation.

## **9.2 No shop restriction**

During the Exclusivity Period, Pepper must not, and must ensure that each of its Representatives does not directly or indirectly, except with the prior written consent of Bidder, solicit, invite, encourage or initiate any enquiries, negotiations or discussions with any Third Party in relation to a Competing Proposal or communicates any intention to do any of these things with a view to obtaining any offer, proposal or expression of interest from any Third Party in relation to a Competing Proposal.

## **9.3 No talk restriction**

Subject to clauses 9.5 and 9.6, during the Exclusivity Period, Pepper must not, and must ensure that each of its Representatives does not, except with the prior written consent of Bidder, enter into or participate in negotiations or discussions with, or enter into any agreement, understanding or arrangement with, any Third Party in relation to a Competing Proposal or any agreement, understanding or arrangement that may reasonably be expected to lead to a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Pepper or any of its Representatives or the person has publicly announced the Competing Proposal.

## **9.4 No due diligence**

Subject to clauses 9.5 and 9.6, during the Exclusivity Period, Pepper must not, and must ensure that each of its Representatives does not, except with the prior written consent of Bidder, enable any Third Party to undertake due diligence investigations on any member of the Pepper Group or their business or operations or make available to any Third Party or permit any such Third Party to receive (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the Pepper Group or their businesses or operations with a view to obtaining , or which would reasonably be expected to encourage or lead to receipt of an actual, proposed or potential Competing Proposal by the Third Party.

## **9.5 Exceptions**

Clauses 9.1(c),9.1(c) 9.3, 9.4 and 9.7 do not apply to the extent that they would otherwise restrict Pepper or the Pepper Board from taking or refusing to take any action in relation to an actual, proposed or potential Competing Proposal (which was not solicited, invited, encouraged or initiated by Pepper or its Representatives in contravention of clause 9.2) provided that the Pepper Board has determined, acting in good faith, that:

- (a) after consultation with its financial advisors, such Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers, failing to respond to such Competing Proposal would constitute, or be reasonably likely to constitute a breach of the Pepper Board's fiduciary or statutory obligations.,

## **9.6 Further exceptions**

Nothing in this deed prevents Pepper from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course of business or in relation to the Transaction; or
- (b) fulfilling its continuous disclosure obligations.

## **9.7 Notice of unsolicited approach**

During the Exclusivity Period, Pepper must inform Bidder as soon as reasonably practicable if it, any of its Related Bodies Corporate or any of its Representatives:

- (a) receives any unsolicited approach with respect to any Competing Proposal and must disclose to Bidder all material details of the Competing Proposal, including details of the proposed bidder or acquirer (to the extent known by Pepper);
- (b) receives any request for information relating to Pepper or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of Pepper or any of its Related Bodies Corporate, which Pepper has reasonable grounds to suspect may be in connection with or for the purposes of the person formulating, developing or finalising a Competing Proposal; and
- (c) provides any information relating to Pepper or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of an actual, proposed or potential Competing Proposal.

## **9.8 Matching right**

Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, Pepper:

- (a) must not enter into any legally binding agreement, arrangement or understanding pursuant to which a Third Party, Pepper or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
- (b) must use its reasonable endeavours to procure that none of its directors withdraw or change their recommendation to vote in favour of the Scheme or otherwise make a public statement to publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Scheme),

unless:

- (c) the Pepper Board acting in good faith and in order to satisfy its statutory or fiduciary duties (having received written advice from its external legal advisers), determines that the Competing Proposal would be or would be likely to be an actual, proposed or potential Superior Proposal;
- (d) Pepper has provided Bidder with the material terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the third party making or proposing to undertake or give effect to the actual, proposed or potential Competing Proposal;
- (e) Pepper has given Bidder at least 5 Business Days after the date of the provision of the information referred to in clause 9.8(d) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and



- (f) Bidder has not provided a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal to the Pepper Board by the expiry of the 5 Business Day period referred to in clause 9.8(e).

Pepper acknowledges and agrees that each successive modification (excluding immaterial modifications) of any actual, proposed or potential Competing Proposal will constitute a new actual, proposed or potential Competing Proposal for the purposes of the requirements under clause 9.8 and accordingly Pepper must comply with clause 9.8(a) and clause 9.8(b) of this clause in respect of any new actual, proposed or potential Competing Proposal unless clause 9.8(c) to 9.8(f) (inclusive) apply.

## **9.9 Bidder Counterproposal**

If Bidder proposes to Pepper, or announces amendments to the Scheme or a new proposal that constitute a matching or superior proposal to the terms of the Competing Proposal (**Bidder Counterproposal**) before the expiry of the 5 Business Day period referred to in clause 9.8(e), Pepper must procure that the Pepper Board considers the Bidder Counterproposal and if the Pepper Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Pepper Shareholders as a whole compared with the Competing Proposal, taking into account the material terms and conditions of the Bidder Counterproposal, then:

- (a) Pepper and Bidder must use their reasonable endeavours to agree the amendments to this deed and, if applicable, the Scheme and Deed Poll that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and
- (b) Pepper must use its reasonable endeavours to procure that each of the directors of Pepper recommends the Bidder Counterproposal to Pepper Shareholders.

## **10. PEPPER BREAK FEE**

### **10.1 Background**

This clause has been agreed in circumstances where:

- (a) Bidder and Pepper believe that the Scheme will provide significant benefits to Bidder, Pepper and their respective shareholders, and Bidder and Pepper acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 10.5;
- (b) Bidder requested that provision be made for the Pepper Break Fee, without which Bidder would not have entered into this deed;
- (c) both Bidder and the Pepper Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Bidder's entry into this deed and participation in the Scheme; and
- (d) both parties have received legal advice on this deed and the operation of this clause.

### **10.2 Payment by Pepper to Bidder**

Subject to clauses 10.3, 10.4, 10.6 and 10.7, Pepper agrees to pay the Pepper Break Fee to Bidder (or any other person that Bidder directs) without withholding or set off if:

- (a) a Competing Proposal is announced during the Exclusivity Period and, within 12 months of such announcement:

- (i) the proponent of that Competing Proposal (or any of its Associates) acquires a Relevant Interest in more than 50% of Pepper Shares; and
  - (ii) that Competing Proposal is (or becomes) free from any defeating conditions (or if the Competing Proposal is a scheme of arrangement, the scheme becomes effective); or
- (b) during the Exclusivity Period, any Pepper Board Member fails to recommend the Scheme or withdraws, adversely changes or adversely qualifies his or her recommendation that Pepper Shareholders vote in favour of the Scheme or otherwise makes a public statement indicating that he or she no longer supports the Scheme, except where:
- (i) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of Pepper Shareholders (other than where the sole or dominant reason for the Independent Expert's conclusion is the existence of a Competing Proposal which the Independent Expert may reasonably regard to be on more favourable terms than the transaction contemplated by this deed); or
  - (ii) Pepper is entitled to terminate this deed pursuant to clause 13.1(a)(i) and has given the appropriate termination notice to Bidder; or
- (c) Bidder validly terminates this deed in accordance with clause 13.1(a)(i).

### **10.3 No amount payable if Scheme becomes Effective**

- (a) Notwithstanding the occurrence of any event in clause 10.2, if the Scheme becomes Effective:
- (i) no amount is payable by Pepper under clause 10.2; and
  - (ii) if any amount has already been paid under clause 10.2 it must be refunded by Bidder within 10 Business Days after the Scheme becomes Effective.
- (b) Pepper can only ever be liable to pay the Pepper Break Fee once.
- (c) The Pepper Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.
- (d) The Pepper Break Fee is not payable where:
- (i) Pepper has become entitled to the Bidder Break Fee; or
  - (ii) this deed is validly terminated by either party pursuant to clause 3.7(b) as a result of a failure of a Condition Precedent in clause 3.1(a) to be satisfied (and if any amount has been already paid under clause 10.2 it must be refunded by Bidder within 10 Business Days after any such termination).

### **10.4 Timing of payment**

- (a) A demand by Bidder for payment of the Pepper Break Fee under clause 10.2 must:
- (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;

- (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account into which Pepper must pay the Pepper Break Fee.
- (b) Pepper must pay the Pepper Break Fee to Bidder (or any other person that Bidder directs) under clause 10.2 without withholding or set off within 10 Business Days of receipt by Pepper of a valid demand for payment from Bidder under clause 10.4(a).
  - (c) The demand may only be made after the occurrence of an event referred to in clause 10.2.

#### 10.5 Nature of payment

The Pepper Break Fee is an amount to compensate Bidder for:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) costs of management and directors' time in planning and implementing the Transaction;
- (c) out-of-pocket expenses incurred by Bidder and its respective employees, advisers and agents in planning and implementing the Transaction;
- (d) damage to Bidder's reputation associated with a failed transaction and the implications of that damage to Bidder's business; and
- (e) reasonable opportunity costs incurred by Bidder in pursuing the Transaction or in not pursuing alternative acquisitions or strategic initiatives, including costs arising from Bidder being associated with a failed transaction and the implications of that damage to Bidder's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 10.2.

#### 10.6 Pepper's limitation of liability

- (a) Subject to clauses 10.6(b) and 10.7:
  - (i) the maximum liability of Pepper to Bidder under or in connection with this deed including in respect of any breach of this deed will be the Pepper Break Fee, and in no event will the aggregate liability of the Pepper under or in connection with a breach of this deed exceed an amount equal to the Pepper Break Fee; and
  - (ii) the payment by Pepper of the Pepper Break Fee represents the sole and absolute amount of liability of Pepper to Bidder under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Pepper to Bidder in connection with this deed.
- (b) Clause 10.6(a) does not apply to a breach of clause 9.2 by Pepper in reliance on which Bidder has validly terminated this deed in accordance with clause 13.1(a)(i), excluding any breach of clause 9.2 arising solely from:
  - (i) Pepper failing to ensure that those Representatives within paragraph (c) of the definition (**Relevant Representatives**) comply with clause 9.2; or

- (ii) Pepper or its Relevant Representatives receiving or responding to unsolicited enquiries from a Third Party,

provided that in either case described in clause 10.6(b)(i) or 10.6(b)(ii), neither Pepper nor any of its Representatives encouraged the relevant Third Party to make a Competing Proposal or entered into or participated in negotiations or discussions with the Third Party in relation to a Competing Proposal.

## **10.7 Compliance with law**

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 10.2:

- (a) is unlawful or would if performed be, unlawful;
- (b) involves a breach of the duties of the Pepper Board; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then Pepper's obligation to pay the applicable amount or part of the amount payable under clause 10.2 does not apply and if Bidder has received any such part of the payment due under clause 10.2 it must refund it within 10 Business Days of such final determination.

The parties must not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 10.7.

## **11. BIDDER BREAK FEE**

### **11.1 Background**

This clause has been agreed in circumstances where:

- (a) Bidder and Pepper believe that the Scheme will provide significant benefits to Bidder, Pepper and their respective shareholders, and Bidder and Pepper acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, Pepper will incur significant costs, including those set out in clause 11.5;
- (b) Pepper requested that provision be made for the Bidder Break Fee, without which Pepper would not have entered into this deed;
- (c) both Bidder and the Pepper Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Pepper's entry into this deed and participation in the Scheme; and
- (d) both parties have received legal advice on this deed and the operation of this clause.

### **11.2 Payment by Bidder to Pepper**

Subject to clauses 11.3, 11.4 and 11.6, Bidder agrees to pay the Bidder Break Fee to Pepper without withholding or set off if:

- (a) Pepper validly terminates this deed in accordance with clause 13.1(a)(i) or 13.2(b); or
- (b) Bidder does not provide or procure the provision of the Scheme Consideration in accordance with the terms of this deed and the Deed Poll.

### **11.3 No amount payable if Scheme becomes Effective**

- (a) Notwithstanding the occurrence of any event in clause 11.2, if the Scheme becomes Effective:
  - (i) no amount is payable by Bidder under clause 11.2; and
  - (ii) if any amount has already been paid under clause 11.2 it must be refunded by Pepper within 10 Business Days after the Scheme becomes Effective.
- (b) Bidder can only ever be liable to pay the Bidder Break Fee once.

### **11.4 Timing of payment**

- (a) A demand by Pepper for payment of the Bidder Break Fee under clause 11.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account into which Bidder must pay the Bidder Break Fee.
- (b) Bidder must pay the Bidder Break Fee to Pepper under clause 11.2 without withholding or set off within 10 Business Days of receipt by Bidder of a valid demand for payment from Pepper under clause 11.4(a).
- (c) The demand may only be made after the occurrence of an event referred to in clause 11.2.

### **11.5 Nature of payment**

The Bidder Break Fee is an amount to compensate Pepper for:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction (excluding success fees);
- (b) costs of management and directors' time in planning and implementing the Transaction;
- (c) out-of-pocket expenses incurred by Pepper and its respective employees, advisers and agents in planning and implementing the Transaction;
- (d) damage to Pepper's reputation associated with a failed transaction and the implications of that damage to Pepper's business; and
- (e) reasonable opportunity costs incurred by Pepper in pursuing the Scheme or in not pursuing alternative strategic initiatives which Pepper, including costs arising from Pepper being associated with a failed transaction and the implications of that damage to Pepper's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 11.2.

## 11.6 Bidder's limitation of liability

Subject to clause 11.7:

- (a) the maximum liability of Bidder to Pepper under or in connection with this deed including in respect of any breach of this deed will be the Bidder Break Fee and in no event will the aggregate liability of the Bidder under or in connection with a breach of this deed exceed an amount equal to the Bidder Break Fee; and
- (b) the payment by Bidder of the Bidder Break Fee represents the sole and absolute amount of liability of Bidder to Pepper under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder to Pepper in connection with this deed.

## 11.7 Claims under the Deed Poll

Nothing in clause 11.6 or otherwise in this deed will limit Bidder's or HoldCo's liability under or in connection with a breach of clause 4.3(b) or clause 4.4 of this deed or the Deed Poll.

## 12. REPRESENTATIONS AND WARRANTIES

### 12.1 Pepper Representations and Warranties

Subject to clause 12.4, Pepper represents and warrants to Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder directors) that each of the following statements is true and correct in all material respects as at the date of this deed and, unless expressly stated otherwise, as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **status:** it is a corporation duly incorporated or validly existing in accordance with the laws of its place of incorporation;
- (b) **power:** it has power to enter into this deed, to comply with its obligations under it and exercise its rights under it;
- (c) **no contravention:** the entry by it into, its compliance with its obligations and the exercise of its rights under, this deed do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on it;
- (d) **corporate authorisations:** it has taken all necessary corporate action to authorise its entry into this deed and has taken or will take all necessary action to authorise the performance of this deed and to carry out the transactions contemplated by this deed;
- (e) **validity of obligations:** its obligations under this deed are valid and binding and are enforceable against it in accordance with its terms;
- (f) **reliance:** the Pepper Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (g) **Pepper Information:** the Pepper Information provided in accordance with this deed and included in the Scheme Booklet as at the date of the Scheme Booklet will not

contain any material statement which is misleading or deceptive in any material respect nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;

- (h) **disclosure:** the Disclosure Materials were prepared, compiled and made available to Bidder and its Representatives in good faith and with reasonable care, the change of control table included in the Disclosure Materials summarising the change of control provisions in certain funding arrangements of the Pepper Group fairly and accurately represents those change of control provisions, and does not omit to summarise any material change of control provisions in the funding arrangements of the Pepper Group in its Australian operations, and, so far as it is aware as at the date of this deed, are not misleading or deceptive in any material respect (whether by omission or otherwise);
- (i) **continuous disclosure:** Pepper is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than in connection with the Transaction);
- (j) **compliance:** each member of the Pepper Group has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian or foreign Government Agencies having jurisdiction over it and has all material licences, authorisations and permits necessary for it to conduct its business as it has been conducted in the 12 months prior to the date of this deed;
- (k) **provision of information to Independent Expert:** all information provided by or on behalf of Pepper to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (l) **securities:** Pepper's issued securities as at the date of this deed are as set out in Part A of Schedule 2, and other than as Fairly Disclosed in the Disclosure Materials or this deed or in an announcement made by Pepper to ASX prior to the date of this deed, it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into or give rights to acquire Pepper Shares;
- (m) **Insolvency Event:** no member of the Pepper Group is subject to an Insolvency Event;
- (n) **no default:** so far as it is aware, neither Pepper nor any of its Subsidiaries is in material default under any material document, agreement or instrument binding on it or its assets nor, so far as it is aware, has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect other than as Fairly Disclosed;
- (o) **regulatory approvals:** so far as Pepper is aware as at the date of this deed, no regulatory approval is required to be obtained by Pepper in order for it to execute, deliver and perform this deed, other than those approvals set out in clause 3.1, and so far as the Pepper is aware, as at the date of this deed no regulatory action of any nature has been taken that would prevent or restrict its ability to fulfil its obligations under this deed; and

(p) **Anti-Corruption Laws and Sanctions:**

- (i) So far as Pepper is aware, based on reasonable and due inquiry, neither the Pepper Group, nor any of its officers, directors or employees, nor any agent or other third party representative acting on behalf of, and with the actual authority of, the Pepper Group, has made, offered, promised, or authorised, directly or indirectly, any payment for unlawful contributions, gifts, entertainment or other expenses relating to political activity, or any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment to any person for the purpose of either gaining an improper business advantage, in each case in violation of any applicable Anti-Corruption Laws.
- (ii) So far as Pepper is aware, based on reasonable and due inquiry, neither the Pepper Group nor any of its officers, directors, employees, agents or other third party representatives acting on behalf of, and with the actual authority of, the Pepper Group is a Sanctioned Person or has transacted business with a Sanctioned Person or in violation of Sanctions.
- (iii) None of Pepper Group's officers, directors, or employees is currently a Government Official.
- (iv) The Pepper Group has implemented and adhered in all material respects to policies and procedures designed to prevent conduct that would constitute a violation of applicable Anti-Corruption Laws, Sanctions, and Anti-Money Laundering Laws, and have maintained in all material respects complete and accurate books and records, including records of payments to any agents, consultants, representatives, third parties and government officials.
- (v) During the 5 years prior to the date of this deed, the Pepper Group has not received from any Government Agency or any other person any notice, inquiry, or internal or external allegation, or made any voluntary or involuntary disclosure to a Government Agency related to any actual or potential violation of applicable Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions. No proceeding by or before any Government Agency involving Pepper with respect to Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions is pending, or to the actual knowledge of Pepper, is threatened.
- (vi) Pepper shall not use any proceeds transferred pursuant to this Transaction in violation of any Anti-Corruption Laws, nor shall it directly or knowingly indirectly transfer such proceeds to or for the benefit of any Sanctioned Person or in violation of Sanctions.

**12.2 Notices in relation to Pepper Representations and Warranties**

Pepper must give written notice to Bidder promptly, and in any event within 2 Business Days, of any breach of any of the Pepper Representations and Warranties, or any material development of which Pepper or any of its Representatives becomes aware that is reasonably likely to result in the breach of any of the Pepper Representations and Warranties, with such notice to include details of the relevant circumstances and any actions taken to remedy the actual or potential breach.

**12.3 Pepper's indemnity**

Subject to clauses 10.6 and 12.4, Pepper indemnifies the Bidder against all Losses incurred directly or indirectly as a result of any breach of the representations and warranties in clause 12.1.



## 12.4 Qualifications on Pepper Representations and Warranties

The Pepper Representations and Warranties in clause 12.1 and the indemnity in clause 12.3 are each subject to matters that:

- (a) are permitted or required in this deed or under the Scheme;
- (b) have been Fairly Disclosed in the Disclosure Materials;
- (c) have been Fairly Disclosed by Pepper in an announcement made to Pepper on ASX; or
- (d) as at the date of this deed are within the actual knowledge of the Representatives of Bidder designated in the Disclosure Letter for the purposes of this clause 12.4(d).

Any Pepper Representations and Warranties that are given subject to Pepper's awareness, knowledge or belief are given by reference to the actual awareness, knowledge or belief of the Pepper Representatives referred to in clause 12.8(a) after having made reasonable enquiries.

## 12.5 Bidder Representations and Warranties

Bidder represents and warrants to Pepper (on its own behalf and separately as trustee or nominee for each of the Pepper directors) that each of the following statements is true and correct in all material respects as at the date of this deed and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **status:** it is a corporation duly incorporated or validly existing in accordance with the laws of its place of incorporation;
- (b) **power:** it has power to enter into this deed, to comply with its obligations under it and exercise its rights under it;
- (c) **no contravention:** the entry by it into, its compliance with its obligations and the exercise of its rights under, this deed do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on it;
- (d) **corporate authorisations:** it has taken all necessary corporate action to authorise its entry into this deed and has taken or will take all necessary action to authorise the performance of this deed and to carry out the transactions contemplated by this deed;
- (e) **validity of obligations:** its obligations under this deed are valid and binding and are enforceable against it in accordance with its terms;
- (f) **reliance:** the Bidder Information provided to Pepper for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Pepper and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (g) **Bidder Information:** the Bidder Information provided in accordance with this deed and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive in any material respect nor contain any material omission having regard to applicable disclosure

requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;

- (h) **new information:** it will, as a continuing obligation, provide to Pepper all further or new information which arises after the Scheme Booklet has been despatched to Pepper Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information is not misleading or deceptive in any material respect (including by way of omission);
- (i) **compliance:** each member of the Bidder Group has complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian or foreign Government Agencies having jurisdiction over it and has all material licences, authorisations and permits necessary for it to conduct its business as it has been conducted in the 12 months prior to the date of this deed;
- (j) **no dealing with Pepper Shareholders:** neither it nor any of its Associates has any agreement, arrangement or understanding with any Pepper Shareholder under which that Pepper Shareholder (or an associate of that Pepper Shareholder) would be entitled to receive consideration for their Pepper Shares different from the Scheme Consideration or under which the Pepper Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal;
- (k) **reasonable basis:** it has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to provide or procure the provision of the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (l) **provision of information to Independent Expert:** all information provided by or on behalf of Bidder and HoldCo to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (m) **Insolvency Event:** no member of the Bidder Group is subject to an Insolvency Event;
- (n) **Equity Commitment Letter:** the Equity Commitment Letter has been duly executed by the parties to the letter and constitutes legally binding obligations of those parties that are enforceable in accordance with the Equity Commitment Letter's terms and the Equity Commitment Letter has not been terminated;
- (o) **ongoing effect:** as a continuing obligation, Bidder agrees that it:
  - (i) subject to paragraph (ii), will not amend the Equity Commitment Letter in any respect which will, or is reasonably likely to prejudice Bidder's ability to pay the Scheme Consideration or any other amount payable by it (including the Bidder Break Fee) in accordance with or pursuant to this deed and/or the Deed Poll;
  - (ii) will not agree or consent to any novation, assignment or transfer of the KKR Funds' obligations under the Equity Commitment Letter; and
  - (iii) will enforce its rights, and will not, waive any of its rights, under the Equity Commitment Letter ;
- (p) **regulatory approvals:** so far as the Bidder is aware, no regulatory approval is required to be obtained by Bidder in order for it to execute, deliver and perform this

deed, other than those approvals set out in clause 3.1, and so far as the Bidder is aware, as at the date of this deed no regulatory action of any nature has been taken that would prevent or restrict its ability to fulfil its obligations under this deed.

## **12.6 Notices in relation to Bidder Representations and Warranties**

Bidder must give written notice to Pepper promptly, and in any event within 2 Business Days, of any breach of any of the Bidder Representations and Warranties, or any material development of which Bidder or any of its Representatives becomes aware that is reasonably likely to result in the breach of any of the Bidder Representations and Warranties, with such notice to include details of the relevant circumstances and any actions taken to remedy the actual or potential breach.

## **12.7 Bidder's indemnity**

Subject to clause 11.6, Bidder indemnifies Pepper against all Losses incurred directly or indirectly as a result of any breach of the representations and warranties in clause 12.4.

## **12.8 Qualifications on Bidder Representations and Warranties**

- (a) The Bidder Representations and Warranties in clause 12.5 and the indemnity in clause 12.7 are each subject to matters that as at the date of this deed are within the actual knowledge of the Representatives of Pepper designated in the Disclosure Letter for the purposes of this clause 12.8(a).
- (b) Any Bidder Representations and Warranties that are given subject to Bidder's awareness, knowledge or belief are given by reference to the actual awareness, knowledge or belief of the Representatives of Bidder who have been directly involved in the assessment and/or negotiation of the transactions contemplated by this deed after having made reasonable enquiries.

## **13. TERMINATION**

### **13.1 Termination**

- (a) Either party may terminate this deed by written notice to the other party:
  - (i) other than in respect of a breach of a Pepper Representation and Warranty or a Bidder Representation and Warranty (which are dealt with in clause 13.2), at any time prior to 8.00am on the Second Court Date if the other party has materially breached this deed, the first party has given written notice to the party in breach of this deed setting out the relevant circumstances and stating an intention to terminate this deed, and the other party has failed to remedy the breach within 10 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the date on which the notice is given;
  - (ii) in accordance with and pursuant to clause 3.7(b); or
  - (iii) if agreed to in writing by Bidder and Pepper.
- (b) Bidder may terminate this deed by written notice to Pepper until 8.00am on the Second Court Date if:
  - (i) a Pepper Material Adverse Change or Pepper Prescribed Occurrence occurs, Bidder has given written notice to Pepper setting out the relevant circumstances and stating an intention to terminate this deed, and Pepper has failed to remedy the Pepper Material Adverse Change or Pepper

Prescribed Occurrence to Bidder's reasonable satisfaction within 10 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the date on which the notice is given; or

- (ii) any member of the Pepper Board fails to make the Recommendation, withdraws their Recommendation, adversely changes or qualifies their Recommendation, or otherwise makes a public statement indicating that he or she no longer supports the Scheme (excluding a statement that no action should be taken by Pepper Shareholders pending the assessment of a Competing Proposal by the Pepper Board); or
  - (iii) a person and its Associates (other than Bidder or its Associates and any person who together with its Associates, as at the date of this deed holds a Relevant Interest in more than 20% of the Pepper Shares) together hold a Relevant Interest in more than 20% of the Pepper Shares.
- (c) Pepper may terminate this deed by written notice to Bidder until 8.00am on the Second Court Date if:
- (i) a HoldCo Material Adverse Change or a HoldCo Prescribed Occurrence occurs, Pepper has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate this deed, and Bidder has failed to remedy the HoldCo Material Adverse Change or HoldCo Prescribed Occurrence to Pepper's reasonable satisfaction within 10 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the date on which the notice is given;
  - (ii) at any time before 8:00am on the Second Court Date, a majority of the Pepper Board publicly recommends a Competing Proposal that is a Superior Proposal, and provided that the Competing Proposal was not solicited or facilitated by Pepper or its Representatives in breach of Pepper's obligations in clause 9; or
  - (iii) if the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of Pepper Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Scheme is in the best interests of Pepper Shareholders.

### **13.2 Termination for breach of representations and warranties**

- (a) Bidder may, at any time prior to 8.00am on the Second Court Date, terminate this deed for breach of a Pepper Representation and Warranty only if:
- (i) Bidder has given written notice to Pepper setting out the relevant circumstances and stating an intention to terminate this deed or to allow the Scheme to lapse;
  - (ii) the relevant breach or circumstances have not been remedied within 10 Business Days after such notice is given (or any shorter period ending at 8.00am on the Second Court Date); and
  - (iii) the relevant breach of the Pepper Representations and Warranties is material in the context of the Scheme taken as a whole.
- (b) Pepper may, at any time prior to 8.00am on the Second Court Date, terminate this deed for breach of a Bidder Representation and Warranty only if:

- (i) Pepper has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate this deed or to allow the Scheme to lapse;
- (ii) the relevant breach or circumstances have not been remedied within 10 Business Days after such notice is given (or any shorter period ending at 8.00am on the Second Court Date); and
- (iii) the relevant breach of the Bidder Representations and Warranties is material in the context of the Scheme taken as a whole.

### **13.3 Termination**

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed.

### **13.4 Effect of Termination**

If this deed is terminated by either party, or if this deed otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this deed, other than the obligations set out in this clause and in clauses 7, 10.2, 11.2 and 14 to 18 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this deed.

### **13.5 Damages**

Subject to clauses 10.6 and 11.6, in addition to the right of termination under clauses 13.1 and 13.2 where there is no appropriate remedy for the breach in this deed (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this deed, without prejudice to Pepper's right to obtain an order for specific performance in respect of Bidder's obligations in clause 12.5(o).

## **14. PUBLIC ANNOUNCEMENTS**

### **14.1 Initial announcement**

Immediately after the execution of this deed (or any other time the parties agree), Pepper and Bidder must each issue a public announcement of the proposed Scheme in a form agreed between Pepper and Bidder before the execution of this deed.

### **14.2 Required disclosure**

Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Scheme, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.

### **14.3 Subsequent announcements**

Subject to clauses 14.1 and 14.2, no party may make any public announcement or disclosure in connection with the Scheme (including disclosure to a Government Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable. 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 or the Listing Rules.

## **15. CONFIDENTIALITY**

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Deed in respect of all the Bidder Confidential Information and Pepper Confidential Information (as applicable) received by it from the other party on, before or after the date of this deed.

### **15.1 GST**

### **15.2 Recovery of GST**

If GST is payable, or notionally payable, on a supply made under or in connection with this deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

### **15.3 Liability net of GST**

Where any indemnity, reimbursement or similar payment under this deed is based on any cost, expense or other liability, it will be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

### **15.4 Adjustment events**

If an adjustment event occurs in relation to a supply made under or in connection with this deed, the GST Amount will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

### **15.5 Survival**

This clause 15.1 will not merge on termination of this deed.

### **15.6 Definitions**

Unless the context requires otherwise, words and expressions used in this clause 15.1 has the same meaning as in *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

## **16. COSTS**

### **16.1 Costs**

Subject to clauses 15.1 and 16.2 and except as otherwise provided in this deed, each party must pay its own costs and expenses (including taxes) in connection with the negotiation, preparation, execution, delivery and performance of this deed.

### **16.2 Stamp duty**

Bidder:

- (a) must pay all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this deed, the acquisition of the Scheme Shares and the provision of the Scheme Consideration (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies Pepper against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 16.2(a).

## 17. NOTICES

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

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

<b>Party</b>	<b>Notice details</b>
<b>Pepper</b>	Attention: John Williams, General Counsel Address: 27/177 Pacific Hwy, North Sydney NSW 2060 Email: <a href="mailto:jwilliams@pepper.com.au">jwilliams@pepper.com.au</a>  <b>and copy to:</b> Jones Day Attention: Mark Crean Address: Level 41, 88 Phillip Street, Sydney NSW 2000 Email: <a href="mailto:mcrean@jonesday.com">mcrean@jonesday.com</a>
<b>Bidder</b>	Attention: General Counsel Address: KKR Credit Advisors (US) LLC, 555 California Street, 50 <sup>th</sup> Floor, San Francisco, California 94104 Email: <a href="mailto:KKRCreditLegal@kk.com">KKRCreditLegal@kk.com</a>  <b>and copy to:</b> King & Wood Mallesons Attention: Mark McNamara Address: Level 61, 1 Farrer Place, Sydney NSW 2000 Email: <a href="mailto:mark.mcnamara@au.kwm.com">mark.mcnamara@au.kwm.com</a>

- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error; and

- (iv) in the case of email, two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives a delivery failure notification indicating that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at a time that is later than 5.00pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at 9.00am on the next business day in that place.

## **18. GENERAL**

### **18.1 Amendment**

This deed can only be amended or replaced by another document executed by or on behalf of each of the parties.

### **18.2 Assignment**

No party can assign, encumber, declare a trust over or otherwise deal with its rights or obligations under this deed, or attempt, or purport to do so, without the prior written consent of each other party.

### **18.3 No merger**

No provision of this deed merges on completion of any transaction contemplated by this deed.

### **18.4 Further assurances**

Each party must do all things necessary, and must ensure that its employees and agents do anything, including executing agreements and documents, to give full effect to this deed and the transactions contemplated by it.

### **18.5 No waiver**

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

### **18.6 Remedies cumulative**

Except as provided in this deed and permitted by law or equity, the rights, powers and remedies provided in this deed are cumulative with and not exclusive to the rights, powers and remedies provided by law or equity independently of this deed.

### **18.7 Severability**

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

### **18.8 Entire agreement**

This deed contains the entire agreement between the parties with respect to its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter, but excluding the Confidentiality Deed and the Disclosure Letter.



**18.9 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

**18.10 Governing law**

This deed is governed by the laws of New South Wales, Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed.

**18.11 Counterparts**

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

## SCHEDULE 1

### Timetable

<b>Event</b>	<b>Date</b>
Pepper provides Regulator's Draft to ASIC	Early September 2017
First Court Date	Late September 2017
Printing and despatch of Scheme Booklet	Late September 2017
Election Date – latest time for consideration elections to be made	Late October 2017
Scheme Meeting	Early November 2017
Second Court Date	Early November 2017
Effective Date - lodge Court order approving Scheme with ASIC	Early November 2017
Record Date	Mid November 2017
Implementation Date	Mid November 2017

The parties acknowledge that the above timetable has been prepared on the basis of their best estimate of the timing of key events for the Scheme and that certain events may be delayed for reasons outside of the control of the parties, such as:

- the period of consideration by ASIC of the draft Scheme Booklet;
- the Court Hearing to obtain orders to convene the Scheme Meeting may occur after the time specified in the above materials; and
- the Court Hearing to obtain orders approving the Scheme may occur after the time specified in the above timetable.

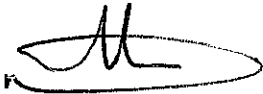
**SCHEDULE 2**

**Pepper securities on issue**

<b>Security</b>	<b>Total number on issue as at the date of this deed</b>
Pepper Shares	182,486,032
Pepper Rights	7,456,395
Pepper Options	300,000

Executed and delivered as a Deed.

**Executed by Pepper Group Limited**  
(ACN 094 317 665) in accordance with  
section 127 of the *Corporations Act 2001*  
(Cth):



\_\_\_\_\_  
Director Signature

Melanie Willis  
Print Name



\_\_\_\_\_  
Director/Secretary Signature

JOHN WILLIAMS  
Print Name

**Executed by Red Hot Australia Bidco Pty  
Ltd** (ACN 620 321 600) in accordance with  
section 127 of the *Corporations Act 2001*  
(Cth):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

Executed and delivered as a Deed.

**Executed by Pepper Group Limited**  
(ACN 094 317 665) in accordance with  
section 127 of the *Corporations Act 2001*  
(Cth):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed by Red Hot Australia Bidco Pty**  
Ltd (ACN 620 321 600) in accordance with  
section 127 of the *Corporations Act 2001*  
(Cth):

  
\_\_\_\_\_  
Director Signature

  
\_\_\_\_\_  
Director/Secretary Signature

**YEW HWAN CHEAH**  
\_\_\_\_\_  
Print Name

**NIRAJ JAVERI**  
\_\_\_\_\_  
Print Name

**ANNEXURE A**  
**Scheme of Arrangement**



## Scheme of Arrangement

Pepper Group Limited (**Pepper**)

The Scheme Shareholders

Jones Day  
Level 41, Aurora Place  
Phillip Street  
Sydney NSW 2000  
Tel: 61 2 8272 0500  
Fax: 61 2 8272 0599  
[www.jonesday.com](http://www.jonesday.com)

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**DATE**

2017

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth).

**BETWEEN THE PARTIES**

- (1) **Pepper Group Limited** (ACN 094 317 665) (**Pepper**)
- (2) **The Scheme Shareholders**

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

**ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as the context requires.

**Bidder** means Red Hot Australia Bidco Pty Limited (ACN 620 321 600).

**Bidder Confirmation Certificate** has the meaning given in clause 4.3(a)(ii).

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

**Cash Scheme Consideration** means an amount equal to the aggregate amount of the cash component of the Scheme Consideration payable to Scheme Shareholders under the terms of this Scheme.

**CHES** means the clearing house electronic subregister system of share transfers operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

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

**Custodian** has the meaning in the Shareholders Deed.

**Custodian Deed** has the meaning in the Shareholders Deed.

**Court** means the Federal Court of Australia (Sydney registry) or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Pepper and Bidder.

**Deed Poll** means the deed poll dated [\*] 2017 executed by Bidder and HoldCo under which each of Bidder and HoldCo covenant in favour of the Scheme Shareholders to perform (or procure performance) of its obligations as contemplated under this Scheme.

**Effective** means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Election** means an election by a Pepper Shareholder to:

- (a) receive up to 100% of the total value of any Scheme Consideration they are to receive in the form of HoldCo Shares in accordance with clause 5.4 of this Scheme (**HoldCo**)

**Election**); or

- (b) retain up to 100% of their Scheme Shares and not transfer those shares to Bidder in accordance with clauses 5.4, 6.2, 6.3, 6.4 and 6.5 of this Scheme (**Retention Election**).

**Election Date** means 5.00pm on the date that is three clear Business Days before the date of the Scheme Meeting or such other date as is agreed in writing between Bidder and Pepper.

**Election Form** means a form issued by Pepper for the purposes of a Pepper Shareholder making an Election.

**End Date** means 31 December 2017 or such other date as is agreed in writing between Bidder and Pepper.

**Foreign Scheme Shareholder** means a Scheme Shareholder whose address in the register of member of Pepper as at the Record Date is a place outside Australia or New Zealand unless Pepper and Bidder agree in writing that it is lawful and not unduly onerous or impracticable to issue HoldCo Shares to that Scheme Shareholder if the Scheme Shareholder so elects under the Scheme in which case that person is not a "Foreign Scheme Shareholder".

**Government Agency** means any governmental, semi-governmental, administrative, fiscal, statutory or judicial entity or authority, or any minister, department, office, commission, agency or delegate of any government, whether in Australia or elsewhere, and includes any regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC and the Takeovers Panel) or any stock exchange.

**HoldCo** means Red Hot Australia Holdco Pty Ltd (ACN 620 321 351).

**HoldCo Constitution** means the constitution adopted, or to be adopted, by HoldCo substantially in the form contained in Annexure B to this Scheme.

**HoldCo Share** means a fully paid ordinary in the capital of HoldCo issued on the terms of issue set out in the Shareholders Deed.

**Immediately Available Funds** means a bank cheque or other form of cleared funds acceptable to Pepper.

**Implementation Date** means the fifth Business Day after the Record Date or such other date after the Record Date agreed to in writing between Pepper and Bidder.

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

**Pepper Registry** means Computershare Investor Services Pty Ltd (ACN 078 279 277) or any replacement provider of share registry services to Pepper.

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

**Pepper Shareholder** means a person registered in the Share Register as a holder of Pepper Shares from time to time.

**Qualifying Tax Payer** means a Pepper Shareholder other than a Foreign Scheme Shareholder where, if HoldCo Shares were to be issued to that Pepper Shareholder as Scheme Consideration, it would result in a Taxable Event for that Pepper Shareholder or its associate (including a beneficiary of a trust of which the Pepper Shareholder is the trustee) without the benefit of Rollover Relief.

**Record Date** means 5.00pm on the date that is three Business Days after the Effective Date, or such other date as may be agreed in writing between Bidder and Pepper or as may be required by ASX.

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

**Retained Share** means a Scheme Share to be retained by a Scheme Shareholder in accordance with clause 6.

**Retaining Shareholder** means a Scheme Shareholder that holds any Retained Shares.

**Retained Shares Scaleback Percentage** means the percentage calculated by the following formula:

$$1 - (B+F),$$

where B and F have the meaning given to them in clause 6.2.

**Retention Cap** means 9.9% of the shares on issue as at the Record Date.

**Rollover Relief** means either the non-recognition or deferred recognition for tax purposes of a gain.

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between Pepper and the Scheme Shareholders, subject to any alterations or conditions agreed or any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Bidder and Pepper, but does not include the Shareholders Deed.

**Scheme Consideration** has the meaning given in clause 5.4.

**Scheme Implementation Deed** means the scheme implementation deed dated [\*] 2017 between Pepper and Bidder.

**Scheme Meeting** means the meeting of Pepper Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Share** means a Pepper Share held by a Scheme Shareholder as at the Record Date.

**Scheme Shareholder** means a Pepper Shareholder as at the Record Date.

**Scheme Transfer** means a duly completed and executed proper share instrument of transfer in respect of the Transferring Shares for the purposes of section 1071B of the Corporations Act, in favour of Bidder as transferee, which may be a master transfer of all or part of the Transferring Shares.

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

**Security Interest** means a mortgage, charge, lien, encumbrance, pledge, and including any "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)

**Share Cap** means 48.5% of the shares on issue as at the Record Date.

**Share Register** means the register of members of Pepper maintained by or on behalf of Pepper in accordance with the Corporations Act.

**Share Rights Agreement** means the letter agreement titled "Share Rights Agreement", dated [\*] 2017 between Bidder and HoldCo.

**Shareholders Deed** means the shareholders deed in relation to HoldCo in the form set out in Annexure A to this Scheme.

**Subsidiary**, in relation to an entity, has the meaning given in Division 6 of Part 1.2 of the Corporations Act but so that:

- (a) an entity will also be deemed to be a "Subsidiary" of an entity if that entity is required by the accounting standards to be consolidated with that entity;
- (b) a trust or fund may be a "Subsidiary", for the purposes of which any units or other beneficial interests will be deemed shares; or
- (c) a corporation or trust or fund may be a "Subsidiary" of a trust or fund if it would have been a Subsidiary if that trust or fund were a corporation.

**Taxable Event** means any action or event that results in tax becoming due and payable in a jurisdiction other than Australia or New Zealand by a person.

**Transferring Shareholder** means a Scheme Shareholder that holds Transferring Shares.

**Transferring Share** means a Scheme Share that is not a Retained Share.

**Trust Account** means an Australian dollar denominated trust account operated by Pepper to hold the Cash Scheme Consideration on trust for the purpose of paying the Cash Scheme Consideration to the Transferring Shareholders in accordance with clause 5.4 of this Scheme.

## 1.2 Interpretation

In this Scheme, headings are for ease of reference only and do not affect interpretation and, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a person includes a natural person, body corporate, corporation, trust, partnership, incorporated body or other entity;
- (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Scheme;
- (f) a reference to a document (including a reference to this Scheme) includes any agreement, deed or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (g) a reference to a document (including this Scheme) includes any variation, replacement or novation of it;

- (h) a reference to dollars or \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to time is to Sydney, Australia time;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) the meaning of general words is not limited by using the words including, for example or similar expressions;
- (l) a party means a party to this Scheme;
- (m) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Regulatory Authority;
- (n) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (o) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (p) nothing in this Scheme is to be construed to the disadvantage of a party because the party was responsible for the preparation of this Scheme or any part of it, or put the relevant part of the agreement forward; and
- (q) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## **2. PRELIMINARY**

### **2.1 Pepper**

- (a) Pepper is a public company limited by shares, registered in New South Wales and admitted to the official list of ASX. Pepper Shares are quoted for trading on ASX.
- (b) As at the date of the Scheme Implementation Deed:
  - (i) 182,486,032 Pepper Shares were on issue; and
  - (ii) the Board has determined that Pepper will issue a further 1,570,842 Pepper Shares prior to the Record Date.

### **2.2 Bidder**

Bidder is a proprietary company limited by shares registered in Victoria.

### **2.3 General**

- (a) Pepper and Bidder have agreed by executing the Scheme Implementation Deed to implement this Scheme.
- (b) Bidder and HoldCo have executed the Share Rights Agreement to permit Bidder to implement its obligations in relation to the Scheme Consideration under the Scheme Implementation Deed,
- (c) Bidder and HoldCo have executed the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform (or procure performance) of its

obligations as contemplated by the Scheme including to provide the Scheme Consideration.

## **2.4 Consequence of this Scheme becoming Effective**

If this Scheme becomes Effective:

- (a) subject to each of Bidder and HoldCo complying with its obligations under the Deed Poll, Pepper will provide or procure the provision of the Scheme Consideration to Pepper and Scheme Shareholders, as applicable, in accordance with clause 5.5 of this Scheme;
- (b) all the Transferring Shares, together with all rights and entitlements attaching to the Transferring Shares as at the Implementation Date, will be transferred to Bidder; and
- (c) Pepper will enter the name of Bidder in the Share Register in respect of all Transferring Shares transferred to Bidder in accordance with the terms of this Scheme with the result that Bidder will hold all Pepper Shares other than any Retained Shares.

## **3. CONDITIONS**

### **3.1 Condition precedent**

- (a) This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:
  - (i) all the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition in clause 3.1(f) of the Scheme Implementation Deed relating to the Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed before 8.00am on the Second Court Date;
  - (ii) neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with their terms by no later than 8.00am on the Second Court Date;
  - (iii) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed to in writing by Pepper and Bidder;
  - (iv) such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to Pepper and Bidder, having been satisfied or waived; and
  - (v) the orders of the Court made under section 411(4)(b) (and if applicable section 411(6)) of the Corporations Act approving the Scheme coming into effect, pursuant to section 411(10) of the Corporations Act.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) of this Scheme is a condition precedent to the operation of clauses 4, 5 and 6.

### **3.2 Certificate**

- (a) Pepper and Bidder will provide to the Court on the Second Court Date 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 clauses 3.1(a)(i) and 3.1(a)(ii) have been satisfied or waived.

- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

### **3.3 End Date**

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

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

## **4. IMPLEMENTATION**

### **4.1 Effective Date**

Subject to clause 3.3, this Scheme will come into effect on and from the Effective Date.

### **4.2 Lodgement of Court orders with ASIC**

Pepper must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as reasonably practicable after the Court approves this Scheme and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme.

### **4.3 Transfer of Transferring Shares**

On the Implementation Date:

- (a) subject to:
  - (i) the payment by Pepper of the cash component of the Scheme Consideration in the manner contemplated by clause 5.5(d); and
  - (ii) Bidder confirming in writing to Pepper by no later than 12 noon (or such later time as Bidder and Pepper may agree in writing) on the Implementation Date that the HoldCo Shares component of the Scheme Consideration has been provided in the manner contemplated by clause 5.5(b) (**Bidder Confirmation Certificate**),

the Transferring Shares, together with all rights and entitlements attaching to the Transferring Shares at the Implementation Date, will be transferred to Bidder, without the need for any further act by any Transferring Shareholder (other than acts performed by Pepper or its officers as agent and attorney of the Scheme Shareholders under clause 9.6 or otherwise), by:

- (iii) Pepper delivering to Bidder a duly completed and executed Scheme Transfer, executed on behalf of the Transferring Shareholders by Pepper; and
  - (iv) Bidder duly executing the Scheme Transfer and delivering it to Pepper for registration; and
- (b) immediately after receipt of the Scheme Transfer in accordance with clause 4.3(a)(iv), Pepper must enter, or procure the entry of, the name of Bidder in the Share Register in respect of the Transferring Shares transferred to Bidder in accordance with this Scheme.



## **5. SCHEME CONSIDERATION**

### **5.1 Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to Bidder of the Transferring Shares, each Transferring Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Transferring Shares in accordance with clause 5.4 of this Scheme.

### **5.2 Election procedure**

- (a) Subject to clauses 5.2(b), (c), (d), (e) and (f), clause 5.3 and clause 6.1(a), each Pepper Shareholder other than a Foreign Scheme Shareholder will be entitled to make an Election. All Elections will take effect in accordance with this Scheme to the extent that any Pepper Shareholder who makes an Election qualifies as a Scheme Shareholder.
- (b) A Pepper Shareholder which makes an Election may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received on or before the Election Date.
- (c) An Election must be made in accordance with the terms and conditions of the Election Form and this clause 5.2, and an Election not so made will not be a valid election for the purpose of this Scheme and will not be recognised by Bidder or Pepper for any purpose (provided that Bidder may, with the agreement of Pepper, waive this requirement and may, with the agreement of Pepper, settle as it thinks fit any difficulty, matter of interpretation or dispute which may arise in connection with determining the validity of any Election, and any such decision will be conclusive and binding on Bidder, Pepper and the relevant Scheme Shareholder).
- (d) Clause 5.3 will apply to any Pepper Shareholder who purports to make an Election but who qualifies as a Foreign Scheme Shareholder.
- (e) Subject to clause 5.2(f), if a Pepper Shareholder makes an Election, that Election will be deemed to apply in respect of that Pepper Shareholder's entire registered holding of Pepper Shares at the Record Date, regardless of whether the Pepper Shareholder's holding of Pepper Shares at the Record Date is greater or less than the Pepper Shareholder's holding at the time it made its Election, unless Bidder and Pepper agree otherwise, in their absolute discretion.
- (f) A Pepper Shareholder who is noted on the Share Register as holding one or more parcels of Pepper Shares as trustee or nominee for, or otherwise on account of, another person, may make separate Elections under this clause 5.2 in relation to each of those parcels of Shares (subject to it providing to Bidder and Pepper any substantiating information they reasonably require), and if it does so it will be treated as a separate Pepper Shareholder in respect of each such parcel in respect of which a separate Election is made (and in respect of any balance of its holding), provided that if, at the Record Date, it holds fewer Pepper Shares than it held at the time it made the Election, then, unless it has at the time of any sale of Pepper Shares notified Pepper whether the Pepper Shares sold relate to any such separate Election (and if so which separate Election the Shares sold relate to), it will be treated as not having made a valid Election in respect of any of its Pepper Shares (or will be treated in any other manner that Bidder and Pepper agree is fair to the Pepper Shareholder in all the circumstances acting reasonably).

### **5.3 Foreign Scheme Shareholders**

No Foreign Scheme Shareholder will be entitled to receive any HoldCo Shares under the Scheme, nor will they be entitled to retain their Scheme Shares. Accordingly, no Foreign Scheme Shareholder may make a valid Election.

**5.4 Determination of Scheme Consideration**

(a) If:

- (i) a Transferring Shareholder is not a Foreign Scheme Shareholder and has made a valid HoldCo Election on or before the Election Date;
- (ii) no Retained Shares Scaleback in respect of Retaining Shareholders is required under clause 6.2; and
- (iii) the total number of Scheme Shares held by Scheme Shareholders in aggregate who have made valid Elections on or before the Election Date does not equal or exceed the Share Cap,

then the Scheme Consideration applicable to that Transferring Shareholder is one HoldCo Share for each Scheme Share held by the Scheme Shareholder.

(b) If:

- (i) a Transferring Shareholder is not a Foreign Scheme Shareholder and has made a valid HoldCo Election on or before the Election Date;
- (ii) no Retained Share Scaleback in respect of Retaining Shareholders is required under clause 6.2; and
- (iii) the aggregate of the total number of Scheme Shares:
  - (A) held by Scheme Shareholders who have made valid HoldCo Elections on or before the Election Date; and
  - (B) to be retained by Scheme Shareholders who have made valid Retention Elections on or before the Election Date,

exceeds the Share Cap,

then clause 6.3 will apply in respect of Retaining Shareholders and the Scheme Consideration applicable to that Transferring Shareholder is:

- (iv) the number of HoldCo Shares calculated in accordance with the following formula:

$$N = (B + A) \times C$$

where:

**N** = the number of HoldCo Shares to be received by or on behalf of the Transferring Shareholder under the Scheme

**B** = the Share Cap

**A** = the aggregate of the total number of Scheme Shares in clause 5.4(b)(iii) above

**C** = the number of Scheme Shares held by the Transferring Shareholder;

plus:

- (v) an amount in Australian dollars calculated in accordance with the following formula:

$$\text{\$X} = (\text{C} - \text{N}) \times \text{\$3.60}$$

Where:

**\\$X** is the Australian dollar amount to be received by the Transferring Shareholder under the Scheme

**C** = the number of Scheme Shares held by the Transferring Shareholder

**N** = the number of HoldCo Shares determined in accordance with clause 5.4(b)(iv).

(c) If:

- (i) a Transferring Shareholder is not a Foreign Scheme Shareholder and has made a valid HoldCo Election on or before the Election Date;
- (ii) a Retained Share Scaleback in respect of Retaining Shareholders under clause 6.2 is required; and
- (iii) after the Retained Share Scaleback under clause 6.2, the aggregate of:
  - (A) total number of Scheme Shares held by Scheme Shareholders in aggregate who have made valid HoldCo Elections on or before the Election Date; plus
  - (B) the total number of Scheme Shares to be retained by Scheme Shareholders after the Retained Share Scaleback under clause 6.2,

exceeds the Share Cap, then the Scheme Consideration applicable to that Transferring Shareholder is:

- (iv) the number of HoldCo Shares calculated in accordance with the following formula:

$$\text{NN} = (\text{B} + \text{E}) \times \text{C}$$

where:

**NN** = the number of HoldCo Shares to be received by or on behalf of the Transferring Shareholder under the Scheme

**B** = the Share Cap

**E** = the number of Scheme Shares held by Scheme Shareholders in aggregate who have made valid Elections on or before the Election Date

**C** = the number of Scheme Shares held by the Transferring Shareholder;

plus:

- (v) an amount in Australian dollars calculated in accordance with the following formula:

$$\text{\$X} = (\text{C} - \text{NN}) \times \text{\$3.60}$$

where:

**\\$X** = the Australian dollar amount to be received by the Transferring

Shareholder under the Scheme

**C** = the number of Scheme Shares held by the Transferring Shareholder

**NN** = the number of HoldCo Shares determined in accordance with clause 5.4(c)(iv).

If the application of the formula in clause 5.4(c)(iv) in relation to the Transferring Shareholder would result in a reduction of the number of HoldCo Shares to be received by or on behalf of that Transferring Shareholder, expressed as a percentage of the number of Scheme Shares held by that Transferring Shareholder, greater than the Retained Share Scaleback Percentage, then:

- (vi) **NN** will be that number of Scheme Shares which equals the number of Scheme Shares held by that Transferring Shareholder as reduced by the Retained Share Scaleback Percentage; and
  - (vii) clause 5.4(d) will apply.
- (d) If, after applying clauses 5.4(c) and clause 6.2 the aggregate of:
- (i) the total number of Scheme Shares to be retained by Scheme Shareholders who have made valid Retention Elections (**Total Adjusted Retained Shares**); and
  - (ii) the total number of HoldCo shares to be received by or on behalf of Scheme Shareholders who have made valid HoldCo Elections under the Scheme (**Total Adjusted HoldCo Shares**),

exceeds the Share Cap, then:

- (iii) this clause 5.4(d) will apply, and clause 5.4(c) will not apply (other than for the purpose of giving effect to this clause 5.4(d)), in respect of a Transferring Shareholder (not being a Scheme Shareholder who has become a Transferring Shareholder by operation of clause 6);
- (iv) clause 6.4 will apply in respect of Retaining Shareholders; and
- (v) the Scheme Consideration applicable to that Transferring Shareholder is:
  - (A) the number of HoldCo Shares calculated in accordance with the following formula:

$$\mathbf{FN = B+Y X CC}$$

where:

**FN** = is the number of HoldCo Shares to be received by the Transferring Shareholder

**B** = is the Share Cap

**Y** = is the aggregate of the Total Adjusted HoldCo Shares and the Total Adjusted Retained Shares

**CC** = the number of HoldCo Shares to be received by or on behalf of that Transferring Shareholder calculated in accordance with the formula in clause 5.4(c);

plus:

- (B) an amount in Australian dollars calculated in accordance with the following formula;

$$\text{\$X} = (\text{C} - \text{FN}) \times \text{\$3.60}$$

Where:

**\\$X** = the Australian dollar amount to be received by the Transferring Shareholder under the Scheme

**C** = has the meaning in clause 5.4(c)(iv) above.

**FN** = has the meaning in clause 5.4(d)(v)(A) above.

- (e) If the Transferring Shareholder:
- (i) is a Foreign Scheme Shareholder; or
  - (ii) has not made a valid Election on or before the Election Date,
- the Scheme Consideration applicable to that Transferring Shareholder is \$3.60 for each Scheme Share held by the Transferring Shareholder.
- (f) If a Scheme Shareholder has made a valid Retention Election and clause 6 has been applied to their holding of Scheme Shares, with the effect that that Scheme Shareholder is a Transferring Shareholder by reason of any one or more of clauses 6.2, 6.3 or 6.4, the Transferring Shareholder will receive Scheme Consideration of \$3.60 for each Transferring Share held by that Transferring Shareholder.

## 5.5 Provision of Scheme Consideration

- (a) Bidder must by no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in Immediately Available Funds the aggregate amount of the Cash Scheme Consideration into the Trust Account, such amount to be held by Pepper on trust for the purpose of paying the Cash Scheme Consideration to Transferring Shareholders who are entitled to receive it under clause 5.4 (except that the amount of any interest on the amount deposited will be to Bidder's account).
- (b) Bidder must procure that HoldCo must, before 12 noon (or such later time as Bidder and Pepper may agree in writing) on the Implementation Date, procure that the name of each Transferring Shareholder and the Custodian entitled to be issued HoldCo Shares under this Scheme is entered in HoldCo's register of members as the holder of those HoldCo Shares (and in relation to HoldCo Shares issued to a Transferring Shareholder, having the same holding name and address and other details as the holding of the relevant Transferring Shares).
- (c) The HoldCo Shares in respect of which a Transferring Shareholder is entitled may, in Bidder's absolute discretion, be issued directly to that Transferring Shareholder (such that that Transferring Shareholder will be the legal holder of the relevant HoldCo Shares) or issued to the Custodian to hold on as bare trustee for that Transferring Shareholder (such that that Transferring Shareholder will be the beneficial holder but not the legal holder of the relevant HoldCo Shares).
- (d) On the Implementation Date and subject to funds having been deposited in accordance with clause 5.5(a), Pepper must pay or procure the payment of the cash component of the Scheme Consideration to each Transferring Shareholder from the

Trust Account by doing any of the following at its election:

- (i) sending (or procuring the Pepper Registry to send) it to the Transferring Shareholder's Registered Address by cheque in Australian currency drawn out of the Trust Account; or
  - (ii) depositing (or procuring the Pepper Registry to deposit) it into an account with any Australian ADI (as defined in the Corporations Act) notified to Pepper (or the Pepper Registry) by an appropriate authority from the Transferring Shareholder.
- (f) On or before the date that is five Business Days after the Implementation Date, Bidder must send or procure the sending of a certificate to each Transferring Shareholder and/or Custodian entitled to be issued HoldCo Shares under this Scheme, reflecting the issue of such HoldCo Shares.
- (g) To the extent that, following satisfaction of Pepper's obligations under clause 5.5(d), there is a surplus in the amount held in the Trust Account (after taking into account any funds required to satisfy any outstanding cheques issued in accordance with this clause 5.4 and any obligations under clause 5.9), that surplus may be paid by Pepper to Bidder.

#### **5.6 Joint holders**

In the case of Transferring Shares held in joint names:

- (a) any HoldCo Shares comprised in the Scheme Consideration are to be registered in the names of the joint holders or, if these HoldCo Shares are issued to the Custodian to hold as bare trustee for the joint holders, the joint holders will have joint beneficial ownership of these HoldCo shares;
- (b) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent at the sole discretion of Pepper, either to the holder whose name appears first in the Share Register as at the Record Date or to the joint holders; and
- (c) any other document required to be sent under this Scheme, will be forwarded, at the sole discretion of Pepper, either to the holder whose name appears first in the Share Register as at the Record Date or to the joint holders.

#### **5.7 Fractional entitlements**

Where the calculation of the Scheme Consideration to be provided to a Transferring Shareholder would result in the Transferring Shareholder becoming entitled to a fraction of a cent or a fraction of a HoldCo Share, that fractional entitlement will be rounded down to the nearest whole cent or HoldCo Share as the case may be.

#### **5.8 Cancellation and reissue of cheques**

- (a) Pepper may cancel a cheque sent under this clause 5 if the cheque:
  - (i) is returned to Pepper; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Transferring Shareholder to Pepper (or the Pepper Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Pepper must reissue a cheque that was previously cancelled

under clause 5.8(a).

#### **5.9 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) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

#### **5.10 Status of HoldCo Shares**

Subject to this Scheme becoming Effective, Bidder must procure that HoldCo:

- (a) issue (or procure the issue of) the HoldCo Shares required to be issued under this Scheme on terms such that each such HoldCo Share will rank equally in all respects with each other HoldCo Share; and
- (b) ensure that each HoldCo Share required to be issued under this Scheme is duly and validly issued in accordance with all applicable laws and the HoldCo Constitution, and is fully paid and free from any Security Interest (except for any lien arising under the HoldCo Constitution).

#### **5.11 Order of a court or Government Agency**

If:

- (a) written notice is given to Pepper (or the Pepper Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that requires payment to a third party of a sum in respect of Transferring Shares held by a particular Transferring Shareholder, which would otherwise be payable to that Transferring Shareholder by Pepper in accordance with this clause 5, then Pepper may procure that payment is made in accordance with that order or direction; or
- (b) written notice is given to Pepper (or the Pepper Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that prevents Pepper from making a payment to any particular Transferring Shareholder in accordance with clause 5.5(c), or such payment is otherwise prohibited by applicable law, Pepper may retain an amount equal to the number of Transferring Shares held by that Transferring Shareholder multiplied by the Scheme Consideration until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law,

and the payment or retention by Pepper (or the Pepper Registry) will constitute the full discharge of Pepper's obligations under clause 5.5(d) with respect of the amount so paid or retained until, in the case of clause 5.11(b), it is no longer required to be retained.

#### **5.12 Definition of 'sending'**

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

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

## 6. RETENTION ELECTION

### 6.1 General

- (a) Any Pepper Shareholder, other than a Foreign Scheme Shareholder, who is a Qualifying Tax Payer will be entitled to make a Retention Election, subject to the terms of this clause 6.
- (b) Subject to clauses 6.2, 6.3 and 6.4:
- (i) a Scheme Shareholder who makes a valid Retention Election will retain all of their Scheme Shares;
  - (ii) a Scheme Shareholder will be a Retaining Shareholder in respect of the Scheme Shares they retain; and
  - (iii) the Scheme Shares retained by the Retaining Shareholder will be Retained Shares.

### 6.2 Retained Shares Scaleback

Subject to the remainder of this clause 6, if the number of Scheme Shares held by Scheme Shareholders who have made valid Retention Elections is greater than the Retention Cap, the number of Scheme Shares to be retained by a Scheme Shareholder who has made a valid Retention Election will be calculated in accordance with the following formula (**Retained Share Scaleback**):

$$NR = (B+F) \times C$$

where:

**NR** = the number of Scheme Shares to be retained by the Scheme Shareholder, subject to the remainder of this clause 6.2

**B** = the Retention Cap;

**F** = the number of Scheme Shares (in aggregate) in respect of which a valid Retention Election has been made; and

**C** = the number of Scheme Shares held by the Scheme Shareholder.

In which case that Scheme Shareholder will be a Transferring Shareholder in respect of that number of Scheme Shares by which C exceeds NR, and clause 5.4(f) applies to those Transferring Shares.

### 6.3 Pro Rata Scaleback

If clause 5.4(b) applies, the number of Scheme Shares to be retained by a Scheme Shareholder who has made a valid Retention Election will be calculated in accordance with the following formula:

$$RN = B+A \times C$$

where:

**RN** = the number of Scheme Shares to be retained by the Scheme Shareholder;

**B** = the Share Cap;

**A** = the aggregate of the total number of Scheme Shares in Clause 5.4(b)(iii)(A) and 5.4(b)(iii)(B); and



**C** = the number of Scheme Shares held by that Scheme Shareholder,

in which case that Scheme Shareholder will be a Transferring Shareholder in respect of that number of Shares by which C exceeds RN, and clause 5.4(f) applies to those Transferring Shares.

#### **6.4 Further Scaleback**

If, after applying clauses 5.4(c) and 6.2 the aggregate of:

- (a) the total number of Scheme Shares to be retained by Scheme Shareholders who have made valid Retention Elections (**Total Adjusted Retained Shares**); and
- (b) the total number of HoldCo shares to be received by or on behalf of a Transferring Shareholder under the Scheme (**Total Adjusted HoldCo Shares**),

exceeds the Share Cap, then despite clause 6.2 the number of Scheme Shares to be retained by a Retaining Shareholder will be that number calculated in accordance with the following formula:

$$FN = B + Y \times CC$$

where:

**FN** = the number of Scheme Shares to be retained by the Scheme Shareholder;

**Y** = the aggregate of the Total Adjusted HoldCo Shares and the Total Adjusted Retained Shares;

**B** = the Share Cap;

**CC** = the number of Scheme Shares to be retained by that Retaining Shareholder, after the application of the formula in clause 6.2,

in which case that Scheme Shareholder will be a Transferring Shareholder in respect of that number of Scheme Shares by which CC exceeds FN, and clause 5.4(f) applies to those Transferring Shares.

#### **6.5 Fractions**

- (a) Where the calculation of the number of Scheme Shares to be retained by a Retaining Shareholder under this clause results in a fractional amount of a share, that fractional amount of a share will be disregarded for the purpose of finally determining the number of Retained Shares to be retained by that Retaining Shareholder.
- (b) Any Scheme Shares held by a Retaining Shareholder that are not Retained Shares due to the operation of this clause 6 are Transferring Shares, and the Retaining Shareholder is a Transferring Shareholder in respect of those Transferring Shares.

### **7. DEALINGS IN SHARES**

#### **7.1 Determination of Scheme Shareholders**

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

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the relevant Scheme Shares on or

before the Record Date; and

- (b) in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before the Record Date at the place where the Share Register is kept,

and Pepper will not accept for registration, nor recognise for any purpose (except a transfer to Bidder under this Scheme and any subsequent transfer by Bidder or its successors in title), 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.

## **7.2 Register**

- (a) Pepper must register registrable transmission applications or transfers of the kind referred to in clause 7.1(b) on or before the Record Date (provided that for the avoidance of doubt nothing in this clause 7.2 requires Pepper to register a transfer that would result in a Pepper Shareholder holding a parcel of Pepper Shares that is less than a 'marketable parcel' (as defined in the operating rules of ASX).
- (b) Pepper will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Scheme Shares received after the Record Date (except a transfer to Bidder in accordance with this Scheme and any subsequent transfer by Bidder or its successors in title) or received prior to the Record Date but not in registrable or actionable form.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Pepper must maintain the Share Register in accordance with the provisions of this clause 7.2 until the Scheme Consideration has been provided to the Transferring Shareholders and Bidder has been entered in the Share Register as the holder of all of the Transferring Shares. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them during the period from the Record Date until, and including, the Implementation Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Pepper will be entitled to disregard any such disposal.
- (e) All statements of holding for Transferring Shares will cease to have effect after the Record Date as documents of title in respect of those shares. After the Record Date, each entry current on the Share Register as at the Record Date in respect of Transferring Shares (other than a holding in favour of Bidder and its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Transferring Shares relating to that entry.
- (f) As soon as practicable after the Record Date and in any event within three Business Day after the Record Date, Pepper will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder as shown in the Share Register at the Record Date are available to Bidder in such form as Bidder reasonably requires.

## **8. QUOTATION OF SHARES**

- (a) Pepper will apply to ASX to suspend trading on the ASX in Pepper Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Bidder, and only after the transfer of the Scheme Shares has been registered in accordance with

clause 4.3(b), Pepper will apply:

- (i) for termination of the official quotation of Pepper Shares on ASX; and
- (ii) to have itself removed from the official list of ASX.

## **9. GENERAL SCHEME PROVISIONS**

### **9.1 Consent to amendments to this Scheme**

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) Pepper may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented in writing (which consent cannot be unreasonably withheld); and
- (b) each Scheme Shareholder agrees to any such alterations or conditions to which counsel or solicitors for Pepper has consented.

### **9.2 Binding effect of Scheme**

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

### **9.3 Scheme Shareholders' agreements and acknowledgment**

Each Scheme Shareholder:

- (a) agrees to the transfer of all of their Transferring Shares together with all rights and entitlements attaching to those shares in accordance with this Scheme;
- (b) agrees to any variation, cancellation or modification of the rights attached to their Transferring Shares constituted by or resulting from this Scheme;
- (c) agrees to, on the direction of Bidder, destroy any share certificates relating to their Transferring Shares;
- (d) to the extent they are issued with HoldCo Shares as a component of the Scheme Consideration to which they are entitled, agrees to become a shareholder of HoldCo and to be bound by the HoldCo Constitution and the Shareholders Deed;
- (e) to the extent they hold Retained Shares, agrees to be bound by the Shareholders Deed;
- (f) to the extent they are entitled to HoldCo Shares as a component of the Scheme Consideration and these HoldCo Shares are issued to the Custodian to hold as bare trustee for the Scheme Shareholder, agrees to become bound by the Custodian Deed; and
- (g) acknowledges and agrees that this Scheme binds Pepper and all Scheme Shareholders (including those who did not attend the Scheme Meeting or did not vote at that meeting or voted against this Scheme at that Scheme Meeting).

### **9.4 Warranties by Scheme Shareholders**

- (a) Each Scheme Shareholder warrants to Bidder, and is deemed to have authorised Pepper to warrant to Bidder as agent and attorney of each Scheme Shareholder, that as at the Implementation Date:

- (i) all of its Transferring Shares, including any rights and entitlements attaching to those shares, will, at the time of transfer under this Scheme, be fully paid and free from all Security Interests and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, excluding any Security Interests, interests or restrictions in favour of a Pepper Group Member; and
- (ii) it has full power and capacity to transfer its Transferring Shares to Bidder together with any rights and entitlements attaching to those shares.

#### **9.5 Title to and rights in Scheme Shares**

- (a) To the extent permitted by law, the Transferring Shares (including all rights and entitlements attached to Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer to Bidder, vest in Bidder free from all Security Interests and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, excluding any Security Interests, interests or restrictions in favour of a Pepper Group Member .
- (b) Immediately upon provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5, Bidder will be beneficially entitled to the Transferring Shares to be transferred to it under this Scheme pending registration by Pepper of Bidder in the Share Register as the holder of the Transferring Shares.

#### **9.6 Authority given to Pepper**

Each Scheme Shareholder, without the need for any further act:

- (a) on the Implementation Date, irrevocably appoints Pepper and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary for or incidental to the implementation of this Scheme, including executing and delivering:
  - (i) a share transfer or transfers in relation to Transferring Shares as contemplated by clause 4.3;
  - (ii) any deed or document required by Pepper, Bidder or HoldCo that causes each Transferring Shareholder entitled to HoldCo Shares to be bound by the Shareholders Deed, the Custodian Deed and the HoldCo Constitution;
  - (iii) any deed or document required by Pepper, Bidder or HoldCo that causes each Retaining Shareholder to be bound by the Shareholders Deed; and
  - (iv) any deed or document required by Pepper, Bidder or HoldCo that causes each Scheme Shareholder issued HoldCo Shares under this Scheme to be bound by the constituent documents of any trust for the Scheme Shareholder the trustee of which will hold on bare trust for the Scheme Shareholder the Scheme Shareholder's HoldCo Shares; and
- (b) on the Effective Date, irrevocably appoints Pepper and all of its directors, secretaries and officers (jointly and each of them severally) as its attorney and agent for the purpose of:
  - (i) enforcing the Deed Poll against Bidder and HoldCo; and
  - (ii) executing any document necessary to give effect to this Scheme including (without limitation) executing a proper instrument of transfer of its Transferring Shares for the purposes of section 1071B of the Corporations

Act which may be a master transfer of all the Transferring Shares,  
and Pepper accepts each such appointment.

#### **9.7 Appointment of sole proxy**

- (a) Immediately upon provision of the Scheme Consideration to each Transferring Shareholder in the manner contemplated by clause 5, and after until Pepper registers Bidder as the holder of all Transferring Shares in the Share Register, each Transferring Shareholder:
- (i) irrevocably appoints Pepper as its attorney and agent (and directs Pepper in each such capacity) to appoint Bidder and each of its directors and officers and any secretary or agent nominated by Bidder, as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of Pepper, exercise the votes attaching to the Transferring Shares registered in its name and sign any shareholders' resolution or document;
  - (ii) undertakes not to otherwise attend shareholders' meetings, exercise the votes attaching to Transferring Shares registered in its name or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than pursuant to clause 9.7(a)(i);
  - (iii) must take all other actions in the capacity of a registered holder of Transferring Shares as Bidder reasonably directs; and
  - (iv) acknowledges and agrees that in exercising the powers referred to in clause 9.7(a)(i), Bidder and any director, officer, secretary or agent nominated by Bidder under clause 9.7(a)(i) may act in the best interests of Bidder as the intended registered holder of the Transferring Shares.
- (b) Pepper undertakes in favour of each Transferring Shareholder that it will appoint Bidder and each of its directors from time to time (jointly and each of them individually) as that Transferring Shareholder's proxy or, where applicable, corporate representative in accordance with clause 9.7(a) of this Scheme.

#### **9.8 Instructions and elections**

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

#### **9.9 Amendments to Shareholders Deed and Share Rights Agreement**

Bidco must and must procure that Holdco ensure that the Shareholders Deed and the Share Rights Agreement are not amended without the consent of Pepper, before the issue of any HoldCo Shares to the Transferring Shareholders in accordance with clause 5.

## **10. GENERAL**

### **10.1 Further action by Pepper**

Pepper will execute all documents and do all things (on its own behalf and on behalf of each Scheme Shareholder) necessary or expedient to implement, and perform its obligations under, this Scheme.

### **10.2 Authority and acknowledgement**

Each of the Scheme Shareholders:

- (a) irrevocably consents to Pepper and Bidder doing all things necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Pepper and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Pepper.

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

Neither Pepper, Bidder nor HoldCo, nor any of their respective directors, officers, secretaries or employees, will be liable for anything done or omitted to be done in the performance of this Scheme and the Deed Poll in good faith.

### **10.4 Enforcement of Deed Poll**

Pepper undertakes in favour of each Scheme Shareholder to enforce the Deed Poll against Bidder and HoldCo on behalf of and as agent and attorney for the Scheme Shareholders.

### **10.5 Stamp duty**

Bidder will:

- (a) pay all stamp duty (if any) (including any fines, penalties and interest) payable in connection with this Scheme or the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability incurred by the Scheme Shareholder arising from failure to comply with clause 10.5(a).

### **10.6 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Pepper, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Pepper's registered office or at the office of the Pepper Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Pepper Shareholder shall not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### **10.7 Governing law**

This Scheme is governed by the laws of New South Wales, Australia. Each party irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Scheme.

**ANNEXURE A**  
**Shareholders Deed**

**ANNEXURE B**  
**HoldCo Constitution**



**ANNEXURE B**

**Deed Poll**



## Deed Poll

Red Hot Australia Bidco Pty Limited (**Bidder**)

Red Hot Australia Holdco Pty Limited (**HoldCo**)

Jones Day  
Level 41, Aurora Place  
Phillip Street  
Sydney NSW 2000  
Tel: 61 2 8272 0500  
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DATE

2017

**THIS DEED POLL IS MADE BY**

- (1) **Red Hot Australia Bidco Pty Limited** (ACN 620 321 600) (**Bidder**)
- (2) **Red Hot Australia Holdco Pty Limited** (ACN 620 321 351) (**HoldCo**)

in favour of each registered holder of fully paid ordinary shares in Pepper as at the Record Date and Pepper to the extent contemplated in clauses 3.1(b) and 5.3.

**RECITALS**

- (A) Pepper and Bidder have entered into the Scheme Implementation Deed to provide for (among other matters) the implementation of the Scheme.
- (B) The effect of the Scheme will be to transfer all Scheme Shares (except for any Retained Shares) to Bidder in return for the Scheme Consideration.
- (C) In the Scheme Implementation Deed, Bidder has agreed to provide, or procure the provision of, the Scheme Consideration to Scheme Shareholders subject to satisfaction of certain conditions.
- (D) Pursuant to the Share Rights Agreement, Bidder has procured HoldCo to grant to Bidder certain rights with respect to the HoldCo Shares and to enter into this deed poll. Each of Bidder and HoldCo enter this deed poll to covenant in favour of the Scheme Shareholders to perform its respective obligations (including, with respect to HoldCo, obligations undertaken in the Share Rights Agreement) in relation to the Scheme.

**OPERATIVE PROVISIONS**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

- (a) The following definitions apply unless the context requires otherwise.

**Cash Scheme Consideration** has the meaning given in the Scheme.

**Custodian** has the meaning given in the Scheme.

**Liability** means a debt, liability or obligation, whether actual, prospective, contingent or otherwise and whether or not ascertained, and whether or not owing or incurred alone, or jointly and severally, with any other person.

**Scheme Implementation Deed** means the scheme implementation deed dated [\*] August 2017 between Pepper and Bidder under which, amongst other things, Pepper has agreed to propose the Scheme to Pepper Shareholders, and each of Bidder and Pepper has agreed to take certain steps to give effect to the Scheme.

**Share Rights Agreement** has the meaning given in the Scheme Implementation Deed.

**Trust Account** has the meaning given in the Scheme.

- (b) Unless the context otherwise requires, terms defined in the Scheme Implementation Deed have the same meaning when used in this deed poll unless the context requires otherwise.

## **1.2 Interpretation**

Clause 1.2 of the Scheme Implementation Deed applies to the interpretation of this deed poll except that references to "this deed" in that clause are to be read as references to "this deed poll".

## **1.3 Nature of deed poll**

Each of Bidder and HoldCo acknowledge and agree that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not a party to it; and
- (c) under the Scheme, each Scheme Shareholder irrevocably appoints Pepper and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder and HoldCo.

## **2. CONDITIONS PRECEDENT AND TERMINATION**

### **2.1 Conditions precedent**

Each of Bidder's and HoldCo's obligations under clause 3 are subject to the Scheme becoming Effective.

### **2.2 Termination**

This deed poll and the obligations of Bidder and HoldCo 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 Scheme has not become Effective on or before the End Date or any later date as the Court, with the consent of Bidder, HoldCo and Pepper, may order; or
  - (b) the Scheme Implementation Deed is terminated in accordance with its terms,
- unless Bidder, HoldCo and Pepper otherwise agree in writing.

### **2.3 Consequences of termination**

If this deed poll is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Bidder and HoldCo are released from their obligations to further perform this deed poll except those obligations contained in clause 7.1 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights, powers or remedies they have against Bidder and HoldCo in respect of any breach of this deed poll which occurs before it is terminated.

## **3. PERFORMANCE OF OBLIGATIONS**

### **3.1 Generally**

- (a) Bidder must comply with its obligations under the Scheme Implementation Deed and, subject to clause 2, each of Bidder and HoldCo (pursuant to the terms of the Share Rights Agreement) covenants in favour of Scheme Shareholders to perform the actions attributed to them respectively under the Scheme as if Bidder and HoldCo were parties to the Scheme.

- (b) Each of Bidder and Holdco undertakes in favour of Pepper and the Scheme Shareholders to enforce its rights and comply with its obligations under the Share Rights Agreement.

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

- (a) Subject to clause 2, each of Bidder and, as required by the terms of the Share Rights Agreement, HoldCo undertake in favour of each Scheme Shareholder to:
  - (i) provide or procure the provision of the Scheme Consideration to the Scheme Shareholder in accordance with the terms of the Scheme;
  - (ii) undertake all other actions attributed to them under the Scheme;subject to and in accordance with the terms of the Scheme.
- (b) The obligations of Bidder and HoldCo under clause 3.2(a) will be satisfied if, in respect of the Scheme Consideration:
  - (i) Bidder deposits, no later than one Business Day before the Implementation Date, an amount equal to the Cash Scheme Consideration in Immediately Available Funds to the Trust Account;
  - (ii) Bidder instructs HoldCo to issue pursuant to terms of the Share Rights Agreement and this deed poll, the HoldCo Shares;
  - (iii) no later than 12.00 noon (or such later time as Bidder, and Pepper may agree in writing) on the Implementation Date, HoldCo issues all of the HoldCo Shares which it is obliged to issue to Scheme Shareholders and/or the Custodian under the Scheme and Bidder provides Pepper with written confirmation that HoldCo has done so;
  - (iv) Bidder and HoldCo no later than 12:00 noon (or such later time as Bidder and Pepper may agree in writing) on the Implementation Date procure that the name of each Scheme Shareholder (if any) and/or the Custodian entitled to receive HoldCo Shares under the Scheme is entered into HoldCo's register of members as the holder of those HoldCo Shares (and in relation to HoldCo Shares issued to a Scheme Shareholder rather than the Custodian, having the same holding name and address and other details as the holding of the relevant Scheme Shares); and
  - (v) on or before the date that is five Business Days after the Implementation Date, Bidder sends or procures the sending of a certificate to each Scheme Shareholder and/or the Custodian entitled to receive HoldCo Shares under the Scheme, reflecting the issue of such HoldCo Shares, in each case, in accordance with, and subject to, the provisions of the Scheme.

### **3.3 HoldCo Shares to rank equally**

HoldCo covenants in favour of each Scheme Shareholder that the HoldCo Shares issued in accordance with the Scheme will:

- (a) rank equally in all respects with each other HoldCo Share on issue at that time and will have the rights set out in the constitution of HoldCo and the Shareholders Deed; and
- (b) be issued fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

#### 4. REPRESENTATIONS AND WARRANTIES

- (a) Each of Bidder and HoldCo represents and warrants to each Scheme Shareholder, in respect of itself, that:
- (i) **status:** it is a corporation duly incorporated or validly existing in accordance with the laws of its place of incorporation;
  - (ii) **power:** it has power to enter into this deed poll, to comply with its obligations under it and exercise its rights under it;
  - (iii) **corporate authorisations:** it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transaction contemplated by this deed poll;
  - (iv) **validity of obligations:** its obligations under this deed poll are valid and binding and are enforceable against it in accordance with its terms;
  - (v) **no contravention:** this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction judgment, law, rule or regulation to which it is party or subject or by which it is bound; and
  - (vi) **Insolvency Event:** it is solvent and not subject to an Insolvency Event.
- (b) HoldCo and Bidder represent and warrant to each Scheme Shareholder that, immediately prior to implementation of the Scheme, each of HoldCo and Bidder:
- (i) does not Control any entity, other than HoldCo Controlling Bidder;
  - (ii) is not the legal or beneficial owner of any shares or capital in any body corporate (wherever incorporated), other than HoldCo being the legal and beneficial owner of shares in Bidder;
  - (iii) is not a member of any incorporated or unincorporated joint venture, partnership or other unincorporated association (other than a recognised trade association);
  - (iv) has not commenced trading or conducted business other than, as applicable, in connection with the respective incorporations, entry into of the Scheme Implementation Deed and any ancillary documents (as agreed between Pepper and Bidder for the purposes of this clause), the Equity Commitment Letter, Share Rights Agreement, Shareholders Deed, Custodian Deed, Disclosure Letter and this deed poll and the taking of such other actions as are necessary to facilitate the implementation of the Transaction (including actions in relation to the incurrence of costs, fees and expenses in connection with the Transaction);
  - (v) does not own any assets and does not have any Liabilities, other than assets derived, or Liabilities incurred, in connection with, as applicable, their respective incorporations, entry into of the Scheme Implementation Deed and any ancillary documents (as agreed between Pepper and Bidder for the purposes of this clause), the Equity Commitment Letter, Share Rights Agreement, Shareholders Deed, Custodian Deed, Disclosure Letter and this deed poll and the taking of such other actions as are necessary to facilitate the implementation of the Transaction or otherwise disclosed in writing to Pepper prior to the date of the Scheme Implementation Deed (including actions in relation to the incurrence of costs, fees and expenses in connection with the Transaction); and

(vi) has not given any guarantee or granted any powers of attorney,

in each case, other than as expressly contemplated in this deed poll or the Scheme.

(c) HoldCo warrants to each Scheme Shareholder that receives HoldCo Shares pursuant to the HoldCo Election that, from the date of the Scheme Implementation Deed until immediately prior to the implementation of the Scheme, it has not issued any HoldCo Shares:

(i) other than for cash;

(ii) at an issue price that is less than \$3.60 per HoldCo Share; and

(iii) other than in connection with the funding of the Scheme Consideration or the payment of costs, fees and expenses incurred in connection with the Transaction,

unless otherwise agreed with Pepper.

## **5. CONTINUING OBLIGATIONS**

### **5.1 Deed poll irrevocable**

Subject to clause 5.2, this deed poll is irrevocable and, subject to clause 2, remains in full force and effect until the earlier of:

(a) both Bidder and HoldCo having fully performed their respective obligations under this deed poll; and

(b) termination of this deed poll under clause 2.2.

### **5.2 Variation**

A provision of this deed poll or any right created under it may not be varied unless, altered or otherwise amended unless:

(a) if before the Second Court Date, the variation is agreed to in writing by Pepper; or

(b) if on or after the Second Court Date, the variation is agreed to in writing by Pepper and is approved by the Court,

in which event Bidder and HoldCo must enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation, alteration or amendment.

### **5.3 Capital structure**

(a) From the date of this deed poll until immediately prior to implementation of the Scheme, HoldCo will not issue any HoldCo Shares:

(i) other than for cash;

(ii) at an issue price that is less than \$3.60 per HoldCo Share; and

(iii) other than in connection with the funding of the Scheme Consideration or the payment of costs, fees and expenses incurred in connection with the Transaction,

unless otherwise agreed with Pepper.



6. **NOTICES**

Any notice, demand, consent or other communication (a **Notice**) to Bidder or HoldCo in connection with this deed poll:

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

<b>Party</b>	<b>Notice details</b>
<b>Bidder</b>	Attention: General Counsel Address: KKR Credit Advisors (US) LLC 555 California Street 50 <sup>th</sup> Floor San Francisco, California 94104 Email: KKRCreditLegal@kkcr.com
<b>HoldCo</b>	Attention: General Counsel Address: KKR Credit Advisors (US) LLC 555 California Street 50 <sup>th</sup> Floor San Francisco, California 94104 Email: KKRCreditLegal@kkcr.com

- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered;
  - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);
  - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error; and
  - (iv) in the case of email, two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives a delivery failure notification indicating that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day in the place to which the Notice is sent or at a time that is later than 5.00pm in the place to which the Notice is sent, it will be conclusively taken to have been duly given or made at 9.00am on the next business day in that place.

**7. GENERAL**

**7.1 Stamp duty**

Bidder must:

- (a) pay all stamp duty (including fines, penalties and interest) payable and assessed on or in connection with this deed poll, the performance of this deed poll, or any instruments entered into under this deed poll and in respect of a transaction effected by or made under the Scheme and this deed poll;
- (b) pay other costs in respect of the Scheme (including, in connection with the transfer of Scheme Shares to Bidder in accordance with the terms of the Scheme); and
- (c) indemnify on demand each Scheme Shareholder against any liability arising from failure to comply with clauses 7.1(a) or 7.1(b).

**7.2 Assignment**

The rights and obligations of Bidder, HoldCo and each Scheme Shareholder under this deed poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt or purport to do so without the prior written consent of Bidder, HoldCo and Pepper.

**7.3 Further assurances**

Bidder and HoldCo must execute all deeds and other documents and do all things (on their own behalf or on behalf of each Scheme Shareholder) necessary or expedient to give full effect to this deed poll and the transactions contemplated by it.

**7.4 Waiver**

- (a) Bidder and HoldCo may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) No Scheme Shareholder may rely on words or conduct of Bidder or HoldCo as a waiver of any right unless the waiver is in writing and signed by Bidder or HoldCo, as appropriate.
- (c) The meanings of the terms used in this clause 7.4 are set out below.

<b>Term</b>	<b>Meaning</b>
<b>conduct</b>	includes delay in the exercise of a right.
<b>right</b>	any right arising under or in connection with this deed poll and includes the right to rely on this clause.
<b>waiver</b>	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

**7.5 Remedies cumulative**

The rights, powers and remedies of Bidder, HoldCo and the Scheme Shareholders under this deed poll are cumulative and are in addition to, and do not exclude any, other rights, powers and remedies given by law independently of this deed poll.

**7.6 Governing law**

This deed poll is governed by the laws of New South Wales, Australia. Each of Bidder and HoldCo irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this deed poll.

**7.7 Counterparts**

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

Executed as a deed poll.

**Executed by Red Hot Australia Bidco Pty Limited** (ACN 620 321 600) in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Executed by Red Hot Australia Holdco Pty Limited** (ACN 620 321 351) in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Director Signature

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**ANNEXURE C**  
**Shareholders Deed**

Agreed form for Scheme Implementation Deed

# Shareholders Deed

Dated 2017

Red Hot Australia Holdco Pty Ltd (ACN 620 321 351)

The KKR Investors

The Original Pepper Shareholders

The other Non-Investor Parties

**King & Wood Mallesons**

Level 61  
Governor Phillip Tower  
1 Farrer Place  
Sydney NSW 2000  
Australia  
T +61 2 9296 2000  
F +61 2 9296 3999  
DX 113 Sydney  
[www.kwm.com](http://www.kwm.com)

# Shareholders Deed

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# Shareholders Deed

## Details

<b>Parties</b>	The <b>Company</b> , the <b>KKR Investors</b> , the <b>Original Pepper Shareholders</b> and the <b>Non-Investor Parties</b> (if any from time to time)	
<b>Company</b>	Name	Red Hot Australia Holdco Pty Ltd
	ACN	620 321 351
	Formed in	Victoria, Australia
	Address	TMF Corporate Services (Aust) Pty Limited, Level 16, 201 Elizabeth Street, Sydney NSW 2000, Australia
	Email	KKRCreditLegal@kkcr.com
	Attention	Company Secretary
<b>KKR Investors</b>	As defined in this Deed and with the notice details specified in Schedule 5 or as otherwise notified in a Deed of Adherence.	
<b>Original Pepper Shareholders</b>	As defined in this Deed and with the notice details specified in Schedule 6 or as otherwise notified in a Deed of Adherence.	
<b>Non-Investor Parties</b>	As defined in this Deed and with the notice details specified in Schedule 6 or Schedule 7 (as applicable) or as otherwise notified in a Deed of Adherence.	
<b>Governing law</b>	New South Wales	
<b>Recitals</b>	<b>A</b>	Subject to the Implementation Date occurring, the Company will own the Business directly or through other Group Companies.
	<b>B</b>	The parties have agreed that the Group should be managed, controlled and financed on the terms set out in this Deed.

# Shareholders Deed

## General terms

---

### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Absent KKR Director** has the meaning given in paragraph 5.4 of Schedule 2.

**Absent Pepper Director** has the meaning given in paragraph 5.5 of Schedule 2.

**Adjusted KKR Investor Shares** means, if any Shares are issued to one or more KKR Investors after the Implementation Date for the purposes of funding the acquisition of any business or securities by a Group Company and the KKR Investors subscribe for a greater percentage of their Entitlement Securities than the percentage of the aggregate number of the Original Pepper Shareholders' Entitlement Securities which the Original Pepper Shareholders subscribe for, the Shares determined by the following formula:

(a)

$$(K\% - P\%) \times KN$$

where:

**K%** is the number of Equity Securities which were subscribed for by the KKR Investors in the relevant issuance expressed as a percentage of the aggregate number of the KKR Investors' Entitlement Securities in that issuance;

**P%** is the aggregate number of Equity Securities which were subscribed for by the Original Pepper Shareholders in the relevant issuance expressed as a percentage of the aggregate number of the Original Pepper Shareholders' Entitlement Securities in that issuance; and

**KN** is the aggregate number of the KKR Investors' Entitlement Securities in the relevant issuance.

**Adjusted Share Ownership Percentage** means, in respect to the Original Pepper Shareholders from time to time, the aggregate number of Shares held the Original Pepper Shareholders (plus, until the date 6 months after the Implementation Date, the aggregate number of Pepper Shares held by Retaining Holders), excluding Incentive Shares, expressed as a percentage of the Adjusted Share Number.

**Adjusted Share Number** means the number of Shares determined by:

- (a) all Shares on issue (plus, until the date 6 months after the Implementation Date, the aggregate number of Pepper Shares held by Retaining Holders), excluding Incentive Shares; *minus*
- (b) any Adjusted KKR Investor Shares.

**Affiliate** means in respect of a person (**Primary Person**), a person:

- (a) Controlled directly or indirectly by the Primary Person;

- (b) Controlling directly or indirectly the Primary Person;
- (c) directly or indirectly Controlled by a person who Controls the Primary Person (whether alone or with another person or persons); or
- (d) directly or indirectly under the common Control of the Primary Person and another person or persons,

and, if the Primary Person is a KKR Investor, includes:

- (e) any account, fund, vehicle or investment portfolio established and Controlled by any person referred to in any of paragraphs (a) to (d) of this definition or an Affiliate of that person; and
- (f) any account, fund, vehicle, entity or investment portfolio for which such person or its Affiliate acts as sponsor, investment adviser or manager or with respect to which such person or its Affiliate exercises discretionary control or otherwise has ability to direct or control investment decisions, vote on behalf of or take any other action on behalf of, including where such rights are contractual by nature.

**Aggregate BBP** has the meaning given in clause 6.4(e)(i).

**Alternate Director** means an alternate director of a Director appointed in accordance with paragraph 3.1 of Schedule 2.

**Anti-Corruption Laws** means:

- (a) the Foreign Corrupt Practices Act of 1977 (US);
- (b) the Bribery Act 2010 (UK);
- (c) the *Criminal Code Act 1995* (Cth) and
- (d) any similar applicable law that has as its objective the prevention of corruption, including without limitation legislation enacted in furtherance of the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions 1997.

**Anti-Money Laundering Laws** means anti-money laundering laws and regulations applicable to the Group from time to time, including the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*.

**Appointing Beneficiary** means a Non-Investor Party who has appointed the Custodian to hold Equity Securities on bare trust for it in accordance with clause 22 and the Custodian Deed.

**Asset Sale** means the sale of all or substantially all of the Business and assets of the Group to one or more Third Parties as part of a single transaction or a series of related transactions.

**Associated Company** means, in respect of a person, any company where 100% of the Securities in the company are owned, legally and beneficially, by that person and/or that person's Special Relatives and where the affairs of the company are Controlled by that person.

**Associated Trust** means, in respect of a person, any trust in respect of which the trustee is the person, a Special Relative of the person and/or an Associated Company of the person and under which no person other than that person, that person's Special Relatives and any Associated Company of that person:

- (a) has, is entitled to acquire, or may become entitled to acquire, a material interest, whether legal or beneficial, direct or indirect, vested or unvested, in any trust property; or
- (b) receives, is entitled to receive or may become entitled to receive, any material distribution of any of the income or capital of the trust.

**ASX** means ASX Limited (ABN 98 008 624 691) or the market operated by it, as the context requires.

**Bare Trust** means a trust established under the Custodian Deed under which the Custodian holds Beneficial Securities for an Appointing Beneficiary.

**Beneficial Securities** means in relation to an Appointing Beneficiary, the Equity Securities held by the Custodian as bare trustee for that Appointing Beneficiary.

**Board** means the board of Directors from time to time.

**Board Special Majority** means approval by:

- (a) subject to paragraph (b) of this definition, a majority of the Board including at least 1 vote in favour of the resolution by a KKR Director (for so long as there is at least one KKR Director appointed in accordance with this Deed) and, for so long as there is at least one Pepper Director appointed in accordance with this Deed, at least 1 vote in favour of the resolution by a Pepper Director (other than the Group CEO where that person is not the Original Group CEO); and
- (b) in the case of a decision of the Board under paragraph (t) of Part B of Schedule 3 (related party transactions) or paragraph 5.6 of Schedule 2, by the relevant Directors in accordance with that paragraph.

**Business** means the business of the Group from time to time, including initially, lending, advisory services and asset servicing across the residential and commercial property sectors, as well as in consumer, auto and equipment finance.

**Business Day** means a day on which banks are open for general banking business not being a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales.

**Business Plan** means the plan for a period of time from time to time for the conduct of the Business comprising such details as the Board reasonably requires and stating the key assumptions on which it has been based, including an annual budget giving a reasonably based estimate of the income to be received, and the expenses to be incurred, in the Business for the relevant Financial Year.

**Buying OPS ROFR Offeree** has the meaning given in clause 12.5.

**Buying ROFO Offeror** has the meaning given in clause 11.3.

**Cash Distribution Amount** has the meaning given in clause 6.4(b)(iii)(B).

**Catch-up Offeree** has the meaning given in clause 7.19(a)(iii).



**CD Deed of Adherence** has the meaning given in the Custodian Deed.

**CFC** has the meaning given in paragraph 10(a) of Schedule 4.

**Code** means the U.S. Internal Revenue Code of 1986, as amended.

A trade, business or undertaking **Competes with a Group Company** if it provides, or is actively taking steps with an intention to provide, products or services in a specified country which are the same as, similar to, or service a comparable consumer need as, products or services provided by a Group Company in that country.

**Confidential Information** means all:

- (a) know how, trade secrets, ideas, concepts, technical and operational information, owned or used by any Group Company;
- (b) information concerning the affairs or property of the Group Companies or any business, property or transaction in which any Group Company may be, or may have been, concerned or interested;
- (c) details of any customer or supplier of any of the Group Companies;
- (d) information about the terms of this Deed, the Constitution, the Financing Documents, the Custodian Deed or the constitutional documents of any Group Company;
- (e) information which by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to:
  - (i) the Group;
  - (ii) a KKR Investor or Affiliate of a KKR Investor; or
  - (iii) any third party with whose consent or approval the Group Companies use that information; and
- (f) information concerning the finances, affairs or property of any KKR Investor or any Affiliate of a KKR Investor or any business, property or transaction in which any KKR Investor or Affiliate of a KKR Investor may be, or may have been, concerned or interested.

**Constitution** means the constitution of the Company from time to time.

**Control** means, with respect to any person (other than an individual), the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise, and includes the following:

- (a) direct or indirect ownership of more than 50% of the voting rights of such person; or
- (b) the right to appoint the majority of the members of the board of directors of such person (or similar governing body) or to manage on a discretionary basis the assets of such person,

and **Controlled** has a corresponding meaning. For the purposes of this Deed:

- (a) a general partner is deemed to Control a limited partnership of which it is the general partner; and

- (b) any trust, account, managed investment scheme, limited liability company or body corporate or other fund or entity (**Fund Vehicle**) in respect of which a person or an Affiliate of such person is a manager, account holder, trustee, responsible entity, general partner or investment advisor (**Manager**) will also be deemed to be Controlled by such person and to be an Affiliate of any other Fund Vehicle in respect of which such person is a Manager. For the avoidance of doubt, any Fund Vehicle in respect of which KKR Credit Advisors (US) LLC or an Affiliate of KKR Credit Advisors (US) LLC is a Manager will be deemed an Affiliate of each KKR Investor.

**Controller** has the meaning given in the Corporations Act.

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

**Custodian** means the independent third party trustee company appointed from time to time by the Company under clause 22 and the Custodian Deed to hold Equity Securities on bare trust in accordance with clause 22 and the Custodian Deed.

**Custodian Deed** means the custodian deed entered into on or about the date of this Deed between the Company, the Custodian and the Appointing Beneficiaries.

**Custodian Transfer** means a transfer of legal title to Equity Securities:

- (a) by a Security Holder to the Custodian to be held under a Bare Trust, either at the request of the Board or with the prior written consent of the Board;
- (b) in connection with the replacement of the Custodian in accordance with clause 11 of the Custodian Deed; or
- (c) by the Custodian to an Appointing Beneficiary as contemplated by this Deed or otherwise with approval by a Board Special Majority.

**D&O Insurance Policy** means a directors and officers insurance policy taken out by the Company from time to time with a reputable insurer.

**Deadlocked Matter** means an action or transaction which is subject to approval in accordance with:

- (a) Part B of Schedule 3 and which is not approved in accordance with clause 5.1(b) following a proposal at a Board meeting or by written resolution to approve the action or transaction; or
- (b) Part C of Schedule 3 and which is not approved in accordance with clause 5.1(c) following a proposal or proposals (as applicable) at a Board meeting or by written resolution and proposal or proposals (as applicable) to the KKR Investors and Original Pepper Shareholders to approve the action or transaction.

**Debenture** has the meaning given to it in the Corporations Act.

**Deed** means this Shareholders Deed.

**Deed of Access, Insurance and Indemnity** means a deed of that name in the form approved by the Board (including by at least one KKR Director and one Pepper Director, in each case, for so long as there is at least one of such category of Director appointed in accordance with this Deed).

**Deed of Adherence** means:

- (a) a deed substantially in the form set out in Annexure A, or such other form approved in writing by a Board Special Majority;
- (b) in respect of any Original Pepper Shareholder that acquires Equity Securities as a result of the Scheme:
  - (i) the form of election used by that person under the Scheme to receive those Equity Securities; and/or
  - (ii) any provision of the Scheme which provides that by making an election to receive Equity Securities as consideration under the Scheme, that person will be taken to have agreed to become a party to, and bound by, this Deed as an Original Pepper Shareholder and/or appointed any person as its attorney or agent to enter into this Deed on its behalf; or
- (c) in respect of any Retaining Holder the form of election used by that person under the Scheme to retain their Pepper Shares in lieu of participating in the Scheme and receiving cash consideration for all of their Pepper Shares and/or any provision of the Scheme which provides that by making such an election that person will be taken to have agreed to become a party to, and bound by, this Deed as a Retaining Holder and/or appointed any person as its attorney or agent to enter into this Deed on its behalf.

**Details** means the section of this Deed headed "Details".

**Directed Breach** has the meaning given in clause 22.9.

**Director** means a director of the Company from time to time.

**Dispose** means, in respect of any Equity Security or IPO Vehicle Security, any dealing with the Equity Security or IPO Vehicle Security, including a sale, assignment, transfer, conveyance, grant of an option over, grant of, creation of, or allowing a swap or other synthetic instrument or a Security Interest over, and any other disposal, alienation, economic monetisation or realisation of the Equity Security or IPO Vehicle Security or of a legal or beneficial interest in the Equity Security or IPO Vehicle Security, and **Disposal** has a corresponding meaning.

**Drag Buyer** has the meaning given in clause 10.1.

**Drag Transaction** means a Disposal of Equity Securities in accordance with clause 10.

**Drag Notice** has the meaning given in clause 10.1.

**Drag Sale Price** has the meaning given in clause 10.2(d).

**Drag Seller** has the meaning given in clause 10.1.

**Dragged Security Holder** has the meaning given in clause 10.1.

**Dragged Securities** has the meaning given in clause 10.2(f).

**Economic Interest** means, any legal or equitable interest held or acquired by a person whether direct or indirect or through one or more intermediaries, and includes any economic interest (being an ownership interest or an interest which is in economic substance equivalent to an ownership interest, but not including any right to receive consideration for the provision of goods or services which are

provided on arms-length terms to members of the public, the licensing of rights or any similar or equivalent transaction) arising under any transaction entered into by that person or any other person. For the purposes of this definition, a person will be taken to have an Economic Interest in Securities if any of the following occurs:

- (a) it enters into a contract to acquire them;
- (b) whether or not being the registered holder, it is entitled to exercise or have the benefit of any right conferred by the holding of the Securities or to control the exercise of any such right, which in either case will be deemed to be the case if it:
  - (i) has a right (whether subject to conditions or not), the exercise of which would make it so entitled;
  - (ii) is under an obligation (whether subject to conditions or not), the fulfilment of which would make it so entitled; or
  - (iii) it has a right to call for delivery of the Securities to itself or to its order, or
- (c) it has a right to acquire an interest in the Securities or is under an obligation to take an interest in the Securities.

**Emergency Funding Notice** has the meaning given in clause 7.19(a)(iii).

**Emergency Matter** means any event or circumstance that results in, or the Board determines is reasonably likely to result in:

- (a) a default by a Group Company of any term or covenant under the Financing Documents (including any matter that would constitute a "review event" under the facilities);
- (b) any Group Company becoming Insolvent; or
- (c) a change in the financial or operational affairs of any Group Company which would have a material adverse effect on the Group as a whole or any Group Company,

and which can be addressed through the payment of money.

**Engage In** means:

- (a) to carry on, participate in, provide finance or services to (including license intellectual property rights to or from) or otherwise be directly or indirectly involved in, support, contribute to or have an interest (including an Economic Interest) in, directly or indirectly (including through any interposed body corporate, trust, partnership, entity or other person) and in any capacity whatsoever, including as a shareholder, unitholder, security holder, director, consultant, adviser, contractor, principal, agent, manager, employee, beneficiary, partner, associate, trustee or financier; or
- (b) managing, advising or influencing, whether for direct remuneration or benefit or otherwise, including influencing through any association or arrangement with any person in which any Economic Interest, or over which influence, (absolute or partial) is held,

and **Engagement** has a corresponding meaning.

A person is **Engaged By A Group Company** if the person:

- (a) is employed or engaged by a Group Company;
- (b) is a consultant or contractor who provides services to a Group Company;  
or
- (c) is a director or other officer of a Group Company.

**Entitlement New Class Securities** has the meaning given in clause 7.2(f)(ii).

**Entitlement Ordinary Shares** has the meaning given in clause 7.2(f)(i).

**Entitlement Securities** includes Entitlement Ordinary Shares and/or Entitlement New Class Securities, as applicable.

**Equity Securities** means:

- (a) Shares; and
- (b) Securities (of any type) convertible or exchangeable into Shares.

**Existing Plan Rules** means the rules or other comparable plan documentation of any incentive arrangement established by a Group Company before the Implementation Date which is separately documented to this Deed (where applicable, those documents being as amended in connection with the Scheme).

**Existing Plan Trustee** means any entity holding Equity Securities and acting as trustee, including any successor trustee, for multiple participants in accordance with Existing Plan Rules.

**Exit** means an Asset Sale, a Trade Sale or an IPO.

**Exit Instigator** means:

- (a) the KKR Investor or KKR Investors that issue an Exit Notice in accordance with clause 13.1(a);
- (b) the Original Pepper Shareholders comprising the relevant Pepper Super Majority, if the Pepper Super Majority issues an Exit Notice in accordance with clause 13.1(b); or
- (c) the Board if an Exit Notice is issued by a Board Special Majority in accordance with clause 13.1(c) and 15.5(a)(iv).

**Exit Notice** means a notice from an Exit Instigator to the Company that it wishes to commence preparations for a Trade Sale, an Asset Sale or an IPO, or one or more of the options concurrently, and requiring the Company and the other parties to assist with that Exit in accordance with clause 13 and the other applicable provisions of this Deed.

**Fair Market Value** means, in respect of a Platform or the Group from time to time, the then most recently determined Fair Market Value of that Platform or the Group (on an equity value basis rather than an enterprise value basis) determined in accordance with Schedule 8.

**Financial Adviser** means a nominated investment bank, corporate advisor or other comparable professional adviser.

**Financial Year** means:

- (a) the period commencing on the Implementation Date and ending on 31 December 2017; and then
- (b) the 12 months starting on the day after the prior Financial Year and ending on 31 December in that calendar year (or such other dates as the Board approves from time to time).

**Financial Services** means any financial services including consumer finance, lending, loan servicing, asset management, loan origination and securitisation.

**Financing Documents** means each:

- (a) document under which any Group Company is provided with debt financing by any bank or other third party institutional financier;
- (b) other agreement, deed, Debenture, guarantee or Security Interest given or made under or in connection with any document referred to in paragraph (a) of this definition; and
- (c) to the extent not covered by paragraph (a), any document under which any Funding SPV in respect of the Group is provided with debt.

**Funding SPV** means each entity, trust, subsidiary or special purpose vehicle, the sole or predominant business purpose of which is for financing warehouse securitisations, term securitisation transactions or the acquisition of securities from term securitisation transactions for the purpose of satisfying the prescribed risk retention requirements of any relevant jurisdiction.

**General Partner** means:

- (a) each general partner who enters into this Deed as general partner of a limited partnership; and
- (b) each general partner who executes this Deed as general partner of a general partner referred to in paragraph (a) of this definition or otherwise.

**Government Agency** means, whether foreign or domestic:

- (a) a government, whether federal, state, territorial or local;
- (b) a department, office or minister of a government acting in that capacity; or
- (c) a commission, delegate, instrumentality, agency, board or other governmental, semi-governmental, judicial, administrative, monetary, supervisory or fiscal authority, whether statutory or not and includes any self-regulatory organisation established under statute or any stock exchange.

**Group** means all of the Group Companies.

**Group CEO** means the chief executive officer of the Group from time to time.

**Group CFO** means the chief financial officer of the Group from time to time.

**Group Company** means:

- (a) the Company;
- (b) any Subsidiary or other Related Body Corporate of the Company;

- (c) any other entity in which an entity referred to in paragraph (a) or paragraph (b) of this definition holds an Economic Interest or of which that other entity is the trustee; or
- (d) any IPO Vehicle.

**GST Amount** has the meaning given in clause 27.2(a).

**Implementation Date** means the date on which the Scheme is implemented according to its terms.

**Incentive Shares** means any Equity Securities issued under any management or staff equity plan or comparable incentive arrangement established after the Implementation Date by a Group Company which is separately documented to this Deed, provided that once such Equity Securities have fully vested (including that the Equity Securities have ceased to be subject to, or calculated by reference to, any performance, financial, time or employment or other engagement based criteria) in accordance with their terms, they will no longer be regarded as Incentive Shares.

**Independent Expert** has the meaning given in clause 15.3(a).

**Individual Costs** means:

- (a) advisory costs incurred by a party (other than the Company) for tax, legal or other professional advice given to that party in connection with an IPO or Trade Sale, as applicable and not for the benefit of other parties;
- (b) any Tax incurred by a party (other than the Company) in connection with an IPO or Trade Sale, as applicable; and
- (c) any Liability suffered or incurred by a party (other than the Company) arising out of any claim, action or proceeding of any nature in connection with an IPO or Trade Sale, as applicable,

unless otherwise approved by the Board.

**Individual Party** means any individual person who becomes a party to this Deed.

**Initial Acceptance Period** has the meaning given in clause 7.2(c).

**Initial KKR Investors** means each party specified in Schedule 5.

**Initial Period** has the meaning given in paragraph 2(a) of Schedule 8.

A person is **Insolvent** if:

- (a) for a person other than an individual:
  - (i) **(Corporations Act insolvent)** it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
  - (ii) **(Liquidation)** it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
  - (iii) **(creditors' arrangement)** it is subject to any arrangement, assignment, moratorium or composition with or for the benefit of creditors or is protected from creditors under any statute, in each

case, other than a Group Company entering into a financier standstill, reconstruction or amalgamation while solvent on terms approved by the Board);

- (iv) **(creditors' scheme)** if the person is the Company, the Company announces an intention to implement, or implements, a scheme or arrangement under which creditors' rights and claims against the Company are proposed to be compromised;
  - (v) **(presumed insolvency)** it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
  - (vi) **(unable to pay debts)** it is otherwise unable to pay its debts when they fall due; or
  - (vii) **(similar events)** something having a substantially similar effect to any of sub-paragraphs (i) to (v) above happens in connection with that person under the law of any jurisdiction; and
- (b) for a person that is an individual:
- (i) **(bankruptcy notice)** the person has a bankruptcy notice issued against the person;
  - (ii) **(receiver appointed)** a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
  - (iii) **(garnishee notice)** a garnishee notice is given concerning any money that the person is said to be owed;
  - (iv) **(creditors' arrangement)** the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
  - (v) **(creditors' moratorium)** the person proposes or effects a moratorium involving any of the person's creditors;
  - (vi) **(stops debt payment)** the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts or the conduct of all or a substantial part of its business;
  - (vii) **(unable to pay debts)** the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
  - (viii) **(insolvent under administration)** the person becomes an "insolvent under administration" as defined in section 9 of the Corporations Act;
  - (ix) **(similar events)** something having a substantially similar effect to any of sub-paragraphs (i) - (viii) above happens in connection with that person under the law of any jurisdiction; or
  - (x) **(imprisonment or incapability)** the person is imprisoned or becomes incapable of managing his or her own affairs.

**Instruction** has the meaning given in the Custodian Deed.

**Intellectual Property Rights** means all registered and unregistered rights in respect of copyright, designs, circuit layouts, processes, trade marks, know-how, confidential information, patents, inventions, discoveries and domain names and



all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

**Invitation to Tag** has the meaning given in clause 9.1.

**IRR** means the annual percentage discount rate, calculated on a daily basis and compounded annually, which, when applied as a discount to:

- (a) the proceeds of the sale of a Platform, or part of a Platform, and any capital outflows with respect to the Platform in the period between the Implementation Date and the date of that sale (positive cash flows) and the Fair Market Value of the Platform, or part of the Platform (as applicable), as at the Implementation Date and any capital inflows with respect to the Platform or part of the Platform (as applicable) in the period between the Implementation Date and the date of that sale (negative cash flows); or
- (b) the proceeds per Ordinary Share in an Exit and any dividends, distributions or other payments made in respect of the Ordinary Share in the period between the Implementation Date and the date of that sale (positive cash flows) and the Scheme Price and the amounts, if any, paid (determined on a per Ordinary Share basis) in respect of the issue of any Equity Securities to which a Security Holder is entitled by reason of holding the Ordinary Share (assuming for this purpose that the relevant Security Holder participates in all future issues of Equity Securities pro rata to their original Security Ownership Percentage) (negative cash flows),

gives net aggregate discounted proceeds of zero as at the Implementation Date. When calculating the proceeds per Ordinary Share under paragraph (b) of the definition, the proceeds will be calculated net of out-of-pocket transaction costs and expenses incurred by an Ordinary Shareholder in connection with such payments and will exclude any earn out or other amounts contingent on future performance and any amount which will be subject to any escrow, holdback or other deferment. In addition, if the Exit in respect of which the proceeds per Ordinary Share are being calculated under paragraph (b) of this definition is an IPO, the proceeds per Ordinary Share will be the lowest price per security at which those securities are, or are expected to be, sold or offered in the IPO and if an Ordinary Share is, or may be, subject to any escrow or other trading restriction following the IPO, the price of the Ordinary Share will be discounted by 20% for the purposes of the calculation in paragraph (b) of this definition.

**IPO** means:

- (a) an initial public offering of all or substantially all of the Business by way of an offer of shares in the Company or an IPO Vehicle; and/or
- (b) a sell-down by one or more Shareholders of Shares in the Company or in an IPO Vehicle by way of public offering of all or substantially all of the business,

in conjunction with an application for the quotation of those Securities on a recognised stock exchange (including ASX).

**IPO Costs** means all costs and expenses of an IPO, including advisory fees, expenses of due diligence investigations, stock exchange fees, fees of any relevant regulatory authority, legal fees, experts' fees, roadshow expenses, printing, advertising expenses and all other disbursement costs (in each case, of the parties) including the brokerage or commission payable to any underwriter, sub-underwriter, lead manager or co-lead manager, but excluding any Individual Costs.

**IPO Vehicle** means any Related Body Corporate (actual or proposed) of the Company and/or any special purpose vehicle established for the purpose of an IPO.

**Issue Notice** has the meaning given in clause 7.2.

**KKR Director** means each Director appointed by the KKR Investors in accordance with paragraph 1(a) of Schedule 2.

**KKR Investors** means the Initial KKR Investors and any other Security Holder who executes a Deed of Adherence as a KKR Investor (in each case, for so long as the Initial KKR Investor or other Security Holder holds any Equity Securities or other Securities for which Equity Securities are exchanged in accordance with this Deed) and **KKR Investor** means any one of them.

**KKR Investor Affiliate Transfer** means a Disposal of Equity Securities by a KKR Investor:

- (a) to one or more Affiliates of a KKR Investor;
- (b) to any one or more of the entities, limited partnerships, accounts and/or trusts which comprise a fund of which a KKR Investor forms part;
- (c) to a nominee, trustee, general partner or custodian of a KKR Investor or any fund or account of which a KKR Investor or an Affiliate of a KKR Investor is the sole manager or the sole investment adviser;
- (d) on a distribution in kind required under the KKR Investor's relevant partnership agreement, trust deed, account agreement or other applicable constitutional document, to the partners of the partnership, the holders of units or other beneficiaries in the trust, the relevant account holder or the investors in any other fund; or
- (e) to another person provided there is no change in the underlying beneficial interest in the Equity Securities.

**KKR Super Majority** means approval by KKR Investors with an aggregate Security Ownership Percentage of at least 66.67% (for the purposes of this definition Security Ownership Percentage will be determined as if paragraph (b) of that definition referred to the aggregate number of all Equity Securities held by the KKR Investors).

**Liability** means any liability, obligation, damage, loss, cost or expense (including legal costs and expenses of whatsoever nature or description and Tax), whether actual, contingent or prospective, and irrespective of when the act, event or thing giving rise to the liability, obligation, damage, loss, cost or expense occurs.

**LP Assets** has the meaning given in clause 25.3.

**Matrimonial Proceedings** means any proceedings for divorce or nullity of marriage or a binding financial agreement or consent orders, in respect of a division of property between spouses (under the *Family Law Act 1975* (Cth), or otherwise) and includes substantially similar types of proceedings instituted in any other jurisdiction.

**Maximum Non-Cash Distribution Amount** has the meaning given in clause 6.4(c)(i).

**New Securities** has the meaning given in clause 7.1.

**Nominated Affiliate** has the meaning given in clause 7.6.

**Nominee** means, in respect of an Individual Party who is a Non-Investor Party:

- (a) any person identified as a "Nominee" of the Individual Party in Schedule 7;
- (b) any Permitted Holder of the Individual Party who is issued with any Equity Security by the Company or receives a transfer of any Equity Security;
- (c) any person who becomes a Security Holder and executes a Deed of Adherence as a "Nominee" of the Individual Party; and
- (d) any Non-Investor Party who the Board determines to treat as such under this Deed having regard to the affiliation or other relationship between the Non-Investor Party and the Individual Party.

**Non-Controlled Group Company** means a Group Company which is not Controlled by the Company or a Subsidiary of the Company.

**Non-Investor Majority** means Non-Investor Security Holders who have an aggregate Ordinary Share Percentage of more than 50% (for the purposes of this definition, Ordinary Share Percentage will be determined as if paragraph (b) of that definition referred to the aggregate number of all Shares held by Non-Investor Security Holders, excluding any Incentive Shares).

**Non-Investor Party** means each party (other than the Company) who is not a KKR Investor, and which includes:

- (a) each Original Pepper Shareholder;
- (b) each Related Non-Investor Party of an Original Pepper Shareholder; and
- (c) each party listed in Schedule 7,

but excludes each Retaining Party for so long as neither it nor any of its Related Retaining Parties holds any Equity Securities.

**Non-Investor Security Holder** means each Security Holder who is not a KKR Investor, including each Original Pepper Shareholder for so long as it holds any Equity Securities or other Securities for which Equity Securities are exchanged in accordance with this Deed or is an Appointing Beneficiary for whom the Custodian holds any Custodian Securities on Bare Trust.

**Obligations** has the meaning given in clause 25.2(a).

**Observer** has the meaning given in paragraph 4.1 of Schedule 2.

**Ordinary Share Percentage** means with respect to any Security Holder or Security Holders from time to time:

- (a) the aggregate number of all Ordinary Shares held by that Security Holder or those Security Holders, as applicable,
- (b) expressed as a percentage of the aggregate number of all Ordinary Shares on issue at that time,

in each case, excluding all Incentive Shares then on issue.

**Ordinary Shares** means ordinary shares in the capital of the Company, having the rights and entitlements set out in the Constitution.

**Ordinary Shareholder** means a Shareholder holding one or more Ordinary Shares.

**Original Group CEO** means Michael Culhane.

**Original Pepper Shareholder** means each:

- (a) Security Holder who makes an election to receive Equity Securities as consideration for its shares in Pepper Group under the Scheme (as listed in Schedule 5);
- (b) any Security Holder not referred to in paragraph (a) of this definition who executes a Deed of Adherence as an Original Pepper Shareholder in accordance with clause 7.13; and
- (c) any Related Non-Investor Party of a Security Holder referred to in paragraphs (a) or (b) of this definition who executes a Deed of Adherence as an Original Pepper Shareholder in accordance with clause 7.13,

in the case of an Individual Party for so long as it and/or any of its Related Non-Investor Parties holds, and in the case of non-individual Original Pepper Shareholder for so long as the Security Holder holds, any Equity Securities or other Securities for which Equity Securities are exchanged in accordance with this Deed or is an Appointing Beneficiary for whom the Custodian holds any Custodian Securities on Bare Trust.

**OPS ROFR Acceptance Notice** has the meaning given in clause 12.3(a).

**OPS ROFR Acceptance Period** has the meaning given in clause 12.3(a).

**OPS ROFR Allocation Notice** has the meaning given in clause 12.4.

**OPS ROFR Entitlement Shares** has the meaning given in clause 12.2(b).

**OPS ROFR Notice** has the meaning given in clause 12.1.

**OPS ROFR Offerees** has the meaning given in clause 12.1.

**OPS ROFR Price** has the meaning given in clause 12.2(c).

**OPS ROFR Sale Shares** has the meaning given in clause 12.2(a).

**OPS ROFR Seller** has the meaning given in clause 12.1.

**Other Businesses** has the meaning given in clause 17(a).

**Participating Tag Security Holder** has the meaning given in clause 9.4(a).

**Permitted Holder** means in respect of a Non-Investor Party:

- (a) an Associated Company or the trustee of an Associated Trust, of the Non-Investor Party or a Related Non-Investor Party of the Non-Investor Party;
- (b) a Special Relative of the Non-Investor Party (if the Non-Investor Party is an Individual Party) or a Related Non-Investor Party of the Non-Investor Party;
- (c) a self-managed superannuation fund for the relevant Non-Investor Party or a Related Non-Investor Party of the Non-Investor Party, the trustee of

which is, or is Controlled by, the Non-Investor Party or a Special Relative of the Non-Investor Party; or

- (d) any other person consented to in writing by the KKR Investors.

**Permitted Security Interest** means:

- (a) a charge or lien arising in favour of a Government Agency by operation of statute in the ordinary course of the Business;
- (b) any mechanics', workmen's or other like lien arising in the ordinary course of the Business;
- (c) any retention of title arrangement or purchase money security interest arising from any lease of goods or consignment arrangement, in each case, arising in favour of a trade supplier to the Business in the ordinary course of the Business; and
- (d) a PPS Lease (as defined in the PPSA).

**Pepper Director** means each Director appointed under paragraph 1(b) of Schedule 2.

**Pepper Group** means Pepper Group Limited (ACN 094 317 665).

**Pepper Majority** means approval by Original Pepper Shareholders with an aggregate Ordinary Share Percentage of at least 50.01% (for the purposes of this definition Ordinary Share Percentage will be determined as if paragraph (b) of that definition referred to the aggregate number of Shares held by the Original Pepper Shareholders).

**Pepper Shares** means shares in Pepper Group.

**Pepper Super Majority** means approval by Original Pepper Shareholders with an aggregate Ordinary Share Percentage of at least 66.67% (for the purposes of this definition Ordinary Share Percentage will be determined as if paragraph (b) of that definition referred to the aggregate number of Shares held by the Original Pepper Shareholders).

**Performance Rights** has the meaning given in paragraph 2(a) of Schedule 8.

**PFIC** has the meaning given in paragraph 10(a) of Schedule 4.

**Platform** means:

- (a) a business of a Group Company owned on the Implementation Date in Australia, South Korea, Hong Kong Special Administrative Region and China, United Kingdom, Ireland, Spain, Italy, Canada or the Philippines;
- (b) if acquired by a Group Company, any business which a Group Company enters into a binding agreement to acquire prior to the Implementation Date and which has annual revenues in the 12 months prior to acquisition of \$10,000,000 or more; and
- (c) any business or platform a Group Company acquires following the Implementation Date in Australia, South Korea, Hong Kong Special Administrative Region and China, United Kingdom, Republic of Ireland, Spain, Italy, Canada, the Philippines or the country of operation of a business referred to in paragraph (b) which is in the same business line as a business referred to in paragraph (a) or (b) of this definition and is operationally integrated with that business (to avoid doubt, excluding any

such business or platform which offers products or services not offered by a business referred to in paragraph (a) or (b) of this definition).

**Platform Buy-Back** means a buy-back of Equity Securities or a redemption, cancellation, transfer or other Disposal of any Equity Securities which has a substantially similar pre-Tax effect for the Company and the Security Holders as a buy-back of Equity Securities.

**Platform Buy-Back Amount** means, in respect of a Security Holder, the Security Holder's Security Ownership Percentage of the Maximum Non-Cash Distribution Amount (provided that if there are any outstanding Unsecured Loans, each Security Holder's Platform Buy-Back Amount will be determined as if the Departing Parties with those Unsecured Loans continued to be Security Holders holding all of their Transfer Securities).

**Platform Buy-Back Price** means, in respect of:

- (a) an Equity Security which is redeemable in accordance with its terms, the aggregate amount for which the Equity Security could be redeemed in accordance with those terms; or
- (b) an Equity Security not referred to in paragraph (a) of this definition, the fair market value of the Equity Security at the relevant time as determined by a Board Special Majority having regard to the most recent Fair Market Value of the Group, any relevant events or circumstances (positive or negative) which have impacted the Group in the time period (if any) between the date of determination of that most recent Fair Market Value and the time of determination of the Platform Buy-Back Price, the number(s) and classes of Equity Securities then on issue, net proceeds received in the relevant sale of all or part of a Platform, the value of any remaining interest of the Group in the Platform as implied from the relevant sale price and the amount of the distributions made or to be made under clause 6.4 in connection with that Platform sale.

**Platform Proceeds** has the meaning given in clause 6.4(b).

**Platform Sale** has the meaning given in clause 13.13.

**Post-Scheme Restructure** means a transaction or transactions which result in the Retaining Holders and the Security Holders owning securities in the same ultimate parent company of the Group and not in any Subsidiary of that parent company.

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

**Proceeds** means:

- (a) in relation to an Asset Sale, the total amount available for payment or distribution to all Security Holders (including in their capacity as lenders, if applicable) by way of a winding up, a return of capital, a share buy-back, a dividend or other distribution or a repayment of loan; and
- (b) in relation to a Disposal of Equity Securities, the total consideration payable for the relevant Equity Securities being Disposed of by all Security Holders, including any earn-out or other amounts contingent on future performance and any amounts which are escrowed as security for any future or contingent obligations and excluding any payments of costs, expenses, indemnity payments or similar amounts to or on behalf of any Security Holder,

and in each case:

- (c) includes the market value of any non-cash consideration (as determined by the Board);
- (d) includes any dividend or distribution in connection with the Asset Sale or Disposal of Equity Securities; and
- (e) is determined before deduction or withholding for any applicable Tax.

**Purchaser Vehicle** the relevant buyer or a holding company or other Affiliate of the buyer, as determined by the Exit Instigator.

**Quarter** means each 3 month period ending 31 March, 30 June, 30 September and 31 December and **Quarterly** has a corresponding meaning.

**Red Hot Bidco** means Red Hot Australia Bidco Pty Ltd (ACN 620 321 600).

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

**Related Non-Investor Party** means:

- (a) in respect of an Individual Party, each Nominee (if any) of that natural person; or
- (b) in respect of a Nominee, the Individual Party in respect of whom it is a Nominee and each other Nominee of that Individual Party.

**Related Retaining Party** means in respect of a Retaining Party:

- (a) if the Retaining Party is not an Individual Party, the Individual Party who is affiliated or related to the Retaining Party and executes a Deed of Adherence in the capacity of a Retaining Party; and
- (b) each other person (if any) who executes a Deed of Adherence in the capacity of a Retaining Party and would be a Related Non-Investor Party of the Retaining Party if the Retaining Party were a Non-Investor Party.

**Relevant Countries** has the meaning given in clause 16.3(b)(iv)(B)(aa).

**Relevant Multiple Platforms** has the meaning given in clause 16.3(b)(iv).

**Relevant Partnership** has the meaning given in clause 25.1.

**Relevant Persons** has the meaning given in clause 17(b).

**Relevant Platforms** has the meaning given in clause 16.3(b)(iii).

**Relevant Rights and Obligations** has the meaning given in clause 22.3(a).

**Reorganisation Event** means:

- (a) a bonus issue of Shares;
- (b) a sub-division or consolidation of Shares; or
- (c) any other reorganisation or reconstruction of the Equity Securities where the Company neither pays nor receives cash or any other form of consideration.

**Representative** means in respect of a party, an employee, agent, officer, director, auditor, adviser, partner, shareholder, Affiliate, consultant, joint venturer

or sub-contractor of that party or of an Affiliate of that party provided that no party or person Engaged By A Group Company will, for the purposes of this Deed, be considered to be a Representative of a Group Company or any KKR Investor.

**Restraint Exempt Non-Investor Party** means a Non-Investor Party who has not at any time on or after the Implementation Date:

- (a) been, and none of whose Related Non-Investor Parties at any time on or after the Implementation Date has been, Engaged By A Group Company; and
- (b) collectively with its Related Non-Investor Parties from time to time, had a Security Ownership Percentage of 2% or greater.

**Restructuring Event** means any event which involves the Disposal or other form of realisation of Equity Securities by any of the Security Holders and which the Board determines is part of a genuine corporate restructuring or transaction that will not result in, nor has resulted in:

- (a) any actual final realisation of the Security Holders' economic interest in the Group (measured against the Security Holders' economic interest held prior to the event occurring in proportion to the economic interest of all other Security Holders); or
- (b) any change in the Security Holders' economic interest in the Group (measured against the Security Holders' economic interest relatively to other Security Holders held prior to the event occurring),

including any corporate restructuring or other comparable transaction required in connection with amending or refinancing any of the Group's debt financing facilities.

**Retained Amounts** has the meaning given in clause 13.8(i).

**Retaining Holder** means a holder of Pepper Shares who is not a Group Company.

**Retaining Parties** means the Retaining Holders and the Related Retaining Parties of each Retaining Holder.

**ROFO Notice** has the meaning given in clause 11.1.

**ROFO Offer** has the meaning given in clause 11.3.

**ROFO Offer Notice** has the meaning given in clause 11.2(a).

**ROFO Offer Period** has the meaning given in clause 11.2(a).

**ROFO Offerors** has the meaning given in clause 11.1.

**ROFO Price** has the meaning given in clause 11.2(a)(ii).

**ROFO Response Notice** has the meaning given in clause 11.3.

**ROFO Sale Securities** has the meaning given in clause 11.1.

**ROFO Seller** has the meaning given in clause 11.1.

**Sanctioned Person** means at any time:



- (a) any person or entity listed on any Sanctions-related list of designated or blocked persons;
- (b) any person resident in, or entity organized under the laws of, a country or territory that is the subject of comprehensive Sanctions (including Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region); or
- (c) any person or entity majority-owned or controlled by or acting on behalf of any of the foregoing.

**Sanctions** means those economic and financial sanctions and trade embargoes imposed, administered or enforced from time to time by:

- (a) the European Union and implemented by its member States;
- (b) the United Nations Security Council;
- (c) Her Majesty's Treasury of the United Kingdom;
- (d) the Australian Government or any executive arm of the Australian Government including the Department of Foreign Affairs and Trade; or
- (e) the U.S. government, including those administered by the U.S. Treasury, Office of Foreign Assets Control.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act under which Red Hot Bidco acquires all of the issued shares in Pepper Group, except for any Pepper Shares which are retained by any Retaining Holders.

**Scheme Implementation Deed** means the deed entitled "Scheme Implementation Deed" dated on or about 9 August 2017 relating to the Scheme.

**Scheme Price** means \$3.60 (being the price per share under the Scheme), appropriately adjusted for any Reorganisation Event of the Ordinary Shares after the Implementation Date.

**Security** has the meaning given to that term in section 92(3) of the Corporations Act.

**Security Holder** means a holder from time to time of any Equity Securities who is a party to this Deed.

**Security Interest** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA, or any agreement to create any of them or allow them to exist.

**Security Ownership Percentage** means, when calculated with respect to any Security Holder or Security Holders from time to time:

- (a) the aggregate number of all Equity Securities held by that Security Holder or those Security Holders, as applicable;
- (b) expressed as a percentage of the aggregate number of all Equity Securities held by all Security Holders at that time (excluding any Incentive Shares),

provided that:

- (c) all Equity Securities held by the Security Holders at the time will be treated as in the same class; and
- (d) for the purpose of the relevant calculation only, all Equity Securities on issue at the time which are convertible into Equity Securities or another class of Equity Securities (other than any relevant Incentive Shares), will be treated as if they had been converted into Ordinary Shares (or such other class of Equity Securities in which they are convertible) immediately prior to the date of the relevant Issue Notice or the time of the calculation, as applicable.

**Selling Investor** has the meaning given in clause 9.1.

**Share** means an issued share of any class in the capital of the Company.

**Shareholder** means, from time to time, a person who holds Shares.

**SOTP** has the meaning given in paragraph 5(c)(i) of Schedule 8.

**Special Relative** means, with respect to an Individual Party, any spouse, de-facto spouse, mother, father, sister, brother or child ( in the case of a child only, whether natural, step or adopted) of the Individual Party or another relative of the Individual Party approved in writing by the Board Special Majority.

**Standstill Period** means the period from the date of this Deed to the date 12 months after the Implementation Date.

**Stop Notice** has the meaning given in clause 13.4(a).

**Subsidiary** means a subsidiary of the Company within the meaning of the Corporations Act but so that:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (b) a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

**Tag Buyer** has the meaning given in clause 9.2(b).

**Tag Option** has the meaning given in clause 9.2(f).

**Tag Proportions** has the meaning given in clause 9.2(d).

**Tag Security Holder** has the meaning given in clause 9.1.

**Tag Securities** has the meaning given in clause 9.2(f).

**Tag Transaction** means a Disposal of Equity Securities to a Tag Buyer in accordance with clause 9.

**Target Non-Platform Retained Amount** has the meaning given in clause 6.4(b)(ii).

**Target Platform Retained Amount** has the meaning given in clause 6.4(b)(i).

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or accessed as being payable by any authority together with any fines, penalties and interest in connection with them.

**Third Party** means a person dealing at arm's length.

**Tier 1 Non-Investor Party** means any of the following:

- (a) an Individual Party who at any time on or after the Implementation Date holds or held the position of Group CEO, Group CFO, a country chief executive officer of a Platform, the head of Australian mortgages or the head of Australian Asset Finance;
- (b) an Individual Party who at any time holds or held the position of a director of a Group Company after the Implementation Date;
- (c) any other person the Board resolves will be a "Tier 1 Non-Investor Party" for the purposes of this Deed and who executes a Deed of Adherence specifying that he or it is a Tier 1 Non-Investor Party; and
- (d) a Related Non-Investor Party of a person referred to in paragraph (a), (b) or (c) of this definition.

**Tier 2 Non-Investor Party** means any of the following:

- (a) an Individual Party who is not a Tier 1 Non-Investor Party and who is at any time on or after the Implementation Date a member of the Group's Global Executive Committee (or equivalent);
- (b) any other person the Board resolves will be a "Tier 2 Non-Investor Party" for the purposes of this Deed and who executes a Deed of Adherence specifying that he or it is a Tier 2 Non-Investor Party; and
- (c) a Related Non-Investor Party of a person referred to in paragraph (a) or (b) of this definition.

**Tier 3 Non-Investor Party** means a Non-Investor Party who is not a Tier 1 Non-Investor Party, a Tier 2 Non-Investor Party or a Restraint Exempt Non-Investor Party.

**Trade Sale** means a sale or series of related sales of all or substantially all of the Equity Securities (other than in connection with an IPO).

**Trade Sale Costs** means all unpaid costs and expenses of the Company and the Security Holders in connection with preparing, negotiating and completing a Trade Sale including all corporate advisory fees and commissions, expenses of due diligence investigations, fees of any relevant regulatory authorities, professional advisers engaged for the purpose of the Trade Sale, roadshow and management presentation expenses, any advisory or transaction fees payable to a KKR Investor or an Affiliate of a KKR Investor in connection with the Trade Sale and printing, travel and advertising expenses incurred in relation to the Trade Sale (but does not include any Individual Costs).

**Transaction Documents** means:

- (a) the Scheme Implementation Deed;
- (b) the Scheme; and
- (c) the deed poll entered into by the Company and Red Hot Bidco in connection with the Scheme.

**Trust Termination Notice** has the meaning given in clause 13.11.

**Valuation Agent** has the meaning given in paragraph 4(a) of Schedule 8.

## 1.2 Interpretation

Headings and labels used for definitions are for convenience only and do not affect the interpretation of this Deed. Unless the contrary intention appears, in this Deed:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to a "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to the prevailing time in Sydney;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to "**law**" includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to "**regulations**" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (m) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (n) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed;
- (o) unless a contrary intention appears, a reference in a Schedule to a numbered paragraph is a reference to the numbered paragraph of the same Schedule in which the reference appears;
- (p) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (q) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;

- (r) if a party must do something under this Deed on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day; and
- (s) if the day on which a party must do something under this Deed is not a Business Day, the party must do it on the next Business Day.

### **1.3 Liability of Security Holders**

Unless expressly stated in this Deed (which to avoid doubt, does not include clause 1.2(m)), the obligations of the Security Holders, KKR Investors and Non-Investor Parties under this Deed bind each of the Security Holders, KKR Investors and Non-Investor Parties (as applicable) individually and not jointly.

### **1.4 Meaning of Procure**

If under this Deed, a party (other than the Company) has undertaken to another party to procure that any Group Company or any IPO Vehicle will do any act or thing or refrain from doing any act or thing, the party in question will not be in breach of that undertaking if:

- (a) in the case of any party who is a director of a Group Company or any IPO Vehicle, the party has exercised the party's votes as a director in favour of the act or thing the Group Company or IPO Vehicle is obliged to do or against the act or thing the Group Company or IPO Vehicle is obliged to refrain from doing (or abstained from voting in relation to the act or thing) as applicable (provided that nothing in this Deed requires a director of a Group Company or any IPO Vehicle to act in a manner which would breach his or her duties as a director);
- (b) in the case of any Security Holder (or any Affiliate of a Security Holder), the Security Holder has exercised its votes as a Security Holder in favour of the act or thing the Group Company or IPO Vehicle is obliged to do or against the act or thing the Group Company or IPO Vehicle is obliged to refrain from doing (or abstained from voting in relation to the act or thing) as applicable;
- (c) in the case of any party who has appointed a director of a Group Company or any IPO Vehicle or has the right to appoint a director of any Group Company or any IPO Vehicle, that director has exercised his votes as a director in favour of the act or thing the Group Company or IPO Vehicle is obliged to do or against the act or thing the Group Company or IPO Vehicle is obliged to refrain from doing (or abstained from voting in relation to the act or thing) as applicable (provided that nothing in this Deed requires a director of a Group Company or any IPO Vehicle to act in a manner which would breach his duties as a director);
- (d) in the case of any Individual Party who is Engaged By A Group Company, the Individual Party has carried out all actions which are appropriate (but not in conflict with any determination of the Board) within the scope of its role and responsibilities as a result of being Engaged By A Group Company to facilitate the Group Company or IPO Vehicle doing the act or thing it is obliged to do, or to prevent the Group Company or IPO Vehicle from doing the act or thing it is obliged to refrain from doing, as applicable; and
- (e) it has taken all other actions within the scope of its power and authority to facilitate the Group Company or IPO Vehicle doing the act or thing it is obliged to do, or to prevent the Group Company or IPO Vehicle from doing the act or thing it is obliged to refrain from doing, as applicable, and has not taken any action or omitted to take any action within the scope of its power and authority which would prevent or inhibit the Group

Company or IPO Vehicle doing the act or thing it is obliged to do, or facilitate the Group Company or IPO Vehicle doing the act or thing it is obliged to refrain from doing, as applicable.

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## **2 Operation of Deed**

### **2.1 Effect**

This Deed comes into effect on and from the Implementation Date, except for this clause 2 and clauses 1, 17, 18, 20 and 23 to 31 (inclusive) which each come into effect on the date of this Deed.

### **2.2 Failure to implement Scheme**

Unless the KKR Investors agree in writing to the contrary, this Deed terminates if the Scheme Implementation Deed is terminated in accordance with its terms without the Scheme being implemented.

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## **3 Objectives**

The primary objective of the Group is to:

- (a) carry on the Business; and
- (b) maximise the sustainable value of the Group for the Security Holders.

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## **4 Boards**

### **4.1 Composition**

Each party must at all relevant times Procure that the matters and things contemplated by Schedule 2, including the composition of the Board and the boards of directors of the other Group Companies, and the procedures for meetings of the Board and the boards of directors of the other Group Companies, are carried out in accordance with Schedule 2.

### **4.2 Delegation**

The Board may, on any terms it determines, delegate (or revoke a prior delegation) to one or more members of management (including the Group CEO) or a sub-committee of the Board, the authority to cause a Group Company to do or commit anything (with or without further Board approval), except that, notwithstanding any other provision of this Deed, no matter or thing listed in Parts A and B of Schedule 3 may be delegated to any person or group of persons, including any sub-committee of the Board or management, without Board Special Majority approval.

### **4.3 Performance of Directors' duties**

Subject at all times to the duties of each Director at law, a Director may, to the maximum extent permitted by law, in performing any of his or her duties or exercising any power, right or discretion as a Director:

- (a) have regard to and represent the interests of the Security Holders who appointed the Director under this Deed; and
- (b) act on the wishes of the Security Holders who appointed the Director under this Deed.

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## **5 Group undertakings**

### **5.1 Board matters**

The Company must not do, commit or approve, and must, subject to clause 6.1(c), ensure that no other Group Company does, commits or approves, anything listed in:

- (a) Part A of Schedule 3 without Board approval;
- (b) Part B of Schedule 3 without:
  - (i) if the Original Pepper Shareholders have an Adjusted Share Ownership Percentage of 10% or greater, approval by a Board Special Majority; or
  - (ii) if clause 5.1(b)(i) does not apply, Board approval; and
- (c) Part C of Schedule 3 without Board approval, approval by a KKR Super Majority (for so long as there are any KKR Investors) and approval by a Pepper Super Majority (for so long as there are any Original Pepper Shareholders).

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## **6 Company management**

### **6.1 Compliance by parties**

- (a) Except as waived or otherwise approved by a Board Special Majority or as otherwise provided in this Deed, the Company must comply, and ensure that each Group Company complies, with this Deed (including with Schedule 4) and the Financing Documents (to the extent applicable).
- (b) Each of the parties (other than the Company) undertakes to each of the other parties that it will comply with, and Procure that the Company complies with, this Deed, the Constitution and the Financing Documents.
- (c) Each party agrees to take all actions within the scope of its power and authority to facilitate each Non-Controlled Group Company complying with this Deed as if it were a Subsidiary of the Company. Notwithstanding anything to the contrary in this Deed, a party will not be in breach of this Deed if a Non-Controlled Group Company does, or omits to do, a thing that would breach this Deed if undertaken or omitted (as applicable) by the Company or a Subsidiary of the Company but it has, and each director appointed by it to a Group Company, has:
  - (i) taken all other actions within the scope of its power and authority which are permissible in accordance with the governing documents of that Non-Controlled Group Company to facilitate the Non-Controlled Group Company doing the act or thing it is obliged to do, or to prevent the Non-Controlled Group Company from doing the act or thing it is obliged to refrain from doing, as applicable; and
  - (ii) not taken any action or omitted to take any action within the scope of its power and authority which is permissible in accordance with the governing documents which would prevent or inhibit the Non-Controlled Group Company doing the act or thing it is obliged to do, or facilitate the Non-Controlled Group Company doing the act or thing it is obliged to refrain from doing, as applicable.

## 6.2 Responsibilities of the Board

The Board is responsible for:

- (a) the overall direction and management of the Group and formulation of the policies to be applied to the Business; and
- (b) ensuring that the Business is managed in accordance with this Deed.

## 6.3 Dividends

- (a) Subject to clause 6.4, the dividend policy for the Group will be decided by the Board (by Board Special Majority).
- (b) Subject to any relevant obligations of the Group Companies under the Financing Documents, this Deed and the Constitution, the Company undertakes to the Security Holders that it will, if any Group Company has profits lawfully available for distribution, take such action as is required by the Board to ensure that those profits are distributed to the Company to the extent necessary to enable any dividends or distributions lawfully payable on the Equity Securities and, declared or determined by the Board in accordance with Schedule 2, to be paid on the due date for payment.

## 6.4 Proceeds of sale of a Platform

- (a) Subject to clause 6.4(i), if all or part of a Platform (other than as part of an Asset Sale) is sold then this clause 6.4 will apply.
- (b) The Board will determine by Board Special Majority how much (if any) of the net proceeds of the sale of the relevant Platform (**Platform Proceeds**) are to be:
  - (i) retained by the Group to satisfy the capital requirements in respect of another Platform (provided that, unless a Board Special Majority determines that a greater amount of the Platform Proceeds will be retained to satisfy the capital requirements in respect of another Platform, then the amount retained for that purpose will be no more than as reflected in the then current Business Plan) (**Target Platform Retained Amount**);
  - (ii) retained by the Group to satisfy the Group's capital requirements which are not related to a Platform (including, the acquisition of a business, platform or portfolio which is not a Platform, or the allocation of capital towards the ongoing management of such a business, platform or portfolio) (**Target Non-Platform Retained Amount**); and
  - (iii) distributed to all Ordinary Shareholders and any other Security Holder holding Equity Securities whose terms of issue provide that they will participate in the dividend or distribution (and any Departing Party who has an outstanding Unsecured Loan based on the number of the Departing Party's Ordinary Shares which were Transfer Securities) by way of:
    - (A) dividend; or
    - (B) capital distribution (including via a buy back, capital cancellation or capital redemption) (**Cash Distribution Amount**).



- (c) The Company will provide each Security Holder with a notice setting out:
- (i) that a sale of a Platform or part of a Platform and a distribution of proceeds is proposed under this clause 6.4, including to the extent known at the time, the expected timing of completion of the sale and distribution, the expected Cash Distribution Amount and the expected amount of the Platform Proceeds less the Target Platform Retained Amount and the Cash Distribution Amount (**Maximum Non-Cash Distribution Amount**) (or the manner in which each of those amounts will be determined) and the expected mechanism or mechanisms by which any Platform Buy-Back will be implemented; and
  - (ii) the right of each Security Holder to elect to have Equity Securities with an aggregate Platform Buy-Back Price equal to the Security Holder's Platform Buy-Back Amount Disposed of in a Platform Buy-Back. A Security Holder who holds multiple classes of Equity Securities may determine the numbers, if any, of each class of Equity Securities which it holds which are subject to the Platform Buy-Back provided that the price per Equity Security in the Platform Buy-Back must be the Platform Buy-Back Price.
- (d) The Company will give each Security Holder a reasonable period (determined by the Company but not less than 10 Business Days) to elect whether it wishes to exercise its rights under clause 6.4(c)(ii). Any election made by a Security Holder under clause 6.4(c)(ii) is irrevocable unless the Company otherwise agrees. If at the end of the exercise period stated in the notice, a Security Holder has not elected to exercise its rights under clause 6.4(c)(ii) by notice in writing to the Company, that Security Holder will be deemed to have waived all of its rights under this clause 6.4 to have any Equity Securities Disposed of in the relevant Platform Buy Back.
- (e) Following the expiry of the time by which each Security Holder must indicate whether it wishes to exercise its rights under clause 6.4(c)(ii) (or any earlier time at which all Security Holders have made their elections under that clause), the Company will:
- (i) determine the aggregate number of Equity Securities which all Security Holders have validly elected to Dispose of in the Platform Buy-Back and the aggregate amount payable at the Buy-Back Price for each such Equity Security (such aggregate amount being the **Aggregate BBP**); and
  - (ii) implement the Platform Buy-Back in accordance with this clause 6.4 (including the Security Holders' elections under clause 6.4(c)(ii)).
- (f) If the Aggregate BBP is less than the result of deducting the Target Non-Platform Retained Amount from the Maximum Non-Cash Distribution Amount, that difference will be added to the Cash Distribution Amount and distributed as contemplated by clause 6.4(b)(iii).
- (g) To avoid doubt, if the Aggregate BBP is greater than the result of deducting the Target Non-Platform Retained Amount from the Maximum Non-Cash Distribution Amount, the Group will not retain the full amount of (or any, as applicable) of the Target Non-Platform Retained Amount and Security Holders' elections under clause 6.4(c)(ii) must still be given effect.

- (h) If a buy back, redemption, cancellation, transfer or other Disposal of any Equity Securities is undertaken in accordance with this clause 6.4 or otherwise in accordance with the terms of this Deed, each Security Holder (in all relevant capacities) must do and perform all such acts and enter into such documents as are within its power (in any capacity), and use its best endeavours to procure others to do and perform such acts and enter into such documents, as are appropriate to give effect to the buy back, redemption, cancellation, transfer or other Disposal including:
  - (i) voting in favour of the buy back, redemption, cancellation, transfer or other Disposal at any Board and Security Holder meetings that may be required;
  - (ii) entering into any agreement that may be required to effect the buy back, redemption, cancellation, transfer or other Disposal;
  - (iii) lodging all necessary documents and giving all necessary notifications to any regulatory authorities; and
  - (iv) delivering the certificate(s) and, if necessary, executed transfer(s), for the Equity Securities being Disposed of.
- (i) The Company's obligations in this clause 6.4 are subject to the Group Companies' obligations at law, under the Financing Documents, under this Deed and under the Constitution.

#### **6.5 Conduct of Business in accordance with the Business Plan**

Unless otherwise approved by a Board Special Majority, the Company must use its best endeavours to ensure that the Group conducts the Business in each Financial Year in accordance with the Business Plan approved and adopted by the Board for that Financial Year or any amended version of that Business Plan approved by the Board.

#### **6.6 Submissions of draft Business Plan**

At least 6 weeks before the end of each Financial Year (or at such other time as reasonably determined by the Board), the parties must use reasonable endeavours to cause the Group CEO and Group CFO to submit to the Board a draft Business Plan for the next Financial Year. The KKR Investors and the Non-Investor Parties must Procure that the Board considers the draft Business Plan at least 15 Business Days before the beginning of the relevant Financial Year (or at such other time as determined by the Board). The draft Business Plan (with such amendments as are considered appropriate) may only be adopted by a Board Special Majority.

#### **6.7 Conduct until new Business Plan adopted**

If the Board does not adopt the Business Plan in accordance with clause 6.6 before the start of the relevant Financial Year, the Company must continue to conduct the Business on the basis of the previous Financial Year's Business Plan until a new Business Plan is adopted, provided that the Group Companies may continue to operate and incur expenditures and Liabilities in amounts up to 105% of those in the previous Financial Year's Business Plan. Once a new Business Plan is adopted by a Board Special Majority, the previous authority to incur expenditures and Liabilities in amounts up to 105% of those in the previous Financial Year's Business Plan will cease to apply.

#### **6.8 Review of Business Plan**

The Board may at any time review the Business Plan or any budget previously approved by the Board and resolve to amend it provided that any material

amendments to the Business Plan other than as described in paragraph (f) of Part A of Schedule 3 must be approved by a Board Special Majority.

## **7 New Securities**

### **7.1 Issue of New Securities**

Subject to clauses 7.12, 7.13 and 7.19 to 7.21 (inclusive) and compliance with all applicable laws, if the Company proposes to issue new Equity Securities (or any rights to be allotted, issued or to subscribe for Equity Securities) (**New Securities**) to any person after the Implementation Date, it must first comply with this clause 7.

### **7.2 Contents of Issue Notice**

If the Company proposes to issue New Securities, it must serve a notice (**Issue Notice**) on each Security Holder specifying:

- (a) (**issue price**) the issue price per New Security or the manner in which the issue price is proposed to be calculated or determined. Unless otherwise agreed by a Board Special Majority, if the New Securities will be Ordinary Shares issued:
  - (i) prior to the 12 month anniversary of the Implementation Date, the issue price must be the Scheme Price; or
  - (ii) on or following the 12 month anniversary of the Implementation Date, the issue price must be determined by reference to the Fair Market Value of the Group at the time that the Issue Notice is served and the number(s) and classes of Equity Securities then on issue;
- (b) (**total number**) the total number of New Securities to be issued and the number(s) of each class of New Securities to be issued;
- (c) (**acceptance period**) the date by which a Security Holder must give the Company written notice exercising its right to make an offer to subscribe for New Securities, which date must not be less than 10 Business Days after the date of the Issue Notice (**Initial Acceptance Period**) (or any longer period which a Board Special Majority approves for a Security Holder or Security Holders);
- (d) (**completion timing**) the date on which subscription funds for the New Securities must be paid to the Company, which date must not be less than 10 Business Days (or any longer period which a Board Special Majority agrees to for a Security Holder or Security Holders) after the end of the Initial Acceptance Period (or any longer period which a Board Special Majority approves for a Security Holder or Security Holders under clause 7.2(c)) plus such additional period as may reasonably be required by any Security Holder to obtain any necessary approvals or consents of any Government Agency for the Security Holder to lawfully accept the offer of New Securities (such additional period being determined by the Board acting reasonably after consultation with the relevant Security Holder);
- (e) (**other terms**) the other terms of issue of the New Securities; and
- (f) (**relevant proportions**) if some or all of the New Securities will be:
  - (i) Ordinary Shares, the number of New Securities which constitutes the Security Holder's Ordinary Share Percentage of those Ordinary Shares (**Entitlement Ordinary Shares**); and/or

- (ii) any other class of Equity Securities, the number of New Securities for which the Security Holder would need to subscribe in order to maintain the Security Holder's existing Security Ownership Percentage (after accounting for any Ordinary Shares to be issued) (**Entitlement New Class Securities**),

(the **Entitlement Securities**).

### **7.3 Notice by Security Holder**

A Security Holder may exercise its right to make an offer to subscribe for New Securities by giving notice to the Company no later than the end of the Initial Acceptance Period of the number of New Securities which it offers to subscribe for (which may be its number of Entitlement Ordinary Shares and/or Entitlement New Class Securities (as applicable) or more or less than its number of Entitlement Ordinary Shares and/or Entitlement New Class Securities (as applicable)).

### **7.4 Failure to give notice**

If a Security Holder fails to give the notice referred to in clause 7.3 by the end of the Initial Acceptance Period, the Security Holder will cease to have any right to offer to subscribe for the New Securities, unless the Company (with Board approval) otherwise agrees.

### **7.5 Issue**

If a Security Holder (or other person under clause 7.6) exercises its right to offer to subscribe for New Securities under this clause 7, the Company must, subject to receipt of the relevant subscription amount, issue to that Security Holder (or its Nominated Affiliate) the number of New Securities allocated to that Security Holder (or its Nominated Affiliate) in accordance with clauses 7.7 and 7.8.

### **7.6 Nominated Affiliate**

Subject to compliance with clause 7.13:

- (a) a KKR Investor may nominate an Affiliate; and
- (b) an Original Pepper Shareholder may nominate a Permitted Holder of the Original Pepper Shareholder,

to exercise its right to make an offer to subscribe for New Securities under this clause 7 (in each case, the **Nominated Affiliate**), and the Company must, subject to receipt of the relevant subscription amount, issue to the Nominated Affiliate the number of New Securities allocated to the Security Holder in accordance with clauses 7.7 and 7.8.

### **7.7 Allocation**

If the Company receives offers under clause 7.3 to subscribe for:

- (a) equal to or less than the total number of New Securities referred to in the Issue Notice, the Company must issue to each Security Holder who has made an offer under clause 7.3, the number of New Securities for which the Security Holder has offered to subscribe; or
- (b) more New Securities than the total number of New Securities referred to in the Issue Notice then, subject to clause 7.8, each Security Holder who has made an offer under clause 7.3 is entitled to subscribe for the lesser of the number(s) of its Entitlement Securities and the number of New Securities for which it has offered to subscribe.

## **7.8 Remaining New Securities**

Any remaining New Securities that have not been allocated after the application of clause 7.7(b) must be allocated on a pro rata basis among those Security Holders (by reference to their relative Ordinary Share Percentages and/or Security Ownership Percentages, as applicable) that offered to subscribe for a greater number of New Securities than their Entitlement Securities under clause 7.3, provided that no allocation under this clause 7.8 may exceed the number of New Securities for which the Security Holder has offered to subscribe under clause 7.3 (and the Company must reapply this clause 7.8 in respect of the then remaining New Securities until all the New Securities that the Security Holders offered to subscribe for under clause 7.3 are allocated).

## **7.9 Notice of allocation of New Securities**

As soon as reasonably practicable after the determination of the entitlements of each Security Holder, the Company must send to each Security Holder who has made an offer under clause 7.3 a notice setting out the number of New Securities that the Security Holder has been allocated in accordance with this clause 7 and then:

- (a) each Security Holder must pay to the Company the subscription funds for the New Securities which the Security Holder has been allocated on or before the date set out in the Issue Notice or such later date as is agreed between the Security Holder and the Company (with Board approval); and
- (b) subject to the receipt of the subscription funds referred to in clause 7.9(a), the Company must issue the relevant New Securities and certificates evidencing title to the New Securities to the Security Holder (or its Nominated Affiliate, as applicable) and update all relevant registers.

## **7.10 Failure to complete subscription for New Securities**

If New Securities are allocated to a Security Holder or its Nominated Affiliate under this clause 7 but:

- (a) the Security Holder or its Nominated Affiliate, as applicable, breaches any of its material obligations in connection with its subscription for the relevant New Securities; or
- (b) the relevant New Securities cannot be issued to the Security Holder or their Nominated Affiliate, as applicable, due to the application of clause 7.17 or clause 7.18,

the Company may issue the relevant New Securities to any Third Party determined by the Board at the time and on the terms it determines.

## **7.11 Issue to Third Party**

The Company may issue any New Securities that are not subscribed for by the Security Holders in accordance with this clause 7 to any Third Party determined by a Board Special Majority within 80 Business Days of the date on which the Company sends notices to the Security Holders under clause 7.9 (or if no such notices will be sent as none of the Security Holders have offered to subscribe for any New Securities, 120 days from the Initial Acceptance Date) for an issue price per New Security not less than the price specified in the Issue Notice (or as would have been calculated in accordance with the method of calculation specified in the Issue Notice) and on terms materially no more favourable (taken as a whole) than those contained in the Issue Notice. If the Company does not issue the New Securities within that period, the Company may not issue the New Securities without first complying again with clauses 7.1 to 7.11 (inclusive).

## 7.12 Exceptions

Without limiting clause 5, clauses 7.1 to 7.11 (inclusive) do not apply to an issue of Equity Securities:

- (a) **(Transaction Documents)** pursuant to the Transaction Documents;
- (b) **(convertible Securities)** pursuant to the conversion of any form of convertible Equity Securities or convertible securities of any other type (including debt securities) issued by the Company which were previously offered to the Security Holders under clause 7.1 or issued in accordance with another exception in this clause 7.12;
- (c) **(Exit)** pursuant to an Exit;
- (d) **(Board approved)** approved by a Board Special Majority;
- (e) **(Approved by Board and super majorities of Security Holders)** which is approved in writing by the Board, a KKR Super Majority (for so long as there are any KKR Investors) and a Pepper Super Majority (for so long as there are any Original Pepper Shareholders);
- (f) **(incentive scheme)** if the Equity Securities will be Incentive Shares or the issue is pursuant to any employee equity plan or comparable incentive arrangement and the Equity Securities will be subject to the terms of this Deed, and in each case the issue of Equity Securities has been approved by the Board;
- (g) **(acquisition consideration)** as non-cash consideration for an acquisition of a company, business or assets by a Group Company approved in accordance with this Deed;
- (h) **(emergency funding)** pursuant to clause 7.19;
- (i) **(debt financiers)** to a provider of debt finance (or any agent, trustee or nominee of or for the provider) who is not a KKR Investor or an Affiliate of a KKR Investor as part of any genuine debt finance provided to the Group or any Group Company; or
- (j) **(corporate reorganisation)** pursuant to a Reorganisation Event or Restructuring Event provided the Reorganisation Event or Restructuring Event does not dilute the Ordinary Share Percentage of any Security Holder (for this purpose only, if the Reorganisation Event or Restructuring Event involves an exchange of Equity Securities for equity Securities in a new parent company of the Group, the Ordinary Share Percentage will be calculated based on the Security Holders' holdings of equity Securities in that new parent company) and subject to compliance with clause 8.6.

## 7.13 Deed of Adherence

No person can become a holder of Equity Securities (whether as a result of an issue or Disposal of Equity Securities to the person) unless:

- (a) that person, and if applicable the Individual Party of which the person will be a Nominee, first executes and delivers to the Company a Deed of Adherence under which the person agrees to be bound by this Deed as if named as a party and in the capacity of a KKR Investor, an Original Pepper Shareholder, a Non-Investor Party, a Non-Investor Security Holder, Nominee, Retaining Party, Retaining Holder or otherwise (except as provided in clause 7.16, such capacity to be as determined by the Board); or

- (b) the issue or transfer is an issue or transfer of Incentive Shares (provided that the holder of those Incentive Shares must execute a Deed of Adherence if those Equity Securities cease to be Incentive Shares for the purpose of this Deed).

#### **7.14 Inclusion of new holder**

If a person executes a Deed of Adherence in a specified capacity in accordance with clause 7.13 from the date of the Deed of Adherence each reference in this Deed to that category of party will be taken to include the new holder of Equity Securities and the new holder of Equity Securities will have the rights and obligations accorded to that category of party under this Deed.

#### **7.15 Bound by Deed of Adherence**

The parties agree that any person who executes a Deed of Adherence will be bound by, and acquire the rights under, this Deed in accordance with clause 7.13 to this clause 7.15 (inclusive).

#### **7.16 Affiliates of KKR Investors and Permitted Holders**

Without prejudice to the requirements of clause 7.13:

- (a) if an Affiliate of a KKR Investor acquires any Equity Securities it will be taken to be a KKR Investor and will have the rights and obligations of a KKR Investor under this Deed unless otherwise agreed by the KKR Investors; and
- (b) if a Permitted Holder of an Original Pepper Shareholder acquires any Equity Securities it will be taken to be an Original Pepper Shareholder and will have the rights and obligations of an Original Pepper Shareholder under this Deed unless otherwise agreed by a Pepper Super Majority. No person may execute a Deed of Adherence as an Original Pepper Shareholder unless the first sentence of this clause 7.16(b) applies or the capacity for the purposes of this Deed is approved by the KKR Investors (for so long as there are any KKR Investors) and Original Pepper Shareholders comprising a Pepper Super Majority.

#### **7.17 No more than 50 Shareholders**

Despite any other provision of this Deed, except with the written approval of the KKR Investors, the Company must not issue Equity Securities to a person who is not a Shareholder (other than in connection with an IPO pursuant to clause 13) if the issue of those Equity Securities would result in there being more than 50 Shareholders (calculated assuming that prior to that issue of Equity Securities all Equity Securities convertible into Equity Securities or another class of Equity Securities have been converted into Shares by their holders).

#### **7.18 No requirement to prepare disclosure document**

- (a) Any person's rights to be offered Equity Securities and/or to subscribe for Equity Securities (whether under this clause 7 or otherwise) are subject to those rights not requiring the Company to issue a disclosure document (including a prospectus or offering memorandum) or a product disclosure statement, undertake any registration or filing with any Government Agency or take any comparable action, whether under Chapter 6D or Chapter 7 of the Corporations Act or any comparable legislation in any other jurisdiction, unless the Board determines otherwise.
- (b) Neither the Company nor any other party will be in breach of this Deed if it fails to offer or issue any Equity Securities to any person, or give any notice which would constitute an offer of any Equity Securities to any

person, in circumstances where such offer or issue of Equity Securities would require the taking of any action described in clause 7.18(a).

## 7.19 Emergency Matter funding

- (a) If an Emergency Matter occurs:
- (i) a KKR Investor may elect by notice in writing to the Company to subscribe for new Equity Securities at an issue price per Equity Security determined by the KKR Investors acting reasonably in consultation with the Board, having regard to the earnings, assets, liabilities and prospects of the Group and the previous issue prices of Equity Securities (without limiting the KKR Investors' right to reasonably determine a different issue price on account of changes in the Group's financial position, the issue of additional Equity Securities and other relevant intervening factors). The Equity Securities must be of a class and type approved by a Board Special Majority or failing such approval, Ordinary Shares;
  - (ii) subject to receiving the KKR Investor's election, the Company must issue the Equity Securities subscribed for by the KKR Investor immediately on receipt of the issue price from the KKR Investor; and
  - (iii) promptly following any issue of Equity Securities in accordance with clause 7.19(a)(ii), the Company will give a written notice (**Emergency Funding Notice**) to each Security Holder who is not a KKR Investor who elected to subscribe for Equity Securities under clause 7.19(a)(i) (**Catch-up Offeree**) offering the Catch-up Offeree the opportunity to subscribe, or acquire from the KKR Investor (as the KKR Investor elects in its discretion), Equity Securities:
    - (A) of the same class and type (and, if the KKR Investor elects to require that the Security Holder acquire Equity Securities from it, at the same price per Equity Security as the price paid by the KKR Investor, and otherwise at the same price and on the same terms per Equity Security as the price and terms on which the KKR Investor(s) subscribed for the Equity Securities, including compliance with all applicable laws) as the Catch-up Offeree would have been entitled to subscribe for in accordance with clauses 7.1 to 7.12 (inclusive) if the issue in accordance with clause 7.19(a)(i) had instead been made in accordance with clauses 7.1 to 7.12 (inclusive); and
    - (B) in the number(s) which would result in the Catch-up Offeree (if it chose to accept the offer in full) having the same Ordinary Share Percentage and Security Ownership Percentage as it had prior to the KKR Investor subscribing for Equity Securities under clause 7.19(a)(i) (assuming for this purpose that all Catch-up Offerees subscribe or acquire all of the Equity Securities which they are offered under this clause 7.19(a)(iii)).
- (b) The required payment date for Equity Securities offered under an Emergency Funding Notice must not be less than 15 Business Days after the date of the Emergency Funding Notice (unless a particular Catch-up Offeree agrees to pay sooner).



- (c) Notwithstanding anything to the contrary in this clause 7, if a Catch-up Offeree is offered an opportunity to participate in an Emergency Matter funding at or around the same time as the KKR Investor under clause 7.19(a)(i) on substantially equivalent terms to which it would be offered Equity Securities under clauses 7.1 to 7.12 (inclusive) (including at least 15 Business Days' (or any shorter period agreed by the Catch-up Offeree) before being required to make payment for any Equity Securities issued to it), then the Company will have no further obligation to offer Equity Securities to the Catch-up Offeree under clause 7.19(a)(iii), irrespective of whether the Catch-up Offeree accepted the Company's offer at that time.
- (d) If an Emergency Matter occurs, prior to the KKR Investors being issued with Equity Securities under clause 7.19(a)(i), the Board will use commercially reasonable endeavours, in light of the nature of the Emergency Matter and the time available to respond to it, to consider debt and other funding alternatives which do not require the issue of Equity Securities to cure the Emergency Matter.

## **7.20 Acquisition by Catch-up Offeree**

Within 15 Business Days of the issue of a valid Emergency Funding Notice, each Catch-up Offeree may exercise its right to subscribe for, or acquire from the KKR Investors, as applicable, the Equity Securities offered by the Company in the Emergency Funding Notice by giving written notice to the Company of the number of Equity Securities offered which it wishes to subscribe for or acquire (as applicable). If a Catch-up Offeree has not given such written notice to the Company at the end of the 15 Business Day period, then the Catch-up Offeree has no further right to subscribe for, or acquire from any KKR Investor, the Equity Securities offered by the Company under clause 7.19(a)(iii), unless otherwise approved in writing by the Board.

## **7.21 Issue or transfer after receipt of issue price**

- (a) If one or more Catch-up Offerees exercises its right to subscribe for, or acquire from the KKR Investors, Equity Securities under clause 7.19(a)(iii), the Company must issue and/or the KKR Investors must transfer the Equity Securities to be acquired by the relevant Catch-up Offerees as soon as reasonably practicable following receipt of the issue or transfer price from those Catch-up Offerees.
- (b) In the event of a transfer of Equity Securities by the KKR Investors to any Catch-up Offerees:
  - (i) the KKR Investors will be deemed to warrant in favour of those Catch-up Offerees that the KKR Investor:
    - (A) has full power and authority, and has obtained all necessary consents from third parties, to sell the Equity Securities to those Catch-up Offerees;
    - (B) is not Insolvent; and
    - (C) transfers to those Catch-up Offerees clear and unencumbered legal title to the Equity Securities being sold, free of any Security Interests or third party rights other than any such Security Interests or rights arising under this Deed; and
  - (ii) each of those Catch-up Offerees will be deemed to warrant in favour the KKR Investor that the Catch-up Offeree:

(A) has full power and authority, and has obtained all necessary consents from third parties (including Government Agencies), to acquire the Equity Securities; and

(B) is not Insolvent.

Each party consents for all purposes to a transfer and acquisition of Equity Securities in accordance with clauses 7.19 to 7.21 inclusive.

## **7.22 Refusal to register new issues**

Unless otherwise approved by a Board Special Majority, the Company must not register any issue of New Securities in any books or registers maintained by it if this clause 7 has not been observed.

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# **8 Disposal of Equity Securities**

## **8.1 Disposals by KKR Investors**

A KKR Investor may not Dispose of any Equity Securities, except pursuant to:

- (a) after the Standstill Period, subject to compliance with clauses 9 (Tag along rights) and 11 (Right of first offer) (to the extent any of those clauses are applicable);
- (b) a Disposal of Equity Securities to a Catch-up Offeree under clauses 7.19 to 7.21 (inclusive);
- (c) clause 13 (Exit);
- (d) clause 11 (Right of first offer);
- (e) a KKR Investor Affiliate Transfer at any time;
- (f) pursuant to a transaction which has been approved in advance by a Board Special Majority,

and, in each case, also in accordance with clauses 7.13 and 8.7 (other than in connection with an IPO in accordance with clause 13 or in connection with a Trade Sale if this Deed will be terminated on or before completion of the Trade Sale).

## **8.2 Disposals by Non-Investor Parties**

A Non-Investor Party may not Dispose of any Equity Securities, except pursuant to:

- (a) clause 8.3 (Permitted Holders);
- (b) after the Standstill Period, subject to compliance with clauses 9 (Tag along rights), 11 (Right of first offer) and 12 (OPS Right of first refusal) (to the extent any of those clauses are applicable);
- (c) clause 11 (Right of first refusal);
- (d) a Disposal to a Buying OPS ROFR Offeree under clause 12;
- (e) a Disposal by an Existing Plan Trustee to a beneficiary of a trust of which it is the trustee following the beneficiary either validly calling for the transfer of the relevant Equity Securities to it or the Company directing the Existing Plan Trustee to make such a Disposal, in either case in

accordance with the Existing Plan Rules and if applicable, any ancillary documentation to those Existing Plan Rules (provided that if requested by the Company (with Board approval), the Existing Plan Trustee must Dispose of the relevant Equity Securities to the Custodian to be held by it as bare trustee for the beneficiary in accordance with this Deed and the Custodian Deed and the beneficiary must comply with clause 22.1 as if it were already a Non-Investor Party);

- (f) clause 13 (Exit);
- (g) clause 14 (Compulsory Transfers) and Schedule 1;
- (h) a Custodian Transfer at any time; or
- (i) pursuant to a transaction which has been approved in advance by a Board Special Majority,

and in each case, also in accordance with clauses 7.13 and 8.7 (other than in connection with an IPO in accordance with clause 13 or in connection with a Trade Sale if this Deed will be terminated on or before completion of the Trade Sale).

### **8.3 Permitted Holders**

Subject to compliance with the other expressly applicable provisions of this Deed, including clauses 7.13, 8.4 and 8.7, a Non-Investor Party may Dispose of any Equity Securities to a Permitted Holder of the Non-Investor Party.

### **8.4 Ceasing to be a Permitted Holder and re-transfer**

If:

- (a) a Nominee who holds any Equity Securities ceases to be a Permitted Holder of the relevant Individual Party at any time (without prior approval by the Board); or
- (b) Equity Securities are Disposed of in accordance with, or purportedly in accordance with, clause 8.3 and at any time after that Disposal:
  - (i) it becomes known that the transferee was not a Permitted Holder; or
  - (ii) the transferee ceases to be a Permitted Holder,

of the relevant transferor, that Nominee, purported Permitted Holder or transferee (as applicable) must, unless otherwise approved by the Board, promptly transfer all Equity Securities which it holds to the relevant Individual Party who is its Related Non-Investor Party or the original transferor or to a Permitted Holder of the relevant Individual Party or original transferor (and if no such Permitted Holder is willing to accept a transfer of the Equity Securities, then the relevant Individual Party or original transferor must accept a transfer of the Equity Securities in accordance with this Deed). Nothing in this clause 8.4 limits the operation of clause 14.

### **8.5 Permitted Security Interests**

A Non-Investor Party may only grant a Security Interest over any of their Equity Securities to a person with prior approval by the Board and on such terms as the Board determines.

### **8.6 Restructuring Event**

In connection with a Restructuring Event, each Security Holder must:

- (a) Dispose of any Equity Securities promptly if requested by the Board for the consideration approved by the Board (with the Board acting in good faith in light of the economic impact of the Restructuring Event on the classes of Equity Securities and provided that the consideration payable for Equity Securities Disposed of pursuant to this clause 8.6(a) must be the same for all Equity Securities of the same class issued on the same terms); and
- (b) agree to such rights and obligations in respect of the Group as are substantially the same in all material respects with the rights and obligations under this Deed and the Constitution and approved by the Board.

#### **8.7 No more than 50 Shareholders**

Despite any other provision of this Deed, except with the written approval of the KKR Investors, no party may Dispose of any Equity Securities to a person who is not a Security Holder (other than in connection with an IPO in accordance with clause 11) if that Disposal would result in there being more than 50 Shareholders (calculated assuming that prior to such Disposal all Equity Securities convertible into Equity Securities or another class of Equity Securities had been converted into Shares by their holders).

#### **8.8 Refusal to register transfer**

Unless otherwise approved by a Board Special Majority, the Company must not register any transfer of Equity Securities in any books or registers maintained by it unless this clause 8 has been observed.

#### **8.9 Terms of transfer**

In respect of the sale of any Equity Securities by a KKR Investor or Non-Investor Party pursuant to clauses 9, 10, 11 or 12:

- (a) the Equity Securities must be Disposed of, together with all rights attaching to them and free from all Security Interests; and
- (b) at completion of the sale of the Equity Securities the seller must deliver the certificates (if any) for the Equity Securities or a customary indemnity in respect of any lost or destroyed certificate(s) and duly executed transfers in respect of the Equity Securities.

#### **8.10 Party remains liable**

If any Non-Investor Party Disposes of any Equity Securities to a Permitted Holder or any Security Holder purports to Dispose of any Equity Securities other than in compliance with this Deed, that party remains liable in respect of all covenants, warranties, undertakings and obligations given by it under this Deed.

#### **8.11 Non-Investor Party to ensure compliance**

Each Non-Investor Party must ensure that each of its Related Non-Investor Parties complies with all of its obligations under this Deed. Each Non-Investor Party indemnifies, and agrees to reimburse and compensate, the Company and each KKR Investor against any Liability or other amount that the other party has incurred or will incur in relation to any breach of this Deed by any of its Related Non-Investor Parties.

#### **8.12 Post-Scheme Restructure**

Notwithstanding anything to the contrary in this Deed, if a Board Special Majority determines to proceed with a Post-Scheme Restructure:

- (a) each Security Holder must:
  - (i) promptly following the Board's request in connection with the Post-Scheme Restructure, Dispose of all of its Equity Securities in exchange for the same numbers of equity Securities issued by the Company or another new ultimate parent company of the Group (as appropriate to implement the Post-Scheme Restructure as determined by the Board Special Majority) of the same class and type, and on the same terms, as its Equity Securities; and
  - (ii) agree to enter into:
    - (A) a deed in respect of any equity Securities received on substantially the same terms as this Deed;
    - (B) if it is an Appointing Beneficiary, a custodian deed on substantially the same terms as the Custodian Deed in respect of its equity Securities in the Company or other new ultimate company of the Group; and
    - (C) any other documents reasonably requested by the Board to enable the Post-Scheme Restructure;
- (b) each party who is not a Retaining Party must take all actions, the Company must procure that the Group Companies take all actions and the Security Holders must Procure that the directors of each Group Company take all actions, appropriate to implement the Post-Scheme Restructure in accordance with the Board's requirements, including taking any action which the person would be required to take, and not taking any action which would be a breach of this Deed, if the Post-Scheme Restructure were an Exit implemented in accordance with this Deed; and
- (c) each party who is not a Retaining Party agrees that the Post-Scheme Restructure and all matters reasonably ancillary to the Post-Scheme Restructure, are taken to be approved by the Retaining Parties, KKR Investors, the Original Pepper Shareholders and the Non-Investor Parties for all purposes under this Deed and that no further approval of any of them will be required in connection with those matters.

Any Post-Scheme Restructure will be undertaken consistent with the treatment of the acquisition of Pepper Shares under the Scheme being governed by Section 338(g) of the Code.

### 8.13 Pepper Share acquisition

- (a) The Company and the Retaining Parties will discuss in good faith the means by which any Post-Scheme Restructure may be implemented so as to enable participation by the Retaining Parties.
- (b) The Company may determine by Board Special Majority that Red Hot Bidco (or another Group Company) will acquire the Retaining Holders' Pepper Shares at any time during the period from 6 to 36 months following the Implementation Date (any such determination, a **Pepper Acquisition Determination**), for a cash amount per Pepper Share equal to the fair market value of a Pepper Share as determined by a Board Special Majority, acting reasonably. If a Pepper Acquisition Determination is notified in writing to the Retaining Holders, each Retaining Holder agrees to sell their Pepper Shares to Red Hot Bidco (or another Group Company) in accordance with this clause 8.13(b) on the date determined by the Board and, subject to this clause 8.13, to take all

actions reasonably requested by the Board in connection with that sale. Unless otherwise agreed by the Company (with Board Special Majority approval) and the Retaining Holders, if a Pepper Acquisition Determination is notified in writing to the Retaining Holders, the Retaining Holders' Pepper Shares must be acquired pursuant to this clause 8.13(b) by the same entity at the same time for the same price per Pepper Share.

- (c) If a Pepper Acquisition Determination is made, the Company may also determine by Board Special Majority that each Retaining Holder must reinvest all of the aggregate cash proceeds received, or receivable, by it in respect of its Pepper Shares into Ordinary Shares (**RH Ordinary Shares**), each with an issue price equal to the fair market value of a Pepper Share as determined by a Board Special Majority under clause 8.13(b) (as adjusted for any Reorganisation Event or comparable event in respect of the Company or Pepper Group which was not correspondingly implemented in respect of the Company or Pepper Group (as applicable)).
- (d) If the Company notifies the Retaining Holders in writing of a determination in accordance with clause 8.13(c) and a Retaining Holder, or any associate of the Retaining Holder (including a beneficiary of a trust of which the Retaining Holder is the trustee) will incur a liability for Tax in connection with the sale of its Pepper Shares in accordance with the Pepper Acquisition Determination, the Retaining Holder may elect to require a Group Company to provide it with a loan for the amount of that Tax liability (and the Group Company must provide any such loan on terms consistent with this 8.13(d)). Any such loan will be interest-free, secured by (if required by the Company) and limited recourse to the RH Ordinary Shares (subject to customary limitations such as fraud), be repayable with the proceeds of any distributions or other proceeds received in respect of the RH Ordinary Shares, be fully repayable on Exit, include a covenant by the Retaining Holder not to Dispose of any of the RH Ordinary Shares without Board approval other than in connection with a transaction in connection with which the loan will be repaid and otherwise be on terms and conditions agreed by the Company and the Retaining Holder (each acting reasonably and in good faith). If requested by the Company, a Retaining Holder must provide the Company with evidence substantiating the amount and timing of any Tax liability referred to in this clause 8.13(d).

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## 9 Tag along rights

### 9.1 Tag Along Option

Following the Standstill Period, if:

- (a) one or more KKR Investors; or
- (b) a Non-Investor Party together with its Related Non-Investor Parties and any other Non-Investor Parties with whom it is acting in concert in connection with a Disposal of Equity Securities,

(the KKR Investors, or the Non-Investor Party together with its Related Non-Investor Parties and any other relevant Non-Investor Parties, collectively being the **Selling Investor**) wish to Dispose of 10% or more, by number, of the Shares on issue (calculated on the same basis as Security Ownership Percentage is calculated) to a Third Party or Third Parties in one transaction or a series of related transactions and, if the Selling Investor is one or more KKR Investors, the Selling Investor has not issued a Drag Notice (or has withdrawn a Drag Notice and not issued a further Drag Notice), the Selling Investor must serve a notice (**Invitation to Tag**) on each other Security Holder (**Tag Security Holder**) no

fewer than 15 Business Days before entering into a binding agreement to Dispose of those Shares.

## 9.2 Contents of Invitation to Tag

An Invitation to Tag must state:

- (a) **(Selling Investor)** the identity of the Selling Investor;
- (b) **(Tag Buyer)** the identity of the Third Party who proposes to acquire Shares from the Selling Investor (**Tag Buyer**), to the extent then known;
- (c) **(number)** the number and class or classes of Shares proposed to be Disposed by the Selling Investor;
- (d) **(Tag Proportions)** the percentage or percentages of the total number of Shares of each class held by the Selling Investor and proposed to be Disposed in the Tag Transaction (to avoid doubt, excluding any prior Disposal of Shares by a Selling Investor) (that percentage in respect of a class of Shares, a **Tag Proportion**);
- (e) **(sale price)** for each class of Shares proposed to be Disposed, the proposed consideration for each class of Share (which need not be payable all in cash) or the manner in which the sale price is proposed to be calculated or determined and any other material terms of the proposed sale known to the Selling Investor at the time of giving the Invitation to Tag;
- (f) **(Tag Option)** that each Tag Security Holder has an option (**Tag Option**) to participate in the Tag Transaction on the basis set out in clause 9.4, in respect of the relevant Tag Proportion of the Tag Security Holder's Shares (if any) being Disposed of by the Selling Investor (such proportion(s) of each class of the Tag Security Holder's Shares being the **Tag Securities**) at the same price and otherwise on terms which are materially no less favourable to the Tag Security Holder (taken as a whole) than the terms on which the Selling Investor is proposing to sell Shares to the Tag Buyer (taking into account the market values of the class or classes of Shares being sold by the Selling Investor and the Tag Security Holders and the relative rights of such different classes of Shares under this Deed and the Constitution); and
- (g) **(exercise period)** the period during which the Tag Option may be exercised which, unless otherwise agreed in writing between the Selling Investor and the Tag Security Holders, must not be less than 10 Business Days from the date of the Invitation to Tag.

## 9.3 Exercise of a Tag Option

A Tag Option may be exercised by notice in writing to the Selling Investor with a copy to the Company within the exercise period stated in the Invitation to Tag. Any exercise of a Tag Option:

- (a) must be for all Tag Securities of the relevant Tag Security Holder;
- (b) is irrevocable, unless otherwise agreed in writing between the Selling Investor and the relevant Tag Security Holder;
- (c) must include wire transfer instructions for payment of any cash portion of the purchase price payable to the Tag Security Holder; and
- (d) if required by the Selling Investor, must be accompanied by all documents required to be executed in connection with the Tag

Transaction, including the certificate or other documents representing the Tag Securities, together with a power of attorney authorising the Selling Investor or its nominee to act as its attorney to Dispose of the Tag Securities to the Tag Buyer.

If at the end of the exercise period stated in the Invitation to Tag, any Tag Security Holder has not exercised its Tag Option by notice in writing to the Selling Investor, that Tag Security Holder will be deemed to have waived all of its rights under this clause 9 to participate in the relevant Tag Transaction.

#### **9.4 Effect of exercise of Tag Option**

- (a) If a Tag Security Holder validly exercises its Tag Option in accordance with clause 9.3 (**Participating Tag Security Holder**):
- (i) the Participating Tag Security Holder must Dispose of its Tag Securities in the Tag Transaction on the terms stated in the Invitation to Tag; and
  - (ii) the Selling Investor must not complete the proposed Disposal of its Shares to the Tag Buyer unless the Tag Buyer has offered to buy the Tag Securities of each Participating Tag Security Holder or clause 9.4(b) applies, provided that if the Tag Buyer is not willing to purchase all of the Tag Securities and the Shares offered for Disposal by the Selling Investor and the Participating Tag Security Holders, the number of each class Shares Disposed of by the Selling Investor and the Participating Tag Security Holders must (unless the Selling Investor decides not to proceed with the Tag Transaction) be reduced pro rata between the Selling Investor and the Participating Tag Security Holders based on the number of such class of Shares the Tag Buyer is willing to purchase and the number of such class of Shares offered for sale by the Selling Investor and all Participating Tag Security Holders.
- (b) Notwithstanding anything to the contrary in this Deed, a Selling Investor will not have any obligation to include a Participating Tag Security Holder's Tag Securities in a Tag Transaction, and will be permitted to complete the proposed Disposal of its Shares to the Tag Buyer without the Tag Buyer buying those Tag Securities, if:
- (i) the Participating Tag Security Holder defaults in its obligations to Dispose of its Tag Securities in the Tag Transaction, including failing to execute any document which the Participating Tag Security Holder is required to execute under clause 9.5; or
  - (ii) the Participating Tag Security Holder breaches its obligations under clause 9.5.

#### **9.5 Conditions to participating in Tag Transaction**

Despite anything contained in this clause 9, the rights and obligations of the Participating Tag Security Holders to participate in a Tag Transaction are subject to the following conditions (each of which must be satisfied within the time periods specified by the Selling Investor):

- (a) (**substantially identical agreements**) Participating Tag Security Holders must enter into and execute substantially identical documents as the Selling Investor enters into and executes in connection with the Tag Transaction and any other documents reasonably requested by the Selling Investor;



- (b) **(pro rata expenses)** except as otherwise expressly provided in this Deed, each Participating Tag Security Holder must pay its pro rata share of all expenses properly incurred by the Selling Investor, the Participating Tag Security Holders and the Group Companies (based on the amount of Proceeds received by the Selling Investor and each Participating Tag Security Holder or which they are or would have been entitled to receive before any deductions or withholdings in accordance with this Deed or applicable law, as the case may be) in connection with the Tag Transaction (which is consummated or which is not consummated other than due to a decision by the Selling Investor not to proceed as contemplated by clause 9.4(a)(ii)), but only to the extent such expenses are incurred for the benefit of all Participating Tag Security Holders and are not otherwise paid by the Company or another person;
- (c) **(title representations and warranties)** if required by the Selling Investor, each Participating Tag Security Holder must give unqualified representations, warranties and indemnities relating to such Participating Tag Security Holder's title to its Tag Securities and its authority and capacity to execute and deliver the definitive documentation for the Tag Transaction; and
- (d) **(business representations and warranties)** if required by the Selling Investor, each Participating Tag Security Holder must give for the benefit of the Tag Buyer representations, warranties and indemnities that relate to the Group and its operations (and which are the same or substantially the same as those provided by the Selling Investor) provided that liability under such warranties, representations and indemnities is:
- (i) individual and not joint;
  - (ii) allocated pro rata between the Participating Tag Security Holder and any other relevant persons (including the Selling Investor, if applicable), based on the amount of Proceeds received by them (or which they are or would have been entitled to receive before any deductions or withholdings in accordance with this Deed or applicable law, as the case may be); and
  - (iii) capped at 100% of the Proceeds received by the Participating Tag Security Holder (or which they are or would have been entitled to receive before any deductions or withholdings in accordance with this Deed or applicable law),

and to the extent that the Selling Investor's legal exposure for those warranties, representations and indemnities is addressed by a warranty and indemnity insurance policy or there is an escrow amount or comparable arrangement in respect of the Selling Investor's liability under such warranties, representations and indemnities, the Selling Investor ensures that the legal exposure of the Participating Tag Security Holders for those warranties, representations and indemnities is also addressed under that insurance policy or by those escrow or other arrangements, as applicable (subject to each Participating Tag Security Holder bearing its pro rata proportion (determined on the same basis as expenses are borne in accordance with clause 9.5(b)) of the aggregate cost of the warranty and indemnity insurance policy or the amount of the escrow or other arrangement, as applicable).

## 9.6 Co-operation

The KKR Investors and the Non-Investor Parties must cooperate with the Company, the Selling Investor and each actual or prospective Tag Buyer, and their respective Representatives, to facilitate and give effect to any Tag Transaction, including by facilitating and supporting any due diligence process

required and in connection with obtaining all Government Agency and third-party approvals and consents reasonably necessary or desirable to consummate the Tag Transaction.

#### **9.7 No obligation to complete**

Notwithstanding anything contained in this clause 9, neither a Selling Investor nor the Company is liable to any KKR Investor or Non-Investor Party if any Tag Transaction is not consummated for any reason or if the number of Tag Securities Disposed of in a Tag Transaction is scaled back under clause 9.4. Subject to this clause 9, a Selling Investor may decide to Dispose of any Shares in a Tag Transaction or complete a Tag Transaction in its discretion.

#### **9.8 Return of documents**

The Selling Investor will return to each Tag Security Holder all documents in the possession of the Selling Investor executed by the Tag Security Holders in connection with the proposed Tag Transaction if the Selling Investor has not completed the Disposal of its relevant Shares to the Tag Buyer by the earlier of:

- (a) the date on which it reasonably determines that the proposed Tag Transaction will not complete; and
- (b) the date 9 months after delivery of the Invitation to Tag (which date will be extended if any of the transactions contemplated by the Invitation to Tag are subject to regulatory approval until the date 10 Business Days after the earlier of the date on which all such approvals have been received or the requirements to obtain them waived and the date on which any of such regulatory approvals are denied and not able to be appealed to any other forum or waived).

#### **9.9 Tag along rights do not apply to certain Disposals**

This clause 9 does not apply in respect of the Disposal of any Equity Securities if the Disposal is:

- (a) pursuant to clauses 8.3, 8.4, 8.5 or 8.6;
- (b) carried out pursuant to clause 10 or pursuant to, or in any way in connection with, an IPO undertaken in accordance with clause 13;
- (c) if the Selling Investor is all of the KKR Investors and the Selling Investor has issued a Drag Notice or has withdrawn such a Drag Notice and issued a further Drag Notice;
- (d) a Disposal to a Buying ROFO Offeror under clause 11;
- (e) a Disposal to a Buying OPS ROFR Offeree under clause 12;
- (f) in connection with a KKR Investor Affiliate Transfer; or
- (g) in connection with a Custodian Transfer.

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## **10 Drag rights**

### **10.1 Right to give Drag Notice**

Following:

- (a) the Standstill Period; and

- (b) the issue of a ROFO Notice by the KKR Investors and either clause 11.7 or clause 11.8 becoming applicable,

if all of the KKR Investors (**Drag Seller**) wish to Dispose of all of their Equity Securities to a Third Party (**Drag Buyer**) in a transaction other than an IPO initiated in accordance with clause 13, then the Drag Seller may give a written notice (**Drag Notice**) specifying the matters listed in clause 10.2 to each other Security Holder (**Dragged Security Holder**) with a copy to the Company.

## 10.2 Contents of Drag Notice

A Drag Notice must state:

- (a) (**Drag Seller**) the identity, or identities, of the Drag Seller;
- (b) (**Drag Buyer**) the identity of the Drag Buyer, to the extent known;
- (c) (**number**) the number and class or classes of Equity Securities proposed to be Disposed of by the Drag Seller;
- (d) (**Drag Sale Price**) for each class of Equity Securities proposed to be Disposed of in the Drag Transaction and subject to clause 11.7(a) if that clause is applicable, the proposed form and amount of consideration per Equity Security (which need not be payable all in cash) or the manner in which the consideration is proposed to be calculated or determined (**Drag Sale Price**);
- (e) (**other material terms**) any other material terms of the Drag Transaction known to the Drag Seller at the time of giving the Drag Notice which could reasonably be expected to be material to a Dragged Security Holder; and
- (f) (**requirement to Dispose**) that the Drag Seller requires each Dragged Security Holder to Dispose of all of the Dragged Security Holder's Equity Securities (or any lesser proportion of the Dragged Security Holder's Equity Securities agreed by the Dragged Security Holder, the Drag Seller and the Drag Buyer) (**Dragged Securities**) on terms which:
- (i) involve the Dragged Security Holder's Equity Securities (in each class) being Disposed of for no less than the Drag Sale Price; and
- (ii) are otherwise materially no less favourable to the Dragged Security Holder (taken as a whole) than the terms on which the Drag Seller is proposing to Dispose of its Equity Securities in the Drag Transaction, taking into account the market value of the class or classes of Equity Securities being Disposed of by the Drag Seller and the Dragged Security Holders and the relative rights of such Equity Securities under this Deed and the Constitution.

## 10.3 Effect of Drag Notice

If a Drag Notice is given, each Dragged Security Holder must Dispose of its Dragged Securities (or such lesser number of the Equity Securities owned by the Dragged Security Holder as is agreed by the Dragged Security Holder, the Drag Seller and the Drag Buyer) to the Drag Buyer on the terms stated in the Drag Notice.

#### 10.4 Withdrawal of Drag Notice

A Drag Notice may be revoked at any time by written notice from the Drag Seller to the Company. The Company must notify each Security Holder promptly if any Drag Notice is withdrawn.

#### 10.5 Conditions to participating in Drag Transaction

Notwithstanding anything contained in this clause 10:

- (a) **(execute documents)** Dragged Security Holders must enter into and execute substantially identical documents as the Drag Seller enters into and executes in connection with the Drag Transaction and any other documents reasonably requested by the Drag Seller in connection with completion of the Drag Transaction;
- (b) **(title representations and warranties)** if required by the Drag Seller, each Dragged Security Holder must give unqualified representations, warranties and indemnities relating to such Dragged Security Holder's title to its Dragged Securities and its authority and capacity to execute and deliver the definitive documentation for the Drag Transaction;
- (c) **(business representations and warranties)** if required by the Drag Seller, each Dragged Security Holder must give for the benefit of the Drag Buyer representations, warranties and indemnities that relate to the Group and its operations (and which are the same or substantially the same as those provided by the Drag Seller), provided that liability under such warranties, representations and indemnities:
  - (i) for the Drag Seller and each Dragged Security Holder, is individual and not joint;
  - (ii) is allocated pro rata between the Drag Seller and all Dragged Security Holders (based on the amount of Proceeds received (or which they are or would have been entitled to receive before any deductions or withholdings in accordance with this Deed or applicable law), as the case may be, by the Drag Seller and all Dragged Security Holders);
  - (iii) for each Dragged Security Holder, is not in excess of:
    - (A) the Proceeds received (or which they are or would have been entitled to receive before any deductions or withholdings in accordance with this Deed or applicable law) by that Dragged Security Holder, with respect to representations, warranties and indemnities relating to formation, authorisation, title, capitalisation, and Tax matters; or
    - (B) such lesser amount that is reasonable and customary with respect to representations, warranties and indemnities relating to other matters,

and to the extent that the Drag Seller's legal exposure for those warranties, representations and indemnities is addressed by a warranty and indemnity insurance policy or an escrow amount or comparable arrangement in respect of the Drag Seller's liability under such warranties, representations and indemnities, the Drag Seller ensures that the legal exposure of the Dragged Security Holders for those warranties, representations and indemnities is also addressed under that insurance policy or by those escrow or other arrangements, as applicable (subject to each Dragged Security Holder bearing its pro rata

proportion (determined on the same basis as expenses are borne in accordance with clause 10.5(c)(ii)) of the aggregate cost of the warranty and indemnity insurance policy or the amount of the escrow or other arrangement, as applicable).

## **10.6 Co-operation**

The KKR Investors and the Non-Investor Parties must cooperate with the Company, the Drag Seller and the Drag Buyer, and their respective Representatives, to facilitate and give effect to any Drag Transaction, including by facilitating and supporting any due diligence process required and in connection with obtaining all Government Agency and third-party approvals and consents reasonably necessary or desirable to consummate the Drag Transaction.

## **10.7 No obligation to complete**

Notwithstanding anything contained in this clause 10, neither a Drag Seller nor the Company is liable to any Dragged Security Holder if any Drag Transaction is not consummated for any reason. Subject to compliance with the express provisions of this clause 10, a Drag Seller may decide to Dispose of any Equity Securities in a Drag Transaction or complete a Drag Transaction at its discretion.

## **10.8 Return of documents**

The Drag Seller will return to each Dragged Security Holder all documents in the possession of the Drag Seller executed by the Dragged Security Holders in connection with the proposed Drag Transaction if the Drag Seller has not completed the Drag Transaction by the earlier of:

- (a) the date on which it reasonably determines that the proposed Drag Transaction will not complete; and
- (b) the date 12 months after delivery of the Drag Notice (which date will be extended if any of the transactions contemplated by the Drag Notice are subject to regulatory approval until the date 10 Business Days after the earlier of the date on which all such approvals have been received or the requirements to obtain them waived and the date on which any of such regulatory approvals are denied and not able to be appealed to any other forum or waived).

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# **11 Right of first offer**

## **11.1 ROFO Notice**

If:

- (a) **(After Standstill – KKR)** following the end of the Standstill Period, a KKR Investor proposes to sell some or all of the Equity Securities held by such KKR Investor other than in a transaction referred to in clause 11.11;
- (b) **(After Standstill – Non-Investor Party)** following the end of the Standstill Period, a Non-Investor Party who is not an Original Pepper Shareholder proposes to sell Equity Securities other than in a transaction referred to in clause 11.11;
- (c) **(Before Standstill – Non-Investor Party)** prior to the end of the Standstill Period, a Non-Investor Party who is not an Original Pepper Shareholder proposes to sell Equity Securities under clause 8.2(i) (to avoid doubt, other than in connection with another transaction specifically contemplated by clause 8.2); or

- (d) **(Original Pepper Shareholder)** clause 12.1(a) or clause 12.1(c) applies to an Original Pepper Shareholder and either:
- (i) the Original Pepper Shareholder has previously served a OPS ROFR Notice and the OPS ROFR Offerees did not acquire all of the OPS ROFR Sale Shares; or
  - (ii) the Original Pepper Shareholder has not served an OPS ROFR Notice,

and the Original Pepper Shareholder proposes to sell Equity Securities in a transaction which is not referred to in clause 11.11

the Security Holder proposing to sell its Equity Securities (**ROFO Seller**) must serve a written notice (**ROFO Notice**) to that effect on:

- (e) if clauses 11.1(a), 11.1(b) or 11.1(c) apply, the other Security Holders; or
- (f) if clause 11.1(d) applies, the KKR Investors,

(the relevant recipients of the ROFO Notice being the **ROFO Offerors**) specifying the classes or classes and number(s) of its Equity Securities which it proposes to sell of (**ROFO Sale Securities**) (which, if an Original Pepper Shareholder has previously served an OPS ROFR Notice, to avoid doubt will only be the OPS ROFR Sale Shares that the OPS ROFR Offerees did not offer to, or did not, acquire), not less than 20 Business Days before it intends to sell the ROFO Sale Securities. A ROFO Notice is revocable by the ROFO Seller at any time prior to service of a ROFO Response Notice.

## 11.2 ROFO Offer Notices

- (a) If a ROFO Offeror wishes, or ROFO Offerors together wish, to purchase the ROFO Sale Securities, it or they must serve a written notice on the ROFO Seller (**ROFO Offer Notice**) within 20 Business Days of service of the ROFO Notice (**ROFO Offer Period**) specifying:
  - (i) **(binding offer)** their legally binding offer to purchase all of the ROFO Sale Securities either:
    - (A) on an unconditional basis; or
    - (B) conditional only on the ROFO Offeror obtaining any required approvals from any Government Agency and provided the ROFO Offeror undertakes to use its reasonable endeavours to promptly obtain those approvals);
  - (ii) **(price)** the cash price at which the ROFO Offeror is willing to purchase the ROFO Sale Securities or the manner in which that sale price is proposed to be calculated or determined, which may not include any non-cash, deferred or contingent consideration (other than a customary post-completion working capital adjustment) (**ROFO Price**);
  - (iii) **(finance sources)** details of the finance sources available to the ROFO Offeror making the offer and reasonable evidence that the finance will be available on completion of the Disposal of the ROFO Sale Securities to the ROFO Offeror, such financing to be unconditional or conditional only on those matters that are in the ROFO Seller's opinion (acting reasonably) reasonably capable

of satisfaction on or before the date scheduled for completion of the sale;

- (iv) **(offer capable of acceptance)** that it is making an offer to the ROFO Seller which is capable of legally binding acceptance;
  - (v) **(proposed completion date)** the proposed date for completion of the sale of the ROFO Sale Securities to the ROFO Offeror, provided that the date must be no later than the earlier of:
    - (A) 60 Business Days after the date of any ROFO Response Notice; and
    - (B) if the acceptance is conditional on the ROFO Offeror obtaining all required approvals from any Government Agency, the date 12 Business Days after all those approvals have been obtained or waived;
  - (vi) **(warranties and indemnities)** must not, unless otherwise agreed by a ROFO Seller, oblige the ROFO Seller or any of its Affiliates or Related Non-Investor Parties, as applicable, to give any warranties, representations or indemnities other than as required under clause 11.6 or as otherwise expressly provided in this Deed;
  - (vii) **(restraints)** must not, unless otherwise agreed by a ROFO Seller, oblige the ROFO Seller or any of its Affiliates or Related Non-Investor Parties, as applicable, to agree to any restraint of trade or comparable provision or to waive any rights under, or agree to terminate or modify, any agreement between the ROFO Seller or any of its Affiliates or Related Non-Investor Parties, as applicable, except as otherwise expressly provided in this Deed; and
  - (viii) **(other terms)** all the other terms and conditions on which it proposes to purchase the ROFO Sale Securities from the ROFO Seller.
- (b) A ROFO Offer Notice is irrevocable. A ROFO Offer Notice may be amended at any time after submission with the consent of the ROFO Seller.
  - (c) If at the end of the ROFO Offer Period any ROFO Offeror has not served a ROFO Offer Notice on the ROFO Seller, that ROFO Offeror will be deemed to have waived all of its rights under this clause 11 to make a ROFO Offer.

### 11.3 Acceptance of offer to purchase ROFO Sale Securities

The ROFO Seller may accept an offer to purchase all the ROFO Sale Securities made by a ROFO Offeror under clause 11.1 (**ROFO Offer**) by giving written notice (**ROFO Response Notice**) to that effect to the Company and the relevant ROFO Offeror (**Buying ROFO Offeror**) within 10 Business Days of the end of the ROFO Offer Period or receipt of a ROFO Offer from all ROFO Offerors, whichever is earlier. The ROFO Seller may accept or reject any ROFO Offer in its discretion. If the ROFO Seller accepts a ROFO Offer, the Buying ROFO Offeror will be irrevocably bound to purchase, and the ROFO Seller irrevocably bound to sell, the ROFO Sale Securities.

#### **11.4 Joint offer**

Despite anything to the contrary in this clause 11, if a group of ROFO Offerors wish to jointly provide a ROFO Notice which provides that each relevant ROFO Offeror will purchase a portion of the ROFO Sale Securities and the relevant ROFO Offerors will collectively purchase all of the ROFO Sale Securities, the relevant ROFO Offerors may make the offer in the ROFO Offer Notice in accordance with this clause 11 provided that the other terms and conditions of a valid ROFO Offer Notice specified in clause 11.1 are satisfied.

#### **11.5 Date for completion of ROFO Offer**

If the ROFO Seller accepts a ROFO Offer, completion of the sale of the ROFO Sale Securities to the Buying ROFO Offeror must take place on the day provided in the payment terms set out in the relevant ROFO Offer Notice (or such other date as is agreed between the ROFO Seller and the Buying ROFO Offeror).

#### **11.6 Completion**

- (a) At any completion of the sale and purchase of the ROFO Sale Securities:
- (i) the Buying ROFO Offeror must pay the ROFO Price for the ROFO Sale Securities;
  - (ii) the ROFO Seller must deliver to the Buying ROFO Offeror the share certificates (if any) and an executed transfer form (or comparable instrument of transfer) for the ROFO Sale Securities;
  - (iii) subject to the Buying ROFO Offeror complying with its obligations on closing, the ROFO Seller will be deemed to have appointed the Buying ROFO Offeror as the ROFO Seller's proxy in respect of the ROFO Sale Securities sold to the Buying ROFO Offeror until such time as those ROFO Sale Securities are registered in the name of the Buying ROFO Offeror;
  - (iv) the ROFO Seller will be deemed to warrant in favour of the Buying ROFO Offeror that the ROFO Seller:
    - (A) have full power and authority, and has obtained all necessary consents from third parties (including Government Agencies), to sell the ROFO Sale Securities to the Buying ROFO Offeror;
    - (B) is not Insolvent; and
    - (C) transfers to the Buying ROFO Offeror clear and unencumbered legal and beneficial title to the ROFO Sale Securities being sold to the Buying ROFO Offeror, free of any Security Interests or third party rights; and
  - (v) the Buying ROFO Offeror will be deemed to warrant in favour the ROFO Seller that the Buying ROFO Offeror:
    - (A) have full power and authority, and has obtained all necessary consents from third parties (including Government Agencies), to acquire the ROFO Sale Securities; and
    - (B) is not Insolvent.



- (b) If clause 11.6(a)(iv) applies, the ROFO Seller indemnifies the Buying ROFO Offeror against, and agrees to reimburse and compensate the Buying ROFO Offeror for, any Liability that the Buying ROFO Offeror pays, suffers, incurs or is liable for in connection with a breach of the warranties given under clause 11.6(a)(iv); and
- (c) If clause 11.6(a)(v) applies, the Buying ROFO Offeror indemnifies the ROFO Seller against, and agrees to reimburse and compensate the ROFO Seller for:
  - (i) any Liability that the ROFO Seller pays, suffers, incurs or is liable for in connection with a breach of the warranties given under clause 11.6(a)(v); or
  - (ii) in respect of any action taken by the Buying ROFO Offeror as the ROFO Seller's proxy under clause 11.6(a)(ii).

### **11.7 Sale to a third party buyer**

If the ROFO Seller does not accept any ROFO Offer made by a ROFO Offeror:

- (a) if clause 11.1(a) or clause 11.1(b) applied or both clause 11.1(d) and 12.1(a) applied, the ROFO Seller may within a period of 180 days after expiry of the 10 Business Day period referred to in clause 11.3 sell any or all of the ROFO Sale Securities to one or more Third Parties provided that the terms and conditions of the sale are, taken as a whole, no more favourable to any such Third Party than those set out in the relevant ROFO Offer Notice. If no ROFO Offer Notice was served, the ROFO Seller may Dispose of the ROFO Sale Securities to a Third Party on any terms and conditions it determines within the 180 day period; or
- (b) if clause 11.1(c) applied or both clause 11.1(d) and 12.1(c) applied, the ROFO Seller may, within a period of 180 days after expiry of the 10 Business Day period referred to in clause 11.3, sell the ROFO Sale Securities in the transaction which has been approved for the purposes of clause 8.2(i).

### **11.8 Failure to complete ROFO Offer**

If the ROFO Seller accepts a ROFO Offer and the Buying ROFO Offeror fails to complete the purchase of the ROFO Sale Securities in accordance with clauses 11.5 and 11.6:

- (a) if the ROFO Seller is one or more KKR Investors, the KKR Investors may at any time thereafter Dispose of Equity Securities in a Drag Transaction or an Exit initiated under clause 13 without issuing a ROFO Notice or otherwise complying with this clause 11;
- (b) the Buying ROFO Offeror will not have any rights under clause 9 in connection with the Disposal of the ROFO Sale Securities to any relevant Third Party; and
- (c) without limiting any other Liabilities of the Buying ROFO Offeror to the ROFO Seller, the Buying ROFO Offeror must reimburse the ROFO Seller for all out-of-pocket costs and expenses the ROFO Seller, its Affiliates and the Group Companies have incurred in connection with the process instigated under this clause 11 to dispose of the ROFO Sale Securities.

Any Disposal of the ROFO Sale Securities in accordance with this clause 11 will not prejudice or limit any other rights the relevant ROFO Seller has against the defaulting Buying ROFO Offeror at law or in equity in connection with the failure

to complete the Disposal on the ROFO Sale Securities. To avoid doubt, clauses 11.1 to 11.6 (inclusive) will not apply in connection with a Disposal in accordance with this clause 11.8.

### **11.9 No sale of ROFO Sale Securities**

Unless clause 11.8 applies, if clause 11.7(a) or clause 11.7(b) applies and within the 180 day period referred to in clause 11.7(a) or clause 11.7(b) (as applicable) the ROFO Seller does not complete the relevant sale of all the ROFO Sale Securities described in clause 11.7(a) or clause 11.7(b) (as applicable), the ROFO Seller must not sell any of the ROFO Sale Securities in reliance on compliance with this clause 11 without complying again with this clause 11.

### **11.10 Multiple ROFO Notices**

For the avoidance of doubt, a ROFO Seller may serve a ROFO Notice more than once, provided that only 1 ROFO Notice may be issued in each ROFO Offer Period.

### **11.11 ROFO does not apply**

Clauses 11.1 to 11.10 do not apply in relation to any Disposal of Equity Securities:

- (a) pursuant to clauses 8.3, 8.4, 8.5 or 8.6;
- (b) pursuant to clauses 9 or 10 (provided that unless clause 11.8(a) applies, this clause 11 has previously been complied with to the extent applicable);
- (c) pursuant to clause 14;
- (d) in a KKR Investor Affiliate Transfer;
- (e) in a Custodian Transfer;
- (f) by a KKR Investor to a Catch-up Offeree under clauses 7.19 to 7.21 (inclusive); or
- (g) in connection with an IPO, including under clauses 13.2 and 13.3.

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## **12 OPS Right of first refusal**

### **12.1 OPS ROFR Notice**

If:

- (a) following the end of the Standstill Period, an Original Pepper Shareholder proposes to sell some or all of its Equity Securities other than in a transaction referred to in clause 12.9;
- (b) a Trigger Event has occurred or will occur in respect of an Original Pepper Shareholder; or
- (c) an Original Pepper Shareholder proposes to sell Equity Securities under clause 8.2(i) (to avoid doubt, other than in connection with another transaction specifically contemplated by clause 8.2),

the Original Pepper Shareholder proposing to Dispose of Equity Securities or in respect of whom the Trigger Event has occurred or will occur (**OPS ROFR Seller**) may serve a written notice on each other Original Pepper Shareholder (**OPS ROFR Offeree**), copied to the Company (**OPS ROFR Notice**), if clause

12.1(a) or clause 12.1(c) applies, not less than 35 Business Days before it intends to Dispose of the OPS ROFR Sale Shares. An OPS ROFR Notice may not be revoked or amended.

## 12.2 Contents of OPS ROFR Notice

An OPS ROFR Notice must specify:

- (a) **(class of Shares)** the class or classes and number(s) of its Equity Securities which the OPS ROFR Seller proposes to Dispose of (**OPS ROFR Sale Shares**). If clause 12.1(b) applies, the OPS ROFR Sale Shares must be for all of the Equity Securities held by the OPS ROFR Seller (and, to avoid doubt, each of its Related Non-Investor Parties are also required to give OPS ROFR Notices in respect of all of the Equity Securities they hold);
- (b) **(Ordinary Share Percentage)** each OPS ROFR Offeree's existing Ordinary Share Percentage of each class of the OPS ROFR Sale Shares (in respect of each other Original Pepper Shareholder, its **OPS ROFR Entitlement Shares**);
- (c) **(cash price)** the cash price per OPS ROFR Sale Security at which the OPS ROFR Seller is willing to sell the OPS ROFR Sale Shares or the means by which the sale price is proposed to be calculated or determined (**OPS ROFR Price**);
- (d) **(completion date)** the proposed date for completion of the sale of the OPS ROFR Sale Shares, provided that such date must be no more than 10 Business Days after the date of the OPS ROFR Notice;
- (e) **(other terms)** any other terms and conditions on which the OPS ROFR Seller is willing to sell the OPS ROFR Sale Shares; and
- (f) **(offer to purchase)** that each OPS ROFR Offeree may offer to purchase its OPS ROFR Entitlement Shares on the terms set out in the OPS ROFR Notice and in accordance with this clause 12.

## 12.3 OPS ROFR Acceptance Notices

- (a) If an Original Pepper Shareholder wishes to purchase its OPS ROFR Entitlement Shares, it must serve a written notice on the OPS ROFR Seller, copied to the Company, (**OPS ROFR Acceptance Notice**) within 10 Business Days of service of the OPS ROFR Notice (**OPS ROFR Acceptance Period**) specifying:
  - (i) **(acceptance)** that it is willing to purchase all of its OPS ROFR Entitlement Shares on an unconditional basis; and
  - (ii) **(finance sources)** details of the finance sources available to the OPS ROFR Offeree making the offer and reasonable evidence that the finance will be available on completion of the Disposal of the OPS ROFR Sale Shares to the OPS ROFR Offeree, conditional only on those matters that are reasonably capable of satisfaction on or before the date scheduled for completion of the sale.
- (b) An OPS ROFR Acceptance Notice is irrevocable and may not be amended.
- (c) If at the end of the OPS ROFR Acceptance Period any OPS ROFR Offeree has not served an OPS ROFR Acceptance Notice on the OPS

ROFR Seller, that OPS ROFR Offeree will be deemed to have waived all of its rights under this clause 12 to make an OPS ROFR Offer.

#### **12.4 Allocation of OPS ROFR Sale Shares**

Within 5 Business Days of the end of the OPS ROFR Acceptance Period, the OPS ROFR Seller must send a notice to each OPS ROFR Offeree who has given a ROFR Acceptance Notice and the Company setting out the number of OPS ROFR Sale Shares which each OPS ROFR Offeree who has given an OPS ROFR Acceptance Notice will acquire (**OPS ROFR Allocation Notice**).

#### **12.5 Irrevocable sale and purchase**

If the OPS ROFR Seller issues an OPS ROFR Allocation Notice in which it allocates OPS ROFR Sale Shares to one or more of the OPS ROFR Offerees who have given an OPS ROFR Acceptance Notice (**Buying OPS ROFR Offerees**), each Buying OPS ROFR Offeree will be irrevocably bound to purchase, and the OPS ROFR Seller irrevocably bound to sell, the Buying OPS ROFR Offeree's OPS ROFR Entitlement Shares.

#### **12.6 Date for completion of OPS ROFR Offer**

Completion of the sale of the OPS ROFR Sale Shares to the Buying OPS ROFR Offeree must take place on the day provided in the payment terms set out in the relevant OPS ROFR Notice (or such other date as is agreed between the OPS ROFR Seller, the Company and a Buying OPS ROFR Offeree).

#### **12.7 Completion of sale of OPS ROFR Entitlement Shares**

- (a) At any completion of the sale and purchase of the OPS ROFR Entitlement Shares to the Buying OPS ROFR Offerees:
- (i) each Buying OPS ROFR Offeree must pay the OPS ROFR Price for its OPS ROFR Entitlement Shares;
  - (ii) the OPS ROFR Seller must deliver to each Buying OPS ROFR Offeree an executed transfer form (or comparable instrument of transfer) for the Buying OPS ROFR Offeree's OPS ROFR Entitlement Shares;
  - (iii) the OPS ROFR Seller must deliver to the Company the certificates (if any) for the OPS ROFR Seller's Equity Securities and the Company must cancel those certificates and issue new certificates to the OPS ROFR Seller and/or the Buying OPS ROFR Offerees (as applicable) to reflect the Equity Securities held by them following the Disposal of all OPS ROFR Entitlement Shares;
  - (iv) subject to the Buying OPS ROFR Offeree complying with its obligations on closing, the OPS ROFR Seller will be deemed to have appointed the Buying OPS ROFR Offeree as the OPS ROFR Seller's proxy in respect of the OPS ROFR Sale Shares sold to the Buying OPS ROFR Offeree until such time as those OPS ROFR Sale Shares are registered in the name of the Buying OPS ROFR Offeree;
  - (v) the OPS ROFR Seller will be deemed to warrant in favour of each Buying OPS ROFR Offeree that the OPS ROFR Seller:
    - (A) have full power and authority, and has obtained all necessary consents from third parties (including Government Agencies), to sell the relevant OPS ROFR Entitlement Shares to the Buying OPS ROFR Offeree;

- (B) is not Insolvent; and
  - (C) transfers to the Buying OPS ROFR Offeree clear and unencumbered legal and beneficial title to the OPS ROFR Entitlement Shares being sold to the Buying OPS ROFR Offeree, free of any Security Interests or third party rights; and
- (vi) each Buying OPS ROFR Offeree will be deemed to warrant in favour the OPS ROFR Seller that the Buying OPS ROFR Offeree:
- (A) have full power and authority, and has obtained all necessary consents from third parties (including Government Agencies), to acquire its OPS ROFR Entitlement Shares; and
  - (B) is not Insolvent.
- (b) If clause 11.6(a)(iv) applies, the OPS ROFR Seller indemnifies each Buying OPS ROFR Offeree against, and agrees to reimburse and compensate the Buying OPS ROFR Offeree for, any Liability that the Buying OPS ROFR Offeree pays, suffers, incurs or is liable for in connection with a breach of the warranties given under clause 11.6(a)(iv).
- (c) If clause 11.6(a)(v) applies, each Buying OPS ROFR Offeree indemnifies the OPS ROFR Seller against, and agrees to reimburse and compensate the OPS ROFR Seller for:
- (i) any Liability that the OPS ROFR Seller pays, suffers, incurs or is liable for in connection with a breach of the warranties given under clause 11.6(a)(v); or
  - (ii) in respect of any action taken by the Buying OPS ROFR Offeree as the OPS ROFR Seller's proxy under clause 11.6(a)(ii).

## **12.8 OPS ROFR Sale Shares not fully acquired**

If:

- (a) the OPS ROFR Seller receives no ROFR Acceptance Notices or ROFR Acceptance Notices which offer to purchase less than the aggregate number of OPS ROFR Sale Shares; and/or
- (b) one or more Buying OPS ROFR Offerees fail to complete the purchase of their OPS ROFR Entitlement Shares in accordance with clauses 12.6 and 12.7,

then:

- (c) if clause 12.1(a) or clause 12.1(c) applies, the OPS ROFR Seller must serve a ROFO Notice in respect of all OPS ROFR Sale Shares not acquired by Buying OPS ROFR Offerees and otherwise comply with clause 11 prior to Disposing of its Equity Securities to a Third Party in accordance with clause 11.7; or
- (d) if clause 12.1(b) applies, the Company may serve a Transfer Notice on the OPS ROFR Seller and its Related Non-Investor Parties (if any) in respect of all Equity Securities held by them which are not sold to the Buying OPS ROFR Offerees. For so long as the Company does not

serve a Transfer Notice, the OPS ROFR Seller may issue a further OPS ROFR Notice pursuant to clause 12.1(b), except that notwithstanding anything to the contrary in this Deed it may not issue more than 1 OPS ROFR Notice within a 365 day period and may not issue more than 3 such OPS ROFR Notices in total.

## **12.9 OPS ROFR does not apply**

Clauses 12.1 to 12.8 (inclusive) do not apply in relation to any Disposal of Equity Securities:

- (a) pursuant to clauses 8.3, 8.4, 8.5 or 8.6;
- (b) pursuant to clauses 9 or 10 (provided that clause 11 unless clause 11.8(a) previously applied, and, if applicable, this clause 12, has previously been complied with to the extent applicable);
- (c) pursuant to clause 11;
- (d) pursuant to clause 14;
- (e) in a Custodian Transfer;
- (f) by a KKR Investor to a Catch-up Offeree under clauses 7.19 to 7.21 (inclusive); or
- (g) in connection with an IPO, including under clauses 13.2 and 13.3.

## **12.10 Interaction of certain clauses**

To avoid doubt:

- (a) an Original Pepper Shareholder for whom clause 12.1(a) or clause 12.1(c) applies may elect whether or not to issue an OPS ROFR Notice under clause 12.1; and
- (b) irrespective of the Original Pepper Shareholder's election as described in clause 12.10(a), the Original Pepper Shareholder must issue a ROFO Notice and otherwise comply with clause 11 prior to Disposing of its Equity Securities to a Third Party in accordance with clause 11.7.

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## **13 Exit**

### **13.1 Exit timing**

- (a) A KKR Investor may require that the Company implement an Exit at any time after the Standstill Period or at any earlier time approved by a Board Special Majority, by giving an Exit Notice. A KKR Investor may at any time give an Exit Notice to commence preparations for an Exit.
- (b) If approved by a Board Special Majority, a Pepper Super Majority may issue an Exit Notice requiring the Company to commence preparations for an Exit or implement an Exit, at any time after the Standstill Period or at any earlier time.
- (c) The Board, acting by Board Special Majority, may issue an Exit Notice in accordance with clause 15.5(a)(iv).

### 13.2 Assistance for Exit

Without limiting any specific obligation which a party may have under this Deed in connection with an Exit (and subject to clause 13.4 if the Exit Instigator is a Pepper Super Majority or the Board), if an Exit Instigator issues an Exit Notice:

- (a) each party must (and the Company must ensure that the other Group Companies), use their best endeavours to ensure that the Exit occurs in accordance with the Exit Notice and the Exit Instigator's other requirements;
- (b) each Security Holder must exercise all rights it has in relation to the Company and any Equity Securities to ensure that an Exit is achieved in accordance with the Exit Notice and the Exit Instigator's other requirements and no party will raise any objection to the Exit or the process by which the Exit is implemented in accordance with the Exit Notice;
- (c) each KKR Investor and Non-Investor Party must and must Procure that each Director appointed by it, approve all matters appropriate to ensure that the Exit occurs in accordance with the Exit Notice and the Exit Instigator's requirements with respect to the process by which the Exit is implemented and must not withhold, deny or delay any consent or approval right it has in connection with an Exit;
- (d) each party must (and the Company must ensure that the other Group Companies) do all things, execute all documents and provide all such information and assistance as may be required by the Company or the Exit Instigator (including the preparation of any necessary material for, and the giving of presentations to, Third Parties and potential financiers and undertaking any action described in clause 13.3 if the Exit is not an IPO but the Board determines that the action is necessary or desirable in connection with the Exit) to facilitate the Exit; and
- (e) the Company must appoint any Financial Adviser requested in writing by the Exit Instigator or the person entitled to appoint lead advisers in accordance with clause 15.5(b) (if applicable), or the Exit Instigator may appoint any Financial Adviser on behalf of the Company, in each case, to advise on, and assist with, the Exit.

### 13.3 Preparation for an IPO

Subject to clause 13.4 if the Exit Instigator is a Pepper Super Majority or the Board, if an Exit Instigator proposes that an IPO is implemented and the Board resolves to undertake an IPO or to take any other action which would facilitate an IPO (including re-organising the outstanding Securities of any Group Company or amalgamating or reconstructing any or all of the Group Companies), to the extent permitted by law:

- (a) each party must (and the Company must ensure that the other Group Companies and each Security Holder must Procure that each director of a Group Company) co-operate and use its best endeavours to do all acts, matters and things within its power to effect the IPO, including:
  - (i) **(application for admission)** applying to the ASX (or other recognised stock exchange) for admission of the Company or IPO Vehicle, as applicable, to the official list of the ASX (or other recognised stock exchange) and official quotation of the relevant shares on the ASX (or other recognised stock exchange);
  - (ii) **(resolutions)** procuring the unanimous passing of any resolutions of any Group Company in general meeting (including

any class meeting) or by its directors subject to their fiduciary obligations (acting reasonably) to effect any transactions, steps or other matters;

- (iii) **(exchange of Equity Securities)** exchanging its Equity Securities for Securities in the relevant IPO Vehicle or any other company which is proposed by the Board to become (and following such exchange will become) the ultimate holding company of the Group;
- (iv) **(advisers)** appointing appropriately qualified professional advisers;
- (v) **(redemptions, buy backs, purchases and cancellations)** allowing the redemption, buy back, purchase or cancellation (as applicable) by the Company of all or some of its Equity Securities, including doing all things reasonably required by the Board to give effect to the redemption, buy back, purchase or cancellation (as applicable) and all things required under the Corporations Act to approve or otherwise give effect to the redemption, buy back, purchase or cancellation (as applicable), provided that the price per Equity Security (net of costs, if applicable) on any such redemption, buy back, purchase or cancellation (as applicable) is the same for all Equity Securities of the same class issued on the same terms;
- (vi) **(Disposals of Equity Securities)** Disposing of some or all of its Equity Securities (to a newly incorporated sale vehicle or otherwise) and surrendering the certificates (if any) for its Equity Securities as permitted or required by the Board, provided that the price per Equity Security (net of costs, if applicable) on such Disposal is the same for all Equity Securities of the same class issued on the same terms (which price may comprise or include Securities in the Company and/or the IPO Vehicle);
- (vii) **(prospectus assistance)** assisting in preparing a prospectus or other IPO disclosure document;
- (viii) **(appointing board)** appointing an appropriate board of directors to the Company or IPO Vehicle having regard to any advice from the Financial Adviser, including an appropriate number of independent non-executive directors for the Company's or the IPO Vehicle's listed state;
- (ix) **(obtaining approvals)** obtaining any necessary ASX (or other recognised stock exchange) or other regulatory approvals;
- (x) **(underwriting)** Procuring that the Company or IPO Vehicle enters into an underwriting or offer management agreement or similar agreement consistent with market practice;
- (xi) **(financial assistance)** approving any financial assistance arising from any reorganisation or any other steps taken by any Group Company in connection with the IPO;
- (xii) **(financial reporting requirements)** meeting the financial reporting requirements of the relevant stock exchange or trading system (including as to trading history, extracts from audited accounts of prior years, cash flow and profit forecasts, working capital report and indebtedness statement);



- (xiii) **(marketing assistance)** providing assistance for marketing activities, including road shows; and
  - (xiv) **(constitutional amendments)** agreeing to amendments to the Constitution and/or the constitutional documents of any other Group Company;
- (b) this Deed must be either terminated or amended in order to comply with applicable laws and stock exchange rules in connection with the IPO;
- (c) each KKR Investor and Non-Investor Party must Procure that the management of the Group, to the extent requested by the Board, applies adequate time, resources and commitment to the IPO process to enable it to be successfully completed, including for the purposes of:
- (i) **(due diligence)** due diligence and membership of the due diligence committee;
  - (ii) **(due diligence committee meetings)** attendance at meetings of the due diligence committee;
  - (iii) **(due diligence committee sign off)** sign off to the due diligence committee in connection with the preparation and verification of the IPO disclosure document;
  - (iv) **(road shows)** attending management presentations and investor road shows; and
  - (v) **(listing conditions)** satisfying all terms and conditions of admission to listing imposed by the relevant stock exchange;
- (d) each KKR Investor and Non-Investor Party must Procure that the directors appointed to the board of the Company or IPO Vehicle use their best endeavours to approve an earnings forecast for up to an 24 month period (as recommended by the appointed lead manager or underwriter), commencing on or shortly after the date of the IPO for inclusion in the IPO disclosure document; and
- (e) the parties must, and the Company must ensure that the other Group Companies, take such actions as are appropriate to ensure that the capital structure, debt financing and leverage of the Group is appropriate for a public company listed on a stock exchange, including negotiating and entering into, new debt finance facilities, if appropriate.

Before requiring a party to take any action under this clause 13.3 which could reasonably be expected to lead to a Tax liability for Security Holders, the Board will, so far as practicable, have regard to those expected Tax liabilities, including any differential impact on different groups of Security Holders, and take appropriate Tax advice.

#### 13.4 Stop Notice

- (a) If an Exit Notice is issued by a Pepper Super Majority in accordance with clause 13.1(b) or the Board in accordance with clause 13.1(c) and:
- (i) in the case of a Trade Sale or Asset Sale, prior to execution of the definition documentation for the Trade Sale or Asset Sale; or
  - (ii) in the case of IPO, on determination of the price per Security in the IPO and the implied price per Ordinary Share (if the IPO is an IPO of an IPO Vehicle rather than the Company),

it is determined by the KKR Investors that the Exit will not result in an IRR for an Ordinary Share of 15% or greater, as measured against the Scheme Price, the KKR Investors may give a notice to the Board and the other Security Holders requiring the Group Companies and the other parties to cease preparations for the Exit as soon as reasonably practicable and to not implement the Exit (**Stop Notice**).

- (b) If the KKR Investors issue a Stop Notice in accordance with clause 13.4(a), notwithstanding anything to the contrary in this Deed, no Group Company nor the Board or any party will be required to take any action to implement the relevant Exit, including in accordance with clause 13.2 or clause 13.3 and, unless otherwise agreed by the KKR Investors, the parties must, and must procure that the Group Companies, take all actions necessary to reverse any actions which have been taken by the Group Companies and the parties to prepare for the Exit.

### **13.5 Participation in IPO**

Subject to clauses 13.6 and 13.7, any Security Holder may participate as a selling security holder in any IPO and the Company must (or must ensure that each relevant offering entity will), allow the Security Holder to Dispose of its Equity Securities or Securities in the IPO Vehicle, as applicable, in the IPO.

### **13.6 Sell-down restrictions**

Each Non-Investor Party agrees to such restrictions on the number of Securities in the Company or IPO Vehicle, as applicable, it is permitted to realise for cash as part of an IPO as the Company (with approval by the Board) may reasonably require, having regard to the advice of the Financial Adviser on what is reasonably required or desirable for a successful IPO provided that, subject to clause 13.7, each Original Pepper Shareholder will be entitled to realise for cash the same proportion of their Equity Securities as the proportion of the KKR Investors' Equity Securities which the KKR Investors realise for cash in the IPO.

### **13.7 Escrow**

- (a) Each Security Holder agrees to such escrow arrangements for its Securities in the Company or IPO Vehicle, as applicable, on completion of the IPO as the Company (with the approval of a Board Special Majority) may reasonably require, having regard to the advice of the Financial Adviser on what is reasonably required or desirable for a successful IPO. To avoid doubt, nothing in this clause 13.7(a) requires a Director appointed by a Security Holder to vote in favour of any particular proposed escrow arrangement.
- (b) Each Non-Investor Party acknowledges and agrees that the legal holder of Securities in the Company or the IPO Vehicle, as applicable, and any ultimate controller of that legal holder (including an individual Party, if applicable) will be required to enter into an escrow agreement in accordance with clauses 13.6 and 13.7.

### **13.8 Asset disposals**

- (a) If an Exit is implemented by way of Asset Sale then, subject to clause 13.4 if the Exit Instigator is a Pepper Super Majority or the Board, if required by the Exit Instigator, the Security Holders must do all things and execute all documents necessary to Procure that:
  - (i) the Company distributes the Proceeds of the Asset Sale to the Security Holders in accordance with their entitlements under this Deed, the Constitution and the terms of the Equity Securities (net of any Tax or other costs and expenses to be paid on behalf of the Group Companies or the Security Holders and net of all

amounts which the Board determines should be retained by the Company or any third party escrow agent on account of any future contingent payments, including in support of any indemnity or post-completion adjustment (**Retained Amounts**)) as soon as reasonably practicable after completion of the Asset Sale;

- (ii) as soon as reasonably practicable (which may be at multiple times), the Company distributes so much of the Retained Amounts as are no longer required to be retained on account of any future contingent payments (net of any Tax or other costs and expenses to be paid on behalf of the Security Holders); and
  - (iii) if required by the Exit Instigator, the Company is wound up.
- (b) If there is an Asset Sale and it is required as part of a transfer of assets, each Non-Investor Party irrevocably consents to the novation or assignment, as applicable, to the Purchaser Vehicle or its Affiliate of each existing employment, service and other comparable arrangement to which the Non-Investor Party is a party, in each case without substantive amendment.
- (c) If there is a sale of a Platform (in whole or in part and whether by way of a sale of assets, a sale to a purchaser of the shares in the Group Company (or Group Companies) owning the Platform, or an initial public offering of the relevant Platform) and an Individual Party is employed or engaged in that Platform's division of the Business, the Individual Party irrevocably consents to either of the following if required by the Board:
- (i) the novation or assignment, as applicable, to the purchaser of the Platform or its Affiliate of each existing employment, service and other comparable arrangement to which the Individual Party is a party, in each case without substantive amendment; or
  - (ii) the termination of each existing employment, service and other comparable arrangement to which the Individual Party is a party (without any compensation on account of that termination except for accrued entitlements that are required to be paid out as a matter of law or contract) provided that the Individual Party and the purchaser of the Platform or its Affiliate enter into a new employment, service and/or other comparable arrangement on terms substantially identical to those of the terminated employment, service and/or other arrangement and which recognise the Individual Party's accrued entitlements (if any) under the terminated employment, service and/or other arrangement.
- (d) If clause 13.8(c) applies and an Individual Party relevant for the purposes of that clause requests the Company in writing, the Company will use commercially reasonable endeavours to enable the Individual Party and its Related Non-Investor Parties to Dispose of their Equity Securities for their fair market value at the relevant time (as determined by a Board Special Majority having regard to the most recent Fair Market Value of the Group, any relevant events or circumstances (positive or negative) which have impacted the Group in the time period (if any) between the date of determination of that most recent Fair Market Value and the time of determination by a Board Special Majority, the number(s) and classes of Equity Securities then on issue, the net proceeds received in the relevant sale of all or part of a Platform, the value of any remaining interest of the Group in the Platform and the amount of the distributions made or to be made under clause 6.4 in connection with

that Platform sale) and a corresponding reinvestment of the proceeds of the Disposal of the relevant Equity Securities into equity Securities in the relevant purchaser of the Platform or a holding company or other Affiliate of that purchaser, or in the case of a sale of a Platform by way of an initial public offering of the Platform, then into the relevant initial public offering vehicle. To avoid doubt, nothing in this clause 13.8(d) obliges the Company to enable any Non-Investor Party to Dispose of their Equity Securities if the relevant purchaser has not agreed to the reinvestment contemplated by this clause 13.8(d) despite the Board having used commercially reasonable endeavours to enable that reinvestment or if the Board otherwise determines that it is not commercially reasonable to do so.

- (e) Each Non-Investor Party will enter into all documents required to give effect to this clause 13.8.

### **13.9 Exit and drag rights**

- (a) If an Exit is to be by way of a Trade Sale and clause 10.1 applies, a Drag Notice may be given to effect a Trade Sale, in which case clause 10 applies with any required modifications to reflect the Exit process and subject to the express obligations of the Non-Investor Parties in this clause 13 prevailing to the extent of any inconsistency with clause 10.
- (b) Clause 10 does not apply to an IPO.

### **13.10 Exit and consent rights**

- (a) Without limiting any other provision of this Deed, no party may use, and must procure that each director of a Group Company appointed or nominated by it does not use, any consent or approval rights that the party has under this Deed or by virtue of holding Equity Securities or being a director of a Group Company to prevent, hinder or delay the performance by any party of any of its obligations, or exercise of any of its rights, under any of clauses 7.19, 9, 10, 13 or 14 (and Schedule 1).
- (b) If a party or director referred to in clause 13.10(a) fails to give a consent or approval referred to in that clause within 3 Business Days of a written request to do so by any Director or a KKR Investor and the failure to give that consent or approval would be reasonably likely to prevent, hinder or delay the performance by any party of any of its obligations, or exercise of any of its rights, under any of clauses 7.19, 9, 10, 13 or 14 (and Schedule 1):
  - (i) if the consent or approval is the consent or approval of a party under this Deed or in its capacity as a Security Holder, the consent or approval will be deemed to have been given at 5.00pm on the 4th Business Day following the request being made; or
  - (ii) if the consent or approval is the consent or approval of a director of a Group Company appointed or nominated by the party, the party must immediately remove, or Procure that the relevant Group Company removes, the relevant director and replaces him or her with a person willing and able to give the relevant consent or approval.

### **13.11 Bare Trust termination**

The Board may, at any time prior to an Exit, give notice to an Appointing Beneficiary requiring its Bare Trust to be revoked (**Trust Termination Notice**). On receipt of a Trust Termination Notice, the Appointing Beneficiary must direct

the Custodian to transfer the legal title to all of the Appointing Beneficiary's Beneficial Securities to the Appointing Beneficiary or to another transferee nominated by the Board who is appropriate in consideration of the nature of the Exit. The Appointing Beneficiary must procure (to the extent they are able to do so) compliance with the Trust Termination Notice on a date on or prior to consummation of the Exit specified by the Board in the Trust Termination Notice.

### **13.12 Equity Securities in connection with an IPO**

If there is an intervening period between the time at which Security Holders exchange their Equity Securities for Securities in an IPO Vehicle and settlement under the IPO, and in that intervening period no substitute document for this Deed is separately agreed for the IPO Vehicle, the Securities in the IPO Vehicle will be taken to be Equity Securities for the purposes of this Deed.

### **13.13 Assistance with Platform sale**

If the Board determines in accordance with this Deed to undertake a Platform sale or the sale of a Platform is otherwise undertaken as contemplated by this Deed (**Platform Sale**):

- (a) each party must (and the Company must ensure that the other Group Companies) use their best endeavours to ensure that the Platform Sale occurs in accordance with this Deed and the Board's other requirements;
- (b) each Security Holder must exercise all rights it has in relation to the Company and any Equity Securities to ensure that the Platform Sale is achieved in accordance with this Deed and the Board's other requirements and no KKR Investor or Non-Investor Party will raise any objection to the Platform Sale or the process by which the Platform Sale is implemented provided that that implementation is in accordance with this Deed;
- (c) each KKR Investor and Non-Investor Party must, and must Procure that each director of a Group Company appointed by it, approve all matters appropriate to ensure that the Platform Sale occurs in accordance with this Deed and the Board's other requirements and must not withhold, deny or delay any consent or approval right it has in connection with the Platform Sale;
- (d) each party must (and the Company must ensure that the other Group Companies) do all things, execute all documents and provide all such information and assistance as may be required by the Company or the Board (including the preparation of any necessary material for, and the giving of presentations to, Third Parties and potential financiers and undertaking any action described in clause 13.3 if the Board determines that the action is necessary or desirable in connection with the Platform Sale) to facilitate the Platform Sale; and
- (e) the Company must appoint any Financial Adviser required by the person entitled to appoint lead advisers in accordance with clause 15.4(b) (if applicable), or the Board may appoint any Financial Adviser on behalf of the Company, in each case, to advise on, and assist with, the Platform Sale.

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## **14 Compulsory transfers**

The parties agree to comply with Schedule 1 in accordance with its terms.

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## 15 Deadlock resolution

### 15.1 Director discussion

If a Deadlocked Matter arises, two KKR Directors and two Pepper Directors will meet within 10 Business Days of the Deadlocked Matter arising and in good faith attempt to reach agreement on the resolution of Deadlocked Matter and if those Directors do so:

- (a) approval of those four Directors will satisfy the requirements of this Deed to obtain approval of a Board Special Majority and, if applicable, a KKR Super Majority and Pepper Super Majority, in relation to the Deadlocked Matter; and
- (b) to the maximum extent permitted by law, no further approval of the Board or any Security Holders will be required to implement the Deadlocked Matter.

### 15.2 Reconsideration

If the discussions referred to in clause 15.1 do not result in a resolution of the Deadlocked Matter within 30 Business Days (or any other period agreed between the two KKR Directors and two Pepper Directors who have discussed the matter in accordance with that clause), then the Deadlocked Matter may be put again before the Board by any Director and, if applicable, the KKR Investors and Original Pepper Shareholders, for consideration in accordance with clause 5.1(b) or clause 5.1(c), as applicable, no earlier than 40 Business Days after the date the Deadlocked Matter was first put before the Board.

### 15.3 Appointment of Independent Expert

- (a) If a Deadlocked Matter remains unresolved following reconsideration by the Board in accordance with clause 15.2, then the KKR Investors or a Pepper Majority may require that the Company appoints an independent expert with expertise in the area relevant to the Deadlocked Matter (**Independent Expert**) to consider:
  - (i) the Deadlocked Matter and the views of the KKR Directors and the Pepper Directors regarding their respective proposals regarding the Deadlocked Matter; and
  - (ii) any other factors the Independent Expert determines to be relevant,

and then make a written recommendation to the Board, the KKR Investors and the Original Pepper Shareholders in relation to the Independent Expert's determination of the preferred manner in which the Group should seek to resolve the Deadlocked Matter.

- (b) The Independent Expert must be approved by a Board Special Majority or failing approval by a Board Special Majority within 10 Business Days of the KKR Investors or a Pepper Majority requiring that the Company appoint an Independent Expert, appointed by:
  - (i) whichever of the KKR Investors or the Original Pepper Shareholders (acting by a Pepper Majority) collectively have the largest Security Ownership Percentage; or
  - (ii) if an Independent Expert has previously been appointed under clause 15.3(b)(i), whichever of the KKR Investors or the Original Pepper Shareholders (acting by a Pepper Majority) did not last appoint an Independent Expert under clause 15.3(b)(i).

- (c) The Company, the KKR Investors and the Original Pepper Shareholders must request that any Independent Expert appointed in accordance with clause 15.3(b) makes a recommendation with respect to the Deadlocked Matter in accordance with the following provisions:
- (i) the Company, the KKR Investors and the Original Pepper Shareholders must instruct the Independent Expert to:
    - (A) make its recommendation within 20 Business Days after the Deadlocked Matter is referred to the Independent Expert; and
    - (B) provide a report of its recommendation to the Company, the KKR Investors and the Original Pepper Shareholders;
  - (ii) the Independent Expert's recommendation is to be based on the most appropriate means of resolving the Deadlocked Matter with reference to the Group's Liabilities, financial performance and prospects and the operations of the Business provided that the Independent Expert must not make any recommendation which is inconsistent with, or requires a party to waive any of its express rights under, this Deed or any document referenced in this Deed or entered into in connection with the issue or acquisition of any Equity Securities;
  - (iii) the Company, the KKR Investors and the Original Pepper Shareholders must provide the Independent Expert with any information and assistance reasonably required by the Independent Expert to make its recommendation;
  - (iv) all correspondence between a party and the Independent Expert must be in writing and copied to the Company, the KKR Investors and any nominated representative of the Original Pepper Shareholders (as applicable);
  - (v) the Independent Expert acts as an independent expert and not as an arbitrator; and
  - (vi) the recommendation of the Independent Expert is advisory only and will not bind any party.
- (d) The costs of the Independent Expert must be paid by the Company.

#### **15.4 Resolution of Deadlocked Matters which relate to an individual Platform**

- (a) If:
- (i) the Board and, if applicable, the KKR Investors and Original Pepper Shareholders consider the recommendation of the Independent Expert under clause 15.3 and the required approval in relation to the Deadlocked Matter is still not obtained in accordance with clause 5.1(b) or clause 5.1(c), as applicable; and
  - (ii) the Deadlocked Matter relates to only 1 Platform,

then either the KKR Investors or a Non-Investor Majority may by written notice require the Group to use its best endeavours to sell the relevant Platform the subject of the Deadlocked Matter within the following 6

month period provided that the proceeds of the sale could reasonably be expected, as at the time definitive documentation is entered into for that sale, to deliver to the Group an IRR of no less than 10%.

- (b) If clause 15.4(a) applies and:
- (i) the KKR Directors and/or the KKR Investors (as applicable) did not resolve to proceed with the recommendation of the Independent Expert but the Pepper Directors and the Original Pepper Shareholders resolved to proceed with the recommendation of the Independent Expert, the Original Pepper Shareholders; or
  - (ii) the Pepper Directors and/or the Original Pepper Shareholders did not resolve to proceed with the recommendation of the Independent Expert but the KKR Directors and the KKR Investors (as applicable) resolved to proceed with the recommendation of the Independent Expert, the KKR Investors,

will have the right to appoint the lead financial and legal advisers (who must be recognised advisers in their fields with appropriate expertise) to advise the Group on the sale of the relevant Platform in accordance with clause 15.4(a). Each adviser appointed under this clause 15.4(b) will act for, and represent the interests of, the Group Companies and will act on instructions of the Board. To avoid doubt, if neither clause 15.4(b)(i) nor clause 15.4(b)(ii) applies, the Board will appoint the lead financial and legal advisers to advise on the sale of the Platform.

## **15.5 Resolution of Deadlocked Matters which relate to Group**

- (a) If:
- (i) the Board and, if applicable, the KKR Investors and Original Pepper Shareholders consider the recommendation of the Independent Expert under clause 15.3 and the required approval in relation to the Deadlocked Matter is still not obtained in accordance with clause 5.1(b) or clause 5.1(c), as applicable; and
  - (ii) the Deadlocked Matter relates to two or more Platforms or the Group as a whole,

then either:

- (iii) the Group will use best endeavours to undertake an orderly and sequential sale of all of the Platforms until such time as the Deadlocked Matter is approved in accordance with this Deed or all of the Platforms have been sold. The order in which Platforms are sold will be determined by a Board Special Majority or in the absence of a Board Special Majority approving an order of Platform sales, as determined by the Board having regard to whichever Platform(s) is reasonably expected by the Board to deliver the greatest IRR return from the proceeds of its sale; or
- (iv) if a Deadlocked Matter genuinely relates to the Group as a whole and a Board Special Majority agrees that a sale of Platforms in accordance with clause 15.5(a)(iii) is inappropriate given the nature of the Deadlocked Matter or the expected returns of the sale of the Platforms, a Board Special Majority may issue an Exit Notice, provided that advice from the Financial Adviser to be appointed in connection with the Exit



confirms that the Exit can reasonably be expected to result in an IRR per Ordinary Share of no less than 15%.

- (b) If clause 15.5(a)(iii) applies:
- (i) the KKR Directors and/or the KKR Investors (as applicable) did not resolve to proceed with the recommendation of the Independent Expert but the Pepper Directors and the Original Pepper Shareholders resolved to proceed with the recommendation of the Independent Expert, the Original Pepper Shareholders; or
  - (ii) the Pepper Directors and/or the Original Pepper Shareholders did not resolve to proceed with the recommendation of the Independent Expert but the KKR Directors and the KKR Investors (as applicable) resolved to proceed with the recommendation of the Independent Expert, the KKR Investors,

will have the right to appoint the lead financial and legal advisers (who must be recognised advisers in their fields with appropriate expertise) to advise the Group on:

- (iii) the sale of the first Platform in accordance with clause 15.5(a)(iii); and
- (iv) if the KKR Investors and the Original Pepper Shareholders are unable to agree on the lead financial and legal advisers for the sale of any subsequent Platforms in accordance with clause 15.5(a)(iii) following good faith discussions between them, the sale of any such subsequent Platforms.

Each adviser appointed under this clause 15.5(b) will act for, and represent the interests of, the Group Companies and will act on instructions of the Board. To avoid doubt, if neither clause 15.5(b)(i) nor clause 15.5(b)(ii) applies, the Board will appoint the financial and legal advisers to advise on the sale of the relevant Platform(s).

## 15.6 Ongoing reconsideration of Deadlocked Matter

If clause 15.5 applies, until completion of the sale of all Platforms in accordance with clause 15.5(a)(iii) or an Exit in accordance with clause 15.5(a)(iv), at intervals of 60 Business Days, or if sooner after the sale of each Platform, the Deadlocked Matter must be put again before the Board and, if applicable, the KKR Investors and Original Pepper Shareholders, for consideration in accordance with clause 5.1(b) or clause 5.1(c), as applicable.

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## 16 Restraint

### 16.1 General obligations

Each Non-Investor Party undertakes to the Company and to each KKR Investor that it will not directly or indirectly, whether solely or jointly with any other person (including with any Affiliate or relative of the Non-Investor Party, as applicable), and whether as principal, agent, director, executive officer, employee, shareholder, partner, joint venturer, adviser, consultant or otherwise:

- (a) **(non-compete)** during the Restraint Period, and within the Restraint Area, Engage In or prepare to Engage In any trade, business or undertaking which Competes with a Group Company (provided that this clause 16.1(a) does not apply to Restraint Exempt Non-Investor Parties);

- (b) **(non-solicit)** during the Non-Solicit Period, employ, solicit, canvass or entice away from any Group Company:
- (i) the Group CEO, Group CFO, a country chief executive officer of a Platform, the head of Australian mortgages, the head of Australian Asset Finance, any other direct report to the Group CEO or any other senior employee (by whatever title called) of any Group Company or any other person who performs a management function in respect of any such class of employee or generally for the Group;
  - (ii) other officer, employee or consultant of a Group Company who worked with the Non-Investor Party or any of its Related Non-Investor Parties at any time or otherwise provided professional or administrative support to the Non-Investor Party or any of its Related Non-Investor Parties in the 24-month period before the commencement of the Non-Solicit Period; or
  - (iii) any person who was a customer or supplier of the Business (including any broker or security warehouse provider) in the 24-month period before the commencement of the Non-Solicit Period for the purpose of providing Financial Services to the person,
 

whether or not that other person would commit a breach of contract by reason of engaging with the solicitation, canvassing or enticement, including, in the case of employees by reason of leaving the employment of any Group Company;
- (c) **(reputation and goodwill)** at any time, act in any way which may harm or prejudice the reputation or good name of the Business or any Group Company or have an adverse effect on the Business or any Group Company's business, operations, clients, suppliers, employees or consultants;
- (d) **(no public statement)** at any time, make, or permit or authorised to be made, any public statement about the Business, any Group Company or any Group Company's business, operations, clients, suppliers, employees or consultants without the Board's prior written approval;
- (e) **(not infringe Group IP Rights)** at any time, use or infringe any Intellectual Property Rights of any Group Company, or use or register a name or trade mark which includes a substantial part of any business name, trade mark or the name of any Group Company or any confusingly similar word or words in such a way as to be capable of or likely to be confused with any business name, trade mark or name of any Group Company; or
- (f) **(not attempt)** attempt, counsel, procure or otherwise assist any person to do any of the acts referred to in this clause 16.1 (during the period that the act is itself prohibited under the relevant preceding subparagraph of this clause 16.1).

## 16.2 Acknowledgements

Each Non-Investor Party acknowledges that:

- (a) **(fundamental)** the undertakings given in this clause 16 are fundamental to the Company's and the KKR Investors' decisions to enter into this Deed;

- (b) **(pre-existing relationships)** in the case of any Non-Investor Party who is Engaged By A Group Company (or whose Related Non-Investor Party is Engaged By A Group Company), to the extent that he or she and/or any of its Related Non-Investor Parties gains, and develops relationships with, Business customers and any suppliers, partners, consultants, employees and officers of and to the Group Companies during the course of him or her (or his or her Related Non-Investor Party) being Engaged By A Group Company, the Non-Investor Party or Related Non-Investor Party, will do so:
- (i) as a result of being Engaged By A Group Company in connection with which, he or she has been paid significant remuneration or otherwise gained significant economic benefits;
  - (ii) with the assistance of the other people Engaged By A Group Company and the facilities and resources provided by the Group Companies; and
  - (iii) by virtue of the opportunity which being Engaged By A Group Company offers him or her;
- (c) **(relevant employees)** in respect of the persons that must not be employed, solicited, canvassed or enticed away under clause 16.1(b)(i) and clause 16.1(b)(ii):
- (i) they have been, or will be, recruited, trained and developed by one or more Group Companies and those Group Companies have, or will, incur cost and expense in doing so;
  - (ii) the Group Companies will incur cost and expense should they need to recruit replacements for any of those persons; and
  - (iii) those persons are important to the ability of one or more Group Companies to continue to service their customers and/or efficiently manage their affairs in the period following the end of the Non-Solicit Period;
- (d) **(legitimate interest)** the connection between the Group Companies and:
- (i) their Business' customers and suppliers; and
  - (ii) relevant employees and officers,
- forms part of the goodwill of the Group Companies which the Group Companies have a legitimate interest to protect;
- (e) **(reasonable opportunity)** the restraints in clause 16.1 are fair, reasonable and necessary to provide the Group Companies with a reasonable opportunity to, among other things, confirm, maintain or re-establish:
- (i) their relationships with their customers and suppliers; and
  - (ii) the provision of services to the Group Companies' by their suppliers and the provision of services by the Group Companies to customers,
- after the Restraint Trigger Time;
- (f) **(reasonable and certain)** the restraints contained in this clause 16 are:

- (i) fair and reasonable regarding their subject matter, area and duration, recognising the matters described in this clause 16.2, the markets in which the Business operates and geographic spread of the Group's customers, suppliers and operations;
  - (ii) reasonably required to protect the legitimate business, financial and proprietary interests of the Group (including confidential and/or commercially-sensitive information of the Group) and the value of the Securities of the Group; and
  - (iii) sufficiently certain and understandable notwithstanding the number of combinations that can exist when determining the applicable Restraint Period, Non-Solicit Period and Restraint Area;
- (g) **(damages inadequate)** damages will not be an adequate remedy for any breach of clause 16.1 and, accordingly, the Company (for itself and as agent for the Group Companies) and/or the KKR Investors may apply for Urgent Relief, including if:
- (i) a Non-Investor Party (or any of its Related Non-Investor Parties) breaches or threatens to breach clause 16.1; or
  - (ii) the Company or the KKR Investors believes that a Non-Investor Party (or any of its Related Non-Investor Parties) may breach clause 16.1;
- (h) **(purpose)** the restrictions contained in clause 16.1 are given for the purpose of assuring the Company and the KKR Investors the benefit of the Business and goodwill of the Group;
- (i) **(possession of sensitive information)** as a result of its association with the Group, (including the Non-Investor Party or any of its Related Non-Investor Parties being Engaged By A Group Company, if applicable) the Non-Investor Party has, and will further, become possessed of sensitive and/or confidential information relating to the trade secrets and business and finances of the Group Companies and their customers, suppliers, partners, equity holders, debt providers, officers, service providers, employees and consultants, including:
- (i) terms of customer and supplier arrangements, including fees and charges;
  - (ii) procurement costs;
  - (iii) the relationship dynamics surrounding Business' customers and suppliers and the Group Companies;
  - (iv) marketing and analytics strategies of the Group;
  - (v) pricing strategies of the Group Companies;
  - (vi) funding structures or fund terms used by the Group Companies; and/or
  - (vii) proprietary systems and processes of the Group Companies,
- and the disclosure and/or misuse of such information could materially harm the Group Companies and the KKR Investors' interests in the Group Companies and accordingly the undertakings contained in this

clause 16 are reasonable and necessary for the protection of the business of the Group and its goodwill; and

- (j) **(benefit from affiliated Security Holder)** if the Non-Investor Party does not directly hold Equity Securities, the Non-Investor Party controls or is otherwise affiliated with a holder of Equity Securities and will be obtaining, or has obtained, a benefit from such Security Holder's holding of Equity Securities and such benefit is consideration for the Non-Investor Party's undertakings in this clause 16.

### 16.3 Definitions

In this clause 16:

- (a) **Non-Solicit Period** means in respect of each Non-Investor Party, the period from the date the Non-Investor Party, or, if applicable any of its Related Non-Investor Parties, first becomes a party to this Deed until the date:
  - (i) 24 months after its Restraint Trigger Time; or
  - (ii) 18 months after its Restraint Trigger Time; or
  - (iii) 12 months after its Restraint Trigger Time; or
  - (iv) 6 months after its Restraint Trigger Time; or
  - (v) 3 months after its Restraint Trigger Time;
- (b) **Restraint Area** means in respect of each Non-Investor Party other than the Restraint Exempt Non-Investor Parties:
  - (i) each country in which the Group operates, or in respect of which the Group is actively taking steps with an intention to operate at a future time, in each case, as at its Restraint Trigger Time; or
  - (ii) any state, county, dominion or territory within any country in which the Group operates, or in respect of which the Group is actively taking steps with an intention to operate at a future time, in each case, as at its Restraint Trigger Time;

provided that:

- (iii) if a Non-Investor Party was, or any of its Related Non-Investor Parties was, Engaged By A Group Company in respect of particular Platforms immediately before its Restraint Trigger Time and that Non-Investor Party did not have a role, responsibilities, managerial oversight or other involvement in more than 2 Platforms (**Relevant Platforms**) (as determined by the Board), that Non-Investor Party's and its Related Non-Investor Parties' (if any) Restraint Area will be:
  - (A) each country in which a Relevant Platform operates, or respect of which a Relevant Platform is actively taking steps with an intention to operate at a future time, in each case, as at the Non-Investor Party's Restraint Trigger Time; or
  - (B) any state, county, dominion or territory within any country in which the Group operates, or in respect of which the Group is actively taking steps with an

intention to operate at a future time, in each case, as at its Restraint Trigger Time;

- (iv) if a Non-Investor Party was, or any of its Related Non-Investor Parties was, Engaged by a Group Company in respect of particular Platforms immediately before its Restraint Trigger Time and that Non-Investor Party had a role, responsibilities, managerial oversight or other involvement in more than 2 Platforms (**Relevant Multiple Platforms**) (as determined by the Board), that Non-Investor Party's and its Related Non-Investor Parties' (if any) Restraint Area will be:
  - (A) the country in which the Non-Investor Party Engaged by a Group Company was ordinarily resident at the Non-Investor Party's Restraint Trigger Time; and
  - (B) either:
    - (aa) the 2 countries in which a Relevant Multiple Platform operates, or in respect of which a Relevant Multiple Platform is actively taking steps with an intention to operate at a future time, and in respect of which the relevant Non-Investor Party had the greatest role, responsibilities, managerial oversight or other involvement in the two year period preceding the Non-Investor Party's Restraint Trigger Time (as determined by the Board acting reasonably) (**Relevant Countries**); or
    - (ab) any state, county, dominion or territory within a Relevant Country in which the Group operates, or in respect of which the Group is actively taking steps with an intention to operate at a future time, in each case, as at the Non-Investor Party's Restraint Trigger Time;
- (c) **Restraint Period** means in respect of a Tier 1 Non-Investor Party, the period from the date the Non-Investor Party or any of its Related Non-Investor Parties first becomes a party to this Deed until the date:
  - (i) 12 months after its Restraint Trigger Time; or
  - (ii) 6 months after its Restraint Trigger Time; or
  - (iii) 3 months after its Restraint Trigger Time;
- (d) **Restraint Period** means in respect of a Tier 2 Non-Investor Party, the period from the date the Non-Investor Party or any of its Related Non-Investor Parties first becomes a party to this Deed until the date:
  - (i) 6 months after its Restraint Trigger Time; or
  - (ii) 3 months after its Restraint Trigger Time; or
  - (iii) 2 months after its Restraint Trigger Time; or
  - (iv) 1 months after its Restraint Trigger Time;

- (e) **Restraint Period** means in respect of a Tier 3 Non-Investor Party, the period from the date the Non-Investor Party or any of its Related Non-Investor Parties first becomes a party to this Deed until the date:
  - (i) 3 months after its Restraint Trigger Time; or
  - (ii) 2 months after its Restraint Trigger Time; or
  - (iii) 1 months after its Restraint Trigger Time;
- (f) **Restraint Trigger Time** means, in respect of a Non-Investor Party who is or has at any time on or after the Implementation Date been, or any of whose Related Non-Investor Parties are or have at any time on or after the Implementation Date been, Engaged By A Group Company:
  - (i) if the Non-Investor Party or its relevant Related Non-Investor Party (whomever was Engaged By A Group Company) is placed by a Group Company on "garden leave" (or other comparable leave) under the terms of his or her employment or other engagement and the Group Company gives (whether at the time of placing him or her on garden leave or any time during the leave period) written notice terminating the Non-Investor Party's employment or other engagement, and during that period of leave the relevant Non-Investor Party does not perform any role or responsibilities for the Group or otherwise have access to any Confidential Information, the date on which the garden leave commences; or
  - (ii) if clause 16.3(f)(i) does not apply, the date on which the Non-Investor Party or its relevant Related Non-Investor Party ceases to be Engaged By A Group Company;
- (g) **Restraint Trigger Time** means, in respect of a Non-Investor Party not referred to in clause 16.3(f), the date on which the Non-Investor Party and its Related Non-Investor Parties cease to hold any Equity Securities; and
- (h) **Urgent Relief** means injunctive or other interlocutory or urgent relief or other equitable relief.

#### 16.4 Operation of clause

The provisions of clause 16.1 have effect as several, separate and independent covenants consisting of each separate covenant set out in clause 16.1 combined, where applicable, with any applicable period set out in clause 16.3(a) or whichever of clause 16.3(c), clause 16.3(d) or clause 16.3(e) is applicable to the relevant Non-Investor Party and each combination combined, where applicable, with a geographical area set out in clause 16.3(b).

#### 16.5 Interpretation of clause

- (a) The parties agree that:
  - (i) they intend the Restraint Period to be interpreted and enforced for the period set out in clause 16.3(c)(i), clause 16.3(d)(i) or clause 16.3(e)(i), as applicable;
  - (ii) they intend the Non-Solicit Period to be interpreted and enforced for the period in clause 16.3(a)(i); and
  - (iii) they intend the Restraint Area to be interpreted and enforced as the broadest geographical area set out in clause 16.3(b)(i),

clause 16.3(b)(iii)(A) or clause 16.3(b)(iv)(A) and clause 16.3(b)(iv)(B)(aa), as applicable.

- (b) If the parties' intention in clause 16.5(a) cannot be given effect in respect of a Non-Investor Party, or the Restraint Period set out in clause 16.3(c)(i), 16.3(d)(i) or clause 16.3(e)(i), as applicable, the Non-Solicit Period set out in clause 16.3(a)(i) and/or the Restraint Area as defined in clause 16.3(b)(i), clause 16.3(b)(iii)(A) or clause 16.3(b)(iv)(A) and clause 16.3(b)(iv)(B)(aa), as applicable, is found to be invalid or unenforceable in any jurisdiction in respect of a Non-Investor Party, the invalid or unenforceable period or area is to be read down or severed in the relevant jurisdiction in respect of that Non-Investor Party to the extent of the invalidity or unenforceability and the Restraint Period, Non-Solicit Period and/or Restraint Area (as applicable) for the Non-Investor Party will be the longest remaining period and/or broadest remaining geographical area (as applicable) which is valid and enforceable.
- (c) Each covenant in clause 16.1 is cumulative and must be construed independently of each other covenant in clause 16.1 and in such manner as will ensure that each covenant is enforceable to the fullest extent. The interpretation of any covenant in clause 16.1 is not restricted or limited by reference to, or inference from, any other covenant in clause 16.1.

## 16.6 Exceptions

Despite anything to the contrary contained in this Deed, the following actions are exceptions to the clauses specified below:

- (a) as an exception to any relevant restriction in clause 16.1, any action (including the acquisition of any Economic Interest) or omission which has been previously approved by the Board and the KKR Investors;
- (b) as an exception to clause 16.1(a) and clause 16.1(f) to the extent it relates to clause 16.1(a), any Individual Party who is a party to an employment agreement, executive services agreement, consultancy agreement or comparable agreement which contains a non-compete provision taking any actions which are expressly permitted by an exception to that non-compete provision in that agreement, whether before or after termination of the agreement;
- (c) as an exception to clause 16.1(a) and clause 16.1(f) to the extent it relates to clause 16.1(a), holding, for investment purposes only, marketable Securities quoted at the time of acquisition on a recognised stock exchange in Australia or elsewhere and are collectively not more than 5% of the issued share capital of the relevant listed company;
- (d) as an exception to any relevant restriction in clause 16.1, holding Shares or other Equity Securities;
- (e) as an exception to any relevant restriction in clause 16.1, providing any services to the Group; and
- (f) as an exception to any relevant restriction in clause 16.1, any Individual Party being Engaged By A Group Company or being a party to, and taking any action expressly contemplated by, the employment agreement, executive services agreement, consultancy agreement or comparable agreement with a Group Company to which they are a party.



## 16.7 Rights additional

The rights provided by this clause 16 are in addition to any and all other remedies available to any of the Group Companies.

## 16.8 Conflict

The provisions of this Deed are in addition to, and not in lieu of any similar agreement to which any Non-Investor Party is now or may later become a party or any applicable law. If any conflict between the provisions of any such agreements and/or any applicable law, all such agreements and laws must be construed as cumulative and must be construed in such a manner as to be enforceable to the fullest extent.

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## 17 Corporate opportunities

Each party acknowledges and agrees that except as expressly provided in clause 19 and subject always to compliance by any Relevant Person who is an officer of a Group Company with their duties as an officer of the relevant Group Company or Group Companies:

- (a) **(other businesses)** each KKR Investor is permitted to Engage In, and may Engage In, (including having any Economic Interest in, establishing, promoting or advertising and/or assisting), as at the date of this Deed or at any time in the future, investments, companies, businesses, other entities, other business relationships, strategic relationships and ventures in the Financial Services industry or any other industry in which Financial Services are also provided and/or enter into agreements or other arrangements with persons engaged in the Financial Services industry or any other industry in which Financial Services are also provided (**Other Businesses**);
- (b) **(no prohibition)** no KKR Investor or Representative of a KKR Investor, Affiliate or Related Body Corporate of a KKR Investor nor any director of any Group Company appointed or nominated by a KKR Investor (**Relevant Persons**), will be prohibited (including by virtue of this Deed, the acquisition of Equity Securities, their appointment to the Board or any other position or office with any Group Company, as applicable) from pursuing, establishing, promoting or advertising, assisting, Engaging In or having an Economic Interest in Other Businesses;
- (c) **(no option)** no other party nor any Group Company will acquire, or be provided with an option or other opportunity to acquire, any interest or participation in any Other Business as a result of the Economic Interest or Engagement In of any Relevant Person in any Other Business;
- (d) **(conflict of interest)** each party expressly waives, to the fullest extent permitted by law, any and all rights to claim that the Economic Interest or Engagement In of any Relevant Person in any Other Business breaches any duty owed by a Relevant Person to any other party or any Group Company or to assert that any such Economic Interest or Engagement In an Other Business constitutes a conflict of interest by the Relevant Person with respect to any other party or any Group Company;
- (e) **(no obligation)** no Relevant Person will be obliged to inform the any party of any Other Business, any Economic Interest or Engagement In any Other Business or any option or other opportunity with respect to an Other Business, provided that if any Relevant Person serves at any time as a director or officer of a company (or in a similar capacity in respect of another type of entity) that at any time engages in a business that competes directly or indirectly with the Business, they must promptly disclose that fact to the Board and the board of the relevant Group

Company and subject always to compliance by that person with their duties as an officer of the relevant Group Company or Group Companies (if applicable); and

- (f) **(directors)** nothing in this Deed will limit, restrict or prohibit any Relevant Person from serving as a director of any Group Company or a member of a committee of the board of directors of any Group Company nor from serving on a board of directors or other governing body (or any committee of such a board or other governing body) of any Other Business.

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## 18 Warranties

Each party warrants in respect of itself to each of the other parties, as an inducement to those parties to enter into this Deed, on the date it becomes a party to this Deed (and upon signing a Deed of Adherence, each new party warrants to the Company and each existing party at that time), that:

- (a) **(status)** if it is not an Individual Party, it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this Deed, to comply with its obligations under this Deed and exercise its rights under this Deed;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this Deed does not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this Deed, to comply with its obligations, and to allow this Deed to be enforced;
- (e) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(not Insolvent)** it is not Insolvent.

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## 19 Confidentiality

### 19.1 Confidentiality

Subject to clause 19.2, each party must keep confidential (and must ensure that each person to whom it discloses Confidential Information on a confidential basis under clause 19.2, keeps confidential) the Confidential Information and must not do, and must ensure that its Representatives do not do, any of the following:

- (a) disclose any Confidential Information;
- (b) use any Confidential Information in any manner which may cause, or may be calculated to cause, loss to a Group Company or any other party; or
- (c) make any public announcement or issue any press release regarding this Deed or the transactions contemplated by it.

## 19.2 Permitted disclosure

A party may disclose, and may permit any of its Representatives or, in the case of the Company, permit other Group Companies to disclose, any Confidential Information:

- (a) with the prior written approval of:
  - (i) the Board; or
  - (ii) if the Confidential Information relates directly to any particular party or parties only, that party or parties;
- (b) in the case of disclosure by the Company, in a manner consistent with such protocols as the Board may approve from time to time;
- (c) in the case of disclosure by a KKR Investor, to the extent reasonably necessary to enable a Disposal of Equity Securities in a KKR Investor Affiliate Transfer, on a confidential basis;
- (d) in the case of disclosure by the Company, to the extent reasonably necessary to enable a Disposal of Equity Securities in a Custodian Transfer, on a confidential basis;
- (e) to the extent that it or, any of its Representatives is required to do so:
  - (i) by law;
  - (ii) by a Government Agency; or
  - (iii) by any recognised stock exchange on which it is listed or on which any Representative of it is listed,provided that the relevant party, and if applicable its relevant Representative, to the extent lawful and practicable:
  - (iv) informs the Company in writing of any disclosure that is so required under this clause 19.2(e) before the disclosure is made; and
  - (v) takes reasonable steps to restrict distribution of the Confidential Information so disclosed,except that this paragraph does not permit the disclosure of any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies;
- (f) in the case of disclosure by a KKR Investor, directly or indirectly holding Equity Securities on behalf of a partnership, account, unit trust or any other type of Fund Vehicle, to:
  - (i) a manager, trustee, custodian, nominee, general partner, limited partner, investor or prospective investor of or in that Fund Vehicle; or
  - (ii) the members of any investment committee or advisory committee of any such trust, fund or account,

in each case on a confidential basis;

- (g) in the case of disclosure by a KKR Investor, on a confidential basis, to promote the activities of the KKR Investor and/or its Affiliates as a fund manager;
- (h) if the Confidential Information has come into the public domain, other than by a breach of this clause 19 or any other applicable obligation of confidentiality by any party;
- (i) to the party's advisers who have a legitimate need to know the Confidential Information, on a confidential basis;
- (j) in the case of disclosure by the Company, to the Company's financiers (actual or proposed) who have a legitimate need to know the Confidential Information, on a confidential basis;
- (k) in the case of disclosure by a KKR Director or a Pepper Director, to the Security Holders who appointed the Director and, in the case of the Pepper Director, the Related Non-Investor Parties and professional advisers of the Original Pepper Shareholders (including any information obtained in his or her capacity as a Director (including details of any business transacted at meetings of the board and/or committee of any Group Company)), on a confidential basis and in accordance with any protocols which the Board may establish from time to time for the disclosure of that Confidential Information;
- (l) in the case of disclosure by any Non-Investor Party entitled to sell Equity Securities to any Third Party in accordance with clause 11.7(a), to the relevant Third Party to the extent necessary to facilitate that sale of Equity Securities and on a confidential basis and terms as to confidentiality which are determined by the Board (which may include the entry by the Third Party into a confidentiality agreement prior to any confidential information being disclosed to the Third Party under this clause 19.2(l));
- (m) in the case of disclosure by a KKR Investor:
  - (i) to any Third Party who is a potential purchaser for the genuine purpose of achieving a Trade Sale or an Asset Sale, but only on a confidential basis;
  - (ii) as is necessary or desirable to facilitate a potential IPO, including in, and in connection with, roadshows, analyst briefings, disclosure documents and management presentations;
  - (iii) to a prospective financier of the Company or any other Group Company on a confidential basis or in connection with a debt financing or debt refinancing of the Group or any offering of debt securities in any Group Company; and
- (n) to the extent necessary to enforce the terms of this Deed,

but in the case of public announcements and press releases under clause 19.2(e) or clause 19.2(h), to the extent possible, it must consult with the Board before making the disclosure and use reasonable endeavours to agree on the form and content of the disclosure.

### **19.3 Survival of clause**

The provisions of this clause 19 survive termination of this Deed (for all parties or for any specific party) indefinitely.

## 20 Termination

Subject to clause 30.34, unless otherwise expressly provided to the contrary, this Deed terminates automatically:

- (a) **(KKR Investor ceasing to hold)** for any KKR Investor, when it ceases to hold any Equity Securities other than in connection with an action required to prepare for an IPO contemplated by clause 13.3 (and at the time of any such termination the KKR Investor will have no further rights or obligations under this Deed (unless otherwise agreed by the KKR Investors in respect of any rights under clause 16 and except under clauses 8.10, 14 (and Schedule 1), 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30 and 31));
- (b) **(Non-Investor Party ceasing to hold)** for any Non-Investor Party when it and each of its Related Non-Investor Parties, if any, ceases to hold any Equity Securities other than in connection with an action required to prepare for an IPO contemplated by clause 13.3, at which time the Non-Investor Party will have no further rights or obligations under this Deed (except under clauses 8 (as applicable), 14 (and Schedule 1), 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30 and 31);
- (c) **(wind up)** when the Company is wound up by an order of a court;
- (d) **(IPO)** on the day on which Securities offered in an IPO are issued and/or transferred;
- (e) **(one party only)** on the day on which all the Equity Securities are held by 1 party only; or
- (f) **(completed sale)** on the day on which an agreement to Dispose of all the Equity Securities is completed.

## 21 Power of attorney

### 21.1 Appointment for Non-Investor Party

Each of the Non-Investor Parties appoints the Company and each of the KKR Directors from time to time, with power to act individually or jointly, as its attorney to:

- (a) take any action on behalf of the Non-Investor Party to remedy a breach of any of clauses 8, 10, 11, 13, 14 (and Schedule 1) or 22.1 by the Non-Investor Party which has not been remedied by the Non-Investor Party within 2 Business Days of written notice from the Company or, if the breach arises in connection with a Drag Transaction or an Exit in respect of which the Exit Instigator is a KKR Investor, a KKR Investor (or any longer period specified in this Deed for remedy of the breach) or which is not capable of remedy, including, but only to the extent reasonably required to remedy such a breach:
  - (i) complete and execute (under hand or under seal) such documents for and on its behalf as are necessary or otherwise appropriate to cure the relevant breach by the Non-Investor Party including as is necessary or otherwise appropriate to give effect to any transactions in accordance with this Deed (including clauses 8, 10, 11, 13, 14 (and Schedule 1) or 22.1) if the Non-Investor Party has failed to take the relevant actions required in accordance with this Deed (including any consideration election required);

- (ii) call for, agree to short notice being provided in respect of, speak at and attend general meetings of, the Company (including any class meeting);
- (iii) if the Non-Investor Party is a Security Holder, vote or grant a proxy in favour of any person to vote (or appoint an authorised representative to vote) on behalf of the Non-Investor Party (to the exclusion of the Non-Investor Party) at any meeting or class meeting of holders of Securities (or any class of them);
- (iv) instruct and direct the Custodian or any Permitted Holder that is a trustee holding Equity Securities on trust for the Non-Investor Party, to take all actions appropriate to implement any transaction or carry out any other matter, under or contemplated by any this Deed, including to instruct such person to execute, under hand or under seal and deliver (conditionally or unconditionally) any appropriate documents and to Dispose of any Equity Securities; and
- (v) execute circulating shareholder resolutions on behalf of the Non-Investor Party,

in each case, on the Non-Investor Party's behalf;

- (b) take all actions appropriate to negotiate any offer or contract in respect of any Disposal of any Equity Securities held by the Non-Investor Party or any of its Related Non-Investor Parties that is, or will on implementation be, in accordance with this Deed, and all actions necessary or appropriate to initiate, facilitate and negotiate any Drag Transaction and/or Exit, but (in either case) not the power to enter into any agreement providing for, or execute any document completing, such a Disposal of the Non-Investor Party's (or any of its Related Non-Investor Parties') Equity Securities unless clause 21.1(a) applies;
- (c) take any action necessary or appropriate to implement a Custodian Transfer, including executing transfer forms and a deed of adherence to the Custodian Deed on behalf of the Non-Investor Party; and
- (d) taking any action on behalf of a Non-Investor Party which is contemplated by clause 8.12.

## **21.2 Validity**

Each Non-Investor Party:

- (a) declares that all acts and things done by an attorney appointed under clause 21.1 in exercising powers under the power of attorney in clause 21.1 will be as good and valid as if they had been done by that Non-Investor Party and ratifies and confirms whatever the attorney lawfully does, or causes to be done, under the appointment in clause 21.1;
- (b) agrees that it will not, for so long as the power of attorney in this clause 21 is in effect:
  - (i) grant any power of attorney or other instrument conferring on persons other than the attorneys appointed under clause 21.1 rights which contradict or are otherwise inconsistent with some or all of the rights granted under the power of attorney in this clause 21; or

- (ii) personally take any action which would result in the suspension of the power of attorney in this clause 21 or otherwise contradict or be inconsistent with the power of attorney in this clause 21, including attending any meeting and voting at that meeting if an attorney appointed under clause 21.1 is present and intends to vote at the meeting pursuant to a lawful exercise of the attorney's powers; and
- (c) without prejudice to the other provisions of this clause 21, must deliver to the Company and to each KKR Director on demand any power of attorney, instrument of transfer or other document which the Company or a KKR Director requires for the purposes of any transaction or action contemplated by clause 21.1.

### **21.3 Waiver and release**

Each party:

- (a) releases and discharges each attorney appointed under clause 21.1 from any and all claims and Liabilities, in law or equity, that it ever had, now has, would but for this clause have had or may have in the future (whether known at the date of this Deed or not) in respect of, or in any way in connection with, the exercise by the attorney of its powers under this clause 21;
- (b) agrees that this clause 21.3 may be pleaded as a complete bar to any claim or action brought by it against an attorney appointed under clause 21.1 in respect of, or in any way in connection with, the exercise by the attorney of its powers under this clause 21; and
- (c) covenants never to sue or assert any claim or cause of action against any attorney appointed under clause 21.1 with respect to, or in any way in connection with, the exercise by the attorney of its powers under this clause 21.

### **21.4 Application of Non-Investor Party's moneys**

If a Non-Investor Party defaults in completing the Disposal of any Equity Securities pursuant to any provision of this Deed:

- (a) subject to clause 21.4(b), the Company (or an independent person nominated by the Company) may hold any proceeds which are payable to the defaulting Non-Investor Party for the benefit of the Non-Investor Party (and any interest earned on such proceeds belongs to the Company unless the Company otherwise agrees);
- (b) the Company may deduct any costs of performing its rights and obligations under this clause 21.4 (including legal fees and disbursements on a full indemnity basis), which are incurred by or on behalf of the Company or the Directors from the defaulting Non-Investor Party's proceeds;
- (c) subject to clause 21.4(b), receipt by the Company of the defaulting Non-Investor Party's proceeds will be good discharge of the relevant buyer's obligation to the defaulting Non-Investor Party and the buyer will not be bound to see to the application of any such proceeds; and
- (d) subject to clause 21.4(b), the Company must pay the defaulting Non-Investor Party's proceeds to the defaulting Non-Investor Party as soon as practicable after the defaulting Non-Investor Party has observed the applicable requirements for the Disposal.

## **21.5 Irrevocable**

Each Non-Investor Party declares that the power of attorney in clause 21.1 is given for valuable consideration (including the mutual promises in this Deed) and is irrevocable while the relevant Non-Investor Party or any of its Related Non-Investor Parties holds any Equity Securities. For the avoidance of doubt, each Non-Investor Party agrees that if some or all of the Non-Investor Party's or its Related Non-Investor Parties' Equity Securities are Disposed of in accordance with this Deed (or a Non-Investor Party directs any of its Related Non-Investor Parties or the Custodian to do so), the appointment by the Non-Investor Party of the attorneys remains effective in respect of the Non-Investor Party and the remaining Equity Securities held by the Non-Investor Party and its Related Non-Investor Parties, as applicable.

## **21.6 Conflict of interest**

Each attorney may exercise a power under the power of attorney in this clause 21 even if:

- (a) it involves a conflict of duty; or
- (b) any attorney, appointee of the attorney as a director of any Group Company, any Group Company, party and/or Representative of a party has a personal interest in the doing of that act.

## **21.7 Benefits**

Each attorney is expressly authorised to do any act as a result of which a benefit is conferred on it, any appointee of the attorney, a director of a Group Company, any Group Company, any party and/or Representative of a party.

## **21.8 Survival**

Clauses 21.2, 21.3, 21.4, 21.6 and 21.7 survive termination of this Deed (for all parties or for any specific party) indefinitely.

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## **22 Bare Trusts**

### **22.1 Issue or Disposal to Custodian**

- (a) If requested by the Company (with Board approval), a Non-Investor Security Holder must Dispose, and/or procure that some or all of its Related Non-Investor Parties Dispose, of the Equity Securities which it holds to the Custodian.
- (b) Each Non-Investor Party must comply with the directions of the Company for the purposes of facilitating the Disposal of its Equity Securities to the Custodian in accordance with this clause 22, including executing a CD Deed of Adherence to the Custodian Deed.

### **22.2 Intended operation of this clause**

- (a) The parties confirm that the principle to which this clause 22 is intended to give effect is that the voting, economic and other interests of an Original Pepper Shareholder or other Non-Investor Security Holder under this Deed and in respect of the Original Pepper Shareholder's or Non-Investor Security Holder's (as applicable) holding of Equity Securities should, assuming that the Custodian and Original Pepper Shareholder or Non-Investor Security Holder act in accordance with this Deed and the Custodian Deed, be neither enhanced nor impaired as a consequence of appointing the Custodian in respect of that Non-Investor Security Holder's Equity Securities.



- (b) Each party must take all actions within its power and authority, including giving relevant instructions to the Custodian and, in the case of an Appointing Beneficiary, exercising its rights in its capacity as appointor of the Custodian, to give effect to the principle in clause 22.2(a).
- (c) Clauses 22.3 to 22.7 (inclusive) are subject to the principle in clause 22.2(a).

### **22.3 Appointing Beneficiary rights and obligations**

- (a) Each Appointing Beneficiary will continue to have the benefit of, and be bound by, all the provisions of this Deed which would have applied to the Appointing Beneficiary by virtue of, or in relation to, that Appointing Beneficiary's holding of the relevant Custodian Securities had it not transferred legal title to those Custodian Securities to the Custodian (**Relevant Rights and Obligations**), subject to the terms of this Deed and the Custodian Deed.
- (b) The Relevant Rights and Obligations will so far as possible have application to the Custodian and the relevant Appointing Beneficiary in the same way as they would have continued to apply to the Appointing Beneficiary if it held legal title to the Custodian Securities.

This clause 22.3 applies separately in relation to the Custodian in its capacity as bare trustee for each Appointing Beneficiary.

- (c) Each Appointing Beneficiary undertakes to the Company that it will not:
  - (i) take any action, or omit to take any action (including the giving of any Instruction to the Custodian or failing to give any Instruction to the Custodian) which would breach its obligations under this Deed;
  - (ii) fail to give, or delay in giving, any Instruction to the Custodian which is required to enable the Appointing Beneficiary and its Related Non-Investor Parties to comply with their respective obligations under this Deed; or
  - (iii) give an Instruction to the Custodian which has the effect of cancelling or superseding an Instruction given on behalf of the Appointing Beneficiary by an attorney acting on behalf of the Appointing Beneficiary under clause 21.1.
- (d) If:
  - (i) an Appointing Beneficiary is under an obligation to Dispose of its Equity Securities in accordance with this Deed or otherwise to take an action under this Deed which can only be undertaken by the Custodian as the registered holder of the Appointing Beneficiary's Beneficial Securities; and
  - (ii) the Appointing Beneficiary gives an Instruction or Instructions to the Custodian to undertake the Disposal or other action and otherwise takes all action appropriate to, and does not take any action which would inhibit, the Custodian undertaking that Disposal or other action (including providing the Custodian with any information reasonably requested under clause 5.5 of the Custodian Deed),

and the Custodian does not undertake that Disposal or other action, the Appointing Beneficiary will not be taken to be in breach of this Deed by reason of the Custodian's failure to undertake that Disposal or other action.

## **22.4 Definitions**

- (a) Where the context requires to give effect to clauses 22.2 and 22.3 and without limiting any other provision of this Deed, any reference in this Deed to an Original Pepper Shareholder or Non-Investor Security Holder who is an Appointing Beneficiary is to be taken to include a reference to the Custodian as bare trustee of that Appointing Beneficiary in relation to the Appointing Beneficiary's Custodian Securities.
- (b) If an Original Pepper Shareholder or Non-Investor Security Holder is a Appointing Beneficiary, then for the purposes of any references in this Deed to the Equity Securities of or held by the Original Pepper Shareholder or Non-Investor Security Holder (or any comparable expression, including for the purposes of determining the Security Ownership Percentage and Adjusted Share Ownership Percentage of the Original Pepper Shareholder or Non-Investor Security Holder), the Original Pepper Shareholder or Non-Investor Security Holder is to be regarded as holding its Beneficial Securities.
- (c) An Original Pepper Shareholder will continue to be an Original Pepper Shareholder for the purposes of this Deed irrespective of whether legal title to all or any of the Original Pepper Shareholder's Equity Securities is held by the Custodian. A Non-Investor Security Holder will continue to be a Non-Investor Security Holder for the purposes of this Deed irrespective of whether legal title to all or any of the Non-Investor Security Holder's Equity Securities is held by the Custodian.
- (d) Obligations under this Deed or the Constitution on an Original Pepper Shareholder or other Non-Investor Security Holder who is an Appointing Beneficiary to exercise voting rights or take other steps as the registered holder of Equity Securities are to be interpreted as obligations to ensure that the Custodian takes the relevant steps (at the Appointing Beneficiary's direction, or by the Company or another attorney on behalf of the Appointing Beneficiary, acting under power of attorney, or otherwise).
- (e) To avoid doubt but without limiting any other provision of this clause 22:
  - (i) in the context of any requirement that an act be approved by Original Pepper Shareholders or Non-Investor Security Holders with at least a specified Security Ownership Percentage or Adjusted Share Ownership Percentage, each Appointing Beneficiary is to be treated as if they were the legal holder of their Beneficial Securities; and
  - (ii) a requirement that an Original Pepper Shareholder or Non-Investor Security Holder maintain a minimum Security Ownership Percentage or Adjusted Share Ownership Percentage will be determined by reference to the number of its Beneficial Securities.
- (f) The Custodian is not itself to be regarded for the purposes of this Deed as:
  - (i) a Security Holder, Original Pepper Shareholder, Non-Investor Security Holder or Non-Investor Party; or

- (ii) otherwise as the holder of any Equity Securities.

## **22.5 Voting and dividends**

- (a) Instructions may be given by each Appointing Beneficiary to the Custodian (as the person legally entitled to voting rights, dividends and distributions in respect of those Equity Securities) in accordance with this Deed and the Custodian Deed:
  - (i) in relation to voting, Disposals and other dealings in respect of the Appointing Beneficiary's Beneficial Securities; and
  - (ii) in respect of the payment of dividends and distributions.
- (b) Each Appointing Beneficiary directs the Company to pay dividends and distributions in respect of its Beneficial Securities as it directs in accordance with the Custodian Deed. This clause 22.5(b) does not affect the right of an Appointing Beneficiary to change such a direction from time to time.

## **22.6 Disposals of Equity Securities**

- (a) References to Disposals of Equity Securities in this Deed and the Constitution include Disposals in a beneficial interest in Beneficial Securities and any Disposal of the legal title to those Equity Securities by the Custodian (at the Appointing Beneficiary's direction, or by the Company or another attorney on behalf of the Appointing Beneficiary acting under power of attorney, or otherwise).
- (b) An Appointing Beneficiary must not direct the Custodian to Dispose of, nor otherwise procure the Disposal of, legal title to any of its Beneficial Securities to itself or any other person unless it would be entitled in accordance with clause 8.2 to Dispose of its Beneficial Securities in the relevant circumstances if it held legal title to them.
- (c) Where this Deed permits any party to issue, transfer, sell or otherwise Dispose of Equity Securities to any person, that provision includes permission to issue, transfer, sell or otherwise Dispose Equity Securities to the Custodian as bare trustee for the relevant person.
- (d) Unless otherwise approved in writing by the Board, an Appointing Beneficiary may Dispose of Equity Securities to a Permitted Holder under clause 8.3 on the basis that the Custodian is directed to hold legal title to the relevant Equity Securities as bare trustee on behalf of the transferee Permitted Holder (that is, the Appointing Beneficiary may only Dispose of the beneficial interest in its Beneficial Securities without a Disposal of legal title from the Custodian).

## **22.7 Additional Equity Securities**

- (a) If an Appointing Beneficiary becomes entitled to receive any additional Equity Securities, whether by way of issue or Disposal (and whether under this Deed or otherwise), then unless the Board has approved another holding arrangement in relation to the relevant transaction, the issue or Disposal must be made in favour of the Custodian on the basis that the Equity Securities are to be held by the Custodian as bare trustee for the Appointing Beneficiary and will be Beneficial Securities of the Appointing Beneficiary.
- (b) An offer to an Appointing Beneficiary to participate in an issue of Equity Securities on the basis that legal title to the relevant Equity Securities will be issued to the Custodian as bare trustee for the Appointing Beneficiary

will not be regarded for that reason alone as being on different terms from the terms offered to other Security Holders.

## **22.8 Notices**

All notices or communications under this Deed or the Custodian Deed which are provided to the Custodian in its capacity as bare trustee for a particular Appointing Beneficiary must also be provided at the same time to the relevant Appointing Beneficiary.

## **22.9 Liability of Custodian**

Each party acknowledges that, subject to the terms of the Custodian Deed, the Custodian is obliged to act in accordance with the directions of the Appointing Beneficiaries in relation to their respective Beneficial Securities. Each party agrees that any breach of this Deed or the Constitution which arises as a result of the Custodian complying with a direction given by a Appointing Beneficiary (**Directed Breach**) is to be construed for all purposes as a breach by the relevant Appointing Beneficiary for which the Appointing Beneficiary is personally liable (including in accordance with the Custodian Deed) and not by the Custodian and without limiting the foregoing:

- (a) the Custodian is released from any claim or Liability in respect of any Directed Breach; and
- (b) each party (other than the Custodian) covenants not to claim, sue or take any action against the Custodian in respect of any Directed Breach.

## **22.10 Limitation of Custodian's liability**

- (a) Each party acknowledges that the Custodian enters into this Deed in its capacity as bare trustee of the Bare Trusts and in no other capacity.
- (b) Any Liability of the Custodian arising under or in connection with this Deed is limited to, and can be enforced against the Custodian only to the extent to which it can be satisfied out of, the assets of the Bare Trust from which the Custodian is actually indemnified for the Liability or to the extent that under clause 12 of the Custodian Deed the Custodian is actually indemnified for the Liability. This limitation of the Custodian's Liability applies despite any other provision of this Deed and extends to all Liabilities of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed or the Custodian Deed.
- (c) No party may sue the Custodian in any capacity other than as trustee of a Bare Trust, including seeking the appointment of a receiver (except in relation to property of a Bare Trust), a liquidator, an administrator, or any similar person to the Custodian nor may any party prove in any liquidation, administration or arrangement of or affecting the Custodian (except in relation to property of the relevant Bare Trust).
- (d) The provisions of this clause 22.10 do not apply to any Liability of the Custodian to the extent that it is not satisfied under the Custodian Deed or by operation of law or there is a reduction in the extent of the Custodian's indemnification out of the assets of the relevant Bare Trust, in each case as a result of the Custodian's fraud, negligence or breach of trust.
- (e) No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any personal liability.

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## **23 Disclaimers**

### **23.1 No representation about acquisition or investment**

None of the KKR Investors, the Non-Investor Parties, the Company or any of their respective Representatives makes:

- (a) any representation or warranty to any other KKR Investor or Non-Investor Party in relation to any acquisition by the Group, the proposed business strategy or potential exit strategy of any Group Company or Platform or the returns achievable on an Exit or sale of a Platform; or
- (b) any recommendation on the suitability of an acquisition by any Group Company or an investment in the Company by any KKR Investor or Non-Investor Party.

### **23.2 Benefit**

- (a) Each KKR Investor holds the benefit of clause 23.1 in their own right and on behalf of the KKR Investor's Representatives.
- (b) The Company holds the benefit of clause 23.1 in its own right and on behalf of the Representatives of the Company.
- (c) Each Non-Investor Party holds the benefit of clause 23.1 in their own right and on behalf of the Non-Investor Party's Representatives.

### **23.3 No liability accepted for Security Holders investing**

To the maximum extent permitted by law, the Company, the KKR Investors, the Non-Investor Parties, and their respective Representatives disclaim all Liability in relation to the matters referred to in clause 23.1, and no KKR Investor or Non-Investor Party may take any action against the Company, a KKR Investor, a Non-Investor Party, or any of their respective Representatives for any Liability suffered as a result of a KKR Investor's or Non-Investor Party's decision to invest in the Company or in relation to any acquisition made by a Group Company (whether made on or around the date of this Deed or at any time in the future), or in relation to the proposed business strategy, business performance, potential exit strategy or returns achievable on exit or sale of a Platform or as a result of any KKR Investor or Non-Investor Party lawfully performing its obligations and/or exercising its rights under this Deed, save to the extent that such loss or damage arises as a result of the fraud or wilful misconduct of the KKR Investor or Non-Investor Party (as applicable) against whom the claim is made.

### **23.4 Independent investigations, assessment and advice**

Each party:

- (a) acknowledges and agrees that it has entered into this Deed on the basis of its own independent investigation and assessment and after making its own enquiries; and
- (b) confirms that it has received independent legal, accounting and tax advice in relation to the terms and conditions of this Deed and the escrow arrangements contemplated by clauses 13.6 and 13.7.

### **23.5 No limitation of Scheme Implementation Deed**

Nothing in this clause 23 limits any Liability of any person under the Scheme Implementation Deed.

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## **24 Trustee limitation of liability**

### **24.1 Application**

In this clause 24 the term **Trustee** means each party (excluding the Custodian) who enters into this Deed, and acquires any Equity Securities, in the capacity of a trustee of a trust (in respect of each such Trustee, its **Trust**).

### **24.2 Acknowledgement**

Each Trustee and each party acknowledges that the Trustee enters into this Deed in its capacity as trustee of its Trust.

### **24.3 Limited Capital**

Any Liability arising under or in connection with this Deed is limited to, and can be enforced against the Trustee only to the extent to which it can be satisfied out of the assets of its Trust out of which the Trustee is actually indemnified for the Liability. This limitation of the Trustee's liability applies despite any other provision of this Deed other than clause 24.7 and extends to all Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.

### **24.4 Limited rights to sue**

No other party may sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator, or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).

### **24.5 Exceptions**

The provisions of this clause 24 do not apply to any obligation or Liability of the Trustee to the extent that, as a result of the Trustee's fraud, negligence or breach of trust, is not satisfied under, the deed governing the Trust or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust.

### **24.6 Limited authority**

No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability.

### **24.7 Multiple capacities**

Notwithstanding this clause 24, nothing prevents a party suing a Trustee in his or her personal capacity or otherwise limits the Liability of a Trustee if that Trustee is a party to this Deed both as trustee of a relevant trust and in its personal capacity and the Trustee has breached its obligations under this Deed in its personal capacity.

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## **25 General Partner limitation of liability**

### **25.1 Capacity of General Partner**

Each General Partner enters into or otherwise executes this Deed as general partner of the limited partnership specified in Schedule 5 or in its Deed of Adherence (in respect of each General Partner, the **Relevant Partnership**) (or of its general partner) and in no other capacity.

## **25.2 Obligations only as general partner**

- (a) The obligations and Liabilities of whatever kind undertaken or incurred by, or devolving upon, a General Partner under or in respect of this Deed (**Obligations**) are incurred by that General Partner solely in its capacity as general partner of its Relevant Partnership (or of its general partner), and, subject to compliance with clause 25.2(b)) a General Partner will cease to have any obligation under this Deed if the General Partner ceases for any reason to be the general partner of its Relevant Partnership (or of its general partner).
- (b) Each General Partner must, prior to ceasing to be the general partner of its Relevant Partnership (or of its general partner), cause any successor of it as the general partner of its Relevant Partnership (or of its general partner) to execute such documents as are required by the Company to ensure that this Deed is binding on its successor.

## **25.3 Scope of liability**

No General Partner will be liable to pay or satisfy any Obligations except out of the assets, property and rights, real and personal, of any value whatsoever against which, or out of which, it is entitled to be indemnified in respect of any Liability incurred as general partner of its Relevant Partnership (or of its general partner) (**LP Assets**).

## **25.4 Limitation of Liability**

If a party does not recover all money owing to it arising from non-performance or breach of the Obligations, it may not seek to recover the shortfall by applying to have any General Partner wound up or proving in the winding up of a General Partner.

## **25.5 General Partner's liability**

Notwithstanding anything in this clause 25, each General Partner is liable and is not released to the extent that a Liability under this Deed arises out of a General Partner's own fraud, negligence or default, which disentitles it from an indemnity out of the LP Assets in relation to the relevant Liability.

## **25.6 Attorney**

No attorney or agent appointed in accordance with this Deed has the authority to act on behalf of a Relevant Partnership in a way which exposes the Relevant Partnership to any Liability in excess of any amount for which the Relevant Partnership may be liable under clause 25.1.

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## **26 Costs**

### **26.1 Costs**

As soon as practicable after the date of this Deed (or at such other time approved by the KKR Investors), the Company will pay or procure the payment by Pepper of the costs and expenses of the KKR Investors in connection with the preparation, negotiation, execution and completion of this Deed, the Custodian Deed and the Transaction Documents.

### **26.2 Trade Sale Costs**

Unless a Group Company agrees to bear any Trade Sale Costs or clause 13.4(b) applies, each Security Holder will be liable for its proportionate share of all Trade Sale Costs (which will, to the extent that the Board determines that it is practicable, be set off from the Proceeds payable to the Security Holder in the Trade Sale). For the purpose of this clause 26.2, a Security Holder's proportionate share of the Trade Sale Costs is the proportion that the Proceeds

which it has received, or which it is or would have been entitled to receive before any deductions or withholdings in accordance with this Deed (including this clause 26.2) or applicable law, as the case may be, in respect of Equity Securities as part of the Trade Sale, bears to the total Proceeds in connection with the Trade Sale.

### **26.3 IPO Costs**

Unless the Board determines that the IPO Costs will be borne by each Security Holder in its Security Ownership Percentages (to the extent that the Board determines that it is practicable, those IPO Costs set off from any Proceeds payable to the Security Holder in the IPO) or clause 13.4(b) applies, the Company will pay the IPO Costs. Each party will be liable for any Individual Costs incurred by it.

### **26.4 Aborted Exit**

If a Trade Sale or an IPO is aborted prior to its completion, unless clause 13.4(b) applies, the Company will pay all Trade Sale Costs and IPO Costs to the maximum extent permitted by applicable laws.

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## **27 GST**

### **27.1 Definitions and interpretation**

For the purposes of this clause 27:

- (a) "**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) words and phrases which have a defined meaning in the GST Act have the same meaning when used in this clause 27, unless the contrary intention appears;
- (c) unless otherwise expressly stated in this Deed, all consideration to be provided under this Deed is exclusive of GST; and
- (d) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

### **27.2 Payment of GST**

- (a) If GST is payable, or notionally payable, on a supply made under or in connection with this Deed, the party providing the consideration for the supply must pay to the supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

### **27.3 Adjustment events**

If an adjustment event arises for a supply made under or in connection with this Deed, the GST Amount must be recalculated to reflect that adjustment, the supplier or the recipient (as the case may be) must make any payments



necessary to reflect the adjustment and the supplier must issue an adjustment note.

#### **27.4 Reimbursements**

Any payment, reimbursement, indemnity or similar payment that is required to be made under this Deed which is calculated by reference to an amount paid by another party shall be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 27.2 will apply to the reduced payment.

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## **28 Notices and other communications**

### **28.1 Form**

- (a) Unless this Deed expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing and signed by the sender (if an individual) or an authorised officer of the sender.
- (b) All communications (other than email communications) must also be marked for the attention of the person referred to in the Details, relevant Schedule or in a Deed of Adherence or as otherwise notified by the recipient in writing to the other parties.
- (c) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

### **28.2 Delivery**

Communications must be:

- (a) left at the address referred to in the Details, relevant Schedule or in a Deed of Adherence or as otherwise notified by the recipient in writing to the other parties;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address referred to in the Details, relevant Schedule or in a Deed of Adherence or as otherwise notified by the recipient in writing to the other parties; or
- (c) sent by email to the address referred to in the Details, relevant Schedule or in a Deed of Adherence or as otherwise notified by the recipient in writing to the other parties.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

### **28.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 28.4 (whichever happens first) unless a later time is specified in the communication.

### **28.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:

- (i) when the sender receives an automated message confirming delivery; or
- (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

## **28.5 Receipt outside business hours**

Despite anything else in this clause 28, if communications are received or taken to be received under clause 28.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause 28.5, the place in the definition of Business Day is taken to be the place specified for the purposes of this Deed as the address of the recipient and the time of receipt is the time in that place.

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## **29 Amendments**

### **29.1 Amendment**

This Deed may be amended only by a document signed by:

- (a) the Company (with approval from the Board);
- (b) each KKR Investor; and
- (c) a Pepper Super Majority (for the purposes of this clause 29.1(c) only, the reference to "66.67%" in the definition of Pepper Super Majority will be taken to be a reference to "75%" and a Pepper Super Majority will be determined accordingly),

provided that, if the aggregate Security Ownership Percentage of the KKR Investors and the Original Pepper Shareholders is less than 75%, this Deed may be amended by a document signed by the Company and Security Holders with a collective Security Ownership Percentage of not less than 75%.

### **29.2 Complying amendments**

This Deed may be amended by the Company without a document signed under clause 29.1 if the KKR Investors approve the amendment in writing and:

- (a) the amendment is made to cure any ambiguity, omission, manifest error, mistake or defect or inconsistency identified by the Board;
- (b) the amendment does not diminish the rights, or increase the obligations, of a Non-Investor Party;
- (c) based on professional legal advice received on the issue by the Company, the Board resolves that the amendment is required in order for this Deed to comply with the applicable laws and/or applicable listing rules of any recognised stock exchange on which the Company or the IPO Vehicle is admitted (or is to be admitted) following an IPO;
- (d) based on professional legal advice received by the Company, the Board resolves that the amendment is reasonably necessary to achieve a successful IPO and ongoing listing of the Company or the IPO Vehicle, including any amendment relating to:
  - (i) the terms of Disposal of any Equity Securities; or

- (ii) the removal or amendment of any term or condition of this Deed to make this Deed generally consistent with market practice for comparable agreements for listed entities;
- (e) based on professional tax advice received on the issue, which must be made available to the Board, the Board resolves that the amendment is reasonably required to take into consideration possible adverse Tax implications in respect of this Deed and the amendment does not diminish the rights, or increase the obligations, of a Non-Investor Party; or
- (f) the amendment, variation or waiver relates only to a particular party and is made with the consent of that party and does not increase the obligations of any other party.

### **29.3 Schedule 8 amendments**

Notwithstanding clause 29.1, Schedule 8 may be amended without the approval of the Security Holders in accordance with clause 5.1(b) and Part B of Schedule 3.

### **29.4 Ceasing to be a party**

If this Deed terminates with respect to a party under clause 20, then as from that time, that former Security Holder will cease to be a party to this Deed for the purposes of clauses 29.1 and this Deed may be amended without reference to, or the need for the signature of, that former Security Holder.

### **29.5 Trustee limitation of liability clause**

Despite clauses 29.1 to 29.3, clause 24 cannot be amended without the written agreement of the KKR Investors and any other Trustee.

### **29.6 General Partner limitation of liability clause**

Despite clauses 29.1 to 29.3, clause 25 cannot be amended without the written agreement of the KKR Investors and any other General Partner.

### **29.7 Existing Plan Trustees**

Notwithstanding clause 29.1, a Board Special Majority may modify the application of this Deed (other than clauses 7.13 and 8.7) to an Existing Plan Trustee and the beneficiaries for whom the Existing Plan Trustee holds Equity Securities if it determines that the amendment is reasonably appropriate having regard to the relevant Existing Plan Rules and the rights and obligations of the Existing Plan Trustee in its capacity as trustee under the Existing Plan Rules, provided that the amendment does not:

- (a) except as provided in the Existing Plan Rules, impose on any such beneficiary any greater obligations under this Deed than the beneficiary would have had if it held legal title to its Equity Securities and was a party to this Deed in the capacity of an Original Pepper Shareholder; or
- (b) increase the obligations of a KKR Investor or any other Non-Investor Party.

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## **30 General**

### **30.1 Consents, approvals or waivers**

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

### **30.2 Discretion in exercising rights**

Unless this Deed expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this Deed in its absolute discretion (including by imposing conditions).

### **30.3 Partial exercising of rights**

Unless this Deed expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this Deed fully or at a given time, they may still exercise it later.

### **30.4 Conflict of interest**

Each party may exercise their rights, powers and remedies in connection with this Deed even if this involves a conflict of duty or they have a personal interest in their exercise.

### **30.5 Remedies cumulative**

The rights, powers and remedies of the parties in connection with this Deed in addition to other rights, powers and remedies given by law independently of this Deed.

### **30.6 Specific performance**

The parties acknowledge that:

- (a) Equity Securities cannot be readily purchased or sold in an open market and that damages or an account of profits may be an inadequate remedy to compensate the relevant non-breaching parties for a breach of this Deed by another party; and
- (b) each party is, to the extent permitted by law, entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by another party of this Deed, in addition to any other remedies available to them at law or in equity.

### **30.7 Indemnities and reimbursement obligations**

Any indemnity, reimbursement or similar obligation in this Deed:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this Deed, any settlement or any other thing;
- (b) is independent of any other obligations under this Deed; and
- (c) continues after this Deed, or any obligation arising under it, ends or terminates.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this Deed.

### **30.8 Inconsistent law**

To the extent the law permits, this Deed prevails to the extent it is inconsistent with any law.

### **30.9 Supervening law**

Any present or future law which operates to vary the obligations of a party in connection with this Deed with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is

excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### **30.10 Counterparts**

This Deed may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

### **30.11 Entire agreement**

This Deed and the documents referred to in this Deed or executed in connection with this Deed constitute the entire agreement of the parties about the subject matter of this Deed and supersede all previous agreements, understandings and negotiations on that subject matter and all other communications.

### **30.12 Further steps**

Each party agrees to do anything (such as obtaining consent, signing and producing documents, producing receipts and getting documents completed and signed) which another party reasonably requests and which is necessary to:

- (a) bind a party and any other person intended to be bound under this Deed;
- (b) show whether a party is complying with this Deed; and
- (c) enable a party to register a power of attorney in clause 21 of this Deed or a similar power.

### **30.13 Assignment or other dealings**

A party may not assign or otherwise Dispose of any of its rights under this Deed or allow any interest in them to arise or be varied without the consent of the other parties or as otherwise expressly permitted by this Deed.

### **30.14 Severability**

If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is to be severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or unenforceability of that provision in any other jurisdiction is not affected. This clause 30.14 has no effect if the severance alters the basic nature of this Deed or is contrary to public policy. To the extent of any inconsistency between this clause 30.14 and clauses 16.4, clauses 16.5 and 16.5, prevail to the extent of the inconsistency.

### **30.15 Rules of construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it or seeks to rely on any provision of this Deed.

### **30.16 Director approval and capacity**

Where this Deed provides that any matter or thing may be done or omitted to be done with the approval or consent of 1 or more Directors (as applicable), other than the Group CEO if he or she is a Director, then subject to applicable law the Director will in giving or withholding the consent or approval be acting in his or her capacity as the appointed representative of the Security Holders who appointed the Director and not be acting in his or her capacity as Director.

### **30.17 Relationship of parties**

Unless this Deed expressly states otherwise, nothing contained or implied in this Deed constitutes any party as the partner, agent, associate, employee or representative of any other party for any purpose or creates any partnership, agency or trust between them and no party has authority to bind any other party in any way.

### **30.18 Attorneys**

Each attorney executing this Deed or a Deed of Adherence states that the attorney has no notice of revocation or suspension of the power of attorney under which the attorney executes this Deed or a Deed of Adherence.

### **30.19 KKR Investors**

A right conferred by this Deed on the KKR Investors collectively may be exercised by the KKR Investors who have an aggregate Security Ownership Percentage of at least 50.1% (for the purposes of this clause 30.19, Security Ownership Percentage will be determined as if paragraph (b) of that definition referred to the aggregate number of all Equity Securities held by the KKR Investors).

### **30.20 Non-Investor Parties' approvals**

- (a) Except as expressly provided by this Deed, a right conferred by this Deed on the Non-Investor Parties or the Non-Investor Security Holders, collectively, may be exercised by a Non-Investor Majority.
- (b) Subject to the Corporations Act, the approval of some or all Non-investor Parties for a purpose under this Deed may be obtained by either of the following means of approval or by aggregating the number of affirmative votes and confirmations received by both of the following means of approval:
  - (i) a resolution passed at a general meeting of the Company or one or multiple general meetings and/or meetings of Non-Investor Parties; and
  - (ii) the relevant Non-Investor Parties signing a document (which may be in counterparts) or providing other written confirmations (including by email) to the effect that they approve of the relevant resolution or other matter for the purposes of this Deed.

### **30.21 Acts of the KKR Investors**

Any of the rights, powers, discretions and consents of the KKR Investors under this Deed may be exercised on behalf of the KKR Investors by any person or persons nominated in writing by the KKR Investors to the Board from time to time, and such person or persons may enforce or exercise such rights, powers, discretions or consents of the KKR Investors directly as if it were a party to this Deed.

### **30.22 Fractions**

If the operation of any clause in this Deed results in any party having an entitlement to acquire, or an obligation to Dispose of, a fraction of an Equity Security, then the Board may round up or down the entitlement or obligation to the nearest Equity Security in its discretion.

### **30.23 Method of payment**

All payments required to be made under this Deed must be made by way of direct transfer of immediately available funds to the credit of an Australian bank

account nominated by the payee to the payer at least 3 Business Days before the due date for payment or by any other method agreed by the parties.

### **30.24 KKR Investor Affiliate Transfer**

Provided that clauses 7.13 and 7.17 are observed but despite anything to the contrary in this Deed, nothing in this Deed:

- (a) prevents or limits the ability of any KKR Investor to undertake a KKR Investor Affiliate Transfer at any time; or
- (b) confers on any Non-Investor Party any rights with respect to any KKR Investor Affiliate Transfer, including any rights under clause 9.

### **30.25 Custodian Transfer**

Provided that clauses 7.13 and 7.17 are observed but despite anything to the contrary in this Deed, nothing in this Deed:

- (a) prevents or limits the ability of the Custodian, or the Company to require the Custodian or a Non-Investor Party, to undertake a Custodian Transfer at any time; or
- (b) confers on any KKR Investor or any Non-Investor Party any rights with respect to any Custodian Transfer, including any rights under clause 9.

### **30.26 PPSA**

Notwithstanding clause 30.12, if a Non-Investor Party determines that this Deed contains a Security Interest, that Non-Investor Party must notify the KKR Investors and consult with the KKR Investors in relation to what steps (if any) the Non-Investor Party may take to ensure that the Security Interest is enforceable, perfected and otherwise effective. No Non-Investor Party may apply for any registration, or give any notification, in relation to any Security Interest for the purposes of the PPSA, or disclose a copy of this Deed, without the prior written consent of the KKR Investors.

### **30.27 No notice under PPSA**

No Non-Investor Party may give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded or unless the Company and the KKR Investors otherwise consent in writing.

### **30.28 Enforcement**

To the extent permitted by law, section 115(1) of the PPSA will not apply on the enforcement by the parties of any Security Interest provided for, created or evidenced by this Deed.

### **30.29 No recourse**

Notwithstanding anything that may be expressed or implied in this Deed in the absence of fraud or except for claims against a party, no recourse under this Deed may be pursued against any past, current or future representative (including any past, current or future, employee, agent, officer, director, auditor, adviser, partner, Affiliate, consultant, shareholder, member, general or limited partner or other beneficial owner, joint venturer or contractor) of any KKR Investor or any of their respective Affiliates and representatives, whether by the enforcement of any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal Liability whatsoever attaches to, may be imposed on or will otherwise be incurred by any such person, for any obligation of a KKR Investor or

any other person under this Deed for any claim based on, in respect of or by reason of such obligations or their creation. The provisions of this clause 30.29 survive the termination of this Deed indefinitely.

### **30.30 Issues are not variations of terms**

Each party acknowledges and agrees that the issue of any further Securities (of any class) does not constitute a variation of the terms of the Equity Securities issued to that party and, except as expressly provided by this Deed or other constitutional documents to which the Company is a party, does not entitle any party to any adjustment to the numbers of Equity Securities held by any party (either individually or in aggregate) or any other relevant percentage or amount for the purposes of this Deed, the Constitution or any constituent document of a Group Company.

### **30.31 Third Party Benefit**

If a representation, warranty, indemnity, undertaking or acknowledgment given by a party in this Deed is expressly given to or for the benefit of any Representative of another party (such other party being referred to in this clause 30.31 as the **Recipient**) including each such person that is not a party to this Deed (**Third Party Beneficiary**), the benefit of that representation, warranty, indemnity, undertaking or acknowledgment is held by the Recipient for the benefit of, and is enforceable by, the Recipient on behalf of the Third Party Beneficiary, notwithstanding that they are not a party to this Deed.

### **30.32 Company's statutory powers**

Any provision of this Deed, express or implied, that binds or purports to bind the Company in a manner which unlawfully fetters its statutory powers:

- (a) must be treated and interpreted not to have that effect; and
- (b) the Company's obligations under the provision will be treated as modified to that extent,

provided that the provision (for the avoidance of doubt, including any provision under which the Company would purportedly have been jointly and severally liable with any other party, but for this clause 30.32) will continue to apply in full force and effect in respect of any other party which it expressly or impliedly binds.

### **30.33 Conflict with the Constitution**

- (a) If there is an inconsistency between any provision of this Deed and the Constitution, the provision of this Deed will prevail to the extent of the inconsistency and the parties agree to amend the Constitution to remove the inconsistency (unless otherwise agreed by the Board).
- (b) An inconsistency will be taken to exist between this Deed and the Constitution for the purposes of this clause 30.33 if:
  - (i) the subject matter of the relevant provisions in this Deed and the Constitution is the same and those provisions specify differing requirements; or
  - (ii) the action required to be taken or not taken (as the case may be) under the relevant provisions in this Deed and the Constitution is the same but those provisions specify requirements which both cannot be satisfied by taking, or omitting to take, that action in the same way.
- (c) If this Deed and the Constitution require an action to be taken, including obtaining an approval or consent, at different standards of performance



or other relevant thresholds and both this Deed and the Constitution can be complied with by satisfying the higher standard of performance or other relevant threshold (as determined finally by the Board), those provisions will not be taken to be inconsistent for the purposes of this clause 30.33 and the parties must comply with that higher standard of performance or other relevant threshold (to the extent applicable to them).

### **30.34 Certain provisions continue**

Termination of this Deed with respect to a party or all parties does not affect:

- (a) any obligation of that party or those parties, as applicable, under this Deed which accrued prior to that termination and which remains unsatisfied;
- (b) any rights or Liabilities of a party which accrued prior to such termination; or
- (c) any provision of this Deed which is expressed to come into effect on, or to continue in effect after, that termination.

### **30.35 Enforcement actions**

A Non-Investor Party may not:

- (a) take any action to enforce this Deed; or
- (b) waive, or purport to waive, a right under this Deed,

on behalf of any 1 or more other Non-Investor Parties, without the consent of Non-Investor Parties with an aggregate Ordinary Share Percentage of at least 75% (for the purposes of this clause 30.35, Ordinary Share Percentage will be determined as if paragraph (b) of that definition referred to the aggregate number of all Equity Securities held by the Non-Investor Security Holders, excluding any Incentive Shares). To avoid doubt, nothing in this clause 30.35 limits a Non-Investor Party's right, without the consent of any other Non-Investor Party, to enforce or waive any of its own rights under this Deed.

### **30.36 Other Equity Securities**

Notwithstanding anything to the contrary in this Deed, any Equity Securities issued in accordance with any separately documented incentive arrangement approved by the Board and established after the Implementation Date by a Group Company will be subject to the rules of that incentive plan and are not subject to the provisions of this Deed until such time as those Equity Securities become fully vested (including that the Equity Securities have ceased to be subject to, or calculated by reference to, any performance, financial, time or employment or other engagement based criteria) in accordance with their terms and the rules of that plan provide that those Incentive Shares or their holder is subject to, or intended to be bound by, any provision of this Deed.

### **30.37 Equity Securities subject to multiple documents**

- (a) Notwithstanding anything to the contrary in this Deed but subject to clause 30.37(b), any Equity Securities issued in accordance with Existing Plan Rules will be subject to both the terms of that separate documentation and the provisions of this Deed.
- (b) Notwithstanding anything to the contrary in this Deed other than clauses 7.13 and 8.7:

- (i) a holder of Equity Securities referred to in clause 30.37(a) will not be in breach of this Deed if it takes any action, or omits to take any action, required under Existing Plan Rules;
- (ii) if a party is required to Dispose of any Equity Securities referred to in clause 30.37(a) under the relevant Existing Plan Rules, any provision of this Deed other than clause 7.13 which would otherwise apply in connection with the Disposal is not required to be complied with; and
- (iii) unless clause 30.37(b)(ii) applies, if a party is not permitted to Dispose of any Equity Securities referred to in clause 30.37(a) under the relevant Existing Plan Rules (either absolutely or unless specific conditions are satisfied), it may not Dispose of any of those Equity Securities unless both the relevant Existing Plan Rules and this Deed are complied with (and if the Board determines, acting reasonably, that such compliance is not possible, the holder must not Dispose of the relevant Equity Securities).

### **30.38 Parties**

- (a) The Company may update Schedule 5, Schedule 6 and Schedule 7 to reflect the parties to this Deed from time to time in accordance with the Deeds of Adherence executed by the relevant parties and the other relevant details in those Schedules.
- (b) To avoid doubt, any update to Schedule 5, Schedule 6 and Schedule 7 in accordance with clause 30.38(a) will not be an amendment to which clause 29 applies.

### **30.39 Continuing holders of Pepper Shares**

- (a) The parties confirm that the principle to which this clause 30.39 is intended to give effect is that, except as expressly provided in this clause 30.39, each Retaining Party will have the benefit of, and be bound by, the provisions of this Deed, and the provisions of this Deed will have application to the Retaining Party and its Pepper Shares (if it is a Retaining Holder), so that the Retaining Party has the same rights and obligations and the provisions of this Deed apply to the Retaining Party and its Pepper Shares (if it is a Retaining Holder), in an economically and contractually equivalent manner to that which would have been the case if the Retaining Party were a Non-Investor Party (and Non-Investor Security Holder in the case of a Retaining Holder) and its Pepper Shares were Ordinary Shares (and the other parties are entitled to the benefit of the same rights in respect of the Retaining Party and its Pepper Shares as they would have had in such circumstances and to enforce the Retaining Party's compliance with this Deed).
- (b) Each party must take all actions within its power and authority, including in the case of a Retaining Party, exercising its rights in respect of the relevant Pepper Shares to give effect to the principle in clause 30.39(a) and the other provisions of this clause 30.39.
- (c) Without limiting clause 30.39(a), for so long as there are any Retaining Holders:
  - (i) each Retaining Party agrees to comply with the provisions of this Deed, and each other party agrees that the provisions of this Deed will apply to all parties including for the benefit of each Retaining Holder and/or Retaining Party (as applicable), as if:

- (A) each Retaining Holder were a Non-Investor Security Holder and each Retaining Party were a Non-Investor Party;
  - (B) Pepper Shares were Ordinary Shares;
  - (C) each Retaining Holder who is not an Individual Party were a Permitted Holder and Related Non-Investor Party of the Individual Party who is its Related Retaining Party and each of its Related Retaining Parties (if any) were its Related Non-Investor Party;
  - (D) Ordinary Share Percentage was determined inclusive of the Retaining Holders and as if their Pepper Shares were Ordinary Shares; and
  - (E) Security Ownership Percentage was determined inclusive of the Retaining Holders and as if its Pepper Shares were Ordinary Shares; and
- (ii) each Retaining Party who is an Individual Party must ensure that each of its Related Retaining Parties complies with this Deed.
- (d) Notwithstanding anything to the contrary in this Deed (including clauses 30.39(a) and 30.39(b)):
- (i) if the application of another provision of this Deed would result in a person other than Red Hot Bidco (or another Group Company) or a person who is or will be a Related Retaining Party of the relevant Retaining Holder having the right to acquire a Pepper Share, Red Hot Bidco (or another Group Company determined by the Board) will acquire that Pepper Share and the Company will procure that the relevant person is instead issued with, or otherwise be entitled to acquire, an economically equivalent number of Ordinary Shares; and
  - (ii) the Board (by Special Majority Approval) may make reasonable and good faith determinations with respect to the application of this clause 30.39 in specific circumstances and the parties agree to comply with those determinations.
- (e) To avoid doubt:
- (i) each Retaining Party is a party to this Deed, but is not a Non-Investor Party (except to the extent deemed as such under this clause 30.39) for so long as they hold Pepper Shares but no Equity Securities; and
  - (ii) nothing in this Deed requires a party or a Group Company to take any action to prevent, or compensate a Retaining Party for, any Individual Cost.

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## **31 Governing law**

### **31.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this Deed. The parties submit to the exclusive jurisdiction of the courts of that place. To the extent the law permits, the law of the Commonwealth as it applies in that jurisdiction governs a Security Interest arising under this Deed.

### **31.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this Deed may be served on a party by being delivered or left at that party's address for service of notices under clause 28.2.

**EXECUTED** as a deed

# Shareholders Deed

## Schedule 1 Compulsory transfers

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### **1 Compulsory transfers**

#### **1.1 Trigger Event**

Each Non-Investor Party must immediately notify the Company if a Trigger Event has occurred or will occur in relation to that party or any of its Related Non-Investor Parties (if any).

#### **1.2 Cessation of rights**

If a Trigger Event occurs in respect of a Non-Investor Party, that Non-Investor Party and each of its Related Non-Investor Parties if any, will cease to be entitled to any rights or entitlements in respect of all of its Equity Securities (including that the Non-Investor Party and each of its Related Non-Investor Parties will cease to have the right to personally exercise any voting rights (whether on a show of hands or a poll) in respect of any Equity Security (unless the Board otherwise determines and on such terms as the Board may require) and all other rights arising under this Deed other than the right to receive any dividends or distributions on the Equity Securities, the right to make an election under clause 6.4(c)(ii), the right to issue an OPS ROFR Notice (subject to clause 12.8(d)) and any rights arising under this Schedule 1. For the avoidance of doubt, the cessation of any rights or entitlements of a Non-Investor Party in respect of its Equity Securities does not commence if the Board determines that a Trigger Event will occur, until that Trigger Event (or another Trigger Event) has actually occurred.

#### **1.3 Enquiries into Trigger Event**

A KKR Director may at any time make enquiries of a Non-Investor Party to assess whether a Trigger Event has occurred or will occur in relation to it or any of its Related Non-Investor Parties, as applicable, if any, and the relevant party must promptly provide to the KKR Director all relevant information that the KKR Director reasonably requests which relates to the suspected Trigger Event.

#### **1.4 Compulsory transfers**

If the Board determines that a Trigger Event has or will occur in respect of a Non-Investor Party, a Board Special Majority may:

- (a) if the Non-Investor Party is an Original Pepper Shareholder and:
  - (i) the Original Pepper Shareholder, having served an OPS ROFR Notice in accordance with clause 12.1(b), has not sold all of the OPS ROFR Sale Shares to Buying OPS ROFR Offerees under clause 12 and clause 12.8 applies; or
  - (ii) the Original Pepper Shareholder has not served an OPS ROFR Notice in accordance with clause 12.1(b) within 15 Business Days of the later of it being notified of the Board determination that the Trigger Event has occurred or the occurrence of the Trigger Event; or
- (b) if paragraph 1.4(a)) does not apply, at any time within 120 Business Days of the later of the Non-Investor Party being notified of the Board

determination that the Trigger Event has occurred or the occurrence of the Trigger Event,

determine that the Company will do either or both of the following:

- (c) serve a notice (**Transfer Notice**) on the Non-Investor Party and its Related Non-Investor Parties, if any, (collectively, the **Departing Parties**) requiring all or any of the Departing Parties to sell, on the date specified by the Board (which may be set by reference to the date when the Trigger Event Price is determined or agreed but which cannot be a date prior to the relevant Trigger Event occurring), all or some of the Equity Securities held by the Departing Parties (**Transfer Securities**) to any person nominated by the Board; and/or
- (d) require the redemption, buy back or cancellation (as applicable) by the Company of all or some of the Transfer Securities on the date specified by the Board (which may be set by reference to the date when Trigger Event Price of the Transfer Equity Securities is determined or agreed but which cannot be a date prior to the relevant Trigger Event occurring), subject to and in accordance with the provisions of the Corporations Act. If such a redemption, buy back, purchase or cancellation (as applicable) is required, then each Departing Party (as well as any other parties if required) must do all things reasonably required by the Board to give effect to the redemption, buy back, purchase or cancellation (as applicable), including all things required under the Corporations Act to approve or otherwise give effect to the redemption, buy back, purchase or cancellation (as applicable).

#### **1.5 Trigger Event Price**

Subject to the other provisions of this Schedule 1, the price payable to the Departing Parties for any redemption, buy back, purchase or cancellation (as applicable) of the Transfer Securities in accordance with paragraph 1.4 will be the Trigger Event Price per Transfer Security.

#### **1.6 Completion of compulsory transfer**

Completion of the redemption, buy back, purchase or cancellation (as applicable) of the Transfer Securities must occur on the date specified in the Transfer Notice or as determined by the Board.

#### **1.7 Payment of Transfer Securities price**

- (a) If the Company is redeeming, buying back or otherwise purchasing any of the Transfer Securities and the Trigger Event which occurred is described in any of paragraphs (b) (other than a termination of a Non-Investor Party who was Engaged By A Group Company for the reason described in paragraph (b) of the definition of Cause), (c), (e) or (f) of the definition of Trigger Event or paragraph 1.10 applies, all or part of the price payable by the Company for those Transfer Securities may, at the election of the Board, not be paid to a Departing Party on completion of the redemption, buy back, purchase or cancellation (as applicable) of that Departing Party's Transfer Securities under this Schedule and will remain outstanding as an unsecured loan owing by the Company to each relevant Departing Party (**Unsecured Loan**), accruing nil interest.
- (b) Subject to paragraph 1.7(c), an Unsecured Loan must be paid by the Company to the relevant Departing Party in accordance with paragraph 1.8. Any amount paid under paragraph 1.7(c) will be treated when paid as a reduction of the outstanding amount of the Unsecured Loan.

- (c) If a Departing Party who has, or will, be paid the Trigger Event Price for any Transfer Securities by way of an Unsecured Loan incurs, or will incur, a Tax liability as a result of the sale, redemption or buy back of its Transfer Securities (**Transfer Tax Liability**) and:
- (i) the Transfer Tax Liability exceeds any part of the price paid for the Transfer Securities received by the Departing Party in cash at completion of the relevant sale, redemption or buy back;
  - (ii) the Departing Party has complied with paragraph 1.7(d); and
  - (iii) the Unsecured Loan remains outstanding in whole or in part,

then the Company will pay to the Departing Party in accordance with paragraph 1.7(e) an amount calculated as follows (and provided always that the amount of the payment required under this paragraph 1.7(c) and paragraphs 1.7(d) and 1.7(e) can never exceed the outstanding amount of the Unsecured Loan at the time of payment):

$$A = TTL - CA$$

where:

**A** equals the amount of the relevant payment required to be made under this paragraph 1.7(c).

**TTL** equals the amount of the Transfer Tax Liability for the Departing Party (as determined by the Company acting reasonably after receipt of the information referred to in paragraph 1.7(d)).

**CA** equals the cash price received by the Departing Party for its Transfer Securities, if any, at completion of the relevant sale, redemption or buy back.

- (d) A Departing Party who may be paid for its Transfer Securities by way of an Unsecured Loan must notify the Company in writing of any Transfer Tax Liability which it reasonably expects to incur as a result of the sale, redemption or buy back of its Transfer Securities, at least 20 Business Days prior to the Liability being due and payable, and include within the notification the quantum and details of the Transfer Tax Liability and the expected date for payment of the Transfer Tax Liability. The Departing Party must provide (or procure the provision of) such other evidence concerning the Transfer Tax Liability as may reasonably be requested by the Company.
- (e) The Company must pay to the relevant Departing Party the amount due to that Departing Party under paragraph 1.7(c) no later than 5 Business Days prior to the due date for payment of the Transfer Tax Liability as notified to the Company under paragraph 1.7(d) or, if later, within 5 Business Days of the notification to the Company of the Transfer Tax Liability.

## **1.8 Payment of Unsecured Loan**

- (a) The outstanding amount of an Unsecured Loan (to avoid doubt, after any repayments in accordance with paragraph 1.7(c), 1.7(e) and 1.8(b)) must be paid by the Company to the relevant Departing Party within 5 Business Days following completion of an Exit, but may be repaid earlier (in whole or in part) at the Board's election.

- (b) If the sale of a Platform occurs prior to an Exit, the Company must repay an amount of each outstanding Unsecured Loan (up to a maximum amount equal to the outstanding amount of the Unsecured Loan at that time) equal to:
  - (i) the amount of the Cash Distribution Amount which the Departing Party with the Unsecured Loan would have received in respect of its Transfer Securities if it still held its Transfer Securities; and
  - (ii) an amount equal to what would have been the Platform Buy-Back Amount of the Departing Party with the Unsecured Loan in respect of its Transfer Securities if the Departing Party had continued to be a Security Holder holding all of its Transfer Securities.

### **1.9 Additional purchase price**

If a Departing Party is required to sell any Transfer Securities under paragraph 1.4 to a person nominated by the Board, the Board may determine that the person nominated by the Board pays an amount to the Company in respect of the Transfer Securities in addition to the Trigger Event Price (as applicable) whether by way of capital contribution, fee, commission or otherwise) as agreed by the Company and the person nominated by the Board, and the Company will have no obligation to account to any Departing Party for such additional amount.

### **1.10 Subsequent breach**

If a Departing Party receives or becomes entitled to receive the Trigger Event Price described in paragraph (a) of the definition of Trigger Event Price, but within the later of the end of the Departing Party's Restraint Period and 90 days of the Departing Party receiving or becoming entitled to receive that Trigger Event Price:

- (a) the Departing Party or any Related Non-Investor Party of that Departing Party subsequently breaches clause 16 or clause 19 or any other agreement to which they are a party relating to them being Engaged By A Group Company or the termination or cessation of them being Engaged By A Group Company; and/or
- (b) the KKR Investors or the Company become aware of circumstances not previously known to them which would have entitled the Company to determine that a Trigger Event described in any of paragraphs (b), (c), (e) or (f) of the definition of Trigger Event had occurred,

then (unless the Board otherwise resolves that the Departing Party will be treated more favourably (including appointed by the KKR Investors):

- (c) in the case of any of the relevant Departing Parties having received consideration for their Transfer Securities, the Departing Parties must pay to the Company as a debt due and payable (immediately on demand by the Company):
  - (i) the amount which they received in excess of what would have been the aggregate price for the Transfer Securities in accordance with paragraph (b) of the definition of Trigger Event Price if that paragraph (b) had applied; and
  - (ii) any costs of any Expert which have been borne by the Company; or



- (d) in the case of the relevant Departing Parties having not yet received any consideration for their Transfer Securities, then (notwithstanding any other provision of this Deed) the Departing Parties will only be entitled to receive on the Disposal of their Transfer Securities in accordance with this Schedule 1, the Trigger Event Price specified in paragraph (b) of the definition of Trigger Event Price, less any costs of any Expert which have been borne by the Company, and the other provisions of this Schedule 1 will apply accordingly.

### **1.11 Board determination of Market Value**

- (a) Subject to paragraphs 1.12 and 1.13, the Market Value of a Transfer Security will be:
- (i) if the Transfer Security is an Ordinary Share:
- (A) the market value of the Transfer Security determined by a Board Special Majority acting reasonably and having regard to the most recent Fair Market Value of the Group, and taking into account any relevant events or circumstances (positive or negative) which have impacted the Group in the time period (if any) between the date of determination of that most recent Fair Market Value and the time of determination of the Market Value of the Transfer Security and the number(s) and classes of Equity Securities then on issue; or
- (B) if the Board resolves that it is unable to achieve a Board Special Majority under paragraph 1.11(a)(i)(A) within a reasonable period after first considering the matter (as determined by the Board), then the market value determined by one of the "Big 4" firms of Australian accountants nominated by the Company (who must be appointed by the Company and instructed to determine the Market Value of the Ordinary Share as if paragraphs 1.13(a), 1.13(b) and 1.13(e) applied); or
- (ii) if the Transfer Security is an Equity Security which has a fixed coupon or other return and does not participate in distributions of any excess profits, or assets on a winding up of the Company, on the same basis as Ordinary Shares, the lesser of:
- (A) the aggregate amount for which the Equity Security could be redeemed, repurchased, cancelled or otherwise repaid in accordance with its terms of issue; and
- (B) if the Board determines that the Ordinary Shares have no value, the market value of the Equity Security determined by the Board.
- (b) If:
- (i) the Board determines the Market Value of an Ordinary Share under paragraph 1.11(a)(i) and that Market Value is agreed by a Departing Party; or
- (ii) an Expert determines the Market Value of an Ordinary Share in accordance with paragraph 1.11(a)(i)(B) or paragraphs 1.12 to 1.15 (inclusive),

unless otherwise determined by the Board, that market value of an Ordinary Share will be binding on all Non-Investor Parties who become or may become Departing Parties for 6 months from the date of the Board's or Expert's, as applicable, determination (or any amended determination) and no Non-Investor Party may issue a Dispute Notice disputing that Market Value.

### 1.12 Dispute Notice

If within 5 Business Days of receiving notice from the Board of its determination of Market Value under paragraph 1.11, a Departing Party (**Disputing Party**) gives notice (**Dispute Notice**) that it disputes the Board's determination of Market Value then:

- (a) the Company (through the Board) and the Disputing Party must confer and use all reasonable endeavours to resolve the dispute within 10 Business Days after the Dispute Notice is given to the Company (or any other period agreed between the Company and the Disputing Party) (**Negotiation Period**);
- (b) if the dispute is not resolved between the Company and the Disputing Party within the Negotiation Period, then the dispute must be referred to one of the "Big 4" firms of Australian accountants:
  - (i) agreed by the Company and the Disputing Party in writing; or,
  - (ii) failing agreement under paragraph 1.12(b)(i) within 10 Business Days after expiry of the Negotiation Period (or any other period agreed between the Company and the Disputing Party) (**Expert Appointment Period**), appointed by the person nominated by the Resolution Institute who accepts the appointment in accordance with the Resolution Institutes' Expert Determination Rules,  
  
(the relevant firm of accountants agreed or nominated, **Expert**) for resolution in accordance with paragraph 1.13;
- (c) if paragraph 1.12(b)(ii) applies, the Company and the Disputing Party must, within 5 Business Days of the end of the Expert Appointment Period, request the Resolution Institute to appoint an Expert and the costs of the Resolution Institute must be shared equally between the Company and the Disputing Party; and
- (d) the Market Value will be:
  - (i) the amount resolved in accordance with paragraph 1.12(a); or
  - (ii) if an Expert makes a determination under paragraph 1.13 and determines:
    - (A) a specific dollar value, the Market Value will be the amount determined by the Expert; or
    - (B) a range of values, the Market Value will be the lowest endpoint of the range of values determined by the Expert.

### 1.13 Expert determination

The Company and the Disputing Party must request that any Expert appointed in accordance with paragraph 1.12 determines the dispute referred to the Expert under paragraph 1.12 in accordance with the following provisions:

- (a) the Company and the Disputing Party must instruct the Expert to:
  - (i) determine the Market Value in accordance with the terms of this Deed and within the shortest possible time but, in any event, within 20 Business Days after the dispute is referred to the Expert; and
  - (ii) provide a report to the Company and the Disputing Party stating the determination of the Expert of the Market Value;
- (b) subject to the express provisions of this Deed, the Expert must decide the procedure to be followed to determine the Market Value, provided that the Expert must be instructed to have regard to the matters referred to in paragraphs 1.11(a)(i) and 1.11(a)(ii);
- (c) the Company and the Disputing Party must provide the Expert with any information and assistance reasonably required by the Expert to determine the Market Value;
- (d) all correspondence between a party and the Expert must be in writing and copied to the Company and the Disputing Party (as applicable); and
- (e) the Expert acts as an independent expert and not as an arbitrator and the decision of the Expert is final and binding on the Company and the Disputing Party in the absence of manifest error.

#### **1.14 Expert's costs**

The costs of the Expert must be:

- (a) paid by the Disputing Party, if:
  - (i) the Expert determined a specific dollar value and the Market Value as determined by the Expert is equal to or less than the Market Value determined by the Board under paragraph 1.11; or
  - (ii) the Expert determined a range of values and the Market Value determined by the Board under paragraph 1.11 is within the range of values determined by the Expert; or
- (b) paid by the Company, if:
  - (i) the Expert determined a specific dollar value and the Market Value as determined by the Expert is equal to or greater than the Market Value determined by the Board under paragraph 1.11; or
  - (ii) the Expert determined a range of values and the Market Value determined by the Board under paragraph 1.11 is not within the range of values determined by the Expert.

#### **1.15 Notification of Market Value**

Subject to paragraph 1.4, within 5 Business Days after the Market Value has been finally determined:

- (a) the Company must notify the Departing Parties of the names and addresses of the purchasers of the Transfer Securities and the number of Transfers Securities to be offered to each, if applicable;
- (b) the Company will notify each purchaser of the number of Transfer Securities on offer to him or her, if applicable; and

- (c) the Company's notice must specify the Market Value and the Trigger Event Price (as applicable) per Transfer Security.

### 1.16 Retiring Good Leavers

- (a) If a Non-Investor Party becomes a Retiring Good Leaver, it may at any time until the 1<sup>st</sup> anniversary of the date on which he or she become a Leaver serve a written notice on the Company requiring the Company to issue a Transfer Notice to the Retiring Good Leaver and his or her Related Non-Investor Parties (if any) (**Retiring Good Leaver Parties**) within 10 Business Days of the Company's receipt of the notice from the Retiring Good Leaver on the following basis:
- (i) the Retiring Good Leaver Parties will be treated as if they were Departing Parties and a Trigger Event had occurred in relation to them;
  - (ii) all of the Equity Securities held by the Retiring Good Leaver Parties will be taken to be Transfer Securities;
  - (iii) the Trigger Event Price will be the price specified in paragraph (a) of the definition of Trigger Event Price; and
  - (iv) completion of the Disposal of the Equity Securities of the Retiring Good Leaver Parties must occur within 4 months after the date that the Board becomes aware that the relevant Non-Investor Party has become a Leaver. That 4 month period may be extended if:
    - (A) the Retiring Good Leaver consents in writing;
    - (B) the Company would be in default under any Financing Document if the relevant Equity Securities were Disposed of in accordance with the Transfer Notice (including as a consequence of the breach of any covenant in a Financing Document), in which case, the date for completion will be extended to the earliest date on which the Disposal of the Equity Securities will not result in a default under a Financing Document; or
    - (C) the redemption, buy back, purchase or cancellation (as applicable) of the relevant Equity Securities requires an approval under the Corporations Act or the *Foreign Acquisitions and Takeovers Act 1975* (Cth) which has not been obtained, in which case, the 4 month period will be extended until the date on which all of those approvals for the redemption, buy back, purchase or cancellation (as applicable) of the Equity Securities have been obtained.
- (b) At any completion of the sale and purchase of the Equity Securities of Retiring Good Leaver Parties:
- (i) the Company must pay, or procure the payment of, the aggregate Trigger Event Price for the Retiring Good Leaver Parties' Equity Securities in cash;
  - (ii) the Retiring Good Leaver Parties must deliver to the Company the certificates (if any) and an executed transfer form or forms (or comparable instrument of transfer) for all of their Equity Securities;

- (iii) subject to the Company or its nominee transferee complying with its obligations on closing, each Retiring Good Leaver Party who is a Security Holder will be deemed to have appointed the Company or its nominee transferee, as applicable, as the Retiring Good Leaver Party's proxy in respect of its Equity Securities until such time as those Equity Securities are registered in the name of the Company's nominee transferee or cancelled; and
- (iv) each Retiring Good Leaver Party who is a Security Holder will be deemed to warrant in favour of the Company and its nominee transferee, as applicable, that the each Retiring Good Leaver Party:
  - (A) have full power and authority, and has obtained all necessary consents from third parties (including Government Agencies), to Dispose of the Equity Securities in accordance with the Transfer Notice;
  - (B) is not Insolvent; and
  - (C) transfers to the Company and/or its nominee transferee, as applicable, clear and unencumbered legal and beneficial title to the Equity Securities being Disposed of to the Company and/or its nominee transferee, as applicable, free of any Security Interests or third party rights.
- (c) If paragraph 1.16(b) applies, each Retiring Good Leaver Party indemnifies the Company and its nominee transferee (if any) against, and agrees to reimburse and compensate the Company and its nominee transferee (if any) for, any Liability that a Group Company or the Company's nominee transferee (if any) pays, suffers, incurs or is liable for in connection with a breach of the warranties given under paragraph 1.16(b)(iv).

### **1.17 Trigger Event Price acknowledgement**

The parties acknowledge and agree that:

- (a) the Company, the KKR Investors and the other Security Holders will, directly and indirectly, suffer Liabilities, suffer damage to their legitimate commercial interests and incur costs and expenses if a Trigger Event occurs in relation to a Non-Investor Party;
- (b) estimation of the Liabilities, costs and expenses referred to in paragraph 1.17(a) cannot be undertaken with precision and any such estimation would be extremely, difficult and expensive; and
- (c) notwithstanding the difficulties described in paragraph 1.17(b), the parties have considered the Liabilities, costs and expenses referred to in paragraph 1.17(a) and the Trigger Event Price is intended to be a genuine and reasonable pre-estimate of those Liabilities, costs and expenses which compensates the Company, the KKR Investors and the other Security Holders for them.

### **1.18 Right to offer for Disposal in case of certain underperformance**

If a Non-Investor Party ceases to be Engaged By A Group Company in circumstances which would have constituted Cause in the absence of paragraph (b)(i) of the definition of Cause, the Non-Investor Party and its Related Non-Investor Parties may offer the Company the right to treat them as if the Bad

Leaver Trigger Event had occurred and their Equity Securities were Transfer Securities and the Board will consider any such offer in good faith (without being obliged to accept it).

## 1.19 Definitions

Unless the context otherwise requires, these meanings apply in this Schedule 1 and anywhere else used in this Deed:

**Bad Leaver** means an Individual Party who is a Non-Investor Party who is or was Engaged with a Group Company on or at any time after the Implementation Date and who becomes a Leaver as a result of the Company terminating the employment or other engagement of the Individual Party for Cause.

**Cause** means, with respect to an Individual Party who is a Non-Investor Party:

- (a) **(fraud or dishonesty)** the commission by the Individual Party or any of its Related Non-Investor Parties of a crime or misdemeanour involving moral turpitude, fraud or any other act or omission involving dishonesty;
- (b) **(underperformance)** material underperformance with respect to the Individual Party's role or responsibilities with the Group (which will be determined by reference to the key performance indicators or other comparable targets or performance standards, if any, by which the Individual Party's performance of his or her role is assessed by the relevant Group Company employer), which is not:
  - (i) attributable to a change in law, policy or procedure by a Government Agency or other change in regulatory circumstances for persons operating generally in the Financial Services industry or other general macroeconomic events or circumstances, which in each case, could not reasonably have been avoided or mitigated by the Individual Party given his or her role and responsibilities; and
  - (ii) remedied within a reasonable period of written notice from the Company specifying the underperformance (that period to be determined by the Board acting reasonably in consideration of the nature of the underperformance and the period required to remedy it). To avoid doubt and except for the CEO, the failure of a Group Company to achieve a Group financial forecast or budget is not of itself underperformance of an Individual Party to which this paragraph (b) applies in the absence of a failure by an Individual Party to perform his or her role or responsibilities to the requisite standard;
- (c) **(harmful conduct)** conduct by the Individual Party or any of its Related Non-Investor Parties which the Company determines (acting reasonably) was intended to materially harm, or has materially harmed, the business of any Group Company or, based on the illegal, immoral or unethical nature of such conduct, has brought, or could reasonably be expected to bring, any Group Company into public disgrace or disrepute;
- (d) **(summary termination)** the commission by the Individual Party or any of its Related Non-Investor Parties of any act or the occurrence of any event which, under the terms of the Individual Party's employment or other engagement, would warrant the termination of the employment or other engagement with immediate effect; or
- (e) **(material breach of terms of employment or engagement)** the commission by the Individual Party or any of its Related Non-Investor Parties of a material breach of the terms of the Individual Party's

employment or other engagement or any policy or procedure of a Group Company applicable to the Individual Party or any of its Related Non-Investor Parties (including breach of any non-compete or restraint clause) or any other act by the Individual Party or any of its Related Non-Investor Parties which, under the terms of the Individual Party's employment or other engagement, would warrant the termination of the employment or other engagement, which in each case is not capable of remedy or is not remedied within any time period specified in the relevant terms of employment or other engagement or a reasonable period following written notice of the breach (that period to be determined by the Board acting reasonably in consideration of the nature of the breach and the period required to remedy it).

**Cost** means, with respect to an Equity Security held by a Non-Investor Security Holder (**Specified Security Holder**):

- (a) where the Company issued that Equity Security to the Specified Security Holder, the issue price paid for that Equity Security; or
- (b) where the Specified Security Holder acquired that Equity Security by way of purchase, the price the Specified Security Holder paid to acquire that Equity Security (unless the Equity Security was acquired by the Specified Security Holder from an Affiliate or Permitted Holder of the Specified Security Holder or an Affiliate or Permitted Holder of any Related Non-Investor Party of the Specified Security Holder (collectively the **Specified Party Affiliates**)), in which case it is the earliest in time price paid to acquire that Equity Security by any Specified Party Affiliate from a person that was not, and is not, a Specified Party Affiliate).

**Expert** has the meaning given in paragraph 1.12.

**Leaver** means an Individual Party who is or was Engaged By A Group Company and:

- (a) ceases to be Engaged By A Group Company;
- (b) gives or receives notice of cessation, recession or termination which will lead to the Individual Party ceasing to be Engaged By A Group Company; or
- (c) if the Individual Party is employed or engaged in a Platform's division of the Business, there is a sale of the Platform by way of an initial public offering of the Platform and a Group Company retains an interest in the Platform of greater than 50%, the Individual Party continues to be employed or engaged by the Group Company with the interest in the Platform,

unless, in the case of a person employed or engaged by a Group Company, the person is contemporaneously re-employed or re-engaged in another position or office on terms acceptable to the Company. For the avoidance of doubt, a leave of absence approved by a Group Company will not be construed as ceasing to be Engaged By A Group Company if the underlying relationship of employment or office holding remains during that absence.

**Market Value** means the market value determined in accordance with paragraphs 1.11 to 1.15 (inclusive).

**Net Cost** means, in respect of an Equity Security held by a Non-Investor Party, the Cost for the Equity Security less any paid-up capital returned on the relevant Equity Security to that Non-Investor Party, any Affiliate or Permitted Holder of that Non-Investor Party or any Affiliate or Permitted Holder of any Related Non-

Investor Party of the Non-Investor Party, whether by way of a return of capital or otherwise.

**Retiring Good Leaver** means:

- (a) a Leaver who:
  - (i) is not a Bad Leaver;
  - (ii) ceases to be Engaged By A Group Company as a result of permanent retirement from paid employment;
  - (iii) has been Engaged By A Group Company for at least 2 years following the later of the Implementation Date and the date on which he or she was Engaged By A Group Company;
  - (iv) is aged 55 years or older at the time of ceasing to be Engaged By A Group Company; and
  - (v) enters into an undertaking on terms reasonably acceptable to the Board not to engage in any full time employment with any trade, business or undertaking which Competes with a Group Company in the 5 year period from the date on which he or she ceases to be Engaged By A Group Company; or
- (b) a Leaver who:
  - (i) is not a Bad Leaver;
  - (ii) was or is employed or engaged in a Platform's division of the Business and that Platform which has been sold (in whole or in part and whether by way of a sale of assets, a sale to a purchaser of the shares in the relevant Group Company (or Group Companies) owning the Platform, or an initial public offering of the relevant Platform);
  - (iii) has, in connection with the sale of the Platform, complied with their obligations under clause 13.13; and
  - (iv) following the sale of the Platform (or part thereof), either:
    - (A) the Individual Party is neither Engaged by a Group Company nor employed or otherwise engaged by the purchaser (or an Affiliate of the purchaser) of the Platform; or
    - (B) is employed or engaged by the relevant purchaser of the Platform or its Affiliate (or, if the sale of the Platform was by way of an initial public offering of the Platform and a Group Company has retained an interest in the Platform of greater than 50%, the Individual Party continues to be employed or engaged by the Group Company with the interest in the Platform) but has not been given the opportunity to Dispose of their Equity Securities and reinvest the proceeds into equity Securities in the relevant purchaser of the Platform or a holding company or other Affiliate of that purchaser, or in the case of the sale of the Platform by way of an initial public offering of the Platform, then into the relevant initial public offering vehicle in accordance with clause 13.8(d); or



- (c) any other Leaver who a Board Special Majority determines is a Retiring Good Leaver.

**Transfer Notice** has the meaning given in paragraph 1.4(c).

**Transfer Securities** has the meaning given in paragraph 1.4(c).

**Transfer Tax Liability** has the meaning given in paragraph 1.7(c).

**Trigger Event** means with respect to a Non-Investor Party, the Non-Investor Party (or any of its Related Non-Investor Parties, if any):

- (a) **(Insolvent)** becomes Insolvent (without the written approval of the Board);
- (b) **(Bad Leaver)** becomes a Bad Leaver;
- (c) **(material breach)** commits any material breach of a provision of this Deed, which for this purpose includes any:
  - (i) Disposal of, or purported Disposal of, any Equity Securities in breach of the Constitution, or this Deed (without the written approval of the Board); or
  - (ii) breach of clauses 8, 9, 10, 11, 13, 14 (and Schedule 1), 16, 18, 19, 21 or 22,  
  
and fails to remedy that breach within 5 Business Days of receiving notice of the breach from the Company or a KKR Investor;
- (d) **(court order)** whether in connection with any Matrimonial Proceedings or otherwise, any court or Government Agency of competent jurisdiction orders the Disposal of any Equity Securities held by the Non-Investor Party or any Related Non-Investor Party of the Non-Investor Party, or a binding settlement is agreed to by the Non-Investor Party which provides for the Disposal of any Equity Securities it holds;
- (e) **(Upstream Change of Control)** suffers an Upstream Change of Control (without the written approval of the Board); or
- (f) **(ceases to be Permitted Holder)** in the case of a Non-Investor Party who is a Permitted Holder of another Non-Investor Party, ceases to be a Permitted Holder of the relevant Non-Investor Party (without the written approval of the Board) and does not transfer all Equity Securities which it holds to the relevant Non-Investor Party or another Permitted Holder of the relevant Non-Investor Party (as applicable) in accordance with clause 8.4.

**Trigger Event Price** means, in respect of a Transfer Security, the price agreed between the Departing Party which holds that Transfer Security and the Company or, failing such agreement within a period resolved by the Board (which must be not less than 2 Business Days after commencing such discussions):

- (a) **(Insolvent, court order)** in the case of any Trigger Event described in paragraph (a) or (d) of the definition of Trigger Event, the Market Value; or
- (b) **(Bad Leaver, material breach, Upstream Change of Control, ceases to be Permitted Holder)** in the case of a Trigger Event described in paragraphs (b), (c), (e) or (f) of the definition of Trigger Event, 90% of Market Value.

**Unsecured Loan** has the meaning given in paragraph 1.7(a).

**Upstream Change of Control** means, in respect of a Non-Investor Party which is not an individual, if a change occurs after the date of this Deed such that (in the opinion of the Board, acting reasonably) a new person or persons directly or indirectly have the power to:

- (a) direct the management or policies of the Non-Investor Party; or
- (b) control the membership of the board of the Non-Investor Party,

whether or not the power is legally binding or arises out of formal or informal arrangements.

# Shareholders Deed

## Schedule 2 Relevant boards

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### 1 Structure generally

- (a) **(KKR Investors' right to appoint Directors)** For so long as there are any KKR Investors and the Original Pepper Shareholders have an Adjusted Share Ownership Percentage of 10% or greater, the KKR Investors will collectively have the right to appoint 4 Directors. If there are any KKR Investors and the Original Pepper Shareholders have an Adjusted Share Ownership Percentage of less than 10%, the KKR Investors will collectively have the right to appoint any number of Directors they determine up to the maximum number of Directors in accordance with paragraph 1(f). Each Director appointed by the KKR Investors under this paragraph 1(a) will be a KKR Director for the purposes of this Deed. The KKR Investors may remove any Director they have appointed and may appoint another Director in his or her place at any time by written notice to the Company and the Directors, signed on behalf of the KKR Investors.
- (b) **(Original Pepper Shareholders' right to appoint Directors)** Subject to paragraph 1(c), for so long as the Original Pepper Shareholders have an Adjusted Share Ownership Percentage of 10% or greater, the Original Pepper Shareholders will collectively have the right to appoint 4 Directors (each of whom will be a Pepper Director for the purposes of this Deed). Subject to paragraph 1(c), the Original Pepper Shareholders may remove any Director they have appointed and may appoint another Director in his or her place at any time by written notice to the Company and the Directors, signed on behalf of a Pepper Majority.
- (c) **(appointment of Group CEO as a Director)** The Original Pepper Shareholders must appoint the Group CEO from time to time as a Pepper Director under paragraph 1(b).
- (d) **(KKR Investors' right to appoint Chairman)** Unless paragraph 1(e) applies, the KKR Investors may from time to time, by notice to the Company and the Directors, nominate any of the Directors to become the Chairman. If this paragraph 1(d) applies and the Chairman is absent from a meeting of the Board, or is unwilling to act, then the KKR Directors present at that meeting may nominate any Director present at the meeting to act as chairman of the meeting.
- (e) **(Original Pepper Shareholders' right to appoint Chairman)** If the KKR Investors have a Security Ownership Percentage of less than 50% and the Original Pepper Shareholders have a Security Ownership Percentage of 50% or greater, then the Original Pepper Shareholders (acting by a Pepper Majority) may from time to time, by notice to the Company and the Directors, nominate any of the Directors to become the Chairman. If this paragraph 1(e) applies and the Chairman is absent from a meeting of the Board, or is unwilling to act, then the Pepper Directors present at that meeting may nominate any Director present at the meeting to act as chairman of the meeting.
- (f) **(maximum Board size)** The Board will consist of a maximum of 8 Directors, unless otherwise approved in writing by the KKR Investors and, for so long as the Original Pepper Shareholders have an Adjusted

Share Ownership Percentage of 10% or greater, a Pepper Super Majority.

- (g) **(boards of directors of other Group Companies)** Subject to paragraphs 1(a) to 1(f) above, clause 6.1(c) and the terms of any shareholders' agreement (or comparable agreement) in respect of a relevant Group Company, the board of directors of each Group Company (other than the Company) is to be comprised of such persons appointed by the Board from time to time. The Company and the Security Holders must Procure that no person is appointed to, or removed from, the board of directors of any Group Company (other than the Company) except as required, or otherwise consented to, by this paragraph 1(g).
- (h) **(application to other Group Companies)** The Board may from time to time determine the extent to which this Deed applies to the directors of each Group Company (other than the Company).

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## 2 Appointment and removal of Directors

The Directors will be appointed and removed as follows:

- (a) any appointment of a Director under paragraphs 1(a) to 1(c) (inclusive) takes effect on the latest of:
  - (v) the time of the relevant notice; and
  - (vi) receipt by the Company of a proper consent to act from the relevant proposed Director;
- (b) a Director may not be removed or replaced except in accordance with paragraphs 1(a) to 1(c) (inclusive) and by the person or persons entitled to remove or replace the Director or as provided in paragraph 2(c). Any removal or replacement of a Director takes effect immediately on the passing of the relevant resolution or the giving of the relevant notice to the Company, as applicable, or at a later time resolved by the parties or the Board who are entitled to effect the removal or replacement and specified in the relevant notice to the Company; and
- (c) if the Original Pepper Shareholders cease to have an Adjusted Share Ownership Percentage of 10% or greater and do not remove all of their appointed Directors within 24 hours of that cessation, the KKR Investors may remove any or all of the Pepper Directors with immediate effect, by notice in writing to the Company.

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## 3 Alternate Director

### 3.1 Appointment of alternate directors

A Director may from time to time appoint an alternate director by notice in writing to the Company, provided that any such alternate director who is not an Original Pepper Shareholder and is proposed to be appointed by a Pepper Director must be approved by the KKR Investors.

### 3.2 Rights of Alternate Directors

An Alternate Director:

- (a) may attend a Board meeting and vote on any resolution on which the appointing Director could vote, if the appointor does not attend that meeting;

- (b) is entitled to exercise the votes which would be exercisable by each Director the Alternate Director represents as an alternate (in addition to any votes the Alternate Director may have as a Director in his or her own right, if applicable);
- (c) is entitled to notice of Board meetings in the same way that Directors are entitled to receive notice of such meetings; and
- (d) who attends a Board meeting is counted, for quorum purposes, as a Director for each Director on whose behalf the Alternate Director is attending the meeting (in addition to being counted as a Director in his or her own right, if applicable).

### **3.3 Cease**

The appointment of the Alternate Director will cease on the earliest of:

- (a) automatically on the appointor Director in respect of whom the Alternate Director was appointed ceasing to be a Director;
- (b) on the date specified in the notice referred to in paragraph 3.1 (if any); or
- (c) on the appointor Director providing notice to the Company revoking the appointment.

### **3.4 Effect**

- (a) The appointment of an Alternate Director takes effect immediately on the earlier of receipt of the relevant notice by the Company (or any later date specified in the notice) and receipt by the Company of a proper consent to act from the proposed Alternate Director.
- (b) The removal of an Alternate Director takes effect immediately on the receipt of the relevant notice by the Company (or any later date specified in the notice) or on the date specified under paragraph 3.3.

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## **4 Observers**

### **4.1 Appointment of Observers**

In addition to their rights under paragraphs 1(a), 1(g) and 1(h), the KKR Investors may collectively appoint up to 2 persons as observers from time to time (**Observers**) to attend any meeting of the Board or any other board meeting of any Group Company provided that:

- (a) the KKR Investors give notice to the Chairman, if any, identifying each Observer; and
- (b) if requested by the Board, each Observer has executed a confidentiality agreement in a form approved by the Board.

### **4.2 Confidentiality agreement**

A Group Company must give to each Observer (provided they have entered into the confidentiality agreement referred to in paragraph 4.1(b), if requested by the Board with approval by the Board), all information furnished to directors at, or for the purposes of, those meetings of the relevant Group Company's board at which that Observer is present.

### **4.3 No vote**

Any Observer will be entitled to attend and speak at, but not vote at, any meetings of the board and/or committee of any Group Company. The Company

will deliver all written materials and other information given to Directors in connection with any board or committee meetings to any Observer at the same time that those materials or information are given to the Directors.

#### **4.4 Observers' expenses**

The Company will pay the reasonable out-of-pocket expenses incurred by any Observer in connection with attending the meetings referred to in paragraph 4.1. The Company may request a statement of account or other evidence in respect of those expenses and may defer payment of some or all of the claimed expenses pending receipt of the account or other evidence.

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## **5 Voting and Quorum**

### **5.1 Quorum**

The quorum for a meeting of the Board is at least 1 KKR Director and, for so long as any Pepper Directors are appointed to the Board, 1 Pepper Director.

### **5.2 Quorum not present**

- (a) If a quorum is not present at a meeting of the Board convened under paragraph 5.1, the meeting is adjourned to the same time and place 5 Business Days after the date on which the meeting is adjourned (or such other time and place unanimously agreed by all Directors). A quorum at such re-convened meeting will consist of at least 1 KKR Director and, for so long as any Pepper Directors are appointed to the Board, 1 Pepper Director.
- (b) If a quorum is not present at a meeting of the Board convened under paragraph 5.2(a), the meeting is adjourned to the same time and place 5 Business Days after the date on which the reconvened meeting is adjourned (or such other time and place unanimously agreed by all Directors). A quorum at such re-convened meeting will consist of at least 1 KKR Director.

### **5.3 Number of votes**

At a meeting of the Board:

- (a) on each resolution, subject to paragraphs 5.4 and 5.5, each Director has 1 vote;
- (b) subject to paragraph 5.3(c), the Chairman, if any, will have a casting vote in addition to his deliberative vote if on a resolution there are an equal number of votes in favour of and against a resolution but will not otherwise have a casting vote;
- (c) if the Original Pepper Shareholders hold a greater Ordinary Share Percentage than the KKR Investors (with both having a Security Ownership Percentage of less than 50%), the Chairman, if any, will not have a casting vote in addition to his deliberative vote if on a resolution there are an equal number of votes in favour of and against a resolution; and
- (d) all decisions are by majority vote, unless otherwise expressly provided in this Deed.

### **5.4 Absent KKR Directors**

At any meeting of the Board:

- (a) at which, or in relation to any resolution in respect of which, less than all of the then appointed KKR Directors are present or able to vote (**Absent KKR Director**); and/or
- (b) if the Original Pepper Shareholders have an Adjusted Share Ownership Percentage of 10% or greater, there are less than 4 appointed KKR Directors,

each KKR Director who is present and able to vote will have an additional vote or votes equal to the number of Absent KKR Directors in respect of whom there is no Alternate Director present and voting plus the number of persons which the KKR Investors are entitled to appoint as KKR Directors but have not, divided by the number of KKR Directors who are present and able to vote. Fractional voting entitlements must be recognised and counted when cast.

## 5.5 Absent Pepper Directors

If the Original Pepper Shareholders have an Adjusted Share Ownership Percentage of 10% or greater, at any meeting of the Board:

- (a) at which, or in relation to any resolution in respect of which, less than all of the then appointed Pepper Directors are present or able to vote (**Absent Pepper Director**); and/or
- (b) there are less than 4 Pepper Directors,

each Pepper Director who is present and able to vote will have an additional vote or votes equal to the number of Absent Pepper Directors in respect of whom there is no Alternate Director present and voting plus the number of persons which the Original Pepper Shareholders are entitled to appoint as Pepper Directors but have not, divided by the number of Pepper Directors who are present and able to vote. Fractional voting entitlements must be recognised and counted when cast.

## 5.6 Recusal in the case of conflict

Unless determined otherwise by a Board Special Majority (for the purposes of this paragraph, Board Special Majority will be determined as if the relevant Director who must recuse himself or herself were not a Director), where any matter at a Board meeting involves a discussion relating to a matter involving a Group Company and any:

- (a) Other Business of which a KKR Director is also a director, the KKR Director must recuse himself or herself from the discussion; or
- (b) Other Business of which a Pepper Director or a Special Relative of the Pepper Director is also a director, the Pepper Director must recuse themselves from the discussion,

and in either case, the Board meeting will continue to be considered quorate for the purposes of this Deed and the Constitution and the other KKR Directors or Pepper Directors, as applicable, must not provide to that Director any Confidential Information discussed during the portion of the meeting from which the relevant Director recused himself.

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## 6 Notice

- (a) A meeting of the Board requires at least 5 Business Days' prior written notice to be given to all Directors, unless all Directors otherwise agree. The notice must provide reasonable details of the matters to be considered at the meeting and the business to be put to the vote of the Board.

- (b) Any Director may from time to time give a notice of meeting to all Directors in accordance with this paragraph 6. Any notice provided by a Director under this paragraph 6 must provide reasonable details of the matters to be considered at the meeting and the business to be put to the vote of the Board.

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## 7 Board papers

A notice of a meeting of the Board must include an agenda accompanied by:

- (a) if it is a regularly scheduled monthly meeting:
- (i) a report from the Group CEO on the Business' trading since the last Board meeting, including (unless otherwise required or not required by the Board) comments on revenues, margins, overheads, profits, cash flow, prospects and any major commercial issues affecting the current and future trading position of the Group and proposed actions to correct any adverse variances; and
  - (ii) a report from the Group CFO on the Business' trading since the last Board meeting including (unless otherwise required or not required by the Board) in respect of the Group a profit and loss statement for the month and year to date relative to budget, consolidated finance report, consolidated balance sheet, major variations to budget, cash flow and forecasts;
- (b) a copy of all papers to be considered at the meeting; and
- (c) such other materials or information as may reasonably be requested by a Director from time to time.

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## 8 Committees

- (a) The Board may, in its discretion and at any time, subject to clauses 4.2 and 5.1:
- (i) delegate specific powers to a committee of the Board (including audit and risk and remuneration committees), provided that at least 1 KKR Director and, for so long as the Original Pepper Shareholders have an Adjusted Share Ownership Percentage of 10% or greater, 1 Pepper Director, is represented on that committee (unless otherwise consented to in writing by the KKR Investors or the Original Pepper Shareholders, as applicable); and
  - (ii) amend, revoke or replace any delegation made to any committee of the Board. The voting requirements in paragraph 5 will apply to the operation of any committee appointed by the Board as if the references to Directors in that paragraph were references to members of the committee.

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## 9 Frequency and location of meetings

- (a) A meeting of the Board must be held at least 10 times in each Financial Year or such other number as agreed by the Board unanimously provided that in the period between the Implementation Date and 30 June 2018, no minimum number of Board meetings will be required.



- (b) Board meetings will be held at such locations as approved by the Board and a Director may attend any meeting by means of telephone conference, video conference or similar means of telecommunications.

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## **10 Directors remuneration**

### **10.1 Annual fee**

- (a) Any Director who is not an employee of, or contractor or consultant to, a Group Company with executive responsibilities, will be entitled to be paid an annual fee determined by the Board. The annual fee will be paid net of any applicable Australian Taxes which the Company is required to withhold.
- (b) Directors' fees payable in accordance with this paragraph 10.1 will be paid quarterly in arrears on each of 31 March, 30 June, 30 September and 31 December or at such other intervals as the Board resolves. If a person is a Director for part of a payment period, the amount payable to him or her in accordance with this paragraph 10.1 will be pro-rated based on the number of days in the relevant payment period in which he or she is a Director.
- (c) If the person has been paid in advance by the Company a greater amount of fees than he or she is entitled to receive in accordance with this paragraph 10.1, he or she must promptly refund the excess to the Company.
- (d) To the extent any fee is payable to a KKR Director under this paragraph 10.1 it will be paid to KKR Credit Advisors (US) LLC or another person nominated by the KKR Investors (who may be a KKR Investor or an Affiliate of a KKR Investor).

### **10.2 Expenses**

All reasonable expenses incurred by the Directors which are associated with, or incidental to, the discharge of their obligations as Directors or are otherwise incurred in connection with the Business, including all travelling, hotel and other expenses, are to be reimbursed by the Company to the relevant Directors. The Company may request a statement of account or other evidence in respect of those expenses and may defer payment of some or all of the claimed expenses pending receipt of the account or other evidence.

### **10.3 No fee in addition to salary**

Except as provided in this paragraph 10, Directors will not be entitled to a fee in addition to any salary or other form of compensation they receive from any Group Company.

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## **11 Written resolutions**

Subject to applicable law and without limiting any other provision of this Deed, a written resolution circulated to all the Directors, and signed by those Directors capable of passing the relevant resolution if it was considered at a Board meeting, will be as valid and effective as a resolution duly passed at a meeting of the Board called and held in accordance with this Deed.

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## **12 Quorum for general meeting**

For so long as the Original Pepper Shareholders have an Adjusted Share Ownership Percentage of 10% or greater, a quorum for a meeting of the holders of Ordinary Shares will be 2 Ordinary Shareholders, 1 of whom must be a KKR

Investor and 1 of whom must be an Original Pepper Shareholder who holds Ordinary Shares.

# Shareholders Deed

## Schedule 3 Matters to be determined by the Board and reserved matters

Where a paragraph of this Schedule 3 specifies an amount in Australian dollars and a relevant transaction, contract or other circumstance arises which is denominated in another currency, the Board may determine the appropriate foreign exchange rate for determining the Australian dollar equivalent of that transaction, contract or other circumstance.

### Part A – Matters to be determined by the Board

- (a) **(appointment and removal of certain officers for underperformance)** remove the Group CEO, Group CFO, a country chief executive officer of a Platform, the head of Australian mortgages, the head of Australian Asset Finance or any other direct report to the Group CEO or any employee of a Group Company (other than the Chairman of the Company) in connection with any unremedied underperformance by the employee or for Cause;
- (b) **(appointment and removal of senior officers and management)** appoint or remove any employee of a Group Company (other than the Chairman of the Company, the Group CEO, Group CFO, a country chief executive officer of a Platform, the head of Australian mortgages, the head of Australian Asset Finance or any other direct report to the Group CEO) whose remuneration exceeds \$500,000 per annum, or materially change or negotiate the terms of engagement, role, remuneration or responsibilities of any such person;
- (c) **(remuneration and bonuses for employees)** agree to:
  - (i) an increase in the remuneration per annum payable to any employee or contractor of a Group Company whose remuneration exceeds \$500,000 per annum (other than the Chairman of the Company, the Group CEO, Group CFO, a country chief executive officer of a Platform, the head of Australian mortgages, the head of Australian Asset Finance or any other direct report to the Group CEO); or
  - (ii) any profit or other bonus being paid to any employee of any Group Company.
- (d) **(committees)** subject to clause 4 and paragraph 9 of Schedule 2, appoint, dissolve or alter the composition of a committee of the Board or a committee of the board of directors of any other Group Company.
- (e) **(budgets)** subject to clause 6.5, adopt or vary any business plan or any operating, capital or cash budget other than the Business Plan.
- (f) **(variations to Business Plan for adverse events)** make any material changes to the Business Plan or undertake any actions or activities outside the terms of the Business Plan or a budget to address any material unbudgeted Liability, actual or potential breach of any law, change in law which requires a change to the Group's operations or any other event or circumstance arising after approval of the Business Plan which could have adverse reputational consequences for the Group.

- (g) **(Reorganisation Event)** undertake or undergo a Reorganisation Event.
- (h) **(audit committee recommendation)** take any action which, or which is in respect of an activity which, contravenes or materially departs from any recommendation of the audit committee, if any, of the Company.
- (i) **(acquisitions and disposals)** other than an acquisition or Disposal which requires approval by a Board Special Majority in accordance with paragraph of Part B of this Schedule or an Exit in accordance with clause 13, Dispose of the Business (or any material part of it) or any Securities in or held by any Group Company or acquire any other business (or any material part of a business) or any securities in any company or trust.
- (j) **(assets)** other than an acquisition or Disposal which requires approval by a Board Special Majority in accordance with paragraph (i) of Part B of this Schedule or an Exit in accordance with clause 13, sell or buy any assets (either tangible or intangible), other than in accordance with the Business Plan, having a value of more than \$2,500,000 in a single transaction, in a series of related transactions over any period or in a series of unrelated transactions in a 12 month period by one or more Group Companies.
- (k) **(Disposal of underperforming Business lines)** Dispose of any Business line or product line of a Group Company:
  - (i) at any time after the later of the 3<sup>rd</sup> anniversary of the Implementation Date and the 3<sup>rd</sup> anniversary of the acquisition or other commencement of the Business line or product line by a Group Company; and
  - (ii) if the Business line or product line is not generating a return on equity equal to or greater than the Group's consolidated return on equity (as measured against a 1 year budget period of the Group) or is missing its budgeted revenue or earnings amount by 15% or greater.
- (l) **(liabilities)** incur or assume any material Liability otherwise than in the ordinary course of business.
- (m) **(documents)** terminate, amend, vary or waive a right under this Deed, the Scheme Implementation Deed or any Financing Document.
- (n) **(finance and operating leases)** enter into any finance or operating lease, other than in accordance with the Business Plan, which is reasonably expected to cost more than \$2,000,000 in aggregate over the life of the contract or in any 12 month period.
- (o) **(accounting standards, policies and principles)** materially alter the accounting standards or principles previously adopted by the Company or the Group for the preparation or presentation of individual or consolidated financial statements or alter the accounting policies or basis previously adopted by the Company or the Group, except if required to do so by law.
- (p) **(accounting period)** change the balance date or alter the accounting period of any Group Company.
- (q) **(borrowings)** borrow or accept financial accommodation (other than in accordance with the Business Plan) of more than \$2,000,000 and less

than \$5,000,000 for the Group as a whole or such other amount as the Board determines.

- (r) **(guarantee)** give or enter into any guarantee, indemnity, letter of comfort or performance bond to secure the performance of an obligation by any person (other than a Group Company) except as required by the Financing Documents or if the amount secured by or maximum amount payable by any Group Company under (as applicable) all such guarantees, indemnities, letters of comfort and performance bonds is less \$2,000,000 and the guarantee, indemnity, letter of comfort or performance bond is in the ordinary course of the Business.
- (s) **(loans)** make a loan or give credit or other financial accommodation to a person except in the ordinary course of business.
- (t) **(financial assistance)** other than pursuant to an approved management incentive plan, give a loan or other financial assistance to a director, employee or officer of any Group Company, any Security Holder, any Non-Investor Party or an associate of any of the foregoing or vary the terms of a loan or other financial assistance previously given to any such person.
- (u) **(Security Holder resolutions)** propose, call a meeting to consider or approve any written resolutions with respect to, an ordinary or a special resolution of Security Holders or any class of Security Holders.
- (v) **(partnerships and joint ventures)** other than an entry into a partnership or joint venture which requires approval by a Board Special Majority in accordance with paragraph (j) of Part B of this Schedule, enter into, amend or vary a partnership or joint venture other than in accordance with the Business Plan.
- (w) **(insurance)** other than in the ordinary course of its business, amend or vary the insurance cover over any Group Company or the Business (or any part of it) or any key man insurance policy.
- (x) **(donations)** make any political contribution or donation of any amount, or any charitable contribution or donation other than a genuine charitable donation which is not to a Government Agency or otherwise for a purpose of securing any benefit or advantage to a Group Company which is less than \$10,000 individually (and together with all such donations, is not in aggregate of \$50,000 in any Financial Year).
- (y) **(propose a buy back or redemption of Equity Securities)** propose or implement a buy back or redemption of any Equity Securities or a capital reduction by any Group Company other than a mandatory buy back or redemption in accordance with the terms of issue of the relevant Equity Securities.
- (z) **(deal or agree to deal in Equity Securities)** purchase, retire or acquire any Equity Securities, or agree to do so.
- (aa) **(new Subsidiaries)** acquire or establish any new company which will form part of the Group other than a wholly owned Subsidiary or a Funding SPV.
- (bb) **(change of status of Company)** Change the status of the Company from a proprietary company limited by shares which is incorporated in Australia other than in connection with an Exit in accordance with clause 13.

**Part B – Matters to be determined by a Board Special Majority**

- (Equity Securities)** except as (i) required under a Transaction Document or the Constitution; (ii) an issue of Equity Securities under clause 7.12(h) and clauses 7.19 to 7.21 (inclusive) or any subsequent issue to a Catch-up Offeree, (iii) an issue of Incentive Shares or (iv) as required in connection with a transaction in accordance with clause 13, issue or grant any right to issue or acquire Equity Securities or other Securities (including Securities which are convertible into Shares) of any Group Company.
- (b) **(Exit outside of clause 12)** any preparation by a Group Company for, or implementation of, an Exit other than an Exit in accordance with clause 13.
- (c) **(listing)** except pursuant to a transaction in accordance with clause 13, apply to a recognised stock exchange for a listing or for quotation of any Equity Securities or appoint a manager(s) or underwriter(s) in relation to, or otherwise effect, or take any steps to effect, an IPO, or both.
- (d) **(amendment to Schedule 8)** amendment of Schedule 8.
- (e) **(Business Plan)** subject to clause 6.5 or as provided in paragraph (f) of Part A of this Schedule, adopt or materially vary the Business Plan.
- (f) **(capital expenditure)** incur capital expenditure, other than in accordance with the Business Plan, of more than \$2,500,000 in a Financial Year for the Group or in respect of any Platform, individual asset or project as a whole;
- (g) **(borrowings)** borrow or accept financial accommodation (other than in accordance with the Business Plan) of more than \$5,000,000 for the Group as a whole or such other amount as the Board determines.
- (h) **(dividends)** declare, determine, make or pay a dividend or other distribution of profits or assets or make any change to the dividend policy of a Group Company other than a dividend or distribution in connection with the sale of a Platform as contemplated by clause 6.4.
- (i) **(material acquisitions and disposals)** other than a Disposal described in paragraph (k) of Part A of this Schedule, an acquisition or Disposal in accordance with the Business Plan or a Disposal pursuant to a transaction in accordance with clause 13, Dispose of the Business or any material part of it, a Platform or any Securities in or held by any Group Company or acquire any other business (or any material part of a business) or any securities in any company or trust if the consideration payable or receivable by a Group Company for that acquisition or Disposal is reasonably likely to be in excess of \$5,000,000.
- (j) **(material partnerships and joint ventures)** enter into, amend or vary a partnership or joint venture which generates, or could reasonably be expected to generate, revenues or expenses for any Group Company in excess of \$10,000,000 in aggregate over the life of the partnership or joint venture other than in accordance with the Business Plan.
- (k) **(contracts)** enter into, terminate, materially amend or materially vary a contract:
- (i) outside the ordinary course of business,

- (ii) which generates, or could reasonably be expected to generate, revenues or expenses for any Group Company in excess of \$10,000,000 in aggregate over the life of the contract or in any 12 month period; or
  - (iii) of an onerous or unusual nature or has a term of 12 months or longer.
- (l) **(Security Interest)** create any Security Interest (other than a Permitted Security Interest) over the assets or undertaking of any Group Company except as required by the Financing Documents or in the ordinary course of the Business.
  - (m) **(guarantee)** give or enter into any guarantee, indemnity, letter of comfort or performance bond to secure the performance of an obligation by any person (other than a Group Company) except as required by the Financing Documents, in connection with the lease of real property or if the amount secured by or maximum amount payable by any Group Company under (as applicable) all such guarantees, indemnities, letters of comfort and performance bonds is less than \$10,000,000 and the guarantee, indemnity, letter of comfort or performance bond is in the ordinary course of the Business.
  - (n) **(Board numbers)** subject to clause 4 and Schedule 1, amend or vary the number of directors on the board of any Group Company other than the Company.
  - (o) **(appointment of directors of other companies)** except in accordance with clause 4 and paragraph 1(g) of Schedule 2, appoint or remove a director, trustee or comparable position of a corporation, company, trust or other entity in relation to which the Company has the power to appoint or remove a director, trustee or such other person.
  - (p) **(remuneration and bonuses - directors)** agree to:
    - (i) the setting of, or an increase in, the remuneration per annum payable to any director of any Group Company; or
    - (ii) any profit or other bonus being paid to any director, officer or employee of any Group Company.
  - (q) **(auditor)** appoint or remove an auditor of any Group Company.
  - (r) **(appointment and removal of senior officers and management)** appoint or remove the Group CEO, Group CFO, a country chief executive officer of a Platform, the head of Australian mortgages or the head of Australian Asset Finance unless paragraph (a) of part A of this Schedule applies, or materially change or negotiate the terms of engagement, role, remuneration or responsibilities of any such person.
  - (s) **(incentive plan)** adopt or vary any incentive plan (whether an equity, profit or other incentive plan) in any way relating to the remuneration of any director, officer or employee of any Group Company and make any award or allotment (including issue any Equity Securities) under any such plan.
  - (t) **(related party transactions)** enter into or materially vary any contract, other arrangement or transaction between a Group Company and any current or proposed Security Holder, KKR Investor, Non-Investor Party, director of a Group Company, any person in which a Security Holder, KKR Investor, Non-Investor Party or such a director has an Economic

Interest, or any relative or Affiliate of a Security Holder, KKR Investor, Non-Investor Party or such a director other than where the contract, other arrangement or transaction is on arms-length commercial terms or contemplated by this Deed. Notwithstanding anything to the contrary in this Deed, if the counterparty to the arrangement or transaction is a KKR Investor, an Affiliate of a KKR Investor, a director nominated by a KKR Investor or a person in which a KKR Investor has an Economic Interest, approval by a majority of the Directors who are not KKR Directors is required to approve the Group Company entering into or materially varying the contract, other arrangement or transaction in accordance with this paragraph (t) in lieu of a Board Special Majority.

Notwithstanding anything to the contrary in this Deed, if the counterparty to the arrangement or transaction is an Original Pepper Shareholder, an Affiliate or relative of an Original Pepper Shareholder, a director nominated by an Original Pepper Shareholder or a person in which an Original Pepper Shareholder has an Economic Interest, approval by a majority of the Directors who are not Pepper Directors is required to approve the Group Company entering into or materially varying the contract, other arrangement or transaction in accordance with this paragraph (t) in lieu of a Board Special Majority.

- (u) **(change in nature of Business)** other than in accordance with the Business Plan, pursuant to a transaction in accordance with clause 13, or the acquisition or Disposal of individual businesses or product lines within a Platform, cease to carry on, or materially alter the scale of operations of, the Business or commence any business or operational activities other than the Business.
- (v) **(disputes)** with the exception of defences to proceedings brought against the Company or any Group Company (and any cross-claims made in the course of such defences), commence, settle or conduct any dispute, litigation, arbitration or other proceedings (including with any Tax authority) where the amount claimed or the amount of the settlement is \$2,500,000 or greater other than claims in the ordinary course of business or in the case of urgent injunctive application or other proceedings necessary to protect its rights or preserve or defend its position.
- (w) **(winding up)** take any step to dissolve or wind up any Group Company other than where the dissolution or winding up is required to prevent insolvent trading by a Group Company.

**Part C – Matters to be determined by the Board, a KKR Super Majority and a Pepper Super Majority**

- (a) **(variation of rights)** vary the rights attaching to Equity Securities or the shares or other securities of any other Group Company.
- (b) **(effect a buy back or redemption of Equity Securities)** effect a buy back or redemption of any Equity Securities or a capital reduction by any Group Company other than in connection with the sale of a Platform as contemplated by clause 6.4.
- (c) **(Constitution)** amend or vary the constitution of any Group Company or adopt a new constitution for any Group Company.



# Shareholders Deed

## Schedule 4 Group undertakings

### 1 Access

The KKR Investors and any of their Representatives have the right, to freely:

- (a) visit and inspect any premises of the Company and any other Group Company, upon giving reasonable notice to the Board;
- (b) inspect and take copies of documents relating to the Business (including the records of the Business); and
- (c) discuss the Group's affairs, finances and accounts with the Group Company's officers, employees, contractors and auditors at all reasonable times and as often as any such person may reasonably request.

### 2 Provision of information

- (a) Without limiting any other provision of this Deed, the Company will, on the request of the KKR Investors, cause the management of the Group to prepare, participate in and co-operate with, such presentations to the KKR Investors, prospective investors and any financiers or potential financiers as the KKR Investors may reasonably require from time to time.
- (b) The Company must promptly keep the Directors informed of all material developments regarding the Group. For the avoidance of doubt, nothing in this Deed limits the rights of the Directors to receive such financial and other information relating to any Group Company as the Directors are entitled by law to receive.
- (c) The Company must promptly deliver to the KKR Investors and the Directors, as and when requested by them, such financial and other information relating to any Group Company as the KKR Investors or a Director may reasonably require.
- (d) Without prejudice to the above, the Company must deliver to each KKR Investor and each Director, the information set out in columns 1 and 2 of the table below on or before the dates set out in column 3 of the table below:

<b>Column 1 General description</b>	<b>Column 2 Specific requirements</b>	<b>Column 3 Due date</b>
Monthly Management Accounts	<ul style="list-style-type: none"><li>• Commentary on the operational and financial position for the immediately preceding calendar month, including variances between the actual results and those forecast in the Business Plan</li><li>• A profit and loss account and cash flow statement for the immediately preceding calendar</li></ul>	15 Business Days after the end of each calendar month

<b>Column 1 General description</b>	<b>Column 2 Specific requirements</b>	<b>Column 3 Due date</b>
	<p>month</p> <ul style="list-style-type: none"> <li>• A balance sheet as at the end of the immediately preceding calendar month</li> <li>• Commentary on any material developments (not including details of any macroeconomic policies or events or any amendments to, or the introduction of, any laws) which may materially affect the Business (or any material part of it)</li> </ul>	
Draft audited accounts	<ul style="list-style-type: none"> <li>• Drafts of the audited accounts referred to in the line item below</li> </ul>	As soon as reasonably practicable after such drafts are substantially progressed
Group audited accounts	<p>In respect of the Group, each of the following:</p> <ul style="list-style-type: none"> <li>• Audited consolidated profit and loss account</li> <li>• Audited consolidated balance sheet</li> <li>• Audited consolidated cash flow statement</li> <li>• Notes and reports of Directors and auditors</li> </ul>	3 months after the end of each Financial Year
Loan book information	<ul style="list-style-type: none"> <li>• All requested information related to the loan book of any Group Companies (including with respect to arrears and originations)</li> </ul>	As soon as possible after request and in any event within 5 Business Days of the request
Cash projection	<ul style="list-style-type: none"> <li>• Projection, or updated projection, of cash requirements and expectations of each Group Company and consolidated statement, for such periods as requested</li> </ul>	As soon as possible after request
Bank facilities	<ul style="list-style-type: none"> <li>• To the extent not provided above any information required to be given to any person under any bank facilities of the Group</li> </ul>	At the time, or promptly after, the information is given to that person

- (e) For so long as the Original Pepper Shareholders have an Adjusted Share Ownership Percentage of 10% or greater, the Company must deliver to each Original Pepper Shareholder the Group audited accounts

referred to in the table above within 3 months after the end of each Financial Year.

- (f) The Company must promptly notify the KKR Investors of any material variation from the amount of any item specified in any Group budget, forecast or projection and any other variation in another Group Company's budget, forecast or projection which is material in the context of the Group, which may come to the notice of the Company.

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### **3 Insurance**

The Company must (and must ensure that each Group Company must) (unless the Board otherwise approves):

- (a) take out and maintain insurance in respect of risks associated with the Business that a reasonable prudent person operating in the same industry as the Business would normally insure against;
- (b) at all times pay all premiums falling due under its insurance policies and observe and perform in all respects their terms and conditions;
- (c) not assign, charge or otherwise dispose of any interest in its insurance policies or do or omit to do any act by reason of which they may be rendered void, voidable or otherwise unenforceable by the Company; and
- (d) not amend, alter or modify the terms of its insurance policies.

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### **4 D&O Insurance**

The Company must (unless the Board unanimously resolves otherwise):

- (a) enter into a Deed of Access, Insurance and Indemnity with each Director; and
- (b) maintain a D&O Insurance Policy in respect of each Director (on the same terms for each Director) and pay the premiums in respect of that D&O Insurance Policy.

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### **5 Management of the Business**

The Company must, and must, subject to clause 6.1(c), ensure that the other Group Companies, except as waived or otherwise determined by the Board:

- (a) ensure that their respective businesses are properly managed in accordance with usual sound commercial practice;
- (b) observe and comply with:
  - (i) all laws, by laws, rules, regulations and codes of conduct relating to the Business; and
  - (ii) the terms of any contract or agreement to which it is a party;
- (c) conduct its affairs so as to ensure that there is no breach or failure by it to comply with its duties and obligations under, or restrictions imposed on it and its officers by, the provisions of its constitutional documents;
- (d) maintain adequate procedures to prevent each Group Company and its employees, officers, associated persons and agents from engaging in

any activity, practice or conduct that would constitute an offence under any legislation or law in any jurisdiction which prohibits bribery, corruption or any comparable offence;

- (e) keep proper and up to date accounting, financial and other records in relation to the Business and ensure that such records comply with all applicable laws, accounting standards and generally accepted accounting principles in Australia, consistently applied;
- (f) maintain and comply with all licences, consents, permits and authorisations whatsoever which are required to carry on the Business; and
- (g) seek to protect its Intellectual Property Rights including registering and maintaining the registration of any registrable rights and bringing proceedings against any person believed to be infringing such rights unless seeking such registration is not commercially reasonable.

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## **6 Remedies of the KKR Investors**

### **6.1 Audit**

If there is a material failure to provide any of the access, reports or information referred to in this Schedule 4 and the failure is not remedied within 5 Business Days of a request to do so from the KKR Investors, the KKR Investors have the additional right, on giving notice to the Company of their intention to do so, to:

- (a) direct (at the Company's cost) that an audit or investigation be conducted of all or some of the affairs of the Group for the period for which (or the matter for which) there has been a material failure to provide that access, reports or information; and
- (b) on reasonable notice, enter the premises occupied by the Company or any other Group Company to search for, inspect and take copies of documents relating to the Business.

### **6.2 Assistance and co-operation**

If the KKR Investors require that an audit or investigation be undertaken in accordance with paragraph 6.1(a), each Group Company must request that its respective auditors give the auditor or other investigator all assistance and cooperation (including unrestricted access to its premises, accounting books and records and personnel) which the auditor or other investigator requests, subject to the entry into of a comfort letter and confidentiality undertaking, each on customary terms.

### **6.3 Costs**

The cost of appointing an auditor or other investigator under paragraph 6.1(a) will be borne by the Company.

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## **7 Deemed delivery**

The delivery to:

- (a) a KKR Director of any documents required to be delivered to the KKR Investors under this Deed is deemed to be delivery to the KKR Investors; and
- (b) a Pepper Director of any documents required to be delivered to any Original Pepper Shareholders is deemed to be delivery to the Original Pepper Shareholders.

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## 8 Compliance

The Company must, and must ensure that the other Group Companies, except as waived or otherwise determined by the Board:

- (a) not, and ensure that the Group Companies' respective shareholders, officers, directors, employees, agents and third party representatives do not, make, offer, promise, or authorise, directly or indirectly, any payment for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, or any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment to any person for the purpose of either gaining an improper business advantage or encouraging the recipient to violate the policies of his or her employer or to breach an obligation of good faith or loyalty, in each case in violation of any applicable Anti-Corruption Laws;
- (b) not transact business with or for the benefit of any Sanctioned Person or otherwise in violation of Sanctions;
- (c) notify the KKR Investors promptly if any Group Company or Group Company's principals, owners, officers, directors, or agents becomes a Government Official, or if any Group Company receives from any Government Agency or any other person any notice, inquiry, or internal or external allegation, or makes or proposes to make any disclosure to a Government Agency, related to any actual or potential violation of applicable Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions; and
- (d) adhere to policies and procedures designed to prevent conduct that would constitute a violation of applicable Anti-Corruption Laws, Sanctions and Anti-Money Laundering Laws, and maintain complete and accurate books and records, including records of payments to any agents, consultants, representatives, third parties and government officials.

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## 9 ERISA

For the purpose of ensuring that the Company qualifies as a "venture capital operating company" under the Employment Retirement Income Security Act of 1974 (US):

- (a) the Company will, and will ensure that the Group Companies, provide to each KKR Investor who reasonably requests, true copies of all documents, reports, financial data, and other information as the KKR Investor may reasonably request. Additionally, the Company will, and will ensure that the Group Companies, permit any authorised representative designated by such a KKR Investor to visit and inspect any of the properties of any Group Company, including their books of account, and to discuss their affairs, finances, and accounts with their officers, all at such time as a KKR Investor may reasonably request (subject to that authorised representative accepting such confidentiality obligations consistent with this Deed as the Board may reasonably determine);
- (b) each KKR Investor may consult with the management of the Company and the Group Companies, upon reasonable notice at reasonable times from time to time, on all matters relating to the operations of the Group Companies; and
- (c) if a KKR Investor requests, the Company will enter into a management rights letter with the KKR Investor or other entity nominated by the KKR

Investor in such form as the KKR Investor reasonably requests including rights consistent with this Deed (and subject to the acceptance of such confidentiality obligations consistent with this Deed as the Board may reasonably determine) in favour of the KKR Investor or another entity nominated by the KKR Investor in respect of:

- (i) observation at board deliberations;
- (ii) consultation with respect to the Business Plan;
- (iii) access to books and records; and
- (iv) undertaking to prepare financial statements in accordance with applicable accounting standards.

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## **10 Passive Foreign Investment Company and Controlled Foreign Corporation**

- (a) The Company acknowledges that certain Security Holders (including the KKR Investors) may be, or may be comprised of Security Holders that are, U.S. persons and that the U.S. income tax consequences to those persons of the investment in the Company will be significantly affected by whether the Company and/or any of the entities in which it owns an equity interest at any time is (i) a "passive foreign investment company" (within the meaning of Section 1297 of the Code (**PFIC**), (ii) classified as a partnership or a branch for U.S. federal income tax purposes, or (iii) a "controlled foreign corporation" within the meaning of Section 957 of the Code (**CFC**). With respect to any Group Company, the Company (or any successor company) will promptly file or cause to be filed such Forms 8832 and required supporting documentation as requested by the KKR Investors. The Company will procure that no United States 'check the box' election in respect of Pepper Group, the Company or Red Hot Bidco, whether effected through filing a Form 8852 or otherwise, is made unless first approved by a Board Special Majority.
- (b) Within 60 days after the end of each taxable year, the Company (i) will determine annually, with respect to its taxable year whether the Company and/or any of its Subsidiaries, as relevant, and each of the entities in which the Company owns an equity interest (directly or indirectly) is or may become a PFIC (including whether any exception to PFIC status may apply), is or may be classified as a partnership or branch for U.S. federal income tax purposes or is or may become a CFC, and (ii) will provide such information as any KKR Investor may require to permit any direct or indirect equity holder in the Company to elect to treat each of the Company and its Subsidiaries (that could otherwise be subject to the excess distribution and related PFIC rules) as a "qualified electing fund" (within the meaning of Section 1295 of the Code) for U.S. federal income tax purposes and to maintain such election, at all times, and to accurately prepare its Tax returns and to comply with any Tax reporting requirements (including, without limitation, Forms 5471, Forms 8858, Forms 8865, Forms 8621, Forms 926 and any other taxation compliance forms and supporting documentation, including forms filed pursuant to sections 1471-1474 of the Code, any related intergovernmental agreements or non-U.S. "FATCA" or "Common Reporting Standards" requirements). The Company will also obtain and provide reasonably promptly upon the reasonable request of a KKR Investor all other information necessary for any direct or indirect equity holder in the Company to comply with the provisions of this Deed, including English translations of any information requested.

- (c) The Company will monitor the business and its income and promptly notify the KKR Investors of any facts or circumstances which could result in the Company and/or its Subsidiaries being a PFIC or CFC for the purposes of the Code.
- (d) The Company will not be liable to any KKR Investor or any other person for any information which it provides in good faith under this paragraph 10. No KKR Investor may provide information it receives from the Company under this paragraph 10 to any other party except to its officers, employees, Affiliates of the KKR Investor, any direct or indirect equity holder in the Company, a Government Agency in connection with a matter described in paragraph 10(b) and professional advisers, with the written consent of the Company and in each case on a non-reliance basis.
- (e) Nothing in this paragraph 10 requires the Company to provide any information in respect of a Security Holder who could not reasonably be expected to be a US tax resident.

# Shareholders Deed

## Schedule 5 KKR Investors

### The Initial KKR Investors

Initial KKR Investor	Notice Details
Red Hot Singapore I Pte. Ltd. (UEN 201718013D)	10 Changi Business Park Central 2 #05-01 Hansapoint@CBP Singapore (486030)



# Shareholders Deed

## Schedule 6 Original Pepper Shareholders

Original Pepper Shareholder	Related Non-Investor Party / Nominee	Notice Details

# Shareholders Deed

## Schedule 7 Non-Investor Parties

Non-Investor Party	Related Non-Investor Party / Nominee	Notice Details

# Shareholders Deed

## Schedule 8 Fair Market Value

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### 1 Fair Market Value to Correspond to Equity Value

The Fair Market Value of the Group at any time and as determined as set out in this Schedule 8, is to be allocated amongst the Equity Securities then on issue such that the aggregate value of such Equity Securities at the time is equal to the Fair Market Value of the Group at the time which for the avoidance of doubt is to be an equity value basis and not an enterprise value basis.

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### 2 Fair Market Value for Initial Period

- (a) For the period from the Implementation Date to the date after the 1st anniversary of the Implementation Date as at which the Fair Market Value for the Group is first determined in accordance with the remaining paragraphs of this Schedule 8 (**Initial Period**), the Fair Market Value of the Group at any time in the Initial Period will be calculated in accordance with the following formula:

$$FMV = (A + B) * C$$

where:

FMV = the Fair Market Value of the Group

A = the number of Equity Securities then on issue (provided that for this purpose Equity Securities will not include the Long Term Incentive Plan Performance Rights referred to in clause 4.5(d) of the Scheme Implementation Deed to the extent they have not then been replaced by Ordinary Shares (the **Performance Rights**) but will include any Pepper Shares held by Retaining Holders)

B = the Performance Rights

C = \$3.60.

The formula in this paragraph 2(a) assumes that the only class of Equity Securities on issue is Ordinary Shares (and for the purposes of this paragraph Pepper Shares held by Retaining Holders will be treated as if they were Ordinary Shares) and the only Securities issued by a Group Company which are convertible into, or entitle any person to acquire, any Equity Securities are the Performance Rights. To the extent that any other class of Equity Securities or such other Securities are issued in the Initial Period, the Security Holders will procure that the Board (by a Board Special Majority approval) amends this paragraph 2(a) as appropriate.

- (b) For the Initial Period, the Fair Market Value of the Platforms will be as is determined by a Board Special Majority from time to time (which may appoint a Valuation Agent to determine the Fair Market Valuation of the Platforms in accordance with paragraphs 4 and 5 below), provided that the aggregate of the Fair Market Values of each of the Platforms at any time must be equal to the Fair Market Value of the Group at that time.

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### 3 Frequency of Determination

Unless otherwise agreed by a Board Special Majority, after the Initial Period, the Fair Market Value of the Platforms and the Group will be determined on a Quarterly basis, with the first such date of determination being the end of the calendar quarter in which the Initial Period ends (each date of calculation being a **Calculation Date**).

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### 4 Valuation Agent

- (a) The Security Holders will Procure that the Board, with approval by a Board Special Majority, appoints an appropriately qualified, professional, independent valuer (**Valuation Agent**) to perform a Fair Market Value calculation either for a specific Calculation Date or for a series of Calculation Dates.
- (b) Without limitation to paragraph 4.1, the Board may determine by a Board Special Majority to set criteria that are to be adhered to in the appointment of Valuation Agents from time to time. Any such criteria may be amended or supplemented by a Board Special Majority from time to time.

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### 5 Information and Instructions to Valuation Agent

- (a) The Board will procure that management of the Group prepares and makes available to the Valuation Agent in a timely manner, any information which is reasonably required in order for the Valuation Agent to perform a Fair Market Value calculation. Unless otherwise determined by a Board Special Majority, such information will include :
  - (i) the then current five year business plan covering the Group and each of the Platforms, which will consist of (at each of the Group and Platform level for the duration of the plan), profit & loss, balance sheet and cash flow projections, including allocation of corporate overheads and other corporate costs such as interest expense on corporate debt facilities;
  - (ii) recent audited financial statements;
  - (iii) recent management accounts; and
  - (iv) the timing and expected form of any Platform sales which are then forecast, including in the case of partial Platform sales, the percentage of the Platform which is proposed to be sold.
- (b) The Board (with approval by a Board Special Majority) will provide any instructions or guidance to the Valuation Agent from time to time as is necessary or desirable for the purpose of enabling the Valuation Agent to determine the Fair Market Value, including with respect to:
  - (i) which Platforms should be aggregated for valuation purposes (and where two or more Platforms are so aggregated they will be considered as a single Platform for the purposes of this Schedule 8);
  - (ii) which valuation methodologies are to be used in respect of different Platforms (and either the weighting to be given, or the factors the Valuation Agent is to consider in itself determining the weighting to be given, to such different valuation methodologies in determining the Fair Market Value of each Platform); and

- (iii) other aspects of the approach and inputs to be used in respect of any particular valuation methodology, including in relation to the formation of trading comp sets and either the weighting to be given, or the factors the Valuation Agent is to consider in itself determining the weighting to be given, to companies within such trading comp sets, use of price / earnings multiples, price / book multiples, determination of relevant discount rates (including where relevant the composition thereof), terminal growth assumptions and free cash flows,

provided that, notwithstanding this paragraph 5(b) or any other provision of this Schedule 8, the Board will not give any instructions or guidance to the Valuation Agent which results in the Valuation Agent's determination of the Fair Market Value of the Group or a Platform not being independent.

- (c) Unless otherwise determined by the Board (with approval by a Board Special Majority):
  - (i) the Fair Market Value of the Group is to be determined on a "Sum of the Parts" basis (**SOTP**), with each Platform (or aggregation of Platforms as provided for under paragraph 5.2(a)) and any other business or division of the Group being considered a "part";
  - (ii) the Valuation Agent is to be instructed to perform the Fair Market Value calculation for each Platform and for the Group:
    - (A) in accordance with the terms of this Deed;
    - (B) where relevant, on the basis of an arm's length transaction between an informed and willing seller and an informed and willing buyer under no compulsion to sell or buy, respectively, and assuming a reasonable period within which to negotiate any sale;
    - (C) assuming no account is taken of any prospective purchaser with unique attributes;
    - (D) assuming the buyer would not have the benefit of any uncommon sale terms which would serve to alter the value of the relevant Platform or the Group (as applicable);
    - (E) if relevant, assuming the relevant Platform or the Group (as applicable) is valued on a stand-alone basis (without any attribution of value for a control premium and ignoring any synergies or special value which may accrue to a purchaser);
    - (F) if relevant, assuming the relevant Platform or the Group (as applicable) will be valued as a going concern;
    - (G) disregarding the fact that a trade sale of part of a relevant Platform or the Group may comprise a minority shareholding in the relevant Platform or the Group; and
    - (H) subject to this paragraph 5(c) and any instructions or guidance given in accordance with paragraph 5(b), on any basis that the Valuation Agent considers appropriate.

---

## **6 Costs of Valuation Agent**

The costs of the Valuation Agent in connection with a calculation of the Fair Market Value of the Group or a Platform will be borne by the Company.

# Shareholders Deed

Signing page

DATED: \_\_\_\_\_

***Note: execution blocks to be inserted when parties finalised.***

# Shareholders Deed

## Annexure A Deed of Adherence

### Details

#### Parties

---

<b>Acceding Party</b>	Name	[insert]
	[ACN/ARBN]	[insert]
	Formed in	[insert]
	Address	[insert]
	Email	[insert]
	Attention	[insert]

---

## 7 Definitions and interpretation

### 7.1 Definitions

Unless the contrary intention appears, these meanings apply.

**Accession Date** has the meaning given to it in clause 8.1.

**Acquired Equity Securities** means the Equity Securities issued to, transferred to or acquired by the Acceding Party in accordance with the terms of the Principal Deed.

**Continuing Party** means each party (whether an original party or a party by accession) to the Principal Deed, as listed in Schedule 1 to this Deed.

**Principal Deed** means the Shareholders Deed dated on or about [insert] relating to Red Hot Australia Holdco Pty Ltd (ACN 620 321 351) as amended from time to time, a copy of which is attached as Attachment A.

### 7.2 Interpretation

Clauses 1.2 and 1.3 of the Principal Deed apply to this Deed as if set out in full in this Deed.

### 7.3 Incorporated definitions

Unless the contrary intention appears, a term which has a defined meaning in the Principal Deed has the same meaning when used in this Deed.

---

## 8 Accession

### 8.1 Accession

The Acceding Party accedes to the Principal Deed on and from [insert relevant date/describe events triggering accession] (**Accession Date**).



## 8.2 Rights and obligations of Acceding Party

Upon accession to the Principal Deed, the Acceding Party is bound by all the terms of the Principal Deed from the Accession Date as if the Acceding Party was, from the Accession Date, a party to the Principal Deed with all the rights and obligations of a party to the Principal Deed in the capacity referred to in clause 8.3.

## 8.3 Capacity

Upon accession to the Principal Deed, the Acceding Party acknowledges that it will be a [insert KKR Investor/ Original Pepper Shareholder/Non-Investor Party/Non-Investor Security Holder/Retaining Party/Retaining Holder/other] for the purposes of the Principal Deed and will have rights and obligations as if it were named in the Principal Deed as a [insert KKR Investor/ Original Pepper Shareholder/Non-Investor Party/Non-Investor Security Holder/Retaining Party/Retaining Holder/other].

## 8.4 [Non-Investor Parties

[Insert if applicable]

The Acceding Party acknowledges that it is an Individual Party who's Nominee and Related Non-Investor Party is [insert name].

or

The Acceding Party acknowledges that it is a Nominee and Related Non-Investor Party of [insert name].

## 8.5 Tier

The Acceding Party (and its Related Non-Investor Parties from time to time, if any) will be [Tier 1 Non-Investor Parties/Tier 2 Non-Investor Parties/ Tier 3 Non-Investor Parties] for the purposes of the Principal Deed.

---

## 9 Representations and warranties

The Acceding Party represents and warrants to each Continuing Party:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this Deed, comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this Deed does not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this Deed, to comply with its obligations, and to allow them to be enforced;

- (e) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** it is not Insolvent.

---

## **10 Notices**

### **10.1 Address of Acceding Party for notices**

For the purposes of the Principal Deed the address of the Acceding Party to which all notices must be delivered is:

to [insert]:

Address: [insert]

Email: [insert]

Attention: [insert]

---

## **11 Costs**

The Acceding Party agrees to pay its own costs in connection with the preparation, negotiation, execution and completion of this Deed.

---

## **12 General**

### **12.1 Entire agreement**

This Deed, the Principal Deed and the documents referred to in the Principal Deed or executed in connection with the Principal Deed constitute the entire agreement of the parties about its subject matter and supersede all previous agreements, understandings and negotiations on that subject matter.

### **12.2 Invalid or unenforceable provisions**

If a provision of this Deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of:
  - (i) that provision in another jurisdiction; or
  - (ii) the remaining provisions.

### **12.3 Waiver**

- (a) A provision of this Deed, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.
- (b) A waiver is effective only in the specific instance and for the specific purpose for which it is given.
- (c) Except as otherwise set out in this Deed, any partial exercise, failure to exercise, or delay in exercising a right or remedy provided under this Deed or by law does not operate as a waiver or prevent or restrict any further or other exercise of that or any other right or remedy in accordance with this Deed.

#### **12.4 Consents, approvals or waivers**

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

#### **12.5 Discretion in exercising rights**

Unless this Deed expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this Deed in its absolute discretion (including by imposing conditions).

#### **12.6 Amendment**

This Deed may be amended only by a document signed by all the Acceding Party and each of the Continuing Parties.

#### **12.7 Assignment**

The Acceding Party may not assign or otherwise deal with its rights under this Deed or allow any interest in them to arise or be varied without the written consent of each of the Continuing Parties.

#### **12.8 Severability**

If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 12.8 has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

---

### **13 Governing law and jurisdiction**

The law in force in New South Wales governs this Deed. The Acceding party submits to the exclusive jurisdiction of the courts of that place.

**Executed** as a deed poll

# Shareholders Deed

## Schedule 1 Continuing Parties

- a) [Insert name of continuing party] of [insert address]
- (b) [Insert name of continuing party] of [insert address]

# Shareholders Deed

## Signing page

DATED: \_\_\_\_\_

*[insert execution blocks]*

**ANNEXURE D**  
**HoldCo Constitution**

# Constitution

Red Hot Australia Holdco Pty Limited ("**Company**")

A proprietary company limited by shares

Adopted 7 July 2017

**King & Wood Mallesons**

Level 61

Governor Phillip Tower

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Australia

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# Constitution

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# Constitution

---

## 1 Interpretation

### 1.1 Definitions

In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under article 12.9.

**Committee** means a committee of Directors constituted under article 11.7.

**Company** means Red Hot Australia Holdco Pty Limited, as that name may be changed from time to time.

**Constitution** means this constitution, and a reference to an article is a reference to an article of this constitution.

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

**Director** means a person holding office as a director of the Company and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Executive Director** means a person appointed as an executive director under article 11.9.

**Managing Director** means a person appointed as a managing director under article 11.9.

**Member** means a person entered in the Register as a holder of shares in the capital of the Company.

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of this Constitution, and in the absence of a determination means 5% per annum.

**Register** means the register of Members of the Company under the Corporations Act and, if appropriate, includes a branch register.

**Registered Office** means the registered office of the Company.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act.

**Secretary** means a person appointed under article 13.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Constitution:

- (a) the singular includes the plural and vice versa;
- (b) words importing any gender include all other genders;
- (c) a reference to a document includes any variation or replacement of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (g) a reference to "**law**" includes common law, principles of equity and legislation (including regulations);
- (h) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacement of any of them;
- (i) a reference to "**regulations**" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (j) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (k) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (l) a reference to "**writing**" or "**written**" includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;
- (m) a chairman appointed under this Constitution may be referred to as a chairperson, chairwoman or as chair, as appropriate;
- (n) a reference to a person being "**present**" at a meeting includes participating using technology approved by the Directors in accordance with this Constitution; and
- (o) where a document (including a notice or consent) is required to be "**signed**", the requirement may be satisfied in relation to an electronic communication of the document in any manner:
  - (i) permitted by relevant law relating to electronic transmissions (including electronic signature); or
  - (ii) approved by the Directors (which could include authentication by providing an allocated code or specified personal information).

### **1.3 Corporations Act**

In this Constitution unless the contrary intention appears:

- (a) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and
- (b) "section" means a section of the Corporations Act.

### **1.4 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

---

## **2 Share capital and variation of rights**

### **2.1 Directors to issue shares**

The issue of shares in the Company is under the control of the Directors who may:

- (a) issue, allot, cancel and otherwise dispose of shares in the Company;
- (b) grant options over unissued shares in the Company; and
- (c) settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Corporations Act and any special rights conferred on the holders of any shares or class of shares.

### **2.2 Preference shares**

The Company may not issue preference shares (including redeemable preference shares) and issued shares may not be converted into preference shares unless the rights attached to the preference shares have been approved by special resolution.

### **2.3 Conversion of preference shares**

Subject to compliance with the Corporations Act and other applicable laws, the conversion of any preference share issued in compliance with article 2.2 will not constitute a cancellation, redemption or termination of the preference share or the issue, allotment or creation of new shares, but will have the effect of varying the status of, and the rights attaching to, the preference share so that it becomes an ordinary share.

### **2.4 Variation of class rights**

Subject to this Constitution and the terms on which any shares in the Company are issued, the rights attaching to shares in a class of shares may only be varied or cancelled by a special resolution of the Company and:

- (a) by a special resolution passed at a meeting of Members entitled to vote and holding shares in that class; or
- (b) with the written consent of holders entitled to vote in respect of at least 75% of the issued shares of that class.

## **2.5 Class meetings**

The provisions of this Constitution relating to general meetings apply so far as they are capable of application and with any necessary changes to every separate meeting of the holders of a class of shares except that:

- (a) a quorum is constituted by at least 2 persons who, between them, hold or represent one-third of the issued shares of the class (unless only one person holds all of the shares of the class, in which case that person constitutes a quorum); and
- (b) any holder of shares of the class, present in person or by proxy, or attorney or Representative, may demand a poll.

## **2.6 Redemption in accordance with terms of issue of shares**

The terms of article 2.4 do not apply and consent is not required for a redemption of any shares or variation of rights attaching to any shares in compliance with the terms of issue of those shares.

## **2.7 No variation**

The rights attaching to shares in a class of shares will not be taken to be varied by:

- (a) the issue of further shares of that class; or
- (b) the issue of any shares of any other class; or
- (c) the conversion of shares or other securities to new shares or securities,

which rank equally with, or in priority to, the shares in the relevant class of shares, unless expressly provided by their respective terms of issue or the Corporations Act.

## **2.8 Non-recognition of interests**

Except as required by law, the Company is not required to recognise:

- (a) a person as holding a share on any trust; or
- (b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

---

## **3 Lien**

### **3.1 Lien on share**

To the extent permitted by law, the Company has a first and paramount lien on every share for:

- (a) all due and unpaid calls and instalments in respect of that share;
- (b) all money which the Company is required by law to pay, and has paid, in respect of that share;
- (c) reasonable interest on the amount due from the date it becomes due until payment; and

- (d) reasonable expenses of the Company in respect of the default on payment.

### **3.2 Lien on distributions**

A lien on a share under article 3.1 extends to all distributions for that share, including dividends.

### **3.3 Exemption from article 3.1**

The Directors may at any time exempt a share wholly or in part from the provisions of article 3.1.

### **3.4 Extinguishment of lien**

The Company's lien on a share is extinguished if a transfer of the share is registered without the Company giving notice of the lien to the transferee.

### **3.5 Company's rights to recover payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:

- (a) required by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is required by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

### **3.6 Reimbursement is a debt due**

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

### **3.7 Sale under lien**

Subject to article 3.8, the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien.

### **3.8 Limitations on sale under lien**

A share on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.



### **3.9 Transfer on sale under lien**

For the purpose of giving effect to a sale under article 3.7, the Company may receive the consideration, if any, given for the share so sold and may execute a transfer of the share sold in favour of the purchaser of the share, or do all such other things as may be necessary or appropriate for it to do to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

### **3.10 Irregularity or invalidity**

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share under article 3.7.

### **3.11 Proceeds of sale**

The proceeds of a sale under article 3.7 must be applied by the Company in payment of the amount in respect of which the lien exists as is presently payable, and the residue, if any, must be paid to the person entitled to the share immediately before the sale.

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## **4 Calls on shares**

### **4.1 Directors to make calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call.

### **4.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors authorising the call is passed.

### **4.3 Members' liability**

On receiving not less than 30 business days' notice specifying the time or times and place of payment, each Member must pay to the Company by the time or times and at the place specified in the notice, the amount called on that Member's shares.

### **4.4 Joint holders' liability**

The joint holders of a share are jointly and individually liable to pay all calls in respect of the share.

### **4.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

#### **4.6 Interest on default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum from the day it is due to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

#### **4.7 Fixed instalments**

If the terms of a share make a sum payable on issue of the share or at a fixed date, this is taken to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable. In the case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

#### **4.8 Differentiation between holders as to calls**

The Directors may, on the issue of shares, differentiate between the holders of the shares as to the amount of calls to be paid and the times of payment.

#### **4.9 Prepayment of calls and interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a share even if no part of that amount has been called; and
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed between the Directors and the Member paying the sum.

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### **5 Forfeiture of shares**

#### **5.1 Notice requiring payment of call**

If a Member fails to pay a call, or instalment of a call, on the day appointed for payment of the call or instalment, the Directors may, at any time afterwards during such time as any part of the call or instalment remains unpaid, give a notice to the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of that non-payment.

#### **5.2 Contents of notice**

The notice must name a further day, which is at least 14 days from the date of service of the notice, on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

#### **5.3 Forfeiture for failure to comply with notice**

If a notice under article 5.1 has not been complied with by the date specified in the notice, the Directors may by resolution forfeit the relevant shares, at any time before the payment required by the notice has been made.

#### **5.4 Dividends and distributions included in forfeiture**

A forfeiture under article 5.3 includes all dividends and other distributions to be made in respect of the forfeited shares which have not been paid or distributed before the forfeiture.

#### **5.5 Sale or re-issue of forfeited shares**

Subject to the Corporations Act, a share forfeited under article 5.3 may be sold, re-issued or otherwise disposed of to such person and on such terms as the Directors think fit.

#### **5.6 Notice of forfeiture**

If any share is forfeited under article 5.3, notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

#### **5.7 Surrender instead of forfeiture**

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any share so surrendered is taken to be a forfeited share.

#### **5.8 Cancellation of forfeiture**

At any time before a sale, re-issue or disposal of a share under article 5.5, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

#### **5.9 Effect of forfeiture on former holder's liability**

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and the reasonable expenses of the sale of the shares, until the Company receives payment in full of all money (including interest and expenses) so payable in respect of the shares.

#### **5.10 Evidence of forfeiture**

A written statement declaring that the person making the statement is a Director or a Secretary, and that a share in the Company has been forfeited in accordance with this Constitution on the date declared in the statement, is evidence of the facts in the statement as against all persons claiming to be entitled to the share.

#### **5.11 Transfer of forfeited share**

The Company may receive any consideration given for a forfeited share on any sale, re-issue or disposal of the share under article 5.5 and may execute or effect a transfer of the share in favour of the person to whom the share is sold, re-issued or disposed.

## **5.12 Registration of transferee**

On the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

## **5.13 Irregularity or invalidity**

The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale, re-issue or disposal of the share.

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# **6 Transfer of shares**

## **6.1 Forms of instrument of transfer**

Subject to this Constitution, a share in the Company is transferable by any method of transfer required or permitted by the Corporations Act.

## **6.2 Execution and delivery of transfer**

If a duly completed instrument of transfer:

- (a) is used to transfer a share in accordance with article 6.1; and
- (b) is left for registration at the share registry of the Company, accompanied by any information that the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

## **6.3 Effect of registration**

A transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

## **6.4 Company to retain instrument of transfer**

The Company must retain every instrument of transfer which is registered for the period required by any applicable law.

## **6.5 Directors' powers to refuse to register**

The Directors may refuse to register a transfer of shares, without having to give any reason.

## **6.6 Transfer to or by a secured party**

The Directors may not refuse to register a transfer of shares under article 6.5 if the transfer is either to a person holding a mortgage, charge, pledge or other security interest (or to a person acting as agent, trustee or nominee for such a person) ("**Secured Party**") which is given by a Member over their shares in the Company ("**Share Security**"), or is pursuant to the exercise by a Secured Party of rights in relation to a Share Security.

In any such case, the Directors must register the transferee as a Member. The Directors may request and rely on a written statement of the Secured Party

certifying that the transfer is pursuant to an exercise of rights under a Share Security.

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## **7 Transmission of shares**

### **7.1 Transmission of shares on death**

If a Member who does not hold shares jointly dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.

### **7.2 Information given by personal representative**

If the personal representative of the member who has died gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as a holder of the shares:

- (a) the personal representative may:
  - (i) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under article 7.2(a)(i), the Company must register the personal representative as the holder of the shares.

A transfer under article 7.2(a)(ii) is subject to the articles that apply to transfers generally.

### **7.3 Death of joint owner**

If a Member who holds shares jointly dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. The estate of the Member is not released from any liability in respect of the shares.

### **7.4 Transmission of shares on bankruptcy**

If a person entitled to shares because of the bankruptcy of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares, the person may:

- (a) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or
- (b) by giving a completed transfer form to the Company, transfer the shares to another person.

On receiving an election under article 7.4(a), the Company must register the person as the holder of the shares.

A transfer under article 7.4(b) is subject to the articles that apply to transfers generally.

This article has effect subject to the *Bankruptcy Act 1966* (Cth).

## **7.5 Transmission of shares on mental incapacity**

If a person entitled to shares because of the mental incapacity of a Member gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

- (a) the person may:
  - (i) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person; and
- (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under article 7.5(a)(i), the Company must register the person as the holder of the shares.

A transfer under article 7.5(a)(ii) is subject to the articles that apply to transfers generally.

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## **8 General meetings**

### **8.1 Convening a general meeting**

The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

### **8.2 Use of technology at general meetings**

The Company may hold a meeting of Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### **8.3 Notice of general meeting**

Notice of a general meeting must be given in accordance with article 18 and the Corporations Act.

### **8.4 Calculation of period of notice**

In computing the period of notice under article 8.3, both the day on which the last notice to Members is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **8.5 Cancellation or postponement of a meeting**

Where a general meeting is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This article 8.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a court.

## **8.6 Notice of cancellation or postponement of a meeting**

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member; and
- (b) to each other person entitled to be given notice of a general meeting.

## **8.7 Contents of notice of postponement of meeting**

A notice of postponement of a general meeting must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

## **8.8 Number of clear days for postponement of meeting**

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

## **8.9 Business at postponed meeting**

The only business that may be transacted at a postponed general meeting is the business specified in the original notice convening the meeting.

## **8.10 Proxy, attorney or Representative at postponed meeting**

Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office written notice to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

## **8.11 Non-receipt of notice**

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general

meeting or at a postponed meeting or the cancellation or postponement of a meeting.

#### **8.12 Director entitled to notice of meeting**

A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

#### **8.13 Appointment of proxy, Representative or attorney**

Subject to the Corporations Act, a Member who is entitled to participate in and vote at a meeting of the Company may appoint a person as the Member's proxy, or may appoint a Representative or an attorney, to participate in and vote at the meeting for the Member.

If a Member is entitled to cast two or more votes at the meeting, the Member may appoint two proxies who may each exercise half of the Member's votes at the meeting, unless the instrument appointing the proxies specifies the proportion or number of the Member's votes that each proxy may exercise.

#### **8.14 Circulating resolutions**

The Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

Separate copies of the document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.

The resolution is passed when the last Member signs.

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## **9 Proceedings at general meetings**

### **9.1 Number for a quorum**

Subject to article 9.4, the quorum for a general meeting is, where the Company has only one Member, that Member and otherwise, 2 Members, present in person or by proxy, attorney or Representative are a quorum at a general meeting. If an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted once for that Member and once for each Member for whom that individual is attending as proxy, attorney or representative.

### **9.2 Requirement for a quorum**

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the chairman's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

### **9.3 If quorum not present**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:



- (a) if convened by a Director, or at the request of Members, is dissolved; and
- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

#### **9.4 Adjourned meeting**

At a meeting adjourned under article 9.3(b), where the Company has only one Member, the quorum is that Member, and otherwise, the quorum is 2 persons each being a Member (or the proxy, attorney or Representative of a Member) present at the meeting, are a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **9.5 Appointment of chairman of general meeting**

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

#### **9.6 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) a Director chosen by a majority of the Directors present;
- (d) the only Director present; or
- (e) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

#### **9.7 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this article is final.

## **9.8 Adjournment of general meeting**

The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

- (a) in exercising the discretion to do so, the chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
- (b) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairman, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

## **9.9 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

## **9.10 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

## **9.11 No casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the general meeting is not entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or Representative.

## **9.12 Voting on show of hands**

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact. Neither the chairman nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

## **9.13 Poll**

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is a resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairman or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn; and

- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **9.14 Entitlement to vote**

Subject to this Constitution, the Corporations Act, and to any rights or restrictions for the time being attached to any class or classes of shares:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote; and
- (b) on a poll, each Member present in person has one vote for each fully paid share held by the Member and each person present as proxy, attorney or Representative of a Member has one vote for each fully paid share held by the Member that the person represents.

#### **9.15 Joint shareholders' vote**

If a share is held jointly and more than one Member votes in respect of that share, only the vote of the Member whose name appears first in the Register counts.

#### **9.16 Effect of unpaid call**

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

#### **9.17 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member is mentally incapacitated;
- (c) the Member revokes the appointment or authority;
- (d) the Member revokes the authority under which the appointment was made by a third party; or
- (e) the Member transfers the share in respect of which the appointment or authority was given.

#### **9.18 Objection to voting qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

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## **10 The Directors**

### **10.1 Number of Directors**

The Company must have at least one Director.

### **10.2 Change of number of Directors**

The Company in general meeting may by resolution increase or reduce the number of Directors.

### **10.3 Casual vacancy or additional Director**

The Company in general meeting or the Directors may at any time appoint any person to be a Director, either to fill a casual vacancy or as an additional Director.

### **10.4 Removal of Director**

The Company in general meeting may by resolution remove a Director from office as a Director.

Whether or not the appointment of a managing or executive director was expressed to be for a specified term, the appointment of a managing or executive director terminates if the managing or executive director ceases to be employed by the Company or a related body corporate.

### **10.5 Remuneration of Directors**

The Directors are to be remunerated for their services as Directors as determined by the Company in general meeting by resolution. The remuneration is taken to accrue from day to day.

### **10.6 Additional or special duties**

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under article 10.5.

### **10.7 Retirement benefit**

Subject to the Corporations Act, the Company may pay a former Director, or the personal representative of a Director who dies in office, a retirement benefit in recognition of past services of an amount determined by the Directors. The Company may also enter into a contract with a Director providing for payment of a retirement benefit. A retirement benefit paid under this article is not remuneration to which article 10.5 applies.

### **10.8 Expenses**

A Director is entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

### **10.9 Director's interests**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;
- (c) enter into any contract or arrangement with the Company;
- (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;
- (e) act in a professional capacity (or be a member of a firm or an officer or employee of a body corporate which acts in a professional capacity) for the Company, except as auditor;
- (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
- (g) sign or participate in the execution of a document by or on behalf of the Company;
- (h) do any of the above despite the fiduciary relationship of the Director's office:
  - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
  - (ii) without affecting the validity of any contract or arrangement; and
- (i) exercise the voting power conferred by securities in any entity held by the Company, in accordance with the terms of their appointment, even in circumstances where a Director may be interested in the exercise (such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity);
- (j) act as a nominee or representative of a shareholder of the Company, on terms agreed with the Company.

A reference to the Company in this article 10.9 is also a reference to each related body corporate of the Company.

#### **10.10 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) is a Managing or Executive Director and ceases to be employed by the Company or a related body corporate;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) resigns from the office by notice in writing to the Company;
- (d) is not present personally or by proxy or Alternate Director at meetings of the Directors for a continuous period of 6 months without leave of absence from the Directors; or

- (e) is removed from office by resolution under article 10.4, but without depriving the Director of any compensation or damages payable to the Director in respect of the termination of the Director's appointment as a Director or of an appointment terminating with that appointment.

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## **11 Powers and duties of Directors**

### **11.1 Directors to manage Company**

The Directors are responsible for overseeing the proper management of the business of the Company. They may exercise all the powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

### **11.2 Specific powers of Directors**

Without limiting the generality of article 11.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **11.3 Interests of holding company**

The Directors are authorised to act in the best interests of any company of which the Company is a wholly-owned subsidiary in the circumstances contemplated by section 187 of the Corporations Act.

### **11.4 Appointment of attorney**

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

### **11.5 Provisions in power of attorney**

A power of attorney granted under article 11.4 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **11.6 Signing of receipts and negotiable instruments**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

### **11.7 Committees**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number as they think fit.

### **11.8 Powers delegated to Committees**

A Committee to which any powers have been delegated under article 11.7 must exercise those powers in accordance with any directions of the Directors.

### **11.9 Appointment of Managing and Executive Directors**

The Directors may appoint one or more of themselves to the office of Managing Director or as an Executive Director or to any other office (except auditor) or any position of employment with the Company for the period and on the terms they think fit.

### **11.10 Ceasing to be a Managing or Executive Director**

Whether or not the appointment of a Managing Director or Executive Director was expressed to be for a specified term, the appointment of a Managing Director or Executive Director terminates if:

- (a) the Managing Director or Executive Director ceases for any reason to be a Director;
- (b) the Directors remove the Managing Director or Executive Director from the office of Managing Director or Executive Director (which, subject to any contract between the Company and the Managing Director or Executive Director, the Directors have power to do); or
- (c) the Managing Director or the Executive Director ceases to be employed by the Company or a related body corporate.

### **11.11 Remuneration of Managing and Executive Directors**

The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes, but may not be by a commission on or percentage of operating revenue.

### **11.12 Powers of Managing and Executive Directors**

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

### **11.13 Delegation of Directors' powers**

The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit, and may revoke, withdraw, alter or vary the delegation of any of those powers.

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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## **12 Proceedings of Directors**

### **12.1 Directors' meetings**

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

### **12.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

### **12.3 Use of technology for Directors' meetings**

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

### **12.4 Questions decided by majority**

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.

### **12.5 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

### **12.6 Chairman of Directors**

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person elected as chairman is to hold office.

### **12.7 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairman has not been elected under article 12.6; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

### **12.8 Chairman's casting vote at Directors' meetings**

If there are an equal number of votes for and against a question, the chairman of the Directors' meeting has a casting vote, unless only 2 Directors are present and entitled to vote on the question.



### **12.9 Appointment of Alternate Director**

Subject to the Corporations Act, a Director may appoint a person approved by a majority of the other Directors to be an Alternate Director in the Director's place during any period as the Director thinks fit.

### **12.10 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

### **12.11 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

### **12.12 Alternate Director responsible for own acts and defaults**

While acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

### **12.13 Alternate Director and remuneration**

An Alternate Director is not entitled to receive from the Company any remuneration or benefit under article 10.5 or 10.7.

### **12.14 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director for any reason.

### **12.15 Appointment or termination**

An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice signed by the Director who makes or made the appointment and delivered to the Company.

### **12.16 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

### **12.17 Director attending and voting by proxy**

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) the appointment is signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director, who would be entitled to vote if present at the meeting, has one vote for the appointor and one vote in his or her own capacity as a Director.

#### **12.18 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is:

- (a) where there is only one Director, that Director; and
- (b) where there is more than one Director, 2 Directors, unless otherwise determined by the Directors.

#### **12.19 Continuing Directors may act**

The continuing Directors may act despite a vacancy in their number.

#### **12.20 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

#### **12.21 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

#### **12.22 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

If there are an equal number of votes for and against a question, the chairman of the meeting has a casting vote, unless only 2 members of the Committee are present and entitled to vote on the question.

#### **12.23 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution have consented to the resolution in accordance with this article 12.23. The resolution is passed when the last participating Director consents to the resolution in accordance with this article 12.23. The resolution is not invalidated if it is consented to by a Director who is not entitled to vote.
- (b) A Director may consent to a resolution by signing a document that sets out the terms of the resolution and contains a statement to the effect that the Director is in favour of the resolution.

- (c) Alternatively, a Director may consent to a resolution by giving the Company a written notice (including by fax or other electronic means) addressed to and received by the Secretary or the Chairman:
  - (i) that signifies the Director's assent to the resolution;
  - (ii) that sets out the terms of the resolution or identifies those terms; and
  - (iii) if the Director has notified the Company in writing of a specified means by which his or her consent must be authenticated (including by providing particular personal information or an allocated code), that authenticates the Director's consent by those specified means.
- (d) Any document referred to in this article may be in the form of a fax or electronic notification. Separate copies of a document (including in electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy.
- (e) This article 12.23 applies to resolutions of Committees as if the references to Directors were references to Committee members.

#### **12.24 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
  - (b) a person acting as a Director was disqualified or was not entitled to vote,
- as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

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### **13 Secretary**

#### **13.1 Appointment of Secretary**

The Company may, but need not, have one or more Secretaries who are to be appointed by the Directors.

#### **13.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

#### **13.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

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## **14 Seals**

### **14.1 Safe custody of common seals**

The Directors must provide for the safe custody of any seal of the Company.

### **14.2 Use of common seal**

If the Company has a common seal or duplicate common seal:

- (a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and
- (b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

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## **15 Inspection of records**

### **15.1 Inspection by Members**

Subject to the Corporations Act, the Directors may determine whether, to what extent, at what time and places and under what conditions the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than Directors and, if relevant, a holding company of the Company).

### **15.2 Right of a Member or other person to inspect**

A Member or other person (other than a Director or, if relevant, a holding company of the Company) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

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## **16 Dividends and reserves**

### **16.1 Payment of dividend**

Subject to the Corporations Act, this Constitution and the terms of issue or rights of any Shares with special rights to dividends, the Directors may determine that a dividend is payable, fix the amount and the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend. The Directors may rescind or alter any such determination before payment is made.

### **16.2 No interest on dividends**

Interest is not payable by the Company on a dividend.

### **16.3 Calculation and apportionment of dividends**

Subject to the rights of any persons entitled to shares with special rights as to dividend and to the terms of issue of any shares to the contrary, all sums that the Company determines are to be distributed among the Members as dividends are divisible among the Members so that, on each occasion on which a dividend is paid:

- (a) the same sum is paid on each fully-paid share; and
- (b) the sum paid on a share on which all amounts payable have not been paid is the proportion of the sum referred to in article 16.3(a) that the amount paid on the shares bears to the total of the amounts paid and payable on the share.

To determine the amount paid on a share, exclude any amount:

- (c) paid or credited as paid in advance of a call; and
- (d) credited as paid on a share to the extent that it exceeds the value (ascertained at the time of issue of the share) of the consideration received for the issue of the share.

All dividends are to be apportioned and paid proportionately to the amounts paid on the shares during any portion or portions of the period for which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

#### **16.4 Deductions from dividends**

The Directors may deduct from any dividend payable to, or at the direction of, a Member any sums presently payable by that Member to the Company on account of calls or otherwise in relation to shares.

#### **16.5 Distribution of specific assets**

When resolving to pay a dividend or to return capital by a reduction of capital or otherwise, the Directors may:

- (a) resolve that the dividend or return of capital be satisfied either wholly or partly by the distribution of specific assets to some or all of the persons entitled to the dividend or return of capital including shares, debentures or other securities of the Company or any other body corporate or trust; and
- (b) direct that the dividend or return of capital payable in respect of any particular shares be satisfied wholly or partly by such a distribution and that the dividend or return of capital payable in respect of other shares be paid in cash.

#### **16.6 Ancillary powers regarding distributions**

- (a) In relation to any decision to pay a dividend or to return capital by a reduction of capital or otherwise, the Directors may:
  - (i) settle any difficulty that arises in making the distribution as they think expedient and in particular:
    - (A) make cash payments in cases where Members are entitled to fractions of shares, debentures or other securities;
    - (B) decide that amounts or fractions of less than a particular value decided by the Directors may be disregarded in order to adjust the rights of all parties by withholding assets, cash, shares, debentures or other securities where the Company is required to make a payment in respect of the Member to a government or taxing authority in relation to the distribution or issue; and

- (C) decide to make distributions by disregarding transfers of shares or aggregating parcels of shares where they form the opinion that shareholdings have been split or aggregated to obtain the benefit of rounding on fractions of shares;
  - (ii) fix the value for distribution of any specific assets;
  - (iii) pay cash or issue shares, debentures or other securities to any Member in order to adjust the rights of all parties;
  - (iv) vest any of those specific assets, cash, shares, debentures or other securities in a trustee or nominee on trust for the persons entitled to the distribution or capitalised amount, on any terms that seem expedient to the Directors; and
  - (v) authorise any person to make, on behalf of the Members, or a particular Member, entitled to any specific assets, cash, shares, debentures or other securities as a result of the decision, an agreement (including in writing) with the Company or another person which provides as appropriate, for the distribution or issue to them of the assets, cash, shares, debentures or other securities and by applying to them their respective proportions of the amount resolved to be distributed.
- (b) Any agreement made under an authority referred to in article 16.6(a)(v) is effective and binds all Members concerned;
  - (c) Instead of making a distribution or issue of specific assets, shares, debentures or other securities to a particular Member, the Directors may make a cash payment to that Member or allocate some or all of the assets, shares, debentures or other securities to a trustee to be sold on behalf of, and for the benefit of, or in respect of, that Member, if:
    - (i) the distribution or issue would otherwise be illegal or unlawful;
    - (ii) in the Directors' discretion, the distribution or issue would, for any reason, be impracticable; or
    - (iii) the Member so agrees.
  - (d) If the Company distributes to Members (either generally or to specific Members) shares, debentures or securities of the Company or another body corporate or trust (whether as a dividend or return of capital or otherwise and whether or not for value), each of those Members appoints the Company and any officer of the Company nominated on their behalf by the Directors, as his or her agent or attorney to do anything needed or desirable to give effect, or assist in giving effect, to that distribution, including agreeing to become a member, holder of shares, holder of debentures or holder of securities of the Company or that other body corporate or trust.

## 16.7 Payments in respect of shares

A dividend, interest or other money payable in cash in respect of shares may be paid using any payment method chosen by the Company, including:

- (a) by means of a direct credit as determined by the Directors to the latest payment account details for the relevant holding as provided in writing by the holder or holders shown on the Register; or

- (b) by cheque sent through the post directed to the address in the Register of the holder or, in the case of joint holders, to the address of the joint holder first named in the Register or to such other address as the holder or joint holder directs in writing.

Payment of money is at the risk of the holder or holders to whom it is sent.

### **16.8 Effectual receipt from one joint holder**

Any one of two or more joint holders may give an effectual receipt for any dividend, interest or other money payable in respect of the shares held by them as joint holders.

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## **17 Capitalisation of profits**

### **17.1 Capitalisation of reserves and profits**

The Directors:

- (a) may resolve to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to Members; and
- (b) may, but need not, resolve to apply the sum in any of the ways mentioned in article 17.2, for the benefit of Members in the proportions to which those Members would have been entitled in a distribution of that sum by way of dividend.

### **17.2 Applying a sum for the benefit of Members**

The ways in which a sum may be applied for the benefit of Members under article 17.1 are:

- (a) in paying up any amounts unpaid on shares held by Members;
- (b) in paying up in full unissued shares or debentures to be issued to Members as fully paid; or
- (c) partly as mentioned in article 17.1(a) and partly as mentioned in article 17.1(b).

### **17.3 Implementing the resolution**

The Directors may do all things necessary to give effect to a resolution under article 17.1 and in particular, to the extent necessary to adjust the rights of the Members among themselves, may:

- (a) make cash payments in cases where shares or debentures become issuable in fractions;
- (b) authorise any person to make, on behalf of all or any of the Members entitled to any further shares or debentures on the capitalisation, an agreement with the Company providing for:
  - (i) the issue to them, credited as fully paid up, of any further shares or debentures; or

- (ii) the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,  
and any agreement so made is effective and binding on all the Members concerned;
- (c) fix the value of specified assets; or
- (d) vest property in trustees.

## **18 Service of documents**

### **18.1 Document includes notice**

In this article 18, a reference to a document includes a notice and a notification by electronic means.

### **18.2 Form of document**

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

### **18.3 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by delivering it or sending it by post to the address for the Member in the Register or an alternative address nominated by the Member;
- (c) by sending it to a fax number or electronic address nominated by the Member; or
- (d) by notifying the Member by an electronic means nominated by the Member that:
  - (i) the document is available; and
  - (ii) how the Member may use the nominated access means to access the document.

### **18.4 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and, in either case, is taken to have been given and received on the day after the day of its posting.

### **18.5 Fax or other electronic means**

A document sent or given by fax or other electronic means:



- (a) is taken to be effected by properly addressing and transmitting the fax or other electronic transmission; and
- (b) is taken to have been given and received on the day after the date of its transmission.

### **18.6 Evidence of service**

A certificate signed by a Director or a Secretary stating that a document was sent, delivered or given to a Member personally, by post, fax or other electronic means on a particular date is evidence that the document was sent, delivered or given on that date and by that means.

### **18.7 Joint holders**

A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the Register for the share.

### **18.8 Persons entitled to shares**

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this article 18 to the person from whom that person derives title prior to registration of that person's title in the Register.

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## **19 Winding up**

### **19.1 Distribution of assets**

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members.

### **19.2 Powers of liquidator to vest property**

The liquidator may, with the sanction of a special resolution of the Company, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability.

### **19.3 Shares issued on special terms**

Articles 19.1 and 19.2 do not prejudice or affect the rights of a Member holding shares issued on special terms and conditions.

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## **20 Indemnity and insurance**

### **20.1 Indemnity**

The Company will indemnify any current or former Director or Secretary of the Company or of a subsidiary of the Company out of the property of the Company against:

- (a) any liability incurred by the person in that capacity (except a liability for legal costs);
- (b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

- (d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or
- (e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

## 20.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or senior manager of the Company or of a subsidiary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by law to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by law.

## 20.3 Contract

The Company may enter into an agreement with a person referred to in articles 20.1 and 20.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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## 21 Proprietary Company

The Company is a proprietary company and accordingly:

- (a) the number of Members:
  - (i) counting joint holders of a particular parcel of shares in the Company as one person; and
  - (ii) excluding:
    - (A) each Member who is an employee of the Company or of a subsidiary of the Company; and
    - (B) each Member who became a Member at a time when that member was an employee of the Company or of a subsidiary of the Company

must not exceed 50; and

(b) the Company may not engage in anything that would require disclosure to investors under Chapter 6D of the Corporations Act, other than an offer of shares to:

- (i) a Member; or
- (ii) a person in the employment of the Company or of a subsidiary of the Company.

# Constitution

Each of the undersigned, being a person specified in the application for registration of the Company as a person who consents to become a member of the Company, agrees to the terms of this Constitution.

**SIGNED** by  
as authorised representative for **RED  
HOT SINGAPORE I PTE. LTD.** in the  
presence of:



.....  
Signature of witness

Ooi Yi Jun

.....  
Name of witness (block letters)



.....  
By executing this document the  
signatory warrants that the signatory is  
duly authorised to execute this  
document on behalf of RED HOT  
SINGAPORE I PTE. LTD.