

Disclosure of movement of 1% or more in substantial holding or change in nature of relevant interest, or both

Sections 277 and 278, Financial Markets Conduct Act 2013

To NZX Limited
and
To Serko Limited (**Serko**)

Relevant event being disclosed: change in the nature of the relevant interest

Date of relevant event: 24 October 2019

Date this disclosure made: 24 October 2019

Date last disclosure made: 31 July 2019

Substantial product holder(s) giving disclosure

Full name(s): Darrin Grafton

Summary of substantial holding

Class of quoted voting products: ordinary shares in Serko (**Shares**)

Summary for Darrin Grafton

For **this** disclosure,—

- (a) total number held in class: 14,032,868
- (b) total in class: 80,922,809
- (c) total percentage held in class: 17.341%

For **last** disclosure,—

- (a) total number held in class: 14,032,868
- (b) total in class: 80,922,809
- (c) total percentage held in class: 17.341%

Details of transactions and events giving rise to relevant event

Details of the transactions or other events requiring disclosure:

Underwriting Agreement

On 24 October 2019, certain existing Serko shareholders ("**Sellers**") including Darrin Grafton as trustee (together with Geoffrey Hosking) of the Grafton Howe No. 2 Trust, and Serko entered into an underwriting agreement ("**UWA**") with Deutsche Craigs Limited and Craigs Investment Partners Limited (together, "**DCL**") pursuant to which DCL agreed to act as underwriter in connection with a placement of approximately NZ\$56 of million fully paid ordinary shares ("**Placement**"). A copy of the UWA is **attached** at Schedule 1 to this notice.

The Placement comprises of approximately:

- NZ\$40 million of newly issued ordinary shares; and
- NZ\$16 million of existing shares held by the Sellers,

to selected institutional and retail investors.

Under the UWA, DCL is contractually required to underwrite and arrange the sale of 1,800,000 shares for the Grafton Howe No. 2 Trust ("**Sell Down Shares**"). As a consequence of the UWA, there is a qualification on the power of Darrin Grafton as trustee of the Grafton Howe No. 2 Trust to dispose of, or control disposal of, the Sell Down Shares. The Placement is intended to settle on 30 October 2019.

Escrow Deed

Darrin Grafton (along with certain entities associated with him, including the Grafton Howe No. 2 Trust) entered into an Escrow Deed with Serko on 24 October 2019 (the "**Escrow Deed**"). A copy of the Escrow Deed is **attached** at Schedule 2 of this disclosure.

Whilst 1,800,000 shares are being sold under the Placement, the remaining 12,232,868 shares held by Darrin Grafton (along with certain entities associated with him), will be subject to a 12 month contractual lock-up on sale or disposition as set out in the Escrow Deed, except in certain prescribed circumstances including with the prior consent of the Board of Serko.

If the sale of the Sell Down Shares is not completed under the Placement within 15 working days after the date of the Escrow Deed, Darrin Grafton or the other entities associated with him may terminate the Escrow Deed by giving written notice to Serko.

Details after relevant event

Details for Darrin Grafton

Nature of relevant interest(s): Darrin Grafton as trustee (together with Geoffrey Hosking) of the Grafton Howe No. 2 Trust is the registered holder of 12,667,629 Shares (the **Grafton Howe Trust Shares**), that are subject to the events described in this notice.

For that relevant interest,—

- (a) number held in class: 12,667,629
- (b) percentage held in class: 15.654%
- (c) current registered holder(s): Darrin Grafton and Geoffrey Hosking as Trustees for Grafton Howe No. 2 Trust.
- (d) registered holder(s) once transfers are registered: unknown

Nature of relevant interest(s): Registered holder and beneficial owner of 31,899 Restricted Share Units (Options) pursuant to the Serko Long Term Incentive Scheme.

For that relevant interest,—

- (a) number held in class: 31,899
- (b) percentage held in class: 13.432%
- (c) current registered holder(s): Darrin Grafton
- (d) registered holder(s) once transfers are registered: N/A

Nature of relevant interest(s): Registered holder and beneficial owner 762 Restricted Share Units (Options) granted to Donna Bailey pursuant to the Serko Long Term Incentive Scheme.

For that relevant interest,—

- (a) number held in class: 762
- (b) percentage held in class: 0.320%
- (c) current registered holder(s): Darrin Grafton
- (d) registered holder(s) once transfers are registered: N/A

Nature of relevant interest(s): Registered holder and beneficial owner of 39,512 Shares pursuant to the Serko Limited Restricted Share Scheme. These Shares are subject to a deed restricting exercise of voting rights attached to the Shares. A copy of that deed was attached to the disclosure made on 22 December 2015.

For that relevant interest,—

- (a) number held in class: 39,512
- (b) percentage held in class: 0.049%
- (c) current registered holder(s): no change since last disclosure
- (d) registered holder(s) once transfers are registered: N/A

Nature of relevant interest(s): Darrin Grafton has a beneficial interest in 97,712 Shares, with restrictive conditions, issued under the Restricted Share Scheme, held on trust until vesting. These Shares are subject to a deed restricting exercise of voting rights attached to the Shares. A copy of that deed was attached to the disclosure made on 22 December 2015.

For that relevant interest,—

- (a) number held in class: 97,712
- (b) percentage held in class: 0.121%
- (c) current registered holder(s): no change since last disclosure

(d) registered holder(s) once transfers are registered: N/A

Nature of relevant interest(s): Darrin Grafton has the power to exercise a right to vote attached to 1,217,594 Shares. This interest is acquired through a personal relationship with Donna Bailey.

For that relevant interest,—

- (a) number held in class: 1,217,594
- (b) percentage held in class: 1.505%
- (c) current registered holder(s): no change since last disclosure
- (d) registered holder(s) once transfers are registered: N/A

Nature of relevant interest(s): Darrin Grafton has the power to dispose of, or to control the disposal of, 5,827 Shares. This interest is acquired through a personal relationship with Donna Bailey. These Shares are subject to a deed restricting exercise of voting rights attached to the Shares. A copy of that deed was attached to the disclosure made on 22 December 2015.

For that relevant interest,—

- (a) number held in class: 5,827
- (b) percentage held in class: 0.008%
- (c) current registered holder(s): no change since last disclosure
- (d) registered holder(s) once transfers are registered: N/A

Nature of relevant interest(s): Darrin Grafton has the power to dispose of, or to control the disposal of, 4,594 Shares, with restrictive conditions, allocated to Donna Bailey pursuant to the Restricted Share Scheme, held in trust until vesting. This interest is acquired through a personal relationship with Donna Bailey. These Shares are subject to a deed restricting exercise of voting rights attached to the Shares. A copy of that deed was attached to the disclosure made on 22 December 2015.

For that relevant interest,—

- (a) number held in class: 4,594
- (b) percentage held in class: 0.006%
- (c) current registered holder(s): no change since last disclosure
- (d) registered holder(s) once transfers are registered: N/A

Additional information

Address(es) of substantial product holder(s): PO Box 47-638, Ponsonby, Auckland

Contact details: +64 9 309 4754, darrin.grafton@serko.com

Name of any other person believed to have given, or believed to be required to give, a disclosure under the Financial Markets Conduct Act 2013 in relation to the financial products to which this disclosure relates: Geoffrey Hosking as to 12,667,629 Grafton Howe Trust Shares.

Disclosure has effect for purposes of directors' and senior managers' disclosure

Darrin Grafton is also a director of Serko. This disclosure also constitutes disclosure for the purposes of the directors' and senior managers' disclosure obligations.

Certification

I, **Darrin Grafton**, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.

Schedule 1: Underwriting Agreement

Underwriting agreement relating to a placement of ordinary shares

Serko Limited (Company)

Simon John Botherway and MSH Trustee
(Arrow) Limited as trustees of the Arrow
Trust, Darrin Grafton and Geoffrey Robertson
Ashley Hosking as trustees of the Grafton
Howe No. 2 Trust, Joanne Phipps, Philip Ball
and Sherie Hammond (each a Seller, and
together, the Sellers)

Deutsche Craigs Limited and Craigs
Investment Partners Limited (together, DCL)



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UNDERWRITING AGREEMENT RELATING TO A PLACEMENT OF ORDINARY SHARES

Date: 24 October 2019

PARTIES

Serko Limited (*Company*)

Simon John Botherway and MSH Trustee (Arrow) Limited as trustees of the Arrow Trust, Darrin Grafton and Geoffrey Robertson Ashley Hosking as trustees of the Grafton Howe No. 2 Trust, Joanne Phipps, Philip Ball and Sherie Hammond (each a *Seller*, and together, the *Sellers*)

Deutsche Craigs Limited and Craigs Investment Partners Limited (together, *DCL*)

BACKGROUND

- A The Company proposes to undertake a capital raising to raise approximately \$40 million by way of an issue of fully paid ordinary shares to Eligible Bookbuild Investors. The Sellers will also sell approximately \$15.6 million of existing fully paid ordinary shares contemporaneously, such that they appear to be a single placement. As part of the Placement, Booking has agreed to subscribe for 4,331,683 newly issued Placement Shares at \$4.04 per Placement Share for an aggregate subscription price of NZ\$17.5 million.
- B The Company and the Sellers have requested that the Underwriter underwrite, and arrange, the Placement (other than in relation to the Booking Shares), and the Underwriter has agreed to do so, on the terms and subject to the conditions set out in this Agreement. Prior to entry into this Agreement, the Company and the Underwriter have agreed that the Underwritten Price will be \$4.04 per Placement Share.
- C Cameron Partners Limited has been appointed as Joint Lead Advisor to the Company pursuant to the Engagement Letter, but is not a party to this Agreement.
- D Following the Placement, the Company intends to offer a share purchase plan to eligible shareholders in New Zealand and Australia to raise approximately \$5 million by way of an issue of fully paid ordinary shares. The Underwriter is not underwriting the share purchase plan, but will perform the services set out in the Engagement Letter in relation to the share purchase plan (and be paid the fees set out in the Engagement Letter in respect of the same).

THE PARTIES AGREE as follows:



1 INTERPRETATION

1.1 Definitions

In this Agreement, including the Background, unless the context requires otherwise:

Accounts means the consolidated financial statements of the Group (including the statement of financial position, the statement of financial performance, and the statement of cashflows) for the 12 months ended 31 March 2019;

Actions has the meaning given in clause 29.2(a);

Affiliate has the meaning given to that term in Rule 501(b) under the US Securities Act and also includes, in respect of any person, any other person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person; and "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of securities, by contract or agency or otherwise;

Agreement means this Underwriting Agreement;

Allotment Date has the meaning give to the term Allotment and Quotation Date in Schedule 5;

ASIC Instrument means ASIC Instrument 18-0299 issued on 24 April 2018 by the Australian Securities and Investments Commission under subsection 741(1) of the *Corporations Act 2001* (Cth);

ASX means (as applicable) ASX Limited (ABN 98 008 624 691) or the equity securities market operated by that entity;

ASX Listing Rules means the listing rules from time to time of ASX as they apply to the Company as a foreign exempt listed entity on ASX and as amended or waived from time to time;

Bookbuild means the bookbuild process conducted by the Underwriter between the Bookbuild Opening Date and the Bookbuild Closing Date in accordance with clause 4.1 to determine the allocation of the Placement Shares;

Bookbuild Opening Date has the meaning given in Schedule 5;

Bookbuild Closing Date has the meaning given in Schedule 5;

Bookbuild Price means the amount payable by Eligible Bookbuild Investors under the Placement in respect of Placement Shares, being the Underwritten Price;

Booking means Coronado Pte Ltd;



Booking Placement Agreement means the agreement between Booking and the Company for the subscription of the Booking Shares dated on or about the date of this Agreement;

Booking Shares means the 4,331,683 Shares to be acquired by Booking at the Bookbuild Price pursuant to the Booking Placement Agreement;

Business Day means any day on which registered banks are open for business in Auckland and Wellington and Sydney and on which each of the NZX Main Board and ASX is open for trading;

Certificate means:

- (a) in respect of the Company, a certificate in the form set out in Schedule 2 executed by one director of the Company;
- (b) in respect of a Seller, a certificate in the form set out in Schedule 3 executed by an authorised signatory on behalf of the Seller;

Claims means any allegation, debt, cause of action, liability, claim, proceeding, judgment, award, suit or demand of any nature (and in each case whether or not successful, compromised or settled and whether joint or several), howsoever arising, and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise;

Companies Act means the Companies Act 1993;

Defaulting Bookbuild Investor means an Eligible Bookbuild Investor (other than Booking) who, by 12 noon on the Allotment Date, has not paid in full and in cleared funds the Bookbuild Price in respect of each of the Placement Shares allocated to that Eligible Bookbuild Investor under clause 4.1;

Dispose means to dispose or agree to dispose directly or through any other person by any means, including the following:

- (a) granting or exercising an option;
- (b) using an asset as collateral (other than for the purposes of providing a security interest to lenders, in accordance with past practice);
- (c) decreasing an economic interest; and
- (d) disposing of part of an asset;

Due Diligence Committee means the committee established by the Company to carry out the Due Diligence Investigations in accordance with the Due Diligence Process Memorandum;

Due Diligence Investigations means the due diligence activities described in the Due Diligence Process Memorandum;



Due Diligence Process Memorandum means the document setting out the due diligence investigations relating to the Placement, in the form approved by the Underwriter (acting reasonably);

Due Diligence Report means the report of the Due Diligence Committee to be issued pursuant to the Due Diligence Process Memorandum;

Eligible Bookbuild Investor means any person:

- (a) who, if in New Zealand, applies to participate in the Bookbuild through a Primary Market Participant;
- (b) who, if in Australia, is a "wholesale investor" as defined in clause 1 of Section 5A of Schedule 4 of the Master ECM Terms;
- (c) who, if in the United Kingdom, is a person who is able to give the warranties and representations listed in clause 40 of Section 5A of Schedule 4 of the Master ECM Terms;
- (d) who, if in Hong Kong, is a person who is able to give the warranties and representations listed in clause 15 of Section 5A of Schedule 4 of the Master ECM Terms;
- (e) who, if in Singapore, is a person who is able to give the warranties and representations listed in clause 33 of Section 5A of Schedule 4 of the Master ECM Terms; or
- (f) to whom, if outside the jurisdictions set out in paragraphs (a) to (e) above, an offer of Placement Shares can be made under all applicable laws, without the need for any registration, lodgement, prescribed offer document or similar formality,

in each case, provided that such person is not in the United States unless it is an Eligible US Fund Manager;

Eligible US Fund Manager means dealers or other professional fiduciaries organised or incorporated in the United States that are acting for a discretionary or similar account (other than an estate or trust) held for the benefit or account of persons that are not "US persons" (as defined in Rule 902(k) under the US Securities Act) for which they have and are exercising investment discretion within the meaning of Rule 902(k)(2)(i) of Regulation S;

Engagement Letter means the letter between the Company and the Underwriter dated 27 June 2019 appointing the Underwriter to act as joint lead advisor, bookrunner and underwriter, in relation to the Placement;

Excluded Information means any information that is not generally available at the date of this Agreement which, if made generally available, would be likely to have a material effect upon the price or value of the Shares;



Existing Shares means the 80,922,809 existing issued ordinary shares of the Company;

First Party has the meaning given in clause 24;

FMA means the Financial Markets Authority;

FMCA means the Financial Markets Conduct Act 2013;

FMCR means the Financial Markets Conduct Regulations 2014;

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law;

Group means the Company and its Subsidiaries, and each of them is a *Group Member*;

GST includes tax imposed under the GST Act;

GST Act means the Goods and Services Tax Act 1985 (New Zealand) and the New Tax System (Goods and Services Tax) Act 1999 as the context requires;

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

Indemnified Person means each of DCL, its related companies, Deutsche Bank AG and their respective directors, officers, partners, employees and advisers;

Insolvency Event means, in relation to an entity:

- (a) the suspension or cessation of the primary, or all of the, business activities of that entity for more than five consecutive Business Days; or
- (b) that entity:
 - (i) going into receivership or having a receiver, trustee, statutory manager, interim liquidator, liquidator or administrator appointed in respect of all or a substantial part of its assets;
 - (ii) being or becoming unable to pay its debts as they fall due, or being presumed to be unable to pay its debts as they fall due under sections 287(a) to 287(d) of the Companies Act;
 - (iii) stopping or suspending payment of any of its indebtedness or threatening to do so;



- (iv) making or proposing to make an assignment for the benefit of, or entering into or making any arrangement or composition with, its creditors;
- (v) any event, matter, proposal or circumstance occurring in relation to that entity that has a substantially similar effect to any of the events, matters or circumstances set out in (i) to (iv) above; or
- (vi) any resolution being passed, or any proceeding being commenced, for the liquidation, dissolution, administration, winding up of that entity or any analogous procedure under the law of any jurisdiction in which that entity is incorporated, carries on business or has property (whether on a voluntary or involuntary basis);

Issue means the issue of Shares at the Bookbuild Price by the Company to Eligible Bookbuild Investors;

Investor Presentation means the investor presentation prepared by the Company in the form annexed to this Agreement as Annexure "B";

Loss means all Claims, demands, losses, costs, penalties, charges or expenses (including legal costs and expenses and other out-of-pocket expenses) and liabilities (including all such losses suffered or incurred in disputing, defending, investigating, preparing or providing evidence in connection with any Claims and/or in establishing a right to be indemnified under clause 13.1 or receive a contractual contribution under clause 13.12 and/or in seeking advice in relation to any Claims or in any way related to or in connection with the indemnity in clause 13.1 or the contractual contribution in clause 13.12) and whether joint or several;

Master ECM Terms means the New Zealand Master ECM Terms published by the New Zealand Financial Markets Association dated 30 August 2019;

Material Adverse Event means an event or events, or any matter or matters or information, individually or together, including any breach of a warranty or a covenant of the Company or the Sellers under this Agreement, which occurs, or which the Underwriter first become aware of, after the date of this Agreement and which in the reasonable opinion of the Underwriter:

- (a) has or is likely to have, or once disclosed will or will be likely to have, a material adverse effect on:
 - (i) the Group or its business or prospects;
 - (ii) the Placement;
 - (iii) the price at which the Existing Shares are traded, or Placement Shares will trade, on the NZX Main Board and ASX;
 - (iv) the allotment of and payment for the Placement Shares to be allotted;



- (v) the ability of the Company or the Sellers to allot the Placement Shares at the Bookbuild Price;
- (vi) the Quotation of the Placement Shares on the NZX Main Board or ASX;
or
- (b) would, or would be likely to give rise to a material liability to the Underwriter in connection with the Placement in any capacity under any law or regulation;
or
- (c) has given rise to or is likely to give rise to a contravention by the Underwriter of, or the Underwriter being involved in a contravention of, the FMCA, the NZX Listing Rules, ASX Listing Rules or any other applicable law or regulation,

except in the case of paragraph (b) or (c) above where the relevant event or matter results solely or predominantly from the fraud, wilful misconduct, wilful default or negligence of the Underwriter, provided that a Material Adverse Event will not automatically be constituted by the Underwriter validly terminating its obligations under this Agreement under clause 2.5 or 14.2;

NZX means NZX Limited;

NZX Listing Rules means the listing rules from time to time of the NZX Main Board;

NZX Main Board means the main board equity securities market operated by NZX;

NZX Notice means the notice the Company is required to give to NZX pursuant to clause 20(1)(a) of Schedule 8 of the FMCR in order to comply with the QFP Exclusion which must also be provided to ASX and incorporate the information required by paragraph 5(c) of the ASIC Instrument;

NZX Waiver means a waiver granted by NZX in respect of any NZX Listing Rule;

Placement means the Issue and the Sell Down together;

Placement Shares means the Shares to be offered by the Company for subscription and offered by the Sellers for sale pursuant to the Placement, which Shares will rank pari passu with the Existing Shares;

Placement Shortfall Shares means the number of Shares equal to:

$$PSS = \frac{PUA - APS}{UP} + DBIS$$

where:

PSS = the number of Placement Shortfall Shares;

PUA = the Placement Underwritten Amount;



APS = an amount equal to the number of Placement Shares allocated to Bookbuild Investors (other than Booking) in accordance with clause 4.1 multiplied by the Bookbuild Price;

UP = the Bookbuild Price; and

DBIS = any Shares in respect of which a Defaulting Bookbuild Investor has not paid in full and in cleared funds the Bookbuild Price by 12 noon on the Allotment Date,

and, for the avoidance of doubt, will not include any Booking Shares;

Placement Underwritten Amount means \$38,134,800.28, which excludes the Booking Shares;

Primary Market Participant has the meaning given to it in Rule 1.1 of the NZX Participant Rules;

QFP Conditions has the meaning given in clause 5.1(a);

QFP Exclusion means the exclusion in clause 19 of Schedule 1 to the FMCA;

QFP Requirements has the meaning given in clause 5.1(b);

Quotation means official quotation of the Placement Shares on the NZX Main Board and the ASX;

Registrar means Link Market Services Limited;

Registrar of Companies means the Registrar of Companies appointed in accordance with section 357(1) of the Companies Act;

Regulation S means Regulation S promulgated under the US Securities Act;

Respective Proportion means:

A / B (expressed as a percentage), where:

A = the consideration received by the relevant Seller in connection with the sale of its Secondary Shares; and

B = the aggregate consideration received by all of the Sellers in connection with the sale of all of the Secondary Shares.

Second Party has the meaning given in clause 24;

Secondary Shares means the Shares to be sold by each Seller at the Placement Price, as set out in Schedule 6;

Security Interest includes any mortgage, pledge, lien, hypothecation, or other charge or encumbrance;



Sell Down means the sale by the Sellers of the Secondary Shares conducted contemporaneously with the Issue;

Shares means ordinary shares in the Company;

Shareholder means each holder of Shares recorded as such in the share register of the Company;

Specified Period has the meaning given in clause 7.1(c);

Subsidiary means a subsidiary as defined in sections 5 and 6 of the Companies Act and, where applicable, as if the company concerned were a company incorporated under the Companies Act;

Sub-Underwriter means any person appointed by the Underwriter as a sub-underwriter of the Underwriter's obligations under this Agreement;

Takeovers Code means the Takeovers Code made pursuant to the Takeovers Act 1993 and set out in the Schedule to the Takeovers Regulations 2000;

Termination Date means the earlier of:

- (a) 5.00pm on the Allotment Date;
- (b) for the Underwriter, the date upon which the Underwriter discharges its payment obligations under clause 4.2 in cleared funds available for immediate disbursement without set off, counterclaim or deduction (except as permitted by the Engagement Letter) and/or procures application and payment for the Placement Shortfall Shares;
- (c) the date on which this Agreement is validly terminated pursuant to clause 2.5 or 14.2; and
- (d) the date upon which the parties agree in writing that the obligations of the Underwriter should terminate;

Third Party has the meaning given in clause 5.7(h);

Timetable means the timetable of the Placement set out in Schedule 4;

Underwriter means DCL;

Underwriter Group means DCL, Deutsche Bank AG and each of their respective related companies;

Underwriter and Bookrunner Fee has the meaning given to that expression by clause 10.1;

Underwriter Warranty means a representation and warranty made by the Underwriter to the Company pursuant to clause 12;



Underwritten Price means \$4.04 per Placement Share, being the price agreed between the Company and the Underwriter prior to entry into this Agreement;

US Securities Act means the US Securities Act of 1933;

Verification Materials means the contents of the file maintained by the Company being the documents and information provided in relation to the verification of statements made in the Investor Presentation and verified as part of Due Diligence Investigations; and

Warranty means a representation and warranty made by the Company to the Underwriter pursuant to clause 11.1 as set out in Schedule 1.

1.2 **Construction of certain references**

In this Agreement, unless the context otherwise requires, any reference to:

- (a) an *act, statute or statutory provision, or order or regulation* made under it, includes that act, statute, provision, order or regulation as amended, modified, re-enacted or replaced from time to time (whether before or after the date of this Agreement) and to any previous act, statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by that act, statute, provision, order or regulation;
- (b) an *agreement* includes a contract, deed, licence, franchise, undertaking (in each case whether oral or written) or other document recording legally binding obligations (whether mutual or otherwise) and includes that agreement as modified, supplemented, novated or substituted from time to time;
- (c) an *authorisation* includes any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Government Agency, including under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005, and, in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken;
- (d) a *consent* includes an approval, authorisation, exemption, waiver, filing, licence, order, permit, recording or registration (and references to obtaining consents is to be construed accordingly);
- (e) a *material adverse effect* in a person (or group of persons) is a reference to a material adverse change:
 - (i) in that person's (or group of persons') condition (financial, operational, legal or otherwise), earnings, business affairs, solvency, credit rating, management, prospects, operations or in the consolidated financial condition or operations of it or any of its related companies; or



- (ii) in that person's (or group of persons') ability or willingness to perform its material obligations under any material agreement to which it is a party,

whether or not arising in the ordinary course of business;

- (f) a *person* includes an individual, body corporate, an association of persons (whether corporate or not), a trust and a state and agency of a state (in each case, whether or not having separate legal personality and whether incorporated or existing in New Zealand or elsewhere);
- (g) *property* includes the whole and any part of the relevant person's business, assets, undertakings, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it;
- (h) *related companies* has the meaning given to it by section 2(3) of the Companies Act, read as if references in that section to a company included any body corporate;
- (i) a *related party* includes:
 - (i) any related company of the Company;
 - (ii) the directors of the Company; and
 - (iii) the directors of any related company of the Company;
- (j) any *party* to this Agreement includes, as far as is consistent with the provisions of this Agreement, that party's successors in title and assigns;
- (k) one *gender* includes each other gender;
- (l) a *clause, schedule or annexure* is a reference to a clause in, or Schedule or Annexure to, this Agreement;
- (m) *currency* and \$ are references to New Zealand currency, unless expressly stated otherwise;
- (n) *dates* and *times* are to dates and times in New Zealand and a *month* or *year* are references to a calendar month or year as the case may be;
- (o) *headings* and the *table of contents* are to be ignored in construing this Agreement;
- (p) *include* means include without limitation and *including* is to be construed accordingly; and
- (q) costs incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and subject to clause 22.4, taxes incurred by that person.



1.3 **Timetable**

All references to dates in this Agreement have the same meaning as in the Timetable, and any defined terms not defined in clause 1.1 but defined in the Timetable have the meaning given to them in the Timetable.

1.4 **Relationship of the parties**

- (a) The obligations of Deutsche Craigs Limited and Craigs Investment Partners Limited are joint and several and they shall have responsibility and liability for the obligations of each other.
- (b) The obligations of the Company and the Sellers are several and not joint or joint and several, and (except to the extent that such obligations are assumed in writing) neither the Company nor any of the Sellers has any responsibility or liability for the obligations of the other.
- (c) In respect of any liability of the Sellers under this Agreement, the liability of each Seller shall be several and not joint and shall be limited to that Seller's Respective Proportion of the gross proceeds of the existing Placement Shares sold under the Sell Down.
- (d) A right of a party under this Agreement is held by that party severally and each party exercises its rights, powers and benefits under this Agreement individually, provided that, without limiting clause 1.4(a), Deutsche Craigs Limited and Craigs Investment Partners Limited will act jointly and severally with each other.
- (e) Deutsche Craigs Limited is a wholly-owned subsidiary of Craigs Investment Partners Limited (*CIP*). The role of Underwriter may be performed by Deutsche Craigs Limited or CIP (as the NZX Participant Firm), and those entities shall have the rights and benefits of the Underwriter.
- (f) Where the consent or approval of two or more parties is required under this Agreement, that consent or approval must be obtained from each of those parties.
- (g) Nothing in this Agreement will be construed so as to constitute an agency, a partnership or a fiduciary relationship between the Underwriter, the Company or any of them or so as to constitute any of them as the agent, partner, fiduciary or legal representative of any other of them.

2 **CONDITIONS**

2.1 **Conditional obligations of the Underwriter**

The obligations of the Underwriter under this Agreement (other than the confidentiality obligations set out in clause 28, which shall be binding from the date of this Agreement) do not become binding unless the following conditions are fulfilled (or waived under clause 2.3, if capable of waiver):



- (a) **NZX Waivers:** NZX granting all necessary NZX Waivers to give effect to the Placement on terms and conditions satisfactory to the Underwriter (acting reasonably) by no later than 9.30am on the Bookbuild Opening Date.
- (b) **Announcement:** an announcement being provided by the Company to NZX and ASX by no later than 9.30am on the date of this Agreement (or such later time as the parties agree, each acting reasonably), in the form annexed to this Agreement as Annexure "A".
- (c) **Cleansing Notice:** an NZX Notice in a form approved by the Underwriter (acting reasonably) being provided by the Company to NZX and ASX by no later than 9.30am on the Bookbuild Opening Date.
- (d) **Bring down due diligence investigations:** bring down due diligence investigations in respect of the Placement to be completed on or prior to the Allotment Date in accordance with the Due Diligence Process Memorandum in all material respects to the satisfaction of the Underwriter (acting reasonably).
- (e) **Certificate:** receipt by the Underwriter of a Certificate from the Company and each of the Sellers by 8.00am on the Allotment Date.
- (f) **Trading halt:** a trading halt is granted on the NZX Main Board and ASX in respect of the Company's Existing Shares before 9.30am on the Bookbuild Opening Date, such trading halt to be lifted once the Bookbuild outcome has been determined and the Underwriter confirms to the Company that allocations have been communicated to those Eligible Bookbuild Investors to whom Placement Shares have been allocated.
- (g) **Booking Placement Agreement:** the Company entering into the Booking Placement Agreement in a form satisfactory to the Underwriter (acting reasonably).

2.2 **Obligation to satisfy conditions**

The Company must use all reasonable endeavours to satisfy the conditions referred to in clause 2.1.

2.3 **Waiver**

The Underwriter may, acting in its absolute and unfettered discretion, waive any of the conditions referred to in clause 2.1 (if capable of waiver) by giving notice in writing to the Company to that effect.

2.4 **Notice**

The Company must promptly notify the Underwriter when a condition referred to in clauses 2.1 has been satisfied.

2.5 **Failure to fulfil conditions precedent**

If any condition precedent in clause 2.1 is not satisfied (or waived by the Underwriter) by the relevant date referred to in clause 2.1 for that condition, the Underwriter (in its absolute and unfettered discretion) may by written notice to the



Company terminate their obligations under this Agreement at any time on or prior to the Allotment Date.

3 **APPOINTMENT**

3.1 **Appointment of Underwriter**

- (a) The Company and the Sellers appoint the Underwriter as joint lead advisor, bookrunner and underwriter for the purposes of underwriting the Placement (other than in respect of the Booking Shares), upon the terms and subject to the conditions set out in this Agreement, and the Underwriter confirms its acceptance of this appointment, subject to the terms of this Agreement.
- (b) The appointments under clause 3.1(a) confer on the Underwriter all powers, authorities and discretions which are necessary for, or reasonably incidental to, the performance of its respective functions as underwriter, joint lead advisor and bookrunner (including the power to appoint Sub-Underwriters in accordance with clause 20.3) in accordance with the terms and conditions of this Agreement.

3.2 **Agreement to underwrite**

The Underwriter agrees to underwrite subscriptions for the Placement Shares, other than the Booking Shares, on the terms and conditions set out in this Agreement.

3.3 **Assistance**

The Company and the Sellers undertake to the Underwriter that they will, at any time up to and including the Allotment Date, use all reasonable endeavours to provide to the Underwriter all information and assistance reasonably requested by it, or that may be required by it, to perform its obligations as underwriter, bookrunner or joint lead advisor in accordance with the terms and conditions of this Agreement.

3.4 **Sub-underwriting**

For the avoidance of doubt, the obligations of the Underwriter are primary obligations and, unless otherwise agreed, will not be affected, discharged or released by the appointment of Sub-Underwriters by the Underwriter.

4 **BOOKBUILD**

4.1 **Bookbuild**

- (a) The Underwriter must, beginning on the Bookbuild Opening Date and continuing until the Bookbuild Closing Date, invite Eligible Bookbuild Investors to bid for Placement Shares (other than the Booking Shares) at the Bookbuild Price in the Bookbuild in accordance with the Master ECM Terms (and this Agreement is the Lead Manager Agreement for the purposes of those terms).
- (b) The Underwriter (or any of its related companies) and any Sub-Underwriters may bid into the Bookbuild.
- (c) The Underwriter will provide the Company with a written recommendation as to allocation of the Placement Shares. Allocation of the Placement Shares (other than the Booking Shares) to Eligible Bookbuild Investors will be determined by the



Underwriter in agreement with the Company (each acting reasonably) and in accordance with any relevant statements in the Investor Presentation.

- (d) Any necessary scaling of applications under the Placement will be determined by the Underwriter in agreement with the Company (each acting reasonably).
- (e) Confirmation letters must be sent by the Underwriter to the relevant Eligible Bookbuild Investors (other than Booking) on the Bookbuild Closing Date.
- (f) The Company and the Sellers must accept all bids for Placement Shares (other than any bids in respect of the Booking Shares) which it receives from Eligible Bookbuild Investors to whom Placement Shares are allocated under the Bookbuild.
- (g) In no event will the Underwriter, the Company or the Sellers offer Placement Shares or indicate that Placement Shares are or may be available for a price other than the Bookbuild Price.

4.2 **Application and payment for Placement Shortfall Shares**

- (a) The Underwriter shall, not later than 4.00pm on the Allotment Date, make or procure:
 - (i) bid letters for the Placement Shortfall Shares; and
 - (ii) payment to the Company in full, without set-off, counterclaim or deduction (except as permitted by the Engagement Letter), of an amount equal to the Bookbuild Price multiplied by the number of Placement Shortfall Shares in immediately available same day cleared funds.
- (b) For the avoidance of doubt, in no event may the amount required to be paid by the Underwriter under this clause 4.2 exceed the Placement Underwritten Amount.
- (c) In the event that any of the Placement Shortfall Shares relate to the Sell Down, the Company will be responsible for paying the funds relating to such Shares received by it from the Underwriter under this clause 4.2 to the Sellers, and the payment to the Company of those funds by the Underwriter shall discharge the Underwriter from any obligation it may otherwise have to the Sellers in relation to the proceeds of sale of those Shares.

4.3 **No requirement to take up shortfall if bid refused**

If any refusal by the Company and the Sellers to accept a bid for Placement Shares (other than any bid from an Eligible Bookbuild Investor in respect of whom the Underwriter has provided notice to the Company in accordance with clause 4.1) results in there being Placement Shortfall Shares, the Underwriter will not be obliged to take up the amount of the Placement Shortfall Shares that is attributable to that refusal.

4.4 **Allotment of Placement Shares**

On the Allotment Date, the Company and the Sellers must take all necessary and appropriate steps to allot the Placement Shares to those Eligible Bookbuild Investors allocated Placement Shares in respect of which a bid letter has been received by the



Underwriter (including for the avoidance of doubt, the Placement Shortfall Shares applied for by the Underwriter in accordance with this Agreement), provided that, if bring down due diligence has not been completed in accordance with the Due Diligence Process Memorandum in all material respects to the satisfaction of the Underwriter (acting reasonably), the Company and the Sellers must not allot any Placement Shortfall Shares applied for by the Underwriter to the Underwriter and must immediately return to the Underwriter any payment made by the Underwriter in respect of those Placement Shortfall Shares. The Company will take all necessary and appropriate steps to settle the allotment of the Booking Shares with Booking directly on the Allotment Date.

4.5 **Defaulting Bookbuild Investors**

On the Allotment Date, the Company and the Sellers assign to the Underwriter all contractual rights and recourse they may have (if any) against any Defaulting Bookbuild Investors. If the Company and the Sellers are unable to assign to the Underwriter all of the contractual rights and recourse referred to in this clause 4.5, the Company and the Sellers undertake that they will assign such rights when and to the extent they are legally able to and in the interim will hold such rights on trust for the Underwriter.

5 **DUE DILIGENCE OBLIGATIONS OF THE COMPANY**

5.1 **Due diligence**

The Company must, until the Allotment Date, make, and continue to make, reasonable enquiries, take reasonable precautions, and exercise reasonable due diligence, to ensure that among other things specified in the Due Diligence Process Memorandum:

- (a) the prerequisites for reliance on the QFP Exclusion (as set out in clause 19 of Schedule 1 to the FMCA (*QFP Conditions*)) are satisfied;
- (b) the requirements to be satisfied in relying on the QFP Exclusion (as set out in clauses 19 to 21 of Schedule 8 to the FMCR (*QFP Requirements*)) are satisfied; and
- (c) the Investor Presentation and any document or announcement distributed by or on behalf of the Company in connection with the Placement do not contain any statement that is:
 - (i) false, misleading, deceptive, or likely to mislead or deceive; or
 - (ii) unsubstantiated (being a statement for which the Company does not have reasonable grounds, other than a statement that a reasonable person would not expect to be substantiated).

5.2 **Due Diligence Committee**

The Company has established the Due Diligence Committee to assist the Company in complying with its obligations under clauses 5.1, 5.4 and 5.5. The Company shall procure that the Due Diligence Investigations are carried out in accordance with the Due Diligence Process Memorandum. The Underwriter shall be entitled to receive



notice of and participate in meetings of the Due Diligence Committee in accordance with the terms of the Due Diligence Process Memorandum.

5.3 **Due Diligence Materials**

The Company will provide a final copy of the Due Diligence Report, and upon reasonable request, full and free access to the Verification Materials and all materials and documents used or created in connection with the preparation of the Due Diligence Report and the Verification Materials to the Underwriter and will procure that the legal opinion referred to in the Due Diligence Process Memorandum from Russell McVeagh is addressed to the Underwriter, and that the Underwriter is entitled to rely on the legal opinion provided to it (as contemplated by clause 14.1(b)), subject to the limitations set out in that opinion.

5.4 **Significant matters arising before Allotment Date**

Without in any way limiting the provisions of clause 14, if at any time prior to the Allotment Date the Company discovers or is notified that there has been a significant change affecting any information contained in the Investor Presentation or an NZX Notice, the Company must immediately notify the Underwriter of that change or matter and the parties will forthwith thereafter consult on the most appropriate course of action to be taken, provided that:

- (a) no action shall be taken without the prior consent of the Underwriter (such consent not to be unreasonably withheld or delayed and in any event to be provided where necessary for the Company to comply with the legal obligations of the Company, as set out in legal advice obtained from counsel experienced in the relevant area), any such consent to be without prejudice to clauses 8 and 14 except where such consent has been given in respect of a termination event referred to in clause 14.1; and
- (b) if any such action is taken, it shall be taken as soon as reasonably practicable following the receipt of consent from the Underwriter.

5.5 **Correcting notice after Allotment Date**

If, within the 12 months after the Allotment Date, the Company becomes aware that an NZX Notice was "defective" (as defined in, as applicable, clause 21(3)(i) or (ii) of Schedule 8 of the FMCR), the Company will promptly file any correcting notice required under the FMCR.

5.6 **Access to information and services**

(a) Subject to clause 5.7(d), at any time:

- (i) prior to the Allotment Date;
- (ii) during any investigation or enquiry in relation to the Placement by NZX, ASX the FMA or any other Government Agency; or
- (iii) during any litigation or similar proceedings in relation to the Placement,

each party must, upon receipt of reasonable notice from another party (acting reasonably), provide that other party with full and free access during normal



business hours to, and on reasonable request and to the extent possible and legally permissible, copies of all records, approvals, correspondence, materials and documents (in any medium) used in, created in connection with or in any other way connected with, the Due Diligence Investigations or the Placement. Each party must also procure that final versions of all such materials and documents are retained and stored for at least seven years from completion of the Placement for such purpose.

- (b) Without limiting the generality of clause 5.6(a), the Company must to the extent legally permissible, at the Underwriter's written request (acting reasonably) promptly give the Underwriter copies of notifications to and approvals of NZX, ASX the FMA or any other regulatory body relating to the Investor Presentation and any other similar material relating to the Placement.
- (c) Nothing in this clause 5.6 will require the parties to waive legal professional privilege.

5.7 **Acknowledgements**

The Company and the Sellers agree and acknowledge (without acceptance that the following provisions are, of themselves, sufficient for the Underwriter to comply with law) that:

- (a) the Underwriter is not required to give legal, regulatory, accounting, taxation or public relations advice in connection with the Placement or any other advice that is not specified in this Agreement;
- (b) the Company and the Sellers will rely on their own expertise and on that of specialist legal, regulatory, accounting and tax advisers (and not that of the Underwriter) in respect of the Due Diligence Investigations;
- (c) any advice, whether written or oral, given by the Underwriter to the Company or the Sellers or any communications between the Underwriter and the Company or the Sellers can only be used and relied on by the Company or the Sellers and may not be used or relied on by any third party and may not be disclosed to any third party without the prior written approval of the Underwriter (other than the Company and the Sellers' professional advisers who may place no reliance on such advice);
- (d) the Underwriter is not obliged to disclose to the Company or the Sellers, or utilise for the benefit of the Company or the Sellers, any non-public information which the Underwriter obtains in the normal course of their business where such disclosure or use could result in a breach of any obligation of confidentiality or any internal information barrier policies of the Underwriter;
- (e) it is contracting with the Underwriter on an arms-length basis to provide the services described in this Agreement and the Underwriter is not assuming any duties or obligations (fiduciary or otherwise) in respect of it other than those expressly set out in this Agreement;



- (f) without prejudice to any claim the Company or the Sellers may have against the Underwriter, no proceedings may be taken against any director, officer, employee or agent of any member of the Underwriter Group in respect of any claim the Company or the Sellers may have against the Underwriter;
- (g) the Underwriter and its related companies and members of its Underwriter Group (in their capacity as principal or agent) carry on a wide range of commercial banking and investment banking activities globally (including investment advisory, asset management, research, securities issuance, trading (customer and proprietary) and brokerage) from which conflicting interests or duties may arise and therefore, conflicts may arise between the duties of the Underwriter under this Agreement and other duties of the Underwriter or its related companies. Notwithstanding the foregoing, the Underwriter agree at all times to use all reasonable endeavours to ensure that appropriate and effective internal information barriers are in place and operative;
- (h) the Underwriter and any of its related companies and members of its Underwriter Group may, at any time:
 - (i) provide services to any entity or person (a *Third Party*) other than:
 - (A) the Company and the Sellers; or
 - (B) any Group Member;
 - (ii) hold positions in securities or options on securities of, or hold positions in loans or options on loans of, the Company or a Third Party;
 - (iii) engage in any transaction (on its own account or otherwise) with respect to the Company, the Sellers or a Third Party; or
 - (iv) act in relation to any matter for itself, the Company, the Sellers or any Third Party,

notwithstanding that such services, transactions or actions may be adverse to the Company or the Sellers or any Group Member, and the Underwriter Group may retain for its own benefit any related remuneration or profit, and notwithstanding that a conflict of interest exists or may arise and/or any member of the Underwriter Group is in possession or has come or comes into possession (whether before, during or after the term of this commitment) of information confidential to the Company or the Sellers, provided that the directors, officers and employees of the Underwriter Group engaged in providing the services, implementing the transaction or acting for a Third Party are not aware of information material to the transactions contemplated by this Agreement which is and which continues to be confidential to the Company or the Sellers;

- (i) permanent or ad hoc arrangements/information barriers may be used between and within divisions of the Underwriter or other members of the



Underwriter Group for the purposes of compliance with clause 5.7(h) and that locating directors, officers or employees in separate workplaces is not necessary for such purpose;

- (j) information which is held elsewhere within the Underwriter or the Underwriter Group but of which none of the individual directors, officers or employees involved in the transactions contemplated by this Agreement actually has knowledge (or can properly obtain knowledge without breach of internal procedures), shall not for any purpose be taken into account in determining the Underwriter's responsibilities to the Company and the Sellers under this Agreement;
- (k) it is solely responsible for making its own independent judgments with respect to the Placement; and
- (l) it is not the intention to create a fiduciary relationship between the Underwriter and the Company or the Underwriter and the Sellers and the Underwriter will not be acting in a fiduciary capacity with respect to the Company or the Sellers.

6 ANNOUNCEMENTS AND ADVERTISEMENTS

6.1 Consultation

- (a) The Company and the Sellers undertake that they will not, and will procure that (as applicable) none of their respective related parties or agents will, without the prior written approval of the Underwriter (such approval not to be unreasonably withheld or delayed), make or cause or permit any announcement to be made or any information to be disseminated which is or may be material to, or does or may materially affect, the Placement. However, if the Company and/or the Sellers are required by law to make an announcement to the NZX and ASX to comply with their legal obligations, the Company and the Sellers (as applicable) may make the announcement without the prior written approval of the Underwriter, provided that (where lawfully able) the Company and the Sellers (as applicable) have made reasonable efforts to obtain the Underwriter's consent to the relevant announcement in accordance with this clause 6.1(a) and the Company and the Sellers (as applicable) used commercially reasonable endeavours to ensure (to the extent reasonably practicable consistent with its other obligations), that the announcement is in a form which is not prejudicial to the Placement.
- (b) The Underwriter undertakes that it will not, without the prior written approval of the Company and/or the Sellers (such approval not to be unreasonably withheld or delayed), make or cause or permit any announcement to be made which is or may be material to, or does or may materially affect, the Placement.

6.2 Publicity

Each of the Company and the Sellers:

- (a) agree that the Underwriter has the right, at the Underwriter's expense, to place advertisements in major daily newspapers and business journals, or otherwise publicise its role with respect to the underwriting of the Placement



on terms approved by the Company (such approval not to be unreasonably withheld or delayed); and

- (b) undertake that it will not, without the prior written consent (such consent not to be unreasonably withheld or delayed) of the Underwriter, use the name or logo of the Underwriter in any public advertisement, statement, media release or document concerning the Placement.

7 UNDERTAKINGS

7.1 No competing offers

- (a) During the Specified Period, the Company and the Sellers will not (and, in the case of the Company, will not permit any Group Member to), without the prior written consent of the Underwriter (which may not be unreasonably withheld or delayed):
 - (i) offer for sale or subscription or accept offers to subscribe for, or sell, any Shares or other equity securities issued by the Company;
 - (ii) allot or issue any Shares or other equity securities of the Company (whether preferential, redeemable, convertible or otherwise);
 - (iii) issue or grant any right or option that entitles the holder to call for the issue of Shares by the Company or that is otherwise convertible into, exchangeable for or redeemable by the issue of, Shares or other equity securities by the Company;
 - (iv) create any debt instrument or other obligation which may be convertible into, exchangeable for or redeemable by, the issue of Shares or other equity securities by the Company;
 - (v) otherwise enter into any agreement whereby any person may be entitled to the allotment and issue of any Shares or other equity securities by the Company; or
 - (vi) make any announcement of an intention to do any of the foregoing, other than pursuant to:
 - (vii) an existing employee incentive scheme;
 - (viii) the Placement;
 - (ix) this Agreement;
 - (x) the share purchase plan to raise approximately \$5 million, which is intended to be launched by the Company following the Placement; or
 - (xi) as disclosed in the Investor Presentation.



For the purposes of this clause 7.1(a), “equity securities” has the meaning as given in section 8(2) of the FMCA.

- (b) During the Specified Period, the Company will not (and will not permit any Group Member to), without the prior written consent of the Underwriter (which shall not be unreasonably withheld or delayed) dispose of or charge, or agree to Dispose of or charge, the whole or any substantial part of the Group’s business, except as has been publicly disclosed prior to the date of this Agreement (including by way of announcement on the NZX Main Board and ASX), as is expressly contemplated in the Investor Presentation, as announced on the NZX Main Board and ASX in any disclosure agreed with the Underwriter, or as disclosed in writing to the Underwriter prior to the date of this Agreement.
- (c) The *Specified Period* for the purposes of this clause 7.1 shall be the period from the date of this Agreement to and including:
 - (i) in the case of clause 7.1(a), the date 90 days after the Allotment Date; and
 - (ii) in the case of clause 7.1(b), the date 60 days after the Allotment Date.

7.2 **Undertakings until the Allotment Date**

Each of the Company and the Sellers must in the period until the Allotment Date:

- (a) not commit, be involved in or acquiesce in any activity which breaches or will lead to a breach, to a material extent, which is relevant to the Placement of:
 - (i) the FMCA, FMCR or any other applicable law in any relevant jurisdiction;
 - (ii) the NZX Listing Rules or ASX Listing Rules;
 - (iii) the Company’s constitution; or
 - (iv) any legally binding requirement of the FMA, NZX or ASX;
- (b) procure that neither it, or in the case of the Company, any of its material Group Members:
 - (i) pass any resolution that it be wound up;
 - (ii) enter into any scheme or composition with or for the benefit of its creditors;
 - (iii) have a receiver or manager appointed to the whole or any part of its assets or undertakings;
 - (iv) permit any breach or default whereby it is liable to be wound up;
 - (v) have an administrator appointed to it; or



- (vi) take any step towards any of the foregoing;
- (c) notify the Underwriter of:
 - (i) any breach of any undertaking given by the Company or the Sellers under this Agreement; or
 - (ii) the non-satisfaction of any of the conditions precedent in clause 2.1, or any such condition precedent becoming incapable of satisfaction,

promptly after it becomes aware of any such matter;
- (d) promptly provide the Underwriter with copies of any material communications to or from NZX, ASX, the Companies Office or the FMA relating to any of the transactions contemplated by this Agreement.

7.3 **Conduct of business**

The Company undertakes that during the period commencing on the date of this Agreement and ending 60 days after the Allotment Date it will, except with the prior written consent of the Underwriter (which shall not be unreasonably withheld or delayed), carry on its business in the ordinary course.

7.4 **Use of Proceeds**

The Company must use the proceeds from the Issue for the purposes specifically set out in the Investor Presentation and for incidental costs and expenses incurred in connection with the Placement and for no other purpose.

7.5 **Disposal of Placement Shares**

The Underwriter must inform the Company as soon as reasonably practicable after it has disposed of any Placement Shares allotted to it.

7.6 **Booking Placement Agreement**

The Company must use all reasonable endeavours to perform its obligations in the Booking Placement Agreement and ensure that Booking performs its obligations in accordance with the terms of that agreement.

8 **FINAL RESPONSIBILITY OF COMPANY**

- 8.1 Notwithstanding that the Underwriter, its employees and advisers have assisted and will continue to assist in the compilation of material for, and the preparation of, the Investor Presentation (but without prejudice to clause 14.2), the Company acknowledges and agrees that the Company is and will remain solely and absolutely responsible for ensuring:
- (a) the accuracy, completeness, consistency and materiality of the contents of the Investor Presentation;
 - (b) that all notices, reports, announcements, and advertising material (including the Investor Presentation) published, authorised or instigated by or on behalf of the Company in connection with the Placement are not:



- (i) false, deceptive or misleading or likely to mislead or deceive; or
 - (ii) unsubstantiated (being a statement for which the Company does not have reasonable grounds, other than a statement that a reasonable person would not expect to be substantiated); and
 - (iii) comply with all applicable laws and regulations; and
- (c) that it conducts its obligations under the Placement in accordance with the FMCA, the FMCR, the NZX Listing Rules, the ASX Listing Rules and all other applicable laws and regulations.

8.2 Each Seller acknowledges and agrees that it is and will remain solely and absolutely responsible for ensuring that it conducts its obligations under the Placement in accordance with the FMCA, the FMCR, the NZX Listing Rules, the ASX Listing Rules and all other applicable laws and regulations.

9 DURATION OF UNDERWRITER'S OBLIGATIONS

The obligations of the Underwriter under this Agreement will commence on the date of this Agreement and continue until the Termination Date.

10 FEES, COSTS AND EXPENSES

10.1 Payment of fees

In consideration of performing its obligations under this Agreement, the Company and the Sellers must pay to the Underwriter on the Allotment Date, upon the issue of a tax invoice (as applicable) by the Underwriter such fees as the parties agree in writing (the *Underwriter and Bookrunner Fee*). The Company will be responsible for payment of the Underwriter and Bookrunner Fee in respect of the gross proceeds of the new Placement Shares issued under the Issue while each Seller will be responsible for payment of the Underwriter and Bookrunner Fee in respect of the gross proceeds of the Secondary Shares sold under the Sell Down in proportion to his, her or its Secondary Shares sold.

10.2 Costs and expenses

The Company must pay, or reimburse, the Underwriter for all reasonable out-of-pocket expenses as the parties agree in writing.

10.3 Engagement Letter

For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, if this Agreement is terminated prior to allotment on the Allotment Date the fee in clause 9.4 of the Engagement Letter will continue to be payable in the circumstances set out in that clause.

11 WARRANTIES OF THE COMPANY AND THE SELLERS

11.1 Company

Subject to any matter that is disclosed in the Investor Presentation or that has been fully and fairly disclosed by way of an announcement by the Company to NZX and



ASX or in writing to the Underwriter prior to the date of this Agreement (for the avoidance of doubt, including as may be fully and fairly disclosed through the Underwriter's participation in the Company's due diligence processes and the receipt of any information or reports as part of, or as a result of, those processes), the Company represents and warrants to and, where applicable, agrees with the Underwriter (with the intent that the Underwriter should rely on such representations, warranties and agreements in entering into this Agreement) in the terms set out in Schedule 1. Each of the paragraphs and sub-paragraphs in Schedule 1 will be construed independently and no paragraph or sub-paragraph will be limited by implications arising from any other paragraph or sub-paragraph.

11.2 **The Sellers**

Subject to any matter that is disclosed in writing to the Underwriter prior to the date of this Agreement (for the avoidance of doubt, including as may be fully and fairly disclosed through the Underwriter's participation in the Company's due diligence processes and the receipt of any information or reports as part of, or as a result of, those processes), each of the Sellers severally represents and warrants to, and where applicable, agrees with the Underwriter (with the intent that the Underwriter should rely on such representations, warranties and agreements in entering into this Agreement) in the terms set out in Schedule 2, in each case in respect of itself and its Secondary Shares. Each of the paragraphs and sub-paragraphs in Schedule 2 will be construed independently and no paragraph or sub-paragraph will be limited by implications arising from any other paragraph or sub-paragraph.

11.3 **Warranties repeated**

Each of the Warranties are given as at the date of this Agreement and will be deemed to have been repeated and reaffirmed by the Company and the Sellers on each date from the date of this Agreement until the later of the Termination Date and the Allotment Date, as if it had been made on and effective as at each of those dates.

11.4 **Company and the Sellers to notify**

The Company and the Sellers each undertake to the Underwriter to notify the Underwriter forthwith upon the happening of any event that either constitutes or is likely to constitute a breach of any Warranty and of any matter that may have the effect of making any Warranty incorrect or untrue or misleading by omission or otherwise.

11.5 **Truth of warranties**

The Company and the Sellers each acknowledge that they have agreed for the benefit of the Underwriter that:

- (a) the truth of the statements contained in the Warranties;
- (b) the fulfilment by the Company and the Sellers of all of their material obligations under this Agreement; and
- (c) disclosure by the Company and the Sellers to the Underwriter prior to the Termination Date of any matter or event that does or is likely to constitute a breach of any Warranty and of any matter or event that has or is likely to



have the effect of making any Warranty incorrect, untrue or misleading (were it not disclosed),

are essential to the Underwriter.

12 UNDERWRITER'S WARRANTIES

12.1 Underwriter's Warranties

The Underwriter represents and warrants to the Company and the Sellers (with the intent that the Company and the Sellers should rely on such representations and warranties in entering into this Agreement in the following terms) that:

- (a) (*status*) it is a body corporate validly existing under the laws of its place of incorporation;
- (b) (*power*) it has legal capacity and power to enter into and comply with all of the terms and conditions of this Agreement;
- (c) (*authorisations*) all approvals and authorities that may be required to permit it to enter into this Agreement and to perform this Agreement in accordance with its terms have been obtained and remain valid and subsisting;
- (d) (*validity of obligations*) this Agreement is a valid and binding obligation of it, enforceable in accordance with its terms;
- (e) (*financial resources*) CIP has, and will have, on the date or dates that it is required to comply with clause 4.2, sufficient financial resources or commitments to meet its financial obligations under this Agreement in a timely manner;
- (f) (*US selling restrictions*) it understands that the Placement Shares have not been, and will not be, registered under the US Securities Act, and may only be offered or sold in "offshore transactions" (as defined in Rule 902(h) under Regulation S) in reliance on Regulation S;
- (g) (*no directed selling efforts*) none of it, any of its Affiliates, nor any person acting on behalf of any of them has engaged or will engage in any "directed selling efforts" (as that term is defined in Rule 902(c) under the US Securities Act);
- (h) (*no stabilisation or manipulation*) neither it, nor its Affiliates, nor any person acting on behalf of any of them, has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in the stabilization or manipulation of the price of the Placement Shares in violation of any applicable law;
- (i) (*advise Company of allotment*) it will advise the Company of the number of Placement Shares allotted to the Underwriter and any Sub-Underwriter, as soon as reasonably practicable following the Allotment Date;



- (j) *(offer or sale of Placement Shares)* if it offers or sells any Placement Shares allotted to it, it may only offer or sell such Placement Shares in accordance with all applicable laws having the force of law and to persons to whom securities may be offered or sold without the requirement for the issuer or offeror of those securities to prepare or register a product disclosure statement, prospectus or other similar document, or for the issuer to obtain or maintain any form of licence or registration in respect of such offer or sale.

Each sub-clause of this clause 12.1 will be construed independently and no sub-clause will be limited by implications arising from any other sub-clause.

12.2 **Warranties repeated**

Each of the Underwriter Warranties are given as at the date of this Agreement and will be deemed to have been repeated and reaffirmed by the Underwriter on each date from the date of this Agreement until the later of the Termination Date and the Allotment Date, as if it had been made on and effective as at each of those dates.

12.3 **Underwriter to notify**

The Underwriter undertakes to the Company and the Sellers to notify the Company and the Sellers forthwith upon the happening of any event that either constitutes or is likely to constitute a breach of any Underwriter Warranty given by it and of any matter that may have the effect of making any Underwriter Warranty given by it incorrect or untrue or misleading by omission or otherwise.

12.4 **Truth of warranties**

The Underwriter acknowledges that it has agreed for the benefit of the Company and the Sellers that:

- (a) the truth of the statements contained in the Underwriter Warranties given by it;
- (b) the fulfilment by it of all of its material obligations under this Agreement; and
- (c) full disclosure by it to the Company and the Sellers prior to the Termination Date of any matter or event that does or is likely to constitute a breach of any Underwriter Warranty given by it and of any matter or event that has or is likely to have the effect of making any Underwriter Warranty given by it incorrect, untrue, or misleading (were it not disclosed),

are essential to the Company and the Sellers.

13 **INDEMNITY**

13.1 **Indemnity**

- (a) Subject to clause 13.2, the Company hereby irrevocably agrees to indemnify each of the Indemnified Persons, on demand, at all times fully and effectively and as often as necessary, from and against any and all Losses to the extent incurred by an Indemnified Person arising directly or indirectly out of, in connection with or which refer or relate to the Placement, or the appointment



of the Underwriter as the joint lead advisor, bookrunner and underwriter pursuant to the Agreement, including:

- (i) Losses directly or indirectly incurred by an Indemnified Person arising out of any statement in information released publicly by the Company in connection with the Placement (whether in the Investor Presentation or otherwise); and
- (ii) Losses directly or indirectly incurred by an Indemnified Person arising out of:
 - (A) the Company failing to perform or observe any of its obligations under this Agreement;
 - (B) non-compliance with, or involvement in investigations conducted by, any statutory or Governmental Agency requirement concerning the Placement;
 - (C) any representation or Warranty made or deemed have been made by the Company under this Agreement proving to have been untrue or incorrect or any undertaking given by the Company under this Agreement having been breached; or
 - (D) any Claim that an Indemnified Person has any liability under the FMCA or any other applicable law in relation to the Placement.

Each of the paragraphs in this clause 13.1(a) shall be construed independently and no paragraph is limited by implications arising from any other paragraph.

- (b) Subject to clause 13.2, each of the Sellers hereby irrevocably agrees to severally indemnify each of the Indemnified Persons, on demand, at all times fully and effectively and as often as necessary, from and against any and all Losses to the extent incurred by an Indemnified Person arising directly and indirectly out of, in connection with or which refer or relate to the Placement, or the appointment of the Underwriter as the joint lead advisor, bookrunner and underwriter pursuant to the Agreement as a result of:
 - (i) that Seller's representations and warranties in this Agreement not being true and correct; or
 - (ii) that Seller breaching this Agreement,

except to the extent that a Claim is finally judicially determined to have resulted from any of the Company's representations and warranties in this Agreement being untrue or incorrect or the Company breaching this Agreement.

- (c) Where an amount in respect of a Claim is recovered by an Indemnified Person under clause 13.1(a) from the Company, the Indemnified Person shall not be



permitted to make a Claim under clause 13.1(b) against the Sellers for the same loss arising from the same fact, matter, circumstance or event or other originating cause which might give rise to the Claim under clause 13.1(a), and vice versa.

13.2 **Extent of Indemnity**

The Company and the Sellers will have no obligation to indemnify any Indemnified Person under clause 13.1 if and to the extent that:

- (a) the relevant Loss is finally judicially determined to have been primarily the result of the fraud, gross negligence or wilful misconduct of that Indemnified Person (or a related company, officer, employee, agent or adviser of that Indemnified Person);
- (b) the relevant Loss has resulted from any loss of Underwriter and Bookrunner Fee or other fees and expenses which may have been (but had not yet become) payable under this Agreement, if this Agreement had not been terminated in accordance with its terms;
- (c) the relevant Loss is the income tax payable by the Underwriter in respect of the Underwriter and Bookrunner Fee;
- (d) the relevant Loss is the direct cost of subscribing for Placement Shortfall Shares or is directly attributable to any Loss suffered by an Indemnified Person as a result of a change in the value of the Placement Shortfall Shares following subscription; or
- (e) the obligation to so indemnify is illegal, void or unenforceable under any applicable law,

provided that, in respect of any particular Claim or Loss, such limitation applies only to the Claim or Loss or portion of the Claim or Loss resulting from the matter set out in this clause 13.2, but not otherwise.

13.3 **Release**

The Company and each of the Sellers agree that:

- (a) no Claim may be made by it against any Indemnified Person, and it unconditionally and irrevocably releases and discharges each Indemnified Person from any Claim that may be made by it, to recover from any Indemnified Person any Loss suffered or incurred by it arising directly or indirectly as a result of the participation of any Indemnified Person in relation to the Placement, except in relation to matters where the Loss is finally judicially determined to have been primarily caused by the fraud, gross negligence or wilful misconduct of such Indemnified Person, other than to the extent that Loss is caused, induced or contributed to by the Company (or its Affiliates) and the Sellers (or its Affiliates), or caused by an Indemnified Person's reliance on information contained in the Investor Presentation or other information provided by or on behalf of the Company (or its Affiliates) and the Sellers (or its Affiliates);



- (b) the Indemnified Persons are not liable in any circumstance for any indirect, consequential or special loss or damage, even if they are advised of the possibility of such damages and irrespective of whether any claim for damages is made in negligence, for breach of contract or otherwise;
- (c) in any event, no proceedings may be threatened or taken by or on behalf of the Company (or its Affiliates) or the Sellers (or its Affiliates) against any individual who is an Indemnified Person in connection with any Claim the Company or the Sellers may have against the Underwriter or any of its Affiliates arising out of or in connection with the Investor Presentation or the Placement; and
- (d) where the net liability of an Indemnified Person is increased as a result of a limitation or exclusion of liability arising under a contract between the Company and a third party or the Sellers and a third party who would otherwise be jointly and severally liable for any part of the losses, by operation of statute or because of a third party's death, bankruptcy or insolvency, the liability of that Indemnified Person shall be no more than it would have been in the absence of that limitation or exclusion of liability, statute, or death, bankruptcy or insolvency (as applicable).

13.4 Notice

- (a) If an Indemnified Person receives notice of any act, matter or thing which in the opinion of the Indemnified Person could reasonably be expected to give rise to a Claim or Loss, it must notify the Company or the Sellers (as applicable) of the act, matter or thing as soon as reasonably practicable.
- (b) The Company and each of the Sellers agree that if it becomes aware of any Claim relevant for the purposes of this clause 13 or any matters which may give rise to a Claim (whether or not the Indemnified Person is an actual or potential party to such actual or potential Claim) it shall promptly notify the Underwriter and promptly provide the Underwriter with such information and copies of such documents relating to the Claim as the Underwriter may reasonably request.

13.5 Failure to Notify

The failure of an Indemnified Person to notify the Company or the Sellers (as applicable) under clause 13.4(a) will not release the Company or the Sellers (as applicable) from any obligation or liability which it may have to the relevant Indemnified Person under this Agreement, except that its liability in respect of that Indemnified Person is reduced to the extent to which the amount of the Claim which is the subject of the indemnity under clause 13.1 has increased (including as a result of any defence no longer being available) as a result of the failure to so notify.

13.6 Preservation of Rights

Subject to the other provisions of this clause 13, the rights of an Indemnified Person under this clause 13:

- (a) are not in any way be prejudiced or affected by:



- (i) any approval given by that party in relation to the Investor Presentation;
 - (ii) any knowledge (actual or constructive) of any:
 - (A) non-compliance by the Company or a Group Member or the Sellers with any statutory, Governmental Agency, NZX or ASX requirement concerning the Placement or the Investor Presentation;
 - (B) failure by the Company or the Sellers to perform or observe any of their obligations under this Agreement; or
 - (C) representation or Warranty made or deemed to have been made by the Company or the Sellers under this Agreement proving to have been untrue or incorrect;
 - (iii) any valid termination of this Agreement by the Underwriter;
 - (iv) any consent to be named in the Investor Presentation or document issued in connection with the Placement;
 - (v) the Company or the Sellers becoming entitled to institute or defend legal or other proceedings; or
 - (vi) any other fact, matter or thing which might otherwise constitute a waiver of, or in any way prejudice or affect, any right of an Indemnified Person other than a waiver in writing;
- (b) are in addition to any liability which the Company or the Sellers might otherwise have, or any other rights which any Indemnified Person might otherwise have; and
 - (c) are fully enforceable in accordance with their terms notwithstanding any act, omission, matter or thing that, but for this provision, would or might give rise to a defence or counterclaim to such enforcement.

13.7 **Obligations of Indemnified Persons**

Subject to clause 13.8, the Underwriter must (and must procure that its Indemnified Persons must):

- (a) keep the Company and the Sellers (as applicable) informed on a timely basis of any developments in relation to any Claim in respect of which the indemnity in clause 13.1 will apply;
- (b) promptly take such reasonable action as the Company and the Sellers (as applicable) requests to avoid, dispute, resist, appeal, compromise or defend any Claim in respect of it;



- (c) not admit liability in respect of all or part of, or settle or compromise or consent to the entry of judgment in, any Claim without the prior written consent of the Company and the Sellers (as applicable) (not to be unreasonably delayed or withheld);
- (d) give all reasonable assistance and co-operation to the Company and the Sellers (as applicable) in the conduct of any Claims; and
- (e) do anything reasonably necessary or desirable to ensure that the Company and the Sellers (as applicable) are subrogated to and able to enjoy the benefit of the rights of that Indemnified Person in relation to any cross-claims,

provided that a breach of any such requirement does not affect the other provisions of this clause 13.

13.8 **Conditions Precedent to Indemnified Persons' Obligations**

Subject to clauses 13.9 and 13.11, an Indemnified Person is under no obligation:

- (a) under clause 13.7(b) to (e) unless, at the time the Company or the Seller requests that Indemnified Person to take any action, the Company or the Seller (as applicable) irrevocably and unconditionally agrees to indemnify the Indemnified Person against all Loss incurred by it in taking the action required, as and when it falls due, including legal costs and disbursements of its lawyers on a full indemnity basis and the cost of any involvement of any senior officers of the Underwriter at normal commercial rates; or
- (b) to take or refrain from taking action under clause 13.7 if to do so would, in the reasonable opinion of the relevant Indemnified Person or the Underwriter:
 - (i) cause it to lose or breach legal privilege; or
 - (ii) breach any statutory or regulatory obligation which it owes to any third party other than the Underwriter; or
- (c) to take or refrain from taking any action under clause 13.7(d) or (e) if to do so would, in the reasonable opinion of the relevant Indemnified Person or the Underwriter, lead to a material risk of damage to the reputation, standing or business of the relevant Indemnified Person or the Underwriter.

13.9 **Separate Representation**

- (a) Without prejudice to its right of indemnity under clause 13.1, an Indemnified Person shall be entitled at its election, to be separately represented, and to be indemnified in each case for the costs and expenses of such representation under clause 13.1, in relation to any proceedings against an Indemnified Person in relation to which the indemnity in clause 13.1 applies, as and when they fall due, in any of the following circumstances:
 - (i) the Company or the Seller (as applicable) not choosing legal counsel satisfactory to the Indemnified Person (acting reasonably);



- (ii) a conflict arises for legal counsel chosen by the Company or the Seller (as applicable), or between the interests of the Company or the Seller (as applicable) on the one hand and the interests of the Indemnified Person on the other hand;
 - (iii) where there may be defences available to the Indemnified Person that are different from or additional to those available to the Company or the Seller (as applicable) or another Indemnified Person represented by such legal counsel and the counsel appointed by the Company or the Seller (as applicable) does not mount and pursue those defences on behalf of the Indemnified Person to the reasonable satisfaction of such Indemnified Person; or
 - (iv) the Indemnified Person reasonably believes it desirable to do so in order to protect the Indemnified Person's reputation, standing or business.
- (b) For the avoidance of doubt, each Indemnified Person shall be entitled at its election to have separate legal representation in relation to any proceedings arising under clause 13.1 in any other circumstance, with the costs of such separate representation at its own cost.

13.10 Conduct of Proceedings

- (a) Subject to each of clauses 13.9 and 13.10(b), the Company or a Seller (as applicable), at its own cost, may have sole conduct of the defence of any Claim referred to in clause 13.1 provided that:
- (i) the Company or the Seller (as applicable):
 - (A) acknowledges, and continues to acknowledge, that it is liable to indemnify the relevant Indemnified Person under clause 13.1 in respect of such Claim, but such acknowledgement shall not bind the Company or the Seller (as applicable) if it subsequently discovers in the course of the proceeding that as a consequence of the actions or omissions of an Indemnified Person the indemnity is excluded by clause 13.2 (in which case the Company or the Seller (as applicable) shall immediately notify the Indemnified Person in writing of that fact);
 - (B) pays (and continues to pay) for all legal and other costs in connection with the defence of the Claim as they arise;
 - (C) satisfies (and continues to satisfy) the Indemnified Person of its financial ability to indemnify the Indemnified Person under clause 13.1;
 - (D) obtains legal advice from a Queen's Counsel or other senior lawyer experienced in the relevant area that there is a reasonable prospect of successfully defending the Claim and the Queen's Counsel or other senior lawyer remains of that view;



- (ii) the relevant Indemnified Person has the right to information from, and consultation with, the Company or the Seller (as applicable), and the right to its own independent legal representation, concerning or with respect to the development and defence of any litigation or threatened litigation (where the circumstances in clause 13.9 exist, such representation will be paid for by the Company or the Seller (as applicable) under the indemnity in clause 13.1, otherwise costs will be met by the relevant Indemnified Person);
- (iii) the Company or the Seller (as applicable) must have reasonable regard to preserving the reputation, standing and (as applicable) business of the relevant Indemnified Person in conducting the defence of the Claim; and
- (iv) the Company or the Seller (as applicable) must not:
 - (A) without the written consent of the relevant Indemnified Person (not to be unreasonably withheld or delayed), effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened Claim or action in respect of which indemnification may be sought under this Agreement (whether or not the Indemnified Person is an actual or potential party to such Claim or action) unless the Company or the Seller (as applicable) first consults reasonably with the relevant Indemnified Person and such settlement, compromise or judgment:
 - (1) includes an unconditional release of each Indemnified Person from all liability arising out of such Claim or action; and
 - (2) does not include a statement as to an admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person; or
 - (B) otherwise make on behalf of such Indemnified Person or otherwise any admission of liability or compromise whatsoever in connection with the Claim or the proceedings without the prior written consent of each relevant Indemnified Person and the Underwriter (such consent not to be unreasonably withheld or delayed).
- (b) Without affecting the indemnity in clause 13.1 (including, for the avoidance of doubt, in relation to the Company's and the Sellers' (as applicable) liability for costs associated with any assumed or reassumed control or defence of any Claim under this clause 13.10(b)), an Indemnified Person has a right at any time at its discretion to assume or reassume the control or defence of any Claim referred to in clause 13.1 in the name of the relevant Indemnified Person. If an Indemnified Person does this:



- (i) it will have the right to conduct the proceedings under its management and control, provided it must consult reasonably and co-operate with the Company or the Seller (as applicable) in respect of the conduct of those proceedings;
- (ii) prior to any settlement, admission of liability, or consent to the entry of any judgment with respect to, any pending or threatened Claim which would entitle the Indemnified Person to recover under the indemnity in clause 13.1, the Indemnified Person must first obtain the prior written consent of the Company or the Seller (as applicable) to that settlement, admission of liability or consent to entry of any judgement (not to be unreasonably withheld or delayed); and
- (iii) the Company and the Sellers must:
 - (A) render, upon request, all reasonable assistance and co-operation to the Indemnified Person in the conduct of any such Claim; and
 - (B) do anything reasonably necessary or desirable to ensure that the Indemnified Person is subrogated to and enjoys the benefits of the rights of the Company and the Sellers (as applicable) in relation to any cross-claims,

except where the taking of that action would, in the reasonable opinion of the Company or the Seller (as applicable), lead to a material risk of damage to the reputation, standing or business of the Company and the Sellers; and
- (iv) the Indemnified Person must:
 - (A) keep the Company and the Sellers (as applicable) fully informed of the relevant Indemnified Person's progress in defending the Claim and any proceedings; and
 - (B) at the Company's or the Sellers' request, consult with, and take account of the reasonable views of, the Company and the Sellers (as applicable) so far as reasonably possible in the relevant Indemnified Person's defence of the Claim and any proceedings.

For the avoidance of doubt, in the event of control or defence of a Claim being assumed or reassumed under this clause 13.10(b), the indemnity in clause 13.1 continues to apply in relation to all Claims and Losses suffered or incurred by any Indemnified Person.

13.11 Indemnity – Third parties

Where Loss is suffered by the Company or the Sellers for which an Indemnified Person would otherwise be jointly, or jointly and severally, liable with any third party or third parties to the Company or the Sellers (as applicable), the extent to which such Loss will be recoverable by the Company or the Sellers (as applicable) from the Indemnified Person will:



- (a) be limited so as to be in proportion to the Indemnified Person's contribution to the overall fault for such Loss, as agreed between the Indemnified Person and the Company or the Sellers (as applicable) or, in the absence of agreement, as determined by a court of competent jurisdiction; and
- (b) be no more than it would have been had any arrangements which limit the extent to which the Company or the Sellers (as applicable) may claim against a third party or parties in connection with the Placement not existed.

13.12 **Contractual contribution**

If for any reason the indemnities given by the Company or the Sellers under this clause 13 are unavailable or insufficient to fully indemnify and hold harmless any Indemnified Person against any Claim or Loss against which the Indemnified Person is stated to be indemnified under this clause 13 (other than as a result of the operation of any exclusion, limitation or qualification in this clause 13), then the Company or the Sellers (as the case may be), in lieu of indemnifying such Indemnified Person, will contribute to the aggregate amount of such Claim or Loss, as incurred, in all cases in such proportion as is appropriate to reflect:

- (a) the relative benefits received by the Company or the Sellers on the one hand and the Underwriter on the other hand from the Placement; or
- (b) if the allocation provided by clause 13.12(a) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 13.12(a) above but also the relative fault of the Company or the Sellers on the one hand and of the Underwriter on the other hand in connection with the acts or statements or omissions which resulted in such Claims or Losses, as well as any other relevant equitable considerations.

13.13 **Determination of contribution**

- (a) The relative benefit of the Company or the Sellers on the one hand and the Underwriter on the other hand shall be deemed to be in the same respective proportions as the total net proceeds from the offering of Placement Shares pursuant to this Agreement (before deducting fees, commissions or expenses) received by the Company or the Sellers and the total fees and commissions received by the Underwriter bear to the total gross proceeds from the Placement.
- (b) The relative fault of the Company or the Sellers on the one hand and the Underwriter on the other hand will be determined by reference to, among other things:
 - (i) whether any untrue statement or alleged untrue statement in the Investor Presentation or any omission or alleged omission from the Investor Presentation relates to information supplied by the Company or the Sellers on the one hand, or the Underwriter on the other hand;
 - (ii) the participation in, instigation of, or other involvement of the Company or the Sellers on the one hand, or the Underwriter on the other hand in the act complained of; and



- (iii) the Company or the Sellers' and the Underwriter's relative intent, knowledge, access to information and opportunity to correct or prevent the publication of such untrue statement or alleged untrue statement or such omission or alleged omission.
- (c) The Company or the Sellers and the Underwriter agree that it would not be just and equitable if contribution pursuant to clause 13.12 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in clauses 13.13(a) and (b).
- (d) Notwithstanding any other provisions of clause 13.12 or this clause 13.13, the Company or the Sellers agrees that no Indemnified Person will be required to contribute under clause 13.12 to any Claim or Loss in an aggregate amount exceeding the aggregate commission and fees received by the Underwriter under this Agreement.

13.14 Right to payment

If an Indemnified Person pays an amount in relation to a Loss where it is entitled to contribution or indemnification from the Company or the Sellers under this clause 13, the Company or the Seller (as applicable) agrees to promptly reimburse the Indemnified Person for that amount.

13.15 Related provisions

The indemnity, releases and contractual contribution rights set out in clause 13.1 are:

- (a) in addition to any liability the Company or the Sellers might otherwise have (including under the Engagement Letter);
- (b) in addition to any other rights which any Indemnified Person might otherwise have;
- (c) intended to confer a benefit on each Indemnified Person for the purposes of the Contract and Commercial Law Act 2017 and each Indemnified Person may enforce the indemnity, releases and contractual contribution set out in this clause 13 for his, her or its own benefit;
- (d) fully enforceable in accordance with their terms notwithstanding any act, matter, omission or thing that, but for this clause, would or may give rise to a defence or counterclaim; and
- (e) for the benefit of each Indemnified Person, each of whom may enforce the indemnity, releases and contractual contribution rights severally and without any need to join any or every other Indemnified Person in such proceeding.

13.16 Indemnity to survive termination

This clause 13 will survive and continue in full force and effect notwithstanding the termination of this Agreement for any reason.



14 TERMINATION EVENTS

14.1 Termination Events

The obligations of the Underwriter to perform its obligations under this Agreement are conditional upon:

(a) **Adverse events**

None of the following events or circumstances occurring or arising on or after the execution of this Agreement but prior to or on the Allotment Date:

- (i) *Material Adverse Event*: a Material Adverse Event; or
- (ii) *financial, economic and political conditions*: any material or fundamental change in national or international, financial, economic or political conditions affecting capital markets or financial markets in New Zealand, Australia, Hong Kong, Singapore, the United Kingdom or the United States and this is a Material Adverse Event; or
- (iii) *banking and settlement*: a general moratorium on commercial banking activities in New Zealand, Australia, Hong Kong, Singapore, the United Kingdom or the United States is declared by the relevant central banking authority in any of those countries, or there is a material disruption in commercial banking or security settlement or clearance services in any of those countries, and this is a Material Adverse Event; or
- (iv) *disclosures in NZX Notice and other advertising materials*: any information or statement contained in the Investor Presentation, the NZX Notice or any advertising or promotional materials or other documentation prepared or approved by the Company in accordance with clause 6 being false, deceptive or misleading or likely to mislead or deceive or unsubstantiated (being a statement for which the Company does not have reasonable grounds, other than a statement that a reasonable person would not expect to be substantiated) in any material adverse respect; or
- (v) *disclosures*: any information supplied by or on behalf of the Company or the Sellers to the Underwriter in relation to the Group or the Placement being inaccurate, incomplete, misleading or deceptive (including by omission) and this is a Material Adverse Event; or
- (vi) *correction notice*: the Company becomes required to give or gives a correcting notice under clause 21 of Schedule 8 of the FMCR; or
- (vii) *compliance*: there being a failure by the Company, the Sellers or any of the Company's Subsidiaries or any of their respective directors to comply, and continue to comply, with any provision of the Company's constitution, the Companies Act, the NZX Listing Rules, ASX Listing Rules, the FMCA, the FMCR or any other statute, regulation or order required to be complied with by that person (including the



requirements of any relevant foreign jurisdiction) and this is a Material Adverse Event; or

- (viii) *change in law*: there being announced, made, promulgated, or threatened any statute, regulation, order or enactment, or any direction or policy of any Government Agency, statutory or regulatory authority (including, without limitation, NZX, ASX, the Registrar of Companies, or the FMA) or similar body, in any jurisdiction, or of any Court, and this is a Material Adverse Event; or
- (ix) *Listing*: the Company ceases to be admitted to the official list of NZX or ASX or its Shares are suspended from official quotation on the NZX Main Board or ASX (other than a voluntary suspension requested by the Company and consented to by the Underwriter to facilitate the Placement, such consent not to be unreasonably withheld or delayed) or approval for Quotation for the Placement Shares on the NZX Main Board or ASX is refused or conditional approval is granted where such conditions would, in the reasonable opinion of the Underwriter, have a material adverse effect on the success of the Placement or the Quotation of all of the Placement Shares on the NZX Main Board or ASX on the Allotment Date, or the Company requests that trading in any Existing Shares be halted by NZX or ASX without the prior written consent of the Underwriter, such consent not to be unreasonably withheld; or
- (x) *notifications*: prior to the Allotment Date the issue of an order preventing the Company and the Sellers from allotting the Placement Shares by any regulatory body having jurisdiction in respect of the Placement (including, without limitation, a stop order received from the FMA under Part 8 of the FMCA), or any such regulatory body otherwise commencing an investigation into conduct or affairs relating to the Placement, or a third party applying to a court of competent jurisdiction seeking orders to prevent, or which will have the effect of preventing, the Company or the Sellers from allotting the Placement Shares and that application to a court of competent jurisdiction is a Material Adverse Event; or
- (xi) *default*: a breach by the Company or the Sellers in the performance of any of their respective obligations under this Agreement occurs and this is a Material Adverse Event; or
- (xii) *warranties*: a breach of any Warranty, or any Warranty is incorrect or untrue or misleading (by omission or otherwise) and, in each case, this is a Material Adverse Event; or
- (xiii) *certificate*: any Certificate given by the Company or the Sellers is false, misleading, deceptive or inaccurate as at the date the Certificate is given and this is a Material Adverse Event; or



- (xiv) *Capital structure*: other than as contemplated in clause 7.1(a)(vi), the Company alters its capital structure without the consent of the Underwriter and this is a Material Adverse Event; or
 - (xv) *force majeure*: there is an event or occurrence, including any statute, order, rule, regulation, directive or request (including one compliance with which is in accordance with the general practice of persons to whom the directive or request is addressed) of any Government Agency which makes it illegal for the Underwriter to satisfy an obligation under this Agreement, or to market, promote or settle the Placement; or
 - (xvi) *unable to proceed*: the Company or the Sellers are or will be prevented from conducting or completing the Placement by or in accordance with the NZX Listing Rules, ASX Listing Rules, the FMA, any applicable laws or an order of a court of competent jurisdiction, or otherwise are or will become unable or unwilling to do any of these things; or
 - (xvii) *Regulatory Action*: NZX, ASX, the Registrar of Companies, the FMA or any other regulatory body or authority taking any action in relation to the Placement or Investor Presentation and this is a Material Adverse Event.
- (b) **Reports, opinions, letters etc**
The receipt by the Underwriter of:
- (i) a legal opinion from the Company's legal counsel in relation to compliance with law and the due diligence process (as described in the Due Diligence Process Memorandum); and
 - (ii) a copy of the Due Diligence Report,
- such opinions and report to be in a form agreed with the Company (and satisfactory to the Underwriter, acting reasonably) and such opinions addressed to, and expressed to be for the benefit of, the Underwriter in its capacity as underwriter and bookrunner;
- (c) **Due Diligence Investigations**
Any Due Diligence Investigations of the Company or conducted by, in conjunction with or on behalf of, the Company or the Underwriter not revealing any matter of which the Underwriter was not previously aware and which is a Material Adverse Event; and
- (d) **Certificate**
The receipt by the Underwriter of the Certificate required under this Agreement by the time required under this Agreement.

Each of the paragraphs and sub-paragraphs in clause 14.1 above will be construed independently and no paragraph or sub-paragraph will be limited by implications arising from any other paragraph or sub-paragraph.



14.2 **Termination on non-fulfilment**

- (a) Any or all of the conditions set out in clause 14.1 may be waived by the Underwriter, acting in its absolute and unfettered discretion.
- (b) In determining whether an event of the nature referred to in clause 14.1 has arisen, the Underwriter shall consult, to the extent reasonably practicable, with the Company and the Sellers. Nothing in this clause 14.2(b) shall limit the discretions or rights of the Underwriter under this Agreement.
- (c) If:
 - (i) by or on the Allotment Date, or by any earlier date specified in respect of any condition, all of the conditions set out in clause 14.1 have not been fulfilled or waived by the Underwriter; or
 - (ii) at any time after the date of this Agreement, circumstances arise as a result of which the Underwriter is reasonably satisfied that any of the conditions set out in clause 14.1 have become incapable of fulfilment and have not been waived by the Underwriter,

then the Underwriter may, by notice to the Company and the Sellers terminate its obligations under this Agreement provided that, for the Underwriter to terminate pursuant to clause 14.1(a) with respect to a condition requiring a determination that the relevant event or matter is one that the Underwriter may reasonably consider to be a Material Adverse Event, the Underwriter must have made that determination and provided to the Company reasonable details in writing of its reasons for making that determination.

14.3 **Effect of termination**

In the event that the Underwriter validly terminates its obligations under this Agreement pursuant to clause 2.5 or 14.2, it shall be relieved of its obligations under this Agreement and shall be entitled to the payments referred to in clause 10.2.

14.4 **Survival**

Notwithstanding any other provision of this Agreement, if this Agreement is validly terminated:

- (a) this Agreement shall be of no effect, except to the extent that claims arose prior to termination;
- (b) such termination shall be without prejudice to:
 - (i) any accrued rights or obligations of any party under this Agreement, and any claims arising out of the circumstances leading to termination; and
 - (ii) any obligation of the Company, the Sellers and the Underwriter in respect of any Placement Shares which have already been issued,



acquired and paid for or sold and paid for at the time of such termination; and

- (c) the provisions of clauses 1, 5.6, 7.1, 7.3, 10.2, 13, 14.3, this clause 14.4 and clauses 17, 19, 21, 22, 23, 24, 25, 27, 28 and 29 shall remain in full force and effect.

15 **DELAY**

15.1 No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by one party in respect of any breach of any other party's obligations under this Agreement is to:

- (a) operate as a waiver of or prevent the subsequent enforcement of that obligation; or
- (b) be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.

16 **POST COMPLETION**

16.1 Each provision of this Agreement will, insofar as it has not been performed at the Termination Date or otherwise been extinguished under the terms of this Agreement, continue in full force and effect.

17 **ENTIRE AGREEMENT**

17.1 This Agreement, any written agreement as to fees and the Engagement Letter:

- (a) constitute the entire understanding and agreement of the parties relating to the arranging and underwriting of the Placement; and
- (b) supersede and extinguish all prior agreements, arrangements or understandings between the parties relating to the arranging and underwriting of the Placement.

17.2 The terms of this Agreement shall prevail over the terms of the Engagement Letter to the extent of any inconsistency.

18 **AMENDMENTS**

18.1 No amendment to this Agreement will be effective unless it is in writing and signed by each party.

19 **NOTICES**

19.1 **Form of notice**

Each notice or other communication under this Agreement is to be in writing, is to be made by personal delivery, post or email to the addressee at the address, and is



to be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial address, email address and relevant person or office holder of each party is set out below:

Company

C/- The Directors
Serko Limited
Unit 14d
125 The Strand, Parnell
Auckland

Email: simon@marianas.co.nz
Attention: Simon Botherway

With a copy to:

Russell McVeagh
Level 30, Vero Centre
48 Shortland Street
Auckland

Email: ian.beaumont@russellmcveagh.com
Attention: Ian Beaumont

Underwriter

Deutsche Craigs Limited
Level 32
Vero Centre
48 Shortland Street
Auckland

Email: jeremy.williamson@deutsche Craigs.com
Attention: Jeremy Williamson

With a copy to:

Chapman Tripp
Level 38, ANZ Centre
23 Albert Street
Auckland

Email: rachel.dunne@chapmantripp.com and philip.ascroft@chapmantripp.com
Attention: Rachel Dunne and Philip Ascroft



The Sellers

C/- Serko Limited
Unit 14d
125 The Strand, Parnell
Auckland

Email: simon@marianas.co.nz
Attention: Simon Botherway

With a copy to:

Wynn Williams
Level 25, Vero Centre
48 Shortland Street
Auckland

Email: ash.hill@wynnwilliams.co.nz
Attention: Ash Hill

19.2 Notice effective

No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee:

- (a) in the case of personal delivery, when delivered;
- (b) in the case of a letter, on the third Business Day after posting; and
- (c) in the case of email, on the date and time at which it enters the addressee's email information system (as shown in the delivery report from the sender's information system).

20 ASSIGNMENT AND SUB-UNDERWRITING

20.1 No assignment by Company

The Company and the Sellers are not entitled to assign this Agreement or any part of its benefits or obligations under this Agreement.

20.2 Assignment by Underwriter

The Underwriter may assign its rights or obligations under this Agreement to a related company or, with the prior written consent of the Company and the Sellers (acting reasonably), to any other person but without releasing it from any of its obligations to the Company and the Sellers.



20.3 **Appointment of Sub-Underwriters**

The Underwriter is entitled to appoint persons as Sub-Underwriters of its rights or obligations under this Agreement but without releasing it from any of its obligations to the Company and the Sellers.

21 **SEVERABILITY**

- 21.1 If at any time any provision (or any covenant contained in any provision) of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, such provision or covenant will be severed from this Agreement and will be ignored in construing this Agreement. Such illegality, invalidity or unenforceability will not affect the ability of any party to enforce the provisions (or, as the case may be, the remaining provisions or the remaining covenants contained in any provision) of this Agreement nor will the legality, validity or enforceability of such provisions under the law of any other jurisdiction in any way be affected or impaired thereby. However, the parties will, if so required by either of them, enter into good faith discussions in order to agree and (if agreed) implement such amendments to this Agreement as may achieve as nearly as possible its intent in a manner which is legal, valid and enforceable in all relevant jurisdictions.

22 **GOODS AND SERVICES TAX**

22.1 **Interpretation**

- (a) Unless the context suggests otherwise, all words and phrases used in this clause 22 which are defined in the GST Act have the meanings given to them in the GST Act.
- (b) Any reference to GST paid or payable by the Underwriter or its Affiliate includes any GST paid or payable by the representative member of any GST group of which the Underwriter or its Affiliate is a member.

22.2 **GST exclusive consideration**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of any GST. The parties agree that, to the best of their knowledge, for the purposes of GST, the supplies (or parts thereof) made by the Underwriter pursuant to or evidenced by this Agreement are not taxable (other than at a rate of zero percent) being either not subject to GST, exempt, input taxed, zero rated or GST free and subject to clause 22.3 no amount shall be payable by the Company under or in accordance with this Agreement on account of GST, and they will each file their GST returns on this basis.

22.3 **Payment of GST**

The parties agree that where the relevant tax authority has determined that GST is chargeable, other than at zero percent, on a supply made by one party (the *Supplier*) to another party (the *Recipient*) under or in accordance with this Agreement, the Supplier will issue a tax invoice to the Recipient and the Recipient will pay to the Supplier, in addition to the GST exclusive consideration for the supply, an amount equal to the sum of:



- (a) the GST charged on the supply (other than to the extent such GST relates to the Underwriter and Bookrunner Fee) (*GST Amount*); plus
- (b) any use of money interest (other than any use of money interest calculated by reference to a late payment penalty or shortfall penalty) imposed on the Supplier in relation to the GST Amount under the New Zealand Tax Administration Act 1994 (NZ), the GST Act or any replacement legislation as a result of the late payment or non-payment by the Supplier of the GST charged on the supply (*Default GST*). However the Recipient is not liable for any Default GST that relates to the period after the date that the GST Amount plus any Default GST in respect of the GST Amount is paid in full by the Recipient to the Supplier.

For the avoidance of doubt, no amount on account of GST (including Default GST) will be or become payable by the Recipient to the Supplier unless the Supplier has first issued a tax invoice, debit note or adjustment note.

22.4 **Net down**

If an amount payable under or in connection with this Agreement is calculated or determined by reference to an expense, cost, loss or outgoing of a party (*Relevant Expense*), the amount of the Relevant Expense for the purpose of calculating the payment is to be reduced by an amount equal to any input tax credit or (if applicable) any deduction from output tax the person is entitled to as a result of incurring the Relevant Expense, or where that person is a member of a GST group to the representative member of that group.

23 **TIME OF THE ESSENCE**

- 23.1 Time will be of the essence for the performance of all obligations in respect of which a time period or date, or both, is specified in this Agreement.

24 **DEFAULT**

- 24.1 If any moneys payable by any party (*First Party*) to this Agreement to any other party (*Second Party*) are not paid by the due date for payment, the First Party will pay to the Second Party interest at the rate equal to the aggregate of the overdraft interest rate charged to the Second Party by its bank as at the due date and 2% per annum calculated daily (but not cumulatively), and compounding quarterly, on the amount unpaid from and including the due date until payment is made in full. This provision is without prejudice to any party's rights, powers or remedies against any other party in respect of any delay or failure by the second mentioned party to make payment.

25 **NO FIDUCIARY RELATIONSHIP**

- 25.1 The Company and the Sellers each acknowledge and agree that:

- (a) the Underwriter is acting solely pursuant to a contractual relationship with the Company and the Sellers on an arm's length basis with respect to the Placement (including in connection with determining the terms of the



Placement) and on the terms, and with the obligations and duties, expressly stated in this Agreement, and not as a fiduciary to the Company and the Sellers or any other person;

- (b) except as provided in this Agreement, the Underwriter is not advising the Company and the Sellers or any other person as to any legal, tax, investment, financial and capital structure modelling, accounting or regulatory matters in any jurisdiction; and
- (c) the Underwriter shall not have any liability for any claims brought against any person (and the Company and the Sellers confirm it will not make any claim against the Underwriter) in respect of the timing, terms and structure of the Placement, or that the Bookbuild Price was set at a level that is too high or too low, or with respect to any sales of Placement Shares by investors following allocation to them by the Underwriter of such Placement Shares.

26 COUNTERPARTS

26.1 Two or more counterparts

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

26.2 Any counterpart may be signed

A party may enter into this Agreement by signing any counterpart (including any counterpart sent by way of facsimile or PDF email attachment).

27 SUCCESSION

- 27.1 The indemnity in clause 13 and all other terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns and any successor or permitted assign of any of their respective businesses and/or assets.

28 CONFIDENTIALITY

- 28.1 Each party shall at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any disclosure or use to be made of:

- (a) the subject matter of this Agreement or any sub-underwriting agreement;
- (b) any provision of this Agreement, of any sub-underwriting agreement, or of any information relating to any such provision; or
- (c) any information directly or indirectly obtained from any other party under or in connection with this Agreement or any sub-underwriting agreement,

except:

- (d) in the case of DCL, to Deutsche Bank AG;



- (e) to the extent required by the law of any jurisdiction in which the Placement is made;
- (f) to the extent necessary to satisfy the requirements of any recognised stock exchange;
- (g) to any person as part of a sub-underwriting offer;
- (h) as contained in the Investor Presentation; or
- (i) to the extent that the parties otherwise agree in writing.

29 **GOVERNING LAW**

29.1 **New Zealand law**

This Agreement is to be governed by and construed in accordance with the laws of New Zealand.

29.2 **Jurisdiction**

Each of the parties to this Agreement irrevocably:

- (a) agrees that any legal suit, action or proceeding (*Actions*) arising out of or based on this Agreement may be instituted in any competent court in New Zealand;
- (b) waives, to the fullest extent it may effectively do so, any objection which it may now or later have to the laying of venue of those Actions in any such court; and
- (c) submits to the non-exclusive jurisdiction of those courts in those Actions.

30 **LIMITATION OF LIABILITY**

30.1 MSH Trustee (Arrow) Limited has entered into this agreement in its capacity as trustee of the Arrow Trust and not personally. The liability under this agreement of MSH Trustee (Arrow) Limited and its successors as trustees of the Arrow Trust is not an unlimited personal liability but is limited to the assets of the Arrow Trust.

30.2 Geoffrey Robertson Ashley Hosking has entered into this agreement in his capacity as trustee of the Grafton Howe No. 2 Trust and not personally. The liability under this agreement of Geoffrey Robertson Ashley Hosking and his successors as trustees of the Grafton Howe No. 2 Trust is not an unlimited personal liability but is limited to the assets of the Grafton Howe No. 2 Trust.

EXECUTION

Executed as an agreement



Serko Limited by:

Signature of authorised signatory

Signature of authorised signatory
Candice Batten
Director

SIGNED by Simon John Botherway (as trustee of the Arrow Trust):

Simon John Botherway

SIGNED by MSH Trustee (Arrow) Limited (as trustee of the Arrow Trust):

Name of director



Serko Limited by:

Signature of authorised signatory



Signature of authorised signatory

SIGNED by **Simon John Botherway (as trustee of the Arrow Trust)**:

Simon John Botherway

SIGNED by **MSH Trustee (Arrow) Limited (as trustee of the Arrow Trust)**:

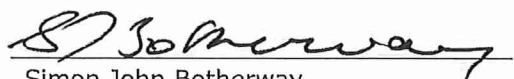
Name of director



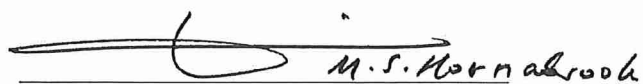
Serko Limited by:

Signature of authorised signatory

SIGNED by **Simon John Botherway** (as
trustee of the Arrow Trust):


Simon John Botherway

SIGNED by **MSH Trustee (Arrow)**
Limited (as trustee of the Arrow
Trust):


Name of director



SIGNED by **Darrin Grafton (as trustee
of the Grafton-Howe Family Trust):**



Darrin Grafton

No. 2

SIGNED by **Geoffrey Robertson
Ashley Hosking (as trustee of the
Grafton-Howe Family Trust):**

Geoffrey Robertson Ashley Hosking

SIGNED by **Joanne Phipps:**

Signature of authorised signatory

SIGNED by **Philip Ball:**

Signature of authorised signatory

SIGNED by **Sherie Hammond:**

Signature of authorised signatory



SIGNED by **MSH Trustee (Arrow)
Limited (as trustee of the Arrow
Trust)** In the presence of:

Name of director

SIGNED by **Darrin Grafton (as trustee
of the Grafton-Howe Family Trust)** in
the presence of:

Darrin Grafton

SIGNED by **Geoffrey Robertson
Ashley Hosking (as trustee of the
Grafton-Howe Family Trust)** In the
presence of:

Susan Margaret Woolley
AUCKLAND
CORPORATE SERVICES MANAGER
SM Woolley

[Signature]

Geoffrey Robertson Ashley Hosking

SIGNED by **Joanne Phipps:**

[Signature]

Signature of authorised signatory

SIGNED by **Philip Ball:**

[Signature]

Signature of authorised signatory



SIGNED by **Sherie Hammond:**

A handwritten signature in black ink, appearing to read 'Sherie Hammond', written over a horizontal line.

Signature of authorised signatory



Deutsche Craigs Limited by:

Signature of authorised signatory

Brett Shepherd

Name of authorised signatory

Signature of authorised signatory

Jeremy Williamson

Name of authorised signatory

Craigs Investment Partners Limited
by:

Signature of authorised signatory

Frank Aldridge

Name of authorised signatory

Signature of authorised signatory

Neil Craig

Name of authorised signatory



SCHEDULE 1

WARRANTIES BY THE COMPANY

- 1 **Status**
It is a company limited by shares under the Companies Act.
- 2 **Capacity**
It has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates.
- 3 **Corporate authority**
It has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out the transactions that this Agreement contemplates.
- 4 **Authorisation**
It holds each authorisation that is necessary to:
 - (a) execute this Agreement and to carry out the transactions that this Agreement contemplates;
 - (b) ensure that this Agreement is legal, valid, binding and admissible in evidence;
 - (c) enable it to properly carry on its business in all material respects,and it is complying with any conditions to which any of these authorisations is subject.
- 5 **Agreement effective**
This Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms.
- 6 **No contravention**
Neither its execution of this Agreement nor the carrying out by it of the transactions that this Agreement contemplates, does or will, in a material respect:
 - (a) contravene any law to which it, or any of its Subsidiaries, is subject or any order of any Government Agency that is binding on it;
 - (b) contravene any authorisation;
 - (c) contravene any agreement, undertaking or instrument binding on it or any of its Subsidiaries; or
 - (d) contravene the constitution of it or any of its Subsidiaries.
- 7 **Restraint on offering of the Placement Shares**
No action has been taken and no proceeding or process (excluding any frivolous or vexatious action, proceeding or process disclosed to the Underwriter in writing as



being of that nature) has been commenced nor, to the best of the Company's knowledge (after due enquiry), is pending or has been threatened against the Company to restrain, contest or challenge the Company's right, power or ability to offer and issue the Placement Shares, publish the Investor Presentation or any other document offering Shares or other securities in the Company or from entering into any agreement in relation to the issue of the Placement Shares by the Company or the entry into or performance of this Agreement.

8 The Investor Presentation

All announcements or disclosures (including the Investor Presentation and the NZX Notice) concerning the Placement, their publication and distribution, and the offer and issue of the Placement Shares, will comply where relevant in all respects with:

- (a) the NZX Listing Rules (including as modified by any applicable NZX Waiver) and ASX Listing Rules;
- (b) the Companies Act, the FMCA and the FMCR; and
- (c) all other applicable statutes, regulations or orders in New Zealand or elsewhere, which are required to be complied with by the Company,

subject in each case to any waivers, rulings, instruments, orders, exemptions, modifications or variations granted in respect of the Placement or the Company.

9 Conduct

The Company has not engaged in, and will not engage in, conduct that is misleading or deceptive or which is likely to mislead or deceive (including by omission) in connection with the issue of the Investor Presentation or the making of the Placement.

10 Other material

At the time of publication and at all times on or before allotment on the Allotment Date, the Investor Presentation and any other announcements, and publicity, made or published by the Company or on its behalf or by a related company in relation to the Placement shall:

- (a) comply in all material respects with the NZX Listing Rules (including as modified by any applicable NZX Waiver), ASX Listing Rules, Companies Act, FMCA, FMCR and all other applicable statutes, regulations or orders in New Zealand or elsewhere, which are required to be complied with by the Company; and
- (b) not contain any statement that is false, misleading, deceptive, or likely to mislead or deceive or unsubstantiated (being a statement for which the Company does not have reasonable grounds, other than a statement that a reasonable person would not expect to be substantiated).

11 Information and representations

All material information and representations provided or to be provided to the Underwriter or its advisers in relation to the Placement (including, without limitation,



information in relation to the Company's share register) by the Company or by its officers or sent on behalf of the Company by its solicitors was true, complete and accurate in all material respects (other than information which was not true, accurate or complete but, prior to the date of this Agreement, was corrected or completed by the Company in writing and provided to the Underwriter, including in the final Investor Presentation) and all information material to the making of an informed investment decision in relation to the Placement Shares has been disclosed to the Underwriter by the Company or is generally available to the market.

12 No contravention

Neither the Company nor any entity in the Group has contravened any material provision of its constitution, the FMCA or any other applicable law, the NZX Listing Rules (including as modified by any applicable NZX Waiver), the ASX Listing Rules or any material requirement of NZX, ASX or the FMA or any material agreement binding on it that is material in the context of the Placement and, except as disclosed in writing to the Underwriter prior to the date of this Agreement, the Company is not relying upon any exemption from its continuous disclosure obligations under the NZX Listing Rules.

13 Litigation

Except as disclosed in the Investor Presentation or by way of announcement to NZX and ASX prior to the date of this Agreement, neither the Company nor any entity in the Group is involved in any litigation, arbitration or administrative proceeding relating to claims or amounts which are material in the context of the Placement nor is any such litigation, arbitration or administrative proceeding pending or threatened.

14 Material Contracts

- (a) Each Group Member has all contracts or valid rights necessary to conduct its business as currently conducted and no Group Member has received notice of any cancellation, termination or failure to renew any such contracts, except for such contracts or rights the failure to maintain which, individually or in the aggregate could not reasonably be expected to result in a Material Adverse Event.
- (b) There has not been, and will not be before the Allotment Date, a breach by the Company (or any entity in the Group) in a material respect of any provision of any contract which is material to the Company or the Group.

15 Certificate

The contents of each Certificate given under this Agreement will be true and correct in all material respects and not misleading or deceptive or likely to mislead or deceive in any material respect as at the date the Certificate is given.

16 Licences

Each Group Member holds all licences, permits, authorisations and consents which are material to the conduct of its business and all such licences, permits, authorisations and consents are in full force and effect and as far as the Company is aware not liable to be revoked or not renewed.



17 Placement Shares

The Placement Shares will validly be issued fully paid, rank equally with the Existing Shares (including with respect to dividends declared on or after the Allotment Date) and will be allotted free and clear of any pledge, lien, charge, encumbrance or Security Interest.

18 Solvency

Each Group Member is solvent and no circumstances exist or (assuming the Placement is successful) may reasonably be expected to arise as a result of which any Group Member may cease to be solvent or able to pay its debts as and when they fall due.

19 Financial position

Since the date of the Accounts, except as otherwise expressly disclosed in the Investor Presentation or by way of announcement to NZX and ASX prior to the date of this Agreement:

- (a) the business of each Group Member has been carried on in the ordinary and usual course in all material respects;
- (b) as far as the Company is aware, there has been no occurrence which has or will (either itself or together with any other occurrence) materially and adversely affect the value of the Placement Shares, the financial position, profitability or prospects of any Group Member or any of the property or assets of the Group;
- (c) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital; and
- (d) as far as the Company is aware, none of the business, assets, liabilities, financial position or prospects of any Group Member has been materially and adversely affected by any matter either financial or otherwise.

20 Statements and opinions

Any statement of opinion or belief of the Company or its directors contained in Investor Presentation or the NZX Notice is honestly held by the Company or its directors, as the case may be, and the Company or its directors, as the case may be, has reasonable grounds for holding that belief or opinion and there are reasonable grounds for any estimate or expression of opinion, belief, expectation or intention, or statement relating to future matters (including any forecast or prospective financial statements, guidance statements, information or data or the assumptions or sensitivity in relation thereto) in the Investor Presentation or the NZX Notice.

21 Brokers' fees and commissions

Except as disclosed in the Investor Presentation or in writing to the Underwriter prior to the date of this Agreement, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or the Underwriter for a brokerage commission, finder's fee or other like payment in connection with the Placement Shares.



22 **Other**

Other than as disclosed:

- (a) on the NZX Main Board or ASX prior to the date of this Agreement;
- (b) in the Investor Presentation or the NZX Notice; or
- (c) in writing to the Underwriter prior to the date of this Agreement,

since the date of this Agreement, the Company has and will not, without the prior written consent of the Underwriter (acting reasonably) or except where expressly provided in clauses 7.1(a)(vii), 7.1(a)(viii), 7.1(a)(ix), 7.1(a)(x) and 7.1(a)(xi):

- (d) changed its capital structure;
- (e) bought back any of its Shares or resolved to approve a share buyback;
- (f) issued Shares, or granted an option over Shares, or agreed to make such an issue or grant such an option;
- (g) issued, or agreed to issue convertible notes;
- (h) Disposed, or agreed to Dispose, of the whole, or a substantial part, of the business or property of the Group;
- (i) charged, or agreed to charge, the whole or a substantial part, of the business or property of the Group; or
- (j) resolved to be wound up.

23 **Other jurisdictions**

In relation to the Placement, the Company will comply in all material respects with all applicable laws in each jurisdiction in which it offers Placement Shares.

24 **Approvals**

Shareholder approval of the Company is not required for the Placement and any necessary NZX Waivers and approvals from NZX have been obtained to conduct the Placement.

25 **Tax**

No stamp or other issuance or transfer taxes or duties, and no indirect taxes or duties are payable by any purchaser of Placement Shares to any New Zealand Government Agency or taxing authority thereof or therein in connection with the issue and transfer of the Placement Shares to any purchaser.

26 **Quotation**

The Shares (including the Placement Shares) will be quoted on the NZX Main Board and ASX on the Allotment Date, and, so far as the Company is aware, there is no reason why such quotation will not be maintained and the Company will take all necessary steps to ensure such quotation is maintained.



27 No material liabilities

Other than as disclosed in the Investor Presentation or the NZX Notice or disclosed prior to the date of this Agreement publically pursuant to the Group's disclosure obligations under the NZX Listing Rules, the Companies Act, the FMCA or the New Zealand Financial Reporting Act 2013, the Group has no material liabilities (whether present or future, contingent or actual) or outstanding or anticipated obligations to contribute or pay any material sums, including by way of contribution to any pension scheme or arrangement.

28 QFP Exclusion

- (a) The Company satisfies the QFP Conditions and is in compliance with the QFP Requirements in respect of the Placement (and, accordingly, is entitled to rely upon the QFP Exclusion in respect of the Placement).
- (b) The Company is not issuing the Placement Shares with the purpose of the person to whom they were issued selling or transferring the securities, or granting, issuing or transferring interests in, or options over, them.

29 No Excluded Information

Other than the Placement and its purpose and other information contained in the drafts of the Investor Presentation, an NZX Notice and any other announcement provided to the Underwriter immediately before execution of this Agreement, the Company is not aware of any Excluded Information at the date of this Agreement.

30 Excluded Information

The Company is not aware of anything that will result in there being any Excluded Information at any time before the Allotment Date.

31 Australian requirements

- (a) The NZX Notice will include the information required to be included under clause 5(c) of the ASIC Instrument.
- (b) Subject to lodging the NZX Notice with NZX and ASX, each offer for sale and each sale of Placement Shares will not be an offer for sale to which section 707(3) of the Corporations Act applies so as to require the offeror or seller to prepare and lodge with ASIC a prospectus or other disclosure document relating to the offer or sale.

32 Anti-bribery

None of the Company, any of its Affiliates or, to the knowledge of the Company, any director, officer, employee or other person acting on behalf of the Company or any of its Affiliates has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, or (iii) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, in each case, in violation of any applicable laws including the US Foreign Corrupt Practices Act of 1977 to the extent applicable.



33 Money Laundering Laws

The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance in all material respects with all applicable money laundering statutes of New Zealand and any other applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Government Agency (collectively, the *Money Laundering Laws*) and no action, suit or proceeding by or before any court or Government Agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.

34 US securities laws

- (a) (*foreign private issuer*) The Company is a “foreign private issuer” as defined in Rule 405 under the US Securities Act.
- (b) (*no substantial US market interest*) The Company reasonably believes there is no “substantial US market interest” (as defined in Rule 902(j) under the US Securities Act) in the Placement Shares or any security of the same class or series as the Placement Shares.
- (c) (*no integrated offers*) None of the Company, any of its Affiliates, nor any person acting on behalf of any of them (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Company makes no representation) has offered or sold, and they will not offer or sell, in the United States any security that could be integrated with the sale of the Placement Shares in a manner that would require the offer and sale of the Placement Shares to be registered under the US Securities Act.
- (d) (*no directed selling efforts*) None of the Company, any of its Affiliates, nor any person acting on behalf of any of them (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Company makes no representation or warranty) has engaged or will engage in any “directed selling efforts” (as that term is defined in Rule 902(c) under the US Securities Act).
- (e) (*no stabilisation or manipulation*) None of the Company, any of its Affiliates nor any person acting on behalf of the Company (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Company makes no representation), has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in the stabilization or manipulation of the price of the Placement Shares in violation of any applicable law.



SCHEDULE 2

WARRANTIES BY THE SELLERS

- 1 **Validly existing company**
To the extent a Seller is a body corporate, the Seller is validly existing under the laws of its place of incorporation.
- 2 **Capacity**
The Seller has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates.
- 3 **Corporate authority**
The Seller has taken all action that is necessary or desirable to authorise its entry into this Agreement and its carrying out the transactions that this Agreement contemplates.
- 4 **Authorisation**
The Seller holds each authorisation that is necessary to:
 - (a) execute this Agreement and to carry out the transactions that this Agreement contemplates;
 - (b) ensure that this Agreement is legal, valid, binding and admissible in evidence; and
 - (c) enable it to properly carry on its business in all material respects,and each Seller is complying with any conditions to which any of these authorisations is subject.
- 5 **Agreement effective**
This Agreement constitutes the legal, valid and binding obligations of the Seller, enforceable against the Seller in accordance with its terms.
- 6 **No contravention**
Neither the Seller's execution of this Agreement nor the carrying out by it of the transactions that this Agreement contemplates, does or will, in a material respect:
 - (a) contravene any law to which each Seller is subject or any order of any Government Agency that is binding on it;
 - (b) contravene any authorisation;
 - (c) contravene any agreement, undertaking or instrument binding on the Seller; or
 - (d) if applicable, contravene the constitution of the Seller.



7 Conduct

The Seller has not engaged in, and will not engage in, conduct that is misleading or deceptive or which is likely to mislead or deceive (including by omission) in connection with the issue of the Investor Presentation or the making of the Placement.

8 Placement Shares

The Secondary Shares sold in the Sell Down will be fully paid, rank equally with the Existing Shares (including with respect to dividends declared on or after the Allotment Date) and will be allotted free and clear of any pledge, lien, charge, encumbrance or Security Interest.

9 Insider trading

The Seller does not at the date of this Agreement have any information that is not generally available to the market, that, if that information was generally available to the market, would reasonably be expected to have a material effect on the price of the Company's securities (other than as will be disclosed in the Investor Presentation, the announcement attached as Annexure A or the NZX Notice), and the Placement will not constitute a violation by the Seller of applicable insider trading laws.

10 Information and representations

All material information and representations provided or to be provided to the Underwriter or its advisers in relation to the Placement by the Seller, its directors, employees or officers or sent on behalf of the Seller by its solicitors was true, complete and accurate in all material respects (other than information which was not true, accurate or complete but, prior to the date of this Agreement, was corrected or completed by the Seller in writing and provided to the Underwriter).

11 No directed selling efforts

None of the Seller, any of its Affiliates, nor any person acting on behalf of any of them (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Seller makes no representation or warranty) has engaged or will engage in any "directed selling efforts" (as that term is defined in Rule 902(c) under the US Securities Act).



SCHEDULE 3

CERTIFICATE

To: Deutsche Craigs Limited and Craigs Investment Partners Limited

Attention: Jeremy Williamson

To: Simon John Botherway and MSH Trustee (Arrow) Limited as trustees of the Arrow Trust, Darrin Grafton and Geoffrey Robertson Ashley Hosking as trustees of the Grafton Howe No. 2 Trust, Joanne Phipps, Philip Ball and Sherie Hammond

I hereby certify on behalf of Serko Limited (the *Company*) that:

- (a) each condition required to be satisfied as at the date of this Certificate referred to in clause 2.1 of the Underwriting Agreement has been satisfied and, where applicable, by the deadline set out in that clause, or otherwise waived by the Underwriter;
- (b) the Company has complied with its obligations under the Underwriting Agreement, whether arising under statute or otherwise;
- (c) the Warranties given by the Company in the Underwriting Agreement are true and correct in all material respects as at the date of this Certificate by reference to the facts and circumstances now existing, and the Company has not breached any of those Warranties in any material respect;
- (d) without limiting subparagraph (c) above, as at the date of this Certificate, no Group Member has sustained a Material Adverse Event since the date of the Underwriting Agreement;
- (e) no information has been identified that has not been made generally available to the market (as defined in section 232 of the FMCA) and that is material information (as defined in section 231 of the FMCA);
- (f) I am not aware, having made due and careful enquires, of any matters having arisen since the date of the Underwriting Agreement which required notification to the Underwriter under clause 7.2(c); and
- (g) to the best of my knowledge and belief, none of the events which may give rise to termination of the Underwriting Agreement pursuant to clause 14 of that agreement have occurred as at the date of this Certificate.

For the purposes of this Certificate:

- (a) “**Underwriting Agreement**” means the underwriting agreement in relation to a placement of ordinary shares dated on or about 24 October 2019 2019 between Deutsche Craigs Limited, Craigs Investment Partners Limited and the Company; and



- (b) words and expressions used shall have the meanings ascribed to them in the Underwriting Agreement.

DATED: 2019

Serko Limited by:

Director



SCHEDULE 4

CERTIFICATE

To: Deutsche Craigs Limited and Craigs Investment Partners Limited

Attention: Jeremy Williamson

To: Serko Limited

Attention: Sarah Miller

I hereby certify on behalf of (the *Seller*) that:

- (a) the Seller has complied with its obligations under the Underwriting Agreement, whether arising under statute or otherwise;
- (b) the Warranties given by the Seller in the Underwriting Agreement are true and correct in all material respects as at the date of this Certificate by reference to the facts and circumstances now existing, and the Sellers has not breached any of those Warranties in any material respect;
- (c) no information has been identified that has not been made generally available to the market (as defined in section 232 of the FMCA) and that is material information (as defined in section 231 of the FMCA);
- (d) I am not aware, having made due and careful enquires, of any matters having arisen since the date of the Underwriting Agreement which required notification to the Underwriter under clause 7.2(c); and
- (e) to the best of my knowledge and belief, none of the events which may give rise to termination of the Underwriting Agreement pursuant to clause 14 of that agreement have occurred as at the date of this Certificate.

For the purposes of this Certificate:

- (c) "**Underwriting Agreement**" means the underwriting agreement in relation to a placement of ordinary shares dated on or about 24 October 2019 between Deutsche Craigs Limited, Craigs Investment Partners Limited, the Sellers and the Company; and
- (d) words and expressions used shall have the meanings ascribed to them in the Underwriting Agreement.

DATED: 2019



[•]:

**SCHEDULE 5****TIMETABLE**

Event	Date
Announcement Date	24 October 2019
Trading halt on NZX and ASX	24 October 2019
Bookbuild Opening Date	24 October 2019
Bookbuild Closing Date	24 October 2019
Announce placement completion and resume trading	25 October 2019
ASX Settlement Date	29 October 2019
Booking Settlement Date	29 October 2019
NZX Settlement Date	30 October 2019
Allotment Date	30 October 2019
Commencement of trading of new Placement Shares	30 October 2019

**SCHEDULE 6****SECONDARY SHARES**

Seller	Shares	Placement Price	Total
Sherie Hammond	240,000	NZ\$4.04	NZ\$969,600
Philip Ball	230,000	NZ\$4.04	NZ\$929,200
Joanne Phipps	450,000	NZ\$4.04	NZ\$1,818,000
Darrin Grafton and Geoffrey Robertson Ashley Hosking as trustees of the Grafton Howe No. 2 Trust	1,800,000	NZ\$4.04	NZ\$7,272,000
Simon Botherway and MSH Trustee (Arrow) Limited as trustees of the Arrow Trust	1,150,000	NZ\$4.04	NZ\$4,646,000
Total Secondary Selldown	3,870,000		NZ\$15,634,800



ANNEXURE A
ANNOUNCEMENT



ANNEXURE B

INVESTOR PRESENTATION

Schedule 2: Escrow Deed

Escrow Deed in favour of Serko Limited

PARTIES

Darrin Grafton and Geoffrey Robertson Ashley Hosking (as
trustees of the Grafton Howe No.2 Trust)

Grafton-Howe Family Trust

Darrin Grafton

Darrin Grafton

Donna Bailey

Donna Bailey

Serko Limited

Company

DEED dated 24 October 2019

PARTIES

Darrin Grafton and Geoffrey Robertson Ashley Hosking (as trustees of the Grafton Howe No.2 Trust)

("Grafton-Howe Family Trust")

Darrin Grafton

("Darrin Grafton")

Donna Bailey

("Donna Bailey")

(each a "**Holder**" and together, the "**Holders**")

Serko Limited

("Company")

INTRODUCTION

The Holders, as at the date of this Deed, hold or control the number of ordinary shares (or options to acquire ordinary shares) in the Company ("**Shares**") set out below:

HOLDER	INTEREST	SHARES
Darrin Grafton and Geoffrey Hosking as Trustees for Grafton Howe No.2 Trust	Registered holder and beneficial owner of shares	12,667,629
Donna Bailey as sole trustee of the Donna Bailey Trust	The power to exercise, or to control the exercise of, a right to vote attached to ordinary shares held by Donna Bailey Trust	1,217,594

HOLDER	INTEREST	SHARES
Donna Bailey	The power to exercise, or to control the exercise of, a right to vote attached to ordinary shares held by Donna Bailey	5,827
Serko Trustee Limited for Donna Bailey	The power to dispose of, or to control the disposal of ordinary shares with restrictive conditions issued to Donna Bailey pursuant to the Serko Restricted Share Scheme. These shares are subject to a deed restricting exercise of voting rights attached to the shares	4,594
Serko Trustee Limited for Darrin Grafton	Beneficial interest in Ordinary Shares with restrictive conditions allocated pursuant to the Serko Limited Employee Restricted Share Scheme, held in trust until vesting. These shares are subject to a deed restricting exercise of voting rights attached to the shares	97,712
Darrin Grafton	Registered holder of Ordinary Shares (following conversion from RSS). These shares are subject to a deed restricting exercise of voting rights attached to the shares	39,512
Darrin Grafton	Registered holder and beneficial owner of Restricted Share Units (Options) pursuant to the Serko Long Term Incentive Scheme. Any shares issued upon exercise of these RSUs are subject to a deed restricting exercise of the voting rights attached to them	31,899
Donna Bailey	The power to control the disposal/exercise of Restricted Share Units (Options) granted to Donna Bailey pursuant to the Serko Long Term Incentive Scheme	762

The Grafton-Howe Family Trust proposes to sell part of their shareholding in the Company by way of an underwritten placement to selected institutional and retail investors ("**Placement**"). The Holders have agreed not to sell or dispose of Shares on the terms set out in this Deed.

AGREEMENT

1. The Holders undertake not to sell, transfer or otherwise dispose of (including an agreement to dispose of) any legal or beneficial interest in any Shares for a period of 12 months from the date of completion of the Placement (the "**Lock-Up Period**"), except:
 - (a) for the sale of up to 1,800,000 Shares by the Grafton-Howe Family Trust under the Placement (including under any underwriting arrangements in connection with the Placement);
 - (b) with the prior written consent of the Board of Directors of the Company;
 - (c) to:
 - (i) a Relative of the Holder; or
 - (ii) a company which is wholly-owned by the Holder and/or one or more Relatives of the Holder; or
 - (iii) a trust in relation to which the Holder or a Relative of the Holder is a beneficiary or trustee,

(each, a "**Transferee**"), where the Transferee also enters into an escrow arrangement with the Company in respect of those Shares on substantially the same terms as this Deed. For this purposes of this clause, "**Relative**" has the meaning given to that term in the Companies Act 1993;
 - (d) to accept, or enter into an agreement to accept, a takeover offer under the Takeovers Regulations 2000 ("**Takeovers Code**");
 - (e) for compulsory acquisition of the Shares under the Takeovers Code;
 - (f) to accept a buyback offer from the Company;
 - (g) by way of a scheme of arrangement approved by the Company's shareholders under the Companies Act 1993;
 - (h) pursuant to the terms of a Company employee share scheme under which such Shares are held;

- (i) the transfer of legal ownership of Shares from any trust to Darrin Grafton or Donna Bailey; or
 - (j) the Grafton-Howe Family Trust may create, or agree to create, a mortgage, charge or other form of security interest over or in respect of all or any part of its Shares in favour of a recognised bank or other similar recognised lending institution provided that the lender enters into an escrow deed with the Company in relation to the relevant Shares on the same terms as this deed.
2. Nothing in this Deed gives the Company any control over the Holder's voting rights attaching to the Shares, including any right to vote on any of the matters described in paragraphs 1(b)1(d) to 1(g) (inclusive) in any capacity.
 3. Geoffrey Robertson Ashley Hosking (as trustee of the Grafton-Howe Family Trust) has entered into this agreement in his capacity as trustee of the Grafton-Howe Family Trust and not personally. The liability under this agreement of Geoffrey Robertson Ashley Hosking and his successors as trustee of the Grafton-Howe Family Trust is not an unlimited personal liability but is limited to the assets of the Grafton-Howe Family Trust.
 4. If the Grafton-Howe Family Trust does not complete the sale of 1,800,000 Shares under the Placement (including under any underwriting arrangements in connection with the Placement) within 15 Working Days (as defined in the Companies Act 1993) after the date of this Deed, any party may terminate this Deed on written notice to the Company.
 5. This Deed may be signed in any number of counterparts, including facsimile or scanned copies, all of which will together constitute one and the same instrument and a binding and enforceable agreement between the parties. Any party may execute this Deed by signing any such counterpart.

SIGNED AS A DEED

SERKO LIMITED by:

Signature of director

Name of director



Signature of director

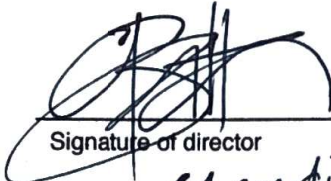
CLYDE MCCONAGHY

Name of director

SERKO LIMITED by:

Signature of director

Name of director



Signature of director



Name of director

Russell
McLeagh

SIGNED by **Darrin Grafton (as trustee of
the Grafton-Howe Family Trust)** in the
presence of:

No. 2



Signature of witness

Sarah Miller

Name of witness

Consultant

Occupation

Auckland

City/town of residence



Darrin Grafton

SIGNED by **Geoffrey Robertson Ashley
Hosking (as trustee of the Grafton-Howe
Family Trust)** in the presence of:

Geoffrey Robertson Ashley Hosking

Signature of witness

Name of witness

Occupation

City/town of residence

Russell
McLeagh

SIGNED by **Darrin Grafton** (as trustee of
the **Grafton-Howe Family Trust**) in the
presence of:

Darrin Grafton

Signature of witness

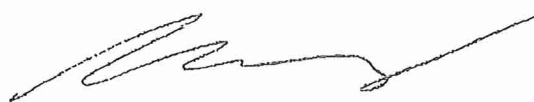
Name of witness

Occupation

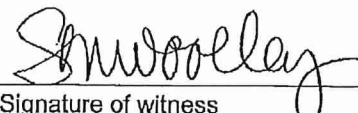
City/town of residence

SIGNED by **Geoffrey Robertson Ashley
Hosking** (as trustee of the **Grafton-Howe
Family Trust**) in the presence of:

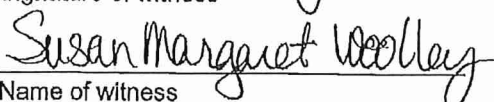
No. 2



Geoffrey Robertson Ashley Hosking



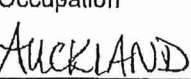
Signature of witness



Name of witness



Occupation



City/town of residence

SIGNED by **DARRIN GRAFTON** in the
presence of:



Signature of witness

Tom Corkill

Name of witness

Solicitor

Occupation

Auckland

City/town of residence



Darrin Grafton

SIGNED by **DONNA BAILEY** in the
presence of:



Signature of witness

PHILIP BALL

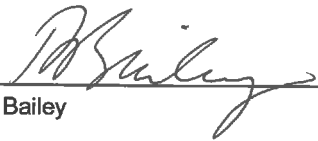
Name of witness

CTSO

Occupation

AUCKLAND

City/town of residence



Donna Bailey