



ASX Release

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21 June 2024

K2FLY AGREES UNANIMOUSLY-RECOMMENDED SCHEME OF ARRANGEMENT WITH ACCEL-KKR

KEY HIGHLIGHTS

- K2fly has entered into a Scheme Implementation Deed with Argyle Bidco Pty Limited, a wholly owned subsidiary of Accel-KKR, under which Accel-KKR will acquire 100% of the shares in K2fly by way of a Scheme of Arrangement (**Scheme**).
- Under the Scheme, K2fly shareholders will be entitled to receive \$0.19 cash per share¹, which represents a 90% premium to K2fly's undisturbed share price on 20 June 2024 of \$0.10 per share².
- The K2fly Board unanimously recommends that K2fly shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to the independent expert concluding that the Scheme is in the best interests of K2fly shareholders.
- Significant shareholders of K2fly, who in aggregate hold or control approximately 90,612,612 K2fly shares representing 48.5% of K2fly's current voting shares as at the date of this announcement, have advised K2fly that they intend to vote, or cause to be voted, all K2fly shares held or controlled by them in favour of the Scheme, in the absence of a superior proposal and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of K2fly shareholders.
- The transaction is subject to Foreign Investment Review Board (**FIRB**) approval and other customary conditions, including K2fly shareholder and Court approvals.

Overview of the Scheme

K2fly Limited (ASX:K2F) (**K2fly** or the **Company**) announces that it has entered into a binding Scheme Implementation Deed (**SID**) with Argyle Bidco Pty Limited, a wholly owned subsidiary of Accel-KKR Company LLC (**Accel-KKR**), a technology-focused investment firm, under which Accel-KKR will acquire 100% of the shares in K2fly by way of a Scheme of Arrangement under Part 5.1 of the Corporations Act 2001 (Cth) for \$0.19 cash per K2fly share (**Scheme Consideration**).

¹ Assuming 200,110,144 fully diluted K2fly shares on issue

² As at 20 June 2024



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The Scheme Consideration represents an equity value³ (on a fully diluted basis) of approximately \$38.0 million and represents:

- a premium of 90% to the closing price of K2fly shares on 20 June 2024 of \$0.10 per share;
- a 2.8x Trailing-Twelve Month Revenue multiple (as of March 2024) based on the last disclosed revenue of \$13.7m as announced by the Company on 30 April 2024⁴.

Unanimous recommendation of the K2fly Board

On 23 November 2023, the Company announced that it had appointed financial advisors for the purpose of undertaking a strategic review of the Company's business. After having now undertaken a comprehensive strategic review and competitive process, and having regard to a number of factors, including its assessment of K2fly's inherent value and near and medium-term growth outlook and likely requirement for further funding as a standalone business, the K2fly Board considers the Scheme is in the best interests of K2fly shareholders.

The K2fly Board believes that the Scheme is a highly attractive offer for K2fly shareholders for the following key reasons:

- **Certainty of value:** the 100% cash consideration provides K2fly shareholders with certainty of value and the opportunity to realise their investment in full for cash;
- **Attractive offer price across key metrics:** the Scheme Consideration represents a 90% premium to K2fly's undisturbed share price on 20 June 2024 of \$0.10 per share;
- **An equal opportunity for all shareholders to vote with the benefit of detailed information:** the Scheme will offer shareholders an opportunity to vote on an "all or nothing" transaction with the benefit of detailed disclosures together with an Independent Expert's Report to be contained in a Scheme Booklet;
- **Limited conditionality:** the Scheme is subject to FIRB approval and conditions customary for transactions of this type and is not conditional on financing or further due diligence; and
- **Strategic review process:** the strategic review process did not uncover an alternative transaction that would be equal in value to K2F shareholders.

The K2fly Directors (who represent approximately 19.9%⁵ of the issued share capital in K2fly as at the date of this announcement) unanimously recommend that K2fly shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of K2fly shareholders.

Subject to those same qualifications, each K2fly Director intends to vote all the K2fly shares held or controlled by them in favour of the Scheme.

³ Based on 200,110,144 fully diluted K2fly shares on issue

⁴ Refer to the March Q3 FY2024 Quarterly Activities Report released on the ASX

⁵ This includes 32,810,245 voting shares (representing ~17.6% of the issued share capital in K2fly) held by Maptek Pty Ltd.



Significant shareholders intend to vote in favour of the Scheme

Significant shareholders who hold or control 90,612,612 shares representing 48.5% of the K2fly's current voting shares have advised K2fly that as at the date of this announcement they intend to vote, or cause to be voted, all K2fly shares held or controlled by them in favour of the Scheme, in the absence of a superior proposal and subject to an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of K2fly shareholders. These shareholders include Maptek Pty Ltd (32,810,245 shares representing 17.6%), Regal Partners Limited (19,217,051 shares representing 10.3%), Tribeca Investment Partners Pty Ltd (18,774,716 shares representing 10%), CSBP Limited⁶ (13,649,184 shares representing 7.3%) and Nicholas Axam (6,161,416 shares representing 3.3%).

K2fly's Chief Executive Officer, Nic Pollock:

"In the last 5 years K2fly has proven there is a strong demand for our industry-first Resource Governance solutions across the biggest mining companies in the world.

We are really excited at the prospect of partnering with such a prestigious partner as Accel-KKR to take us into the next phase of our global growth of products and markets. Accel-KKR have demonstrated a unique understanding of software businesses like K2fly and demonstrated the ability to take them to the next level of maturity and growth.

This offer from Accel-KKR affirms the success of the K2fly business strategy and the quality of its management team to take the business forward."

Accel-KKR's Managing Director, Dean Jacobson said:

"Accel-KKR believes K2fly's success is a result of its differentiated product in sectors with strong industry tailwinds. Highly complex and regulated sectors such as mining, utilities and oil & gas are increasingly facing pressures to do right on behalf of its customers, employees and other stakeholders. K2fly's robust governance, tracking and reporting can result in stronger compliance, higher operational efficiency, better stakeholder transparency and generally be a vital competitive advantage for companies that operate in these industries.

We are excited to put forth an offer to partner with K2fly that could drive continued innovation and value for customers, and unlock new growth opportunities for the business."

About Accel-KKR

Accel-KKR is a technology-focused investment firm with over \$19 billion in capital commitments. The firm focuses on software and IT-enabled businesses, well-positioned for topline and bottom-line growth. At the core of Accel-KKR's investment strategy is a commitment to developing strong partnerships with the management teams of its

⁶ Part of Wesfarmers Chemicals Energy & Fertilisers



portfolio companies and a focus on building value alongside management by leveraging the significant resources available through the Accel-KKR network.

Accel-KKR focuses on middle-market companies and provides a broad range of capital solutions including buyout capital, minority-growth investments, and credit alternatives. Accel-KKR also invests across a wide range of transaction types including private company recapitalisations, divisional carve-outs and going-private transactions. Accel-KKR is headquartered in Menlo Park, California, with additional offices in Atlanta, Chicago, Mexico City and London.

KEY SCHEME TERMS AND CONDITIONS

The implementation of the Scheme is subject to conditions customary for a transaction of this nature, including:

- approval being obtained from K2fly shareholders and court approval in relation to the Scheme;
- the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of K2fly shareholders;
- approval of Australia's Foreign Investment Review Board; and
- no K2fly material adverse change, prescribed occurrence or regulated event (each as defined in the SID) occurring in relation to K2fly.

Existing K2fly incentive options, performance shares and performance rights will be dealt with in accordance with the SID.

The Scheme is not conditional on financing and Accel KKR has advised K2fly that it expects to fund the Scheme Consideration through a combination of debt facilities and cash on balance sheet.

The SID contains customary exclusivity provisions including a 'no shop', 'no talk' and 'no due diligence' restriction (subject to customary fiduciary exceptions), notification obligations and a matching right. A break fee will be payable by K2fly to Accel-KKR in certain circumstances, and a reverse break fee will be payable by Accel-KKR to K2fly in certain circumstances.

Full details of the terms and conditions of the Scheme are set out in the SID, a copy of which accompanies this announcement.

INDICATIVE TIMETABLE AND NEXT STEPS

K2fly shareholders do not need to take any action at this point in time.

A Scheme Booklet containing information relating to the Scheme, reasons for the K2fly Board's unanimous recommendation, an Independent Expert's Report and details of the Scheme Meeting is expected to be sent to K2fly shareholders in August 2024.

K2fly shareholders will then have the opportunity to vote on the Scheme at a Scheme Meeting, expected to be held in September 2024.

Subject to shareholder approval being obtained by the requisite majorities and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented by October 2024.



These dates are indicative and subject to change.

Event	Date
Lodge draft Scheme Booklet with ASIC	Week commencing 5 August 2024
First Court Date	Week commencing 19 August 2024
Scheme Meeting	Week commencing 23 September 2024
Second Court Date for approval of the Scheme	Week commencing 30 September 2024
Effective Date	1 business day after the Second Court Date
Record Date	2 business days after the Effective Date
Implementation Date	5 business days after the Record Date (October 2024)

ADVISERS

Argonaut PCF Limited and Atrico Pty Ltd are acting as Joint Financial Advisers and Steinepreis Paganin is acting as Legal Adviser to K2fly.

Accel-KKR has engaged DLA Piper as its Legal Adviser and engaged Torch Partners as its Financial Advisor.

AUTHORISED BY

This announcement was authorised by K2fly.

Enquiries – K2fly

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**K2FLY LIMITED
ACN 125 345 502
(COMPANY)**

and

**ARGYLE BIDCO PTY LTD
ACN 676 002 332
(BIDDER)**

SCHEME IMPLEMENTATION DEED

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TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions	1
1.2	Interpretation	12
1.3	Knowledge and awareness of the Company	13
1.4	Knowledge and awareness of the Bidder	14
1.5	Reasonable endeavours	14
2.	AGREEMENT TO PROPOSE THE TRANSACTION	14
2.1	Obligations of parties	14
2.2	Bidder may elect a Subsidiary	15
3.	CONDITIONS PRECEDENT.....	15
3.1	Conditions.....	15
3.2	Benefit and waiver of Conditions	16
3.3	Reasonable endeavours and notification	17
3.4	Conditions not satisfied or waived	18
3.5	Communications regarding regulatory approvals	19
3.6	Scheme voted down because of Headcount Test	19
4.	IMPLEMENTATION OF THE SCHEME.....	20
4.1	General obligations.....	20
4.2	The Company's obligations	20
4.3	The Bidder's obligations	26
4.4	Dispute as to Scheme Booklet	29
4.5	Responsibility statement	29
4.6	Reconstitution of the Company Board	29
4.7	Removal of the Company from the official list of ASX	30
4.8	Court proceedings	30
5.	SCHEME CONSIDERATION	31
5.1	Obligations in respect of the Scheme Consideration	31
5.2	Fractional entitlements and share splitting or division	31
5.3	CGT Withholding Amount.....	32
6.	CONDUCT OF BUSINESS	33
6.1	Conduct of the Company's business	33
6.2	Access and Information	37
6.3	Confidentiality.....	37
6.4	Counterparty consents.....	37
6.5	Cooperation with financing.....	38
7.	RECOMMENDATION AND INTENTIONS.....	38
7.1	Company Board Recommendation and Voting Intention	38
7.2	Confirmation	40
7.3	Notification	40
7.4	Company Announcement	40
8.	EXCLUSIVITY ARRANGEMENTS.....	40
8.1	No current discussions regarding a Competing Proposal	40
8.2	No shop.....	41
8.3	No talk	41
8.4	No due diligence.....	41
8.5	Fiduciary out.....	41
8.6	Equivalent obligations.....	42

8.7	Notification of approaches.....	42
8.8	Matching right.....	42
8.9	Normal provision of information	44
8.10	Compliance with law.....	44
9.	BREAK FEE.....	45
9.1	Background.....	45
9.2	Payment by Company to Bidder	45
9.3	No amount payable if Scheme becomes Effective.....	46
9.4	Timing of payment.....	47
9.5	Nature of payment.....	47
9.6	Limitation of liability	48
9.7	Exclusive remedy	48
9.8	Compliance with law.....	48
9.9	Survival	49
9.10	Bidder acknowledgement	49
10.	REVERSE BREAK FEE.....	49
10.1	Background to Reverse Break Fee.....	49
10.2	Reverse Break Fee trigger.....	49
10.3	Payment of Reverse Break Fee.....	49
10.4	Basis of Reverse Break Fee	50
10.5	Reverse Break Fee payable only once	50
10.6	Other Claims.....	50
10.7	Exceptions to limitation of liability.....	51
11.	LIABILITY OF DIRECTORS, OFFICERS AND EMPLOYEES	51
11.1	Liability of the Company and the Company Parties.....	51
11.2	Liability of the Bidder and the Bidder Indemnified Parties.....	52
11.3	Directors' and officers' insurance	52
11.4	Obligations in relation to directors' and officers' insurance.....	52
11.5	Directors' and officers' indemnities.....	53
11.6	Compliance with law and benefit.....	53
12.	REPRESENTATIONS AND WARRANTIES	53
12.1	Representations and warranties by the Bidder	53
12.2	Qualification of the Bidder Warranties	54
12.3	Representations and warranties by the Company	54
12.4	Qualification of the Company Warranties.....	54
12.5	Notifications.....	55
12.6	Status of representations and warranties.....	55
12.7	No limitation on rights.....	55
12.8	No representation of reliance.....	55
13.	CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS.....	55
13.1	Confidentiality Deed.....	55
13.2	Survival of obligations	56
13.3	Disclosure on termination of agreement.....	56
13.4	Public announcements.....	56
14.	TERMINATION AND REMEDIES.....	56
14.1	Limited termination events.....	56
14.2	Termination by the Bidder	56
14.3	Termination by the Company.....	57
14.4	Effect of termination	58
14.5	Remedies	58
15.	GST	58

15.1	Interpretation	58
15.2	GST exclusive.....	58
15.3	Reimbursements and similar payments.....	58
15.4	GST payable.....	59
16.	NOTICES	59
16.1	General.....	59
16.2	How notice to be given.....	59
16.3	Particulars for delivery of Notices	59
16.4	Notices by post	60
16.5	Notices by email.....	61
16.6	Process service.....	61
16.7	After hours Notices	61
	If a Notice is given:.....	61
17.	MISCELLANEOUS	61
17.1	Amendment.....	61
17.2	Waiver and exercise of rights.....	61
17.3	Rights cumulative	61
17.4	Consents	61
17.5	Further steps	62
17.6	Governing law and jurisdiction.....	62
17.7	Assignment	62
17.8	Counterparts	62
17.9	Entire understanding.....	62
17.10	Approvals and consents.....	62
17.11	Severability	63
17.12	Relationship	63
17.13	No merger	63
17.14	Legal advice	63
17.15	Costs and expenses	63
17.16	Electronic execution	63
17.17	Duties.....	63
	SCHEDULE 1 – THE BIDDER WARRANTIES	64
	SCHEDULE 2 – THE COMPANY WARRANTIES.....	66
	SCHEDULE 3 – TIMETABLE.....	70
	ANNEXURE 1 – SCHEME OF ARRANGEMENT	72
	ANNEXURE 2 – DEED POLL.....	73

THIS DEED is made the 20th day of June 2024

BETWEEN

K2FLY LIMITED (ACN 125 345 502) of Level 4, 502 Hay Street, Subiaco WA 6008 (**Company**);

AND

ARGYLE BIDCO PTY LTD (ACN 676 002 332) of Level 22, 1 Martin Place, Sydney NSW 2000 (**Bidder**).

RECITALS

- A.** The Bidder proposes that it will acquire all of the Scheme Shares pursuant to a scheme of arrangement under Part 5.1 of the Corporations Act between the Company and the Scheme Shareholders.
- B.** The Company has agreed to propose the Scheme and issue the Scheme Booklet at the request of the Bidder, and the Company and the Bidder have agreed to implement the Scheme on the terms and conditions of this deed.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed:

ACCC means the Australian Competition and Consumer Commission.

Accounting Principles means generally accepted Australian accounting standards and practices.

Agreed Form means a document that has been agreed in writing by the Company and the Bidder on or before the date of this deed and has been initialled by or on behalf of the Company and the Bidder or acknowledged via email, in each case for the purposes of identification.

ARR means, at any date, annual recurring revenue measured on a consistent basis in accordance with the methodology adopted by the Company Group as at the date of this deed.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in sections 12 and 15 of the Corporations Act.

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

Beneficiary means a present or former director or officer of the Company Group in respect of whom the Policy applies.

Bidder Acquirer means any wholly-owned subsidiary of the Bidder nominated by the bidder pursuant to, and in accordance with, clause 2.2 for the purpose of acquiring the Scheme Shares.

Bidder Counter Proposal has the meaning given in clause 8.8.

Bidder Group means the Bidder and each of its Related Bodies Corporate.

Bidder Indemnified Parties means the Bidder and its Related Bodies Corporate and their respective directors, officers and employees.

Bidder Information means:

- (a) all information regarding the Bidder or the Bidder Group as is provided by the Bidder to the Company in writing for inclusion in the Scheme Booklet, including information regarding the Bidder or the Bidder Group that is required to be included in the Scheme Booklet by:
 - (i) the Corporations Act and the *Corporations Regulations 2001* (Cth);
 - (ii) ASIC policy (including the Regulatory Guides); and
 - (iii) all other applicable laws; and
- (b) any other information that the Company and the Bidder agree is Bidder Information,

but excluding the Company Information, the Independent Expert's Report and any statement on the letterhead of the Company's tax adviser of the Tax consequences of the Scheme and related matters for Company Shareholders, as may be included in the Scheme Booklet.

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

Bidder Warranties means the representations and warranties made by the Bidder set out in Schedule 1.

Break Fee means the amount of \$390,000.

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in Perth, Western Australia.

CGT Withholding Amount has the meaning given in clause 5.3(a)(i).

Company Announcement means the announcement of the Scheme by the Company in the Agreed Form.

Company Board means the board of directors of the Company.

Company Due Diligence Materials means:

- (a) all information and documents provided to the Bidder by or on behalf of the Company in the Data Room prior to 5:00pm on the date that is two Business Days before the date of this deed; and

- (b) the questions raised by the Bidder during the due diligence process and the responses to those questions given by or on behalf of the Company prior to 5:00pm on the date that is two Business Days before the date of this deed (as included in the Data Room),

the index of which has been initialed for identification by representatives of the Company and the Bidder.

Company Employee Option Plan means the Company's Employee Incentive Option Plan which was approved by Shareholders on 29 November 2021.

Company Group means the Company and each of its Related Bodies Corporate.

Company Information means all information included in the Scheme Booklet, other than the Bidder Information, the Independent Expert's Report (or references thereto) and the Tax Opinion, as may be included in the Scheme Booklet.

Company Material Adverse Change means any event, matter, change, thing, occurrence or circumstance (each a **Specified Event**) which, whether individually or when aggregated with all such Specified Events, has had or would be considered reasonably likely to have the net effect of:

- (a) reducing the ARR of the Company Group at the end of any given month from and including May 2024 to a level that is less than 92.5% of \$8.8 million (being the reported ARR at the end of April 2024); or
- (b) reducing the Net Cash Balance of the Company Group after the date of this deed to an amount that is less than \$0 as at the Delivery Time and the Implementation Date,

each as calculated in accordance with the accounting policies and practices applied by the Company as at the date of this deed and where applicable to remove the impact of exchange rate movements other than a Specified Event:

- (c) expressly permitted or required to be done by the Company under the Transaction Documents;
- (d) where the Company has first notified the Bidder in writing in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter;
- (e) that has been Disclosed by the Company prior to the date of this deed; or
- (f) that would have been disclosed to the Bidder in sufficient detail to identify and understand the nature, scope and significance of the relevant Specified Event and its potential impact, had the Bidder conducted searches of public records maintained by ASIC or the PPSR.

Company Option means an option issued by the Company to acquire a Company Share, other than the ZEPOs.

Company Parties means the Company and its Related Bodies Corporate and their respective directors, officers and employees.

Company Performance Right means an entitlement granted by the Company for the holder to be allocated a Company Share subject to the satisfaction of any applicable vesting conditions.

Company Performance Share means a share issued by the Company that has limited rights unless and until any applicable vesting conditions are achieved and will convert into a Company Share upon achievement of the applicable vesting conditions.

Company Prescribed Occurrence means the occurrence of any of the following events:

- (a) the Company converting all or any of its securities into a larger or smaller number of securities;
- (b) the Company or another member of the Company Group resolving to reduce its share capital in any way or resolving to reclassify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) the Company or another member of the Company Group:
 - (i) entering into a buy-back agreement; or
 - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act,

(except as contemplated under clause 4.2(r));
- (d) the Company or another member of the Company Group issuing shares or other securities, or granting an option or a performance right over its shares or agreeing to make such an issue or grant such an option or a performance right (other than the issue of Company Shares upon the exercise or conversion of ZEPOs or Company Performance Rights in accordance with clause 4.2(r));
- (e) the Company or another member of the Company Group issuing, or agreeing to issue, convertible notes or any other security convertible into shares (other than as permitted under paragraph (d) above);
- (f) the Company or another member of the Company Group makes, pays or declares or agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members (whether in cash or in specie);
- (g) the Company or any other member of the Company Group disposing of the whole, or a substantial or material part of its business or property;
- (h) the Company or any other member of the Company Group creating, or agreeing to create, any Encumbrance over any shares or other securities in any member of the Company Group or any of its business or other assets or property other than in the ordinary course of business and having a value greater than \$200,000;
- (i) any member of the Company Group acquiring, or agreeing to acquire, any securities, business, assets, interest in a joint venture, entity or undertaking;

- (j) any member of the Company Group adopts a new constitution or similar constituent document or makes any change to or repeals its constitution or similar constituent document;
- (k) any member of the Company Group enters into or resolves to enter into a transaction with any related party of the Company which would require shareholder approval under Chapter 2E of the Corporations Act or under Chapter 10 of the Listing Rules;
- (l) any member of the Company Group resolves to be wound up;
- (m) an Insolvency Event occurring in relation to any member of the Company Group; or
- (n) any member of the Company Group authorises, commits, offers or agrees (whether conditionally or unconditionally), or announces an intention to do any of the actions referred to in paragraphs (a) to (m) above,

other than an event:

- (o) expressly permitted or required to be done by the Company under the Transaction Documents;
- (p) where the Company has first notified the Bidder in writing in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter; or
- (q) that has been Disclosed by the Company prior to the date of this deed.

Company Shareholder means each person registered in the Company Share Register as the holder of one or more Company Shares.

Company Share Register means the register of members of the Company maintained by or on behalf of the Company in accordance with section 168(1) of the Corporations Act.

Company Shares means fully paid ordinary shares in the capital of the Company.

Company Warranties means the representations and warranties made by the Company set out in Schedule 2.

Competing Proposal means a transaction or arrangement, or any proposal, offer or expression of interest in relation to a transaction or arrangement:

- (a) pursuant to which a Third Party will, if the transaction or arrangement is entered into or completed:
 - (i) acquire (whether directly or indirectly) or become the holder of a legal, beneficial and/or economic interest in, or having the right to acquire, all or a substantial or material part of the business or assets of any member of the Company Group;
 - (ii) acquire a Relevant Interest in, or otherwise acquire or have a right to acquire a legal, beneficial and/or economic interest in, 20% or more of the shares or other securities of the Company or

any other member of the Company Group or Voting Power of 20% or more in the Company; or

(iii) acquire Control of the Company or any other member of the Company Group or otherwise acquire or merge with any member of the Company Group; or

(b) which would cause the Company or the Bidder not to proceed with the Transaction or as a result of which the Transaction otherwise would not proceed,

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

Condition means each condition specified in clause 3.1.

Confidentiality Deed means the confidentiality deed dated 19 February 2024 between the Company and Accel-KKR Capital Partners VII, LP.

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

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

Court means the Supreme Court of Western Australia or such other court of competent jurisdiction as the Company and the Bidder agree in writing.

Data Room means the online data room located at [REDACTED].

Decision Time means 5:00 pm on the Business Day before the Second Court Date.

Deed Poll means a deed poll to be executed by the Bidder (and if applicable, the Bidder Acquirer) in favour of the Scheme Shareholders, substantially in the form set out in Annexure 2 or in such other form as the Company and the Bidder agree in writing.

Delivery Time means 8:00 am on the Second Court Date.

Disclosed means fairly disclosed:

- (a) by the Company to the Bidder prior to the date of this deed in the Company Due Diligence Materials;
- (b) by the Company in any announcement made by the Company on ASX or public filings of the Company with ASIC within two years prior to the date of this deed,

in each case, in sufficient detail to enable a reasonable recipient experienced in transactions similar to the Scheme to identify and understand the nature, scope and significance of the relevant matter, event or circumstance and its potential impact.

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

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

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

End Date means the date that is six months after the date of this deed or such other date agreed in writing between the Company and the Bidder.

Escrow Account means a trust account under the control of the Company's legal counsel for the purpose of holding funds required to be held on trust under this deed.

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

- (a) the End Date;
- (b) the date on which this deed is terminated; and
- (c) the Implementation Date.

FIRB means the Foreign Investment Review Board.

First Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

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

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

Implementation Date means the date that is 5 Business Days after the Record Date or such other date as the Company and the Bidder agree in writing or as ordered by the Court.

Impugned Amount has the meaning given to it in clause 9.8.

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

Independent Expert's Report means the report (including the initial report and any update, revision, amendment, addendum or supplementary report) from the Independent Expert in respect of whether or not the Scheme is in the best interests of Company Shareholders.

Insolvency Event means in relation to an entity:

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of the entity being appointed;
- (c) a court making an order for the winding up of the entity or the entity being deregistered as a company or dissolved;
- (d) an administrator of the entity being appointed;
- (e) the entity being or becoming unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the Corporations Act;
- (f) the entity executing a deed of company arrangement;
- (g) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part, of the property, business or assets of the entity;
- (h) the entity ceases, or threatens to cease, to carry on substantially all the business conducted by it as at the date of this deed; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that entity under the laws of any jurisdiction.

Listing Rules means the official listing rules of ASX.

Mandate means the executed mandate between the Company, Argonaut PCF and Atrico.

Material Contract means a contract, agreement, arrangement or commitment to which a member of the Company Group is a party under which a member of the Company Group is obligated to make or receive payments in excess of \$200,000 in any 12 month period.

Net Cash Balance means the cash balance (excluding deposits or similar balances held for the purposes of security against Company Group leases or guarantees) of the Company Group less the total outstanding principal drawn down amount under the Working Capital Facility and all other financial indebtedness of the Company Group.

Policy means the Company Group directors' and officers' insurance policy in effect at the date of this deed.

PPSR means the register of security interests maintained in accordance with the *Personal Property Securities Act 2009* (Cth).

Recommendation has the meaning in clause 7.1(a)(i).

Record Date means 5:00 pm on the date that is 2 Business Days after the Effective Date or such other time and date agreed in writing between the Company and the Bidder.

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

Regulator's Draft has the meaning in clause 4.2(h).

Regulatory Authority means any foreign or Australian:

- (a) government, department, or minister or agency of any government;
- (b) governmental, semi-governmental, administrative, fiscal, monetary or judicial body;
- (c) minister of the Crown in right of the Commonwealth of Australia or any state or territory; and
- (d) authority, agency, tribunal, commission or similar entity having powers or jurisdiction under any law (including Tax Law), regulation or the listing rules of any recognised stock or securities exchange,

and includes ASX, ASIC, FIRB, the ACCC and the Takeovers Panel.

Regulatory Guides means all regulatory guides published by ASIC and in force at the date of this deed.

Regulatory Review Period means the period from the date on which the Company provides the Regulator's Draft to ASIC in accordance with clause 4.2(h) to the date on which ASIC provides a letter for production on the First Court Date.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act.

Related Entity of a party means another entity which is:

- (a) a Related Body Corporate of the first entity;
- (b) in any consolidated entity (as defined in section 9 of the Corporations Act) which contains the first entity;
- (c) in relation to the Bidder, includes any of its general partners, managing members, management or advisory company and other fund or fund entities managed by its management or advisory company;
- (d) any trust of which the first entity or an entity described in paragraph (a), (b) or (c) above is a trustee.

Relevant Interest has the meaning given in sections 608 and 609 of the Corporations Act.

Representatives means, in relation to a party, the directors, officers, employees, professional advisers (including financiers, financial advisers, corporate advisers, legal advisers or technical or other expert advisers or consultants) and agents of the party or of its Related Bodies Corporate.

Reverse Break Fee means the amount of \$700,000.

Run Off Cover has the meaning given in clause 11.2.

Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between the Company and the Scheme Shareholders in the form set out in Annexure 1 or in such other form as the Company and the Bidder agree in writing, subject to any alterations or conditions made or required by the Court and approved in writing by the Company and the Bidder.

Scheme Booklet means the Scheme Booklet to be prepared by the Company pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this deed for despatch to Company Shareholders.

Scheme Consideration means the amount of cash which a Scheme Shareholder is entitled to receive under the Scheme, being \$0.19 per Scheme Share.

Scheme Meeting means the meeting of Company Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme, and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Share means a Company Share on issue as at the Record Date, other than any Company Shares held by the Bidder or a Related Body Corporate of the Bidder as at the Record Date.

Scheme Shareholder means each person registered in the Company Share Register as the holder of one or more Scheme Shares as at the Record Date.

Second Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Security Interest has the meaning given in section 12 of the *Personal Property Securities Act 2009* (Cth).

Senior Managers means Sara Amir-Ansari, Nicholas Pollock, Brian Elloy and Navin Nirmalrajan (each a **Senior Manager**).

Share Splitting means the splitting by a holder of Company Shares into two or more parcels of Company Shares whether or not it results in any change in beneficial ownership of the Company Shares.

Success Fee means the fee payable to the Company's corporate advisors at the conclusion of the Transaction, as set out in the Mandate.

Superior Proposal means a bona fide, written Competing Proposal which is received by the Company and which the Company Board determines, acting in good faith and in order to satisfy what the Company Board considers to be its fiduciary or statutory duties (after having obtained written advice from the Company's external legal adviser and financial advisers):

- (a) is reasonably capable of being valued and implemented taking into account all aspects of the Competing Proposal, including its conditions, the identity, reputation and financial condition of the person making such proposal, legal, regulatory and financial matters, certainty and any

other matters affecting the probability of the relevant proposal being completed in accordance with its terms; and

- (b) would, if completed in accordance with its terms, be more favourable to the Company's shareholders than the latest proposal provided by the Bidder or any of its Related Entities, taking into account all aspects of the Competing Proposal and the latest proposal provided by the Bidder or its Related Entity to the Company, including the identity, reputation and financial condition of the person making such proposal, legal, regulatory and financial matters, certainty and any other matters affecting the probability of the relevant proposal being completed in accordance with its terms.

TAA means the *Taxation Administration Act 1953* (Cth).

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

Tax means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

Taxation Condition means a condition imposed by the Treasurer under section 74(2) of the Foreign Acquisitions and Takeovers Act in the form of the conditions in the 'Standard tax conditions' published in items 1 to 6 of Part D: Examples of tax conditions in Guidance Note 12 issued by FIRB (Version 3 (10 August 2023)).

Tax Law means any law relating to Tax.

Tax Opinion means, if applicable, a statement on the letterhead of the Company's tax adviser of the tax consequences of the Scheme and related matters for Company Shareholders as may be included in the Scheme Booklet.

Third Party means a person other than a Bidder Group member or the Bidder's Associates or the Company Group.

Timetable means the indicative timetable in relation to the Scheme set out in Schedule 3, or such other indicative timetable as the Company and the Bidder agree in writing.

Transaction means the acquisition by the Bidder or the Bidder Acquirer of the Scheme Shares for the Scheme Consideration pursuant to the Scheme.

Transaction Documents means:

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

Treasurer means the Treasurer of the Commonwealth of Australia.

Trust Account means an Australian dollar denominated trust account operated by or on behalf of the Company as trustee for the Scheme Shareholders, as nominated by the Company and notified to the Bidder at least 5 Business Days prior to the Implementation Date, being the account into which the Bidder will deposit an amount equal to the total Scheme Consideration in accordance with clause 5.1.

Unacceptable Circumstances has the meaning given in section 657A of the Corporations Act.

Voting Intention has the meaning given in clause 7.1.

Voting Power has the meaning given to that term in section 610 of the Corporations Act.

Working Capital Facility means the loan agreement dated 31 May 2023 between the Company as borrower and Maptek Pty Ltd as lender.

ZEPO means an option issued by the Company under the Company Employee Option Plan to acquire a Company Share with an A\$0 exercise price.

1.2 Interpretation

In this deed, unless provided otherwise:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all genders;
 - (iii) a person includes an individual, corporation or other body corporate, partnership, trust, joint venture, unincorporated body, Regulatory Authority or other entity, whether or not it is a separate legal entity;
 - (iv) a clause, schedule or annexure is a reference to a clause, schedule or annexure of this deed;
 - (v) this deed includes any schedule or annexure to it;
 - (vi) a party includes that party's successors, permitted substitutes and permitted assigns;
 - (vii) dollars or \$ is a reference to Australian dollars;
 - (viii) this deed or another document includes that document as amended, supplemented, novated or replaced from time to time;
 - (ix) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of it;

- (x) subsidiary, holding company, related body corporate, relative and substantial holding has the same meaning as in the Corporations Act;
 - (xi) a day, month, quarter or year means a calendar day, calendar month, calendar quarter or calendar year respectively;
 - (xii) time is to the time in Perth, Western Australia; and
 - (xiii) writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form (and includes communication by email);
- (b) where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning;
 - (c) any recital, heading or table of contents is for convenience only and does not affect the interpretation of this deed;
 - (d) a provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this deed or the inclusion of the provision in this deed;
 - (e) where an act would be required to be done, or a time limit or period would expire, on a day which is not a Business Day, the act must be done, or the limit or period will expire, on the following Business Day;
 - (f) if a period of time is specified from or after a given day, the period is to be calculated exclusive of that day;
 - (g) any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression must be construed as illustrative and will not limit the sense of the words preceding those terms; and
 - (h) references to "the parties" are to the parties to this deed and include their respective permitted successors in title and permitted assignees.

1.3 Knowledge and awareness of the Company

A reference in this deed to the knowledge or awareness of the Company in relation to a matter is a reference to:

- (a) the actual knowledge of any Senior Manager of the relevant matter at the relevant time; and
- (b) the knowledge that each Senior Manager would have had of the relevant matter if it had made reasonable enquiries in relation to that matter, including if it had made reasonable enquiries of each other Senior Manager and their respective direct reports.

1.4 Knowledge and awareness of the Bidder

A reference in this deed to the knowledge or awareness of the Bidder in relation to a matter is a reference to:

- (a) the actual knowledge of any of the persons in the list of persons agreed by the Bidder and the Company of the relevant matter at the relevant time; and
- (b) the knowledge that each person referred to in clause 1.4(a) would have had of the relevant matter if it had made reasonable enquiries in relation to that matter, including if it had made reasonable enquiries of each other person referred to in clause 1.4(a) and their respective direct reports.

1.5 Reasonable endeavours

Any provision of this deed that requires a party to use reasonable endeavours or all reasonable endeavours, or to take all steps reasonably necessary, to ensure that something is performed or occurs or does not occur, but does not include any obligation:

- (a) to procure absolutely that that thing is done or happens;
- (b) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person:
 - (i) in the form of an inducement or consideration to a Third Party; or
 - (ii) in circumstances that are commercially onerous or unreasonable in the context of this deed,except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority or immaterial costs to procure that the thing is performed or occurs or does not occur;
- (c) to agree to commercially onerous or unreasonable terms;
- (d) to commence any legal action or proceeding against any person; or
- (e) to engage in any action or fail to engage in any action which such person reasonably determines in its good faith business judgment is not advisable for its business considering the totality of the facts.

2. AGREEMENT TO PROPOSE THE TRANSACTION

2.1 Obligations of parties

- (a) The Company agrees to propose the Scheme on and subject to the terms and conditions of this deed.
- (b) The Bidder agrees to assist the Company to propose the Scheme and to perform its obligations in respect of the Scheme on and subject to the terms and conditions of this deed.

- (c) The parties agree to implement the Scheme on and subject to the terms and conditions of this deed.

2.2 Bidder may elect a Subsidiary

- (a) The Company agrees that the Bidder may elect, under this clause 2.2, a wholly-owned subsidiary of the Bidder to acquire all of the Scheme Shares under the Scheme by giving written notice to the Company of that relevant subsidiary of the Bidder on or before the First Court Date.
- (b) If the Bidder elects a wholly-owned subsidiary to acquire all of the Scheme Shares pursuant to clause 2.2(a), it will ensure that such subsidiary completes the acquisition in accordance with the terms of this deed and the Deed Poll and such election will not relieve the Bidder of any obligation under a Transaction Document (except an obligation to receive transfer of Scheme Shares).

3. CONDITIONS PRECEDENT

3.1 Conditions

Subject to this clause 3.1, the Scheme will not become Effective and the respective obligations of the parties to complete the implementation of the Scheme are not binding until each of the following Conditions are either satisfied or waived in accordance with clause 3.2:

Conditions for the benefit of all parties

- (a) **(Scheme shareholder approval)** subject to clause 3.6, Company Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (b) **(Court approval of Scheme)** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (c) **(FIRB approval)** before the Scheme Meeting, the Treasurer has either:
 - (i) provided written notice that there is no objection under the Foreign Acquisitions and Takeovers Act to the proposed acquisition by the Bidder under the Transaction, with the notice of no objection being either unconditional or subject only to:
 - (A) the Taxation Conditions; and/or
 - (B) other conditions which are reasonably acceptable to the Bidder; or
 - (ii) become precluded from exercising any power to make an order under the Foreign Acquisitions and Takeovers Act in relation to the Scheme;
- (d) **(No restraint)** no temporary restraining order, preliminary or permanent injunction or other temporary, preliminary or final order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint preventing, restraining, prohibiting or

materially adversely affecting any of the transactions contemplated by this deed is in effect at the Delivery Time;

Conditions for the benefit of the Company

- (e) **(Independent Expert's Report)** the Independent Expert's Report concludes that the Scheme is in the best interests of Company Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change or withdraw that conclusion prior to the Delivery Time;
- (f) **(Bidder Warranties)** the Bidder Warranties are true and correct in all material respects at all times between the date of this deed and as at the Delivery Time, except where expressed to be operative at another time;
- (g) **(No Bidder Prescribed Occurrence)** no Bidder Prescribed Occurrence occurs between the date of this deed and the Delivery Time;

Conditions for the benefit of the Bidder

- (h) **(No Company Prescribed Occurrence)** no Company Prescribed Occurrence occurs between the date of this deed and the Delivery Time;
- (i) **(Company Warranties)** the Company Warranties are true and correct in all material respects at all times between the date of this deed and as at the Delivery Time, except where expressed to be operative at another time; and
- (j) **(No Company Material Adverse Change)** no Company Material Adverse Change occurs or becomes known to the Bidder between the date of this deed and the Delivery Time.

3.2 Benefit and waiver of Conditions

- (a) The Conditions in clauses 3.1(a) to 3.1(d) are for the benefit of each of the parties. Any breach or non-fulfilment of any of the Conditions in clauses 3.1(a) to 3.1(c) cannot be waived. Any breach or non-fulfilment of the Condition in clause 3.1(d) may only be waived with the written consent of the Company and the Bidder.
- (b) The Conditions in clauses 3.1(e) to 3.1(g) are for the sole benefit of the Company, and any breach or non-fulfilment of any of those Conditions may only be waived by the Company giving its written consent.
- (c) The Conditions in clauses 3.1(h) to 3.1(j) are for the sole benefit of the Bidder, and any breach or non-fulfilment of any of those Conditions may only be waived by the Bidder giving its written consent.
- (d) A party entitled to waive the breach or non-fulfilment of a Condition pursuant to this clause 3.2 may do so in its absolute discretion and, subject to the other party agreeing to abide by the conditions, may do so subject to conditions.

- (e) If a party waives the breach or non-fulfilment of a Condition in accordance with this clause 3.2, that waiver will preclude it from suing the other party for any breach of this document constituted by the event which gave rise to the breach or non-fulfilment of the Condition.
- (f) A waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same events or circumstances; or
 - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other events or circumstances.

3.3 Reasonable endeavours and notification

- (a) Without prejudice to any other obligations of the parties under this deed, but subject to the other provisions of this deed:
 - (i) each of the parties must use all reasonable endeavours to satisfy, or procure the satisfaction of, the Condition in clause 3.1 (d);
 - (ii) the Bidder must use all reasonable endeavours to satisfy, or procure the satisfaction of, the Conditions in clauses 3.1 (c), 3.1 (f) and 3.1 (g); and
 - (iii) the Company must use all reasonable endeavours to satisfy, or procure the satisfaction of, the Conditions in clauses 3.1 (a), 3.1 (b), 3.1 (e), 3.1 (h), 3.1 (i) and 3.1 (j),

as soon as practicable after the date of this document and in any event with a view to the Effective Date occurring on or before the End Date.

- (b) The parties must:
 - (i) promptly inform each other of a failure to satisfy a Condition or of any circumstance which may result in any of the Conditions not being satisfied or capable of being satisfied;
 - (ii) promptly inform each other of the happening of any fact, matter, change, event, circumstance or occurrence that does, will or would reasonably be likely to prevent a Condition from being satisfied or mean that any Condition will not otherwise be satisfied before the End Date;
 - (iii) promptly advise each other in writing of the satisfaction of a Condition;
 - (iv) each give the Court on the Second Court Date a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its own knowledge) whether or not all of the Conditions in clause 3.1 (other than the Condition in clause 3.1 (b)) have been satisfied or waived in accordance with this deed; and

- (v) give each other a draft of the certificate or other evidence to be provided by it under clause 3.3(b)(iv) by 5pm on the day that is two Business Days prior to the Second Court Date, and must provide to each other on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

3.4 Conditions not satisfied or waived

- (a) If:
 - (i) any Condition has not been fulfilled or waived in accordance with clause 3.2 by the time or date specified in clause 3.1 for satisfaction of the Condition; or
 - (ii) there is an act, omission, event, occurrence or circumstance which will prevent a Condition from being satisfied by the time or date specified in clause 3.1 for its satisfaction or, if no time or date is specified, by the End Date (and the non-fulfilment of the Condition which would otherwise occur has not already been waived in accordance with this document),

either the Bidder or the Company may serve notice on the other of them and then the Company and the Bidder will consult in good faith with a view to determining whether:

- (iii) the Scheme may proceed by way of alternative means or methods;
 - (iv) to extend the relevant time or date for satisfaction of the Condition;
 - (v) to adjourn or change the date of an application to the Court; or
 - (vi) to extend the End Date.
- (b) If the Company and the Bidder are unable to reach agreement under clause 3.4(a) within five Business Days following the delivery of the notice (or any shorter period ending at 5pm on the day before the Second Court Date), either of them may terminate this document by notice in writing to the other, provided that:
 - (i) there has been no failure by that party to comply with its obligations under this document, where that failure directly and materially contributed to the Condition to which the notice relates becoming incapable of satisfaction, or being breached or not fulfilled before the End Date; and
 - (ii) the relevant Condition is for its benefit (whether solely or jointly with another party).

For the avoidance of doubt, nothing in this clause 3.4(b) affects the obligation of the Company to pay the Break Fee, if it is required to do so under clause 9.

3.5 Communications regarding regulatory approvals

To the extent permitted by law and each party's respective legal obligations and without limiting clause 3.3:

- (a) as soon as practicable after the date of this document, the parties must cooperate in good faith to develop a plan for communications with any Regulatory Authority that is required to be approached for the purpose of procuring the satisfaction of any Condition (each a **Relevant Regulatory Authority**);
- (b) each party must provide any Relevant Regulatory Authority with all information reasonably required by the Relevant Regulatory Authority in connection with the Scheme;
- (c) each party:
 - (i) subject to the requirements of the Relevant Regulatory Authority, shall have the right to be present and make submissions at or in relation to any proposed meeting by the other party or its advisers with a Relevant Regulatory Authority in relation to the Scheme (except to the extent that such meeting involves the discussion of commercially sensitive information); and
 - (ii) must promptly provide copies to the other parties of any material written communication sent to or received from a Relevant Regulatory Authority in connection with the Scheme (except to the extent that such written communication contains commercially sensitive information of the party in correspondence with the Relevant Regulatory Authority); and
- (d) notwithstanding any other provision of this document, for the purposes of obtaining any approval of a Relevant Regulatory Authority, none of the parties is required to agree to any conditions or to provide or to agree to provide any written undertakings to a Relevant Regulatory Authority which are not reasonably acceptable to that party.

3.6 Scheme voted down because of Headcount Test

If the Scheme is not approved by Company Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and the parties (acting reasonably) consider that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then the Company must, at the Bidder's written request:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act and disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by the Company to represent it in Court proceedings related to the Scheme, in consultation with the Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under

section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

4. IMPLEMENTATION OF THE SCHEME

4.1 General obligations

- (a) Without limiting the parties' respective obligations under clauses 4.2 and 4.3, the parties must each use all reasonable endeavours to commit necessary resources (including management and the resources of external advisers) and ensure that their respective officers and advisers work in good faith and in a timely and cooperative fashion with the other party (including by providing information) to produce the Scheme Booklet and implement the Scheme substantially in accordance with the Timetable, subject to the terms and conditions of this deed.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 4.1(a) to the extent that such failure is due to circumstances and matters outside the party's control (including for the avoidance of doubt, any delays caused by a Regulatory Authority) or is otherwise due to that party taking an action expressly permitted by this deed.
- (c) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control (including for the avoidance of doubt, any delays caused by a Regulatory Authority), the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

4.2 The Company's obligations

Subject to any change of recommendation by the Company Board as permitted by clause 7.1(b), the Company must use its reasonable endeavours to implement the Scheme as soon as practicable and in accordance with the Timetable and in particular, the Company must:

- (a) **(Scheme Booklet)** as soon as reasonably practicable after the date of this deed, prepare the Scheme Booklet (excluding the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws, Regulatory Guide 60, applicable Takeovers Panel guidance notes and the Listing Rules;
- (b) **(Consult with the Bidder in relation to the Scheme Booklet)** consult with the Bidder as to the content and presentation of the Scheme Booklet (provided that the Company has ultimate discretion with respect to the preparation, content and presentation of the Scheme Booklet other than as expressly provided in this deed) including:
 - (i) allowing the Bidder and its Representatives a reasonable opportunity to review and make comments on drafts of the Scheme Booklet within a reasonable amount of time prior to provision of the Regulator's Draft to ASIC;

- (ii) taking any reasonable comments made by the Bidder into account in good faith when producing revised drafts of the Scheme Booklet;
 - (iii) obtaining the Bidder's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) such consent not to be unreasonably withheld or delayed;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet;
- (d) **(Provide draft Independent Expert's Report to the Bidder)** provide drafts of the Independent Expert's Report to the Bidder within a reasonable amount of time prior to provision of the Regulator's Draft to ASIC;
- (e) **(Director's Recommendation)** state in the Scheme Booklet and the Company Announcement (on the basis of statements made to the Company by each director of the Company) the Recommendation and Voting Intention of each of the directors of the Company in accordance with clause 7.1(a);
- (f) **(Director's votes)** use its reasonable endeavours to procure that each director of the Company:
 - (i) confirms their intention to vote any and all Scheme Shares in which they have a Relevant Interest in favour of the Scheme and any other resolution submitted to the Company Shareholders for their approval in connection with the Scheme, provided that the director has not adversely changed or modified or withdrawn their Recommendation or Voting Intention in accordance with clause 7.1(b);
 - (ii) acts in accordance with their Voting Intentions and votes any and all Scheme Shares in which they have a Relevant Interest in favour of the Scheme and any other resolution submitted to Company Shareholders for their approval in connection with the Scheme, provided that the director has not adversely changed or modified or withdrawn their Recommendation or Voting Intention in accordance with clause 7.1(b); and
 - (iii) does not change their Recommendation or Voting Intention, unless permitted in accordance with clause 7.1(b);
- (g) **(Approval of draft Scheme Booklet)** procure that a meeting of the Company Board is convened to approve the draft Scheme Booklet to be provided to ASIC for its review;
- (h) **(ASIC review)** as soon as reasonably practicable and no later than 14 days before the First Court Date, provide an advanced draft of the

Scheme Booklet (**Regulator's Draft**) to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act and:

- (i) provide a copy of the Regulator's Draft to the Bidder immediately thereafter;
 - (ii) liaise with ASIC as necessary and to the extent reasonably practicable during the Regulatory Review Period; and
 - (iii) promptly notify, and consult with, the Bidder in relation to any matters raised by ASIC or ASX in connection with the Scheme Booklet or the Scheme and use reasonable endeavours to co-operate and consult with the Bidder and take into consideration comments made by the Bidder in relation to, or to resolve any such matters (provided that, where those matters relate to Bidder Information, the Company must not take any steps to address them without the Bidder's prior written consent, not to be unreasonably withheld or delayed);
- (i) **(Section 411(17)(b) statement)** apply to ASIC for the production of:
- (i) a letter stating that ASIC does not intend to appear before the Court on the First Court Date; and
 - (ii) a letter stating that, pursuant to section 411(17)(b) of the Corporations Act, ASIC has no objection to the Scheme;
- (j) **(Court documents)** consult with the Bidder in relation to the content of the documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submission and draft minutes of Court orders) and consider in good faith comments on, and suggested amendments to, those documents from the Bidder and its Representatives prior to filing those documents with the Court;
- (k) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of the Scheme, at which, through its counsel and, if requested by the Court, the Company will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (l) **(First Court Date)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Company to convene the Scheme Meeting;
- (m) **(Approval of Scheme Booklet)** procure that a meeting of the Company Board is convened to approve the Scheme Booklet for registration with ASIC and despatch to Company Shareholders;
- (n) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report);

- (o) **(Register Scheme Booklet)** request that ASIC registers the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (p) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to Company Shareholders and convening and holding the Scheme Meeting, provided that, before despatch, the Company must obtain the written consent of the Bidder to the inclusion of the Bidder's Information in the Scheme Booklet, in the form and the context in which it appears (such consent not to be unreasonably withheld or delayed);
- (q) **(Update Scheme Booklet)** if after despatch of the Scheme Booklet, it becomes aware:
 - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information which is required to be disclosed to Company Shareholders under any applicable law, but was not included in the Scheme Booklet,
as expeditiously as practicable:
 - (iii) notify the Bidder of this fact;
 - (iv) consult with the Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Company Shareholders; and
 - (v) provide the Bidder with drafts of any documents that it proposes to issue to Company Shareholders under paragraph (q)(ii) above and, to the extent reasonably practicable, consult with the Bidder as to the content of those drafts and (acting reasonably and in good faith) take into account any comments from the Bidder and its Representatives on those drafts;
- (r) **(Incentives)** ensure that, before the Record Date, there are no outstanding Company securities or rights (including Company Options, ZEPOs, Company Performance Rights or Company Performance Shares) other than Company Shares;
- (s) **(Options)**: in order to comply with clause 4.2(r):
 - (i) put in place arrangements so that all Company Options will lapse or otherwise be cancelled or terminated (without any cost, consideration or liability) before the Record Date; and
 - (ii) put in place arrangements so that:
 - (A) all unvested ZEPOs will vest in accordance with their terms (and will result in an issue of Company Shares) prior to the Record Date; and

- (B) all vested ZEPOs (including ZEPOs which vest pursuant to the arrangements referred to in clause 4.2(s)(ii)(A)) will be exercised in accordance with their terms (and will result in an issue of Company Shares) prior to the Record Date, so that the holders can participate in the Scheme as Scheme Shareholders and receive the Scheme Consideration in respect of those Company Shares;
- (t) **(Company Performance Rights)**: in order to comply with clause 4.2(r), put in place arrangements so that the Company Performance Rights will vest in accordance with their terms (and will result in an issue of Company Shares) prior to the Record Date, so that the holders can participate in the Scheme as Scheme Shareholders and receive the Scheme Consideration in respect of those Company Shares;
- (u) **(Company Performance Shares)**: in order to comply with clause 4.2(r), put in place arrangements so that the Company Performance Shares will vest in accordance with their terms (and will result in an issue of Company Shares) prior to the Record Date, so that the holders can participate in the Scheme as Scheme Shareholders and receive the Scheme Consideration in respect of those Company Shares;
- (v) **(ASX listing)** use its reasonable endeavours to ensure that the Company continues to be admitted to ASX, and that Company Shares continue to be quoted for trading (and not permanently suspended) on ASX, until the close of business on the Business Day immediately following the Implementation Date;
- (w) **(Suspension)** apply to ASX to have trading in Company Shares suspended from the close of trading on the Effective Date;
- (x) **(Court approval application)** if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the requisite majorities required under section 411(4)(a)(ii) of the Corporations Act and subject to all other Conditions (other than the Condition in clause 3.1(b)) being satisfied or waived in accordance with this deed, apply to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (y) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this deed and provide a draft of that certificate to the Bidder by 5:00 pm at least 2 Business Days prior to the Second Court Date;
- (z) **(Implementation of Scheme)** if the Scheme is approved by the Court:
 - (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act before 5:00 pm on the Business Day following the day of receipt of such office copy (or such other date as is agreed between the Company and the Bidder in writing);

- (ii) close the Company Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
 - (iii) provide to the Bidder all information about the Scheme Shareholders that the Bidder reasonably requires in order for the Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme; and
 - (iv) subject to the Bidder satisfying its obligations under clause 5.1, on the Implementation Date (or as soon as practicable thereafter):
 - (A) on behalf of the Scheme Shareholders, execute proper instruments of transfer and effect the transfer of Scheme Shares to the Bidder in accordance with the Scheme; and
 - (B) register all transfers of Scheme Shares to the Bidder in accordance with the Scheme;
- (aa) **(Proxy reports)**: keep the Bidder reasonably informed of:
- (i) the status and outcome of proxy appointments received in respect of the Scheme Meeting, including over the period commencing 10 Business Days before the Scheme Meeting and ending on the deadline for receipt of proxy forms; and
 - (ii) such other information as the Company Group may receive concerning the voting intentions of Company Shareholders;
- (bb) **(Information)** provide all necessary information, and procure that the Company Share Register provides all necessary information, in each case in a form reasonably requested by Bidder, about the Scheme, the Company Shareholders and Scheme Shareholders to the Bidder, which the Bidder reasonably requests in order to:
- (i) understand the legal and beneficial ownership of Company Shares, and canvass agreement to the Scheme by Company Shareholders;
 - (ii) facilitate the provision by, or on behalf of, the Bidder of the Scheme Consideration and to otherwise enable the Bidder to comply with the terms of this deed, the Scheme and the Deed Poll (which must include the name, Registered Address and registered holding of each Scheme Shareholder as at the Record Date), within two Business Days after the Record Date; or
 - (iii) review the tally of proxy appointments and directions received by the Company before the Scheme Meeting (which, in the period commencing 10 Business Days prior to the Scheme Meeting up to the deadline for the receipt of proxy forms, will be provided every Business Day);
- (cc) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;

- (dd) **(Other things)** promptly do all other things contemplated by or reasonably necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme; and
- (ee) **(Promote merits of the Transaction)** in consultation with the Bidder, participate in efforts reasonably requested by the Bidder to promote the merits of the Transaction and the Scheme Consideration, including:
 - (i) meeting with key Company Shareholders at the reasonable request of the Bidder and soliciting proxy votes in favour of the Scheme;
 - (ii) undertaking reasonable shareholder engagement and proxy solicitation actions to encourage votes in favour of the Scheme in accordance with the Recommendation and:
 - (A) if reasonably requested by the Bidder to do so, engaging a proxy solicitation firm to assist in soliciting proxy votes (or the Company may independently decide to appoint a proxy solicitation firm after consulting in good faith with the Bidder);
 - (B) providing the Bidder with regular updates in relation to such actions (including a summary of feedback received from Company Shareholders); and
 - (C) providing the Bidder a reasonable opportunity to review and, taking any reasonable comments made by the Bidder into account in good faith when producing a revised draft of, any materials related to such actions;
 - (D) consulting with, and considering in good faith feedback received from, the Bidder in relation to such actions,

in each case, subject to applicable law and ASIC policy; and
 - (iii) providing the Bidder with such information and assistance as the Bidder reasonably requests to enable it to promote the merits of the Transaction.

4.3 The Bidder's obligations

Subject to the terms and conditions of this deed, the Bidder must take all reasonably necessary steps to assist the Company to propose and implement the Scheme as soon as is reasonably practicable and in accordance with the Timetable, including the Bidder taking each of the following steps:

- (a) **(Draft of the Bidder Information)** provide to the Company a draft of the Bidder Information as soon as reasonably practicable after the date of this deed and consult with the Company in relation to the content of drafts of the Bidder Information and (acting reasonably and in good faith) take into account any comments from the Company and its Representatives on those drafts;

- (b) **(Final form of the Bidder Information)** provide to the Company the Bidder Information in a form appropriate for inclusion in the Scheme Booklet;
- (c) **(Review Scheme Booklet)** review the drafts of the Scheme Booklet provided by the Company and provide comments on those drafts as soon as reasonably practicable and in good faith;
- (d) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Company or the Independent Expert to enable it to prepare its report for inclusion in the Scheme Booklet;
- (e) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information and provide to the Company all evidence of such processes as may be reasonably requested;
- (f) **(Reasonable assistance)** provide all assistance and information reasonably requested by the Company or its Representatives in connection with:
 - (i) the preparation of the Scheme Booklet (including any supplemental disclosure to Company Shareholders) and any documents required to be filed with the Court in respect of the Scheme; and
 - (ii) the Company in applying for any regulatory modifications or waivers determined appropriate or necessary by the Company (and provide any necessary consents in relation to such applications);
- (g) **(Liaise with ASIC)** provide all reasonable assistance requested by the Company to assist the Company to resolve any matters raised by ASIC regarding the Scheme Booklet or the Scheme;
- (h) **(Approval of the Bidder Information)** subject to clause 4.4, as soon as reasonably practicable after receipt from the Company of the final draft of the Scheme Booklet, and in any event before a draft of the Scheme Booklet is lodged with ASIC and if reasonably required by the Company again before the Scheme Booklet is despatched to Company Shareholders, confirm in writing to the Company that:
 - (i) the Bidder consents to the inclusion of the Bidder Information in the form and context in which the Bidder Information appears in the Scheme Booklet, such consent not to be unreasonably withheld or delayed; and
 - (ii) the Bidder Information in the form and context in which it appears in the Scheme Booklet does not contain any material statement that is misleading or deceptive whether by omission or otherwise (subject to the approval of the Court);
- (i) **(Keep the Company informed)** promptly inform the Company if it becomes aware after the despatch of the Scheme Booklet that the Bidder Information in the form and context in which it appears in the Scheme Booklet is or has become misleading or deceptive in any material respect or contains any omission (including any information

required to be disclosed under any applicable law), and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or contains any material omission;

- (j) **(Deed Poll)** by the Business Day prior to the First Court Date, enter into the Deed Poll and deliver the executed Deed Poll to the Company;
- (k) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of the Scheme, at which, through its counsel and, if requested by the Court, the Bidder will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (l) **(Due diligence and verification)**: undertake appropriate due diligence and verification processes in relation to the Bidder Information;
- (m) **(Certificate)** before the commencement of the hearing on the Second Court Date provide to the Company for provision to the Court at that hearing a certificate (signed for and on behalf of Bidder) confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this deed and provide a draft of that certificate to the Company by 5:00 pm at least 2 Business Days prior to the Second Court Date;
- (n) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration on the Implementation Date in accordance with clause 5 and the terms of the Scheme and the Deed Poll;
- (o) **(Promote merits of Transaction)** participate in efforts reasonably requested by the Company to promote the merits of the Transaction and the Scheme Consideration, including meeting with key employees of the Company and key Company Shareholders at the request of the Company;
- (p) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (q) **(Payment of Success Fee)** within 2 Business Days of the Second Court Date, cause an amount equal to the amount that the Company must pay to its corporate advisors as a Success Fee under the Mandate to be deposited into the Escrow Account for the purpose of payment of the Success Fee by the Company on or around the Implementation Date;
- (r) **(Share transfer)**: if the Scheme becomes Effective:
 - (i) Bidder must accept a transfer of the Scheme Shares as contemplated by clause 5.1; and
 - (ii) Bidder must execute instruments of transfer in respect of the Scheme Shares;

- (s) **(Assistance)**: up to and including the Implementation Date and subject to obligations of confidentiality owed to Third Parties and undertakings to Regulatory Authorities, provide the Company with all reasonable assistance and reasonable access during normal business hours to information and personnel of Bidder Group that Company reasonably requests for the purpose of preparation of the Scheme Booklet and implementation of the Transaction; and
- (t) **(Other things necessary)** promptly do all other things contemplated by or reasonably necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

4.4 Dispute as to Scheme Booklet

If, after a reasonable period of consultation, the Company and the Bidder, each acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:

- (a) if the disagreement relates to the form or content of the Bidder Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Information), the Company will, acting in good faith, make such amendments to that information in the Scheme Booklet as the Bidder may reasonably require; and
- (b) otherwise, the Company will, acting in good faith, decide the final form of that aspect of the Scheme Booklet.

4.5 Responsibility statement

The Scheme Booklet will contain a responsibility statement to the effect that:

- (a) the Bidder is responsible for the Bidder Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Company and its directors and officers will not be responsible for any Bidder Information and will disclaim any liability for the Bidder Information;
- (b) the Company is responsible for the Company Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Bidder and its directors and officers will not be responsible for any Company Information and will disclaim any liability for the Company Information;
- (c) the Independent Expert is responsible for the Independent Expert's Report, and none of the Company, Bidder or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report; and
- (d) if the Scheme Booklet contains a Tax Opinion, that tax adviser is responsible for such Tax Opinion.

4.6 Reconstitution of the Company Board

On the Implementation Date, and subject to the Bidder having provided the Scheme Consideration in accordance with clause 5, the Company must:

- (a) cause the appointment to the Company Board of such persons as nominated by the Bidder in writing to the Company, subject to those persons being appointed having:
 - (i) provided to the Company a duly signed consent to act as a director of the Company Board; and
 - (ii) applied for their Australian Director Identification Number (DIN);
- (b) procure that the directors of the Company Board which the Bidder nominates resign from the Company Board (such resignation, to include a statement to the effect that the outgoing director has no claim outstanding against any member of the Company Group, in their capacity as a director of the Company Board, and without prejudice to any rights they may have under any deed of indemnity, access and insurance or policy of directors and officers insurance, or equivalent); and
- (c) procure that each director of each other member of the Company Group (other than any existing director of a member of the Company Group which Bidder has agreed in writing will remain on the board of the relevant member of the Company Group) resigns from their officer as a director by providing to the board of the relevant member of the Company Group their resignation in writing (such resignation, to include a statement to the effect that the outgoing director has no claim outstanding against any member of the Company Group, in their capacity as a director, and without prejudice to any rights they may have under any deed of indemnity, access and insurance or policy of directors and officers insurance, or equivalent), and cause the appointment of the nominees of the Bidder to those boards,

in each case, in accordance with the relevant company's constituent documents, the Corporations Act, the Listing Rules and any other applicable laws.

4.7 Removal of the Company from the official list of ASX

Subject to the Scheme becoming Effective, the Company must take all steps necessary for the Company to be removed from the official list of ASX with effect from the close of trading on ASX on the Business Day immediately following the Implementation Date, including by lodging a request for removal with ASX prior to the Implementation Date, and the Company and the Bidder (to the extent necessary) must satisfy any conditions reasonably required by ASX for it to act on that request.

4.8 Court proceedings

- (a) Without limiting clause 4.2(k) above:
 - (i) the Bidder shall have separate representation at all Court proceedings relating to the Scheme (at its own cost); and
 - (ii) the Company must support any application by the Bidder for leave of the Court to be represented, or the separate representation of the Bidder, at any hearing held by the Court in relation to the Scheme whether following a request by the Company or otherwise.

- (b) This deed does not give either party any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- (c) If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, the parties must appeal the Court's decision to the fullest extent possible except to the extent that:
 - (i) the parties agree otherwise; or
 - (ii) an independent senior counsel of the Western Australia bar advises that, in their opinion, an appeal would have no reasonable prospect of success,

in which case, either party may terminate this document.

5. SCHEME CONSIDERATION

5.1 Obligations in respect of the Scheme Consideration

The Bidder agrees in favour of the Company (in the Company's own right and separately as trustee for each Scheme Shareholder) that, if the Scheme becomes Effective, in consideration of the transfer to the Bidder of each Scheme Share under the Scheme, the Bidder will deposit an amount equal to the total Scheme Consideration in cleared funds into the Trust Account by no later than the Business Day before the Implementation Date, and on the Implementation Date will:

- (a) accept that transfer and execute any instruments of transfer required to effect it; and
- (b) provide, or procure the provision of, the Scheme Consideration to each Scheme Shareholder for Scheme Shares in accordance with the terms of this deed and the Scheme.

5.2 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
- (b) If the Company is of the opinion (acting in good faith) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.2(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Company may give notice to those Scheme Shareholders:
 - (i) setting out their names and registered addresses as shown in the Company Share Register;
 - (ii) stating that opinion; and

- (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares will, for the purposes of the other provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of the Scheme, be taken to hold no Scheme Shares.

5.3 CGT Withholding Amount

- (a) Notwithstanding any other provision of this deed, if the Bidder determines (acting reasonably and in good faith) that an amount is required to be withheld under Subdivision 14-D of Schedule 1 of the TAA from the Scheme Consideration payable to a Scheme Shareholder, the Bidder:
 - (i) may withhold and remit to the Australian Taxation Office a portion of the Scheme Consideration payable to that Scheme Shareholder (**CGT Withholding Amount**);
 - (ii) is taken to have paid the CGT Withholding Amount to the Scheme Shareholder for the purposes of this deed and the Scheme; and
 - (iii) will not be required to pay any additional amount to the Scheme Shareholder on account of any CGT Withholding Amount, and will, on payment of the Scheme Consideration less the CGT Withholding Amount, be deemed for all purposes to have paid the full and final amount of the Scheme Consideration (or other payment) required under this deed,provided that:
 - (iv) the Bidder has, at least 10 Business Days prior to the Implementation Date, given the Company notice in writing and information which is to the Company's satisfaction (acting reasonably), which identifies the reasons as to why a liability arises under Subdivision 14-D of Schedule 1 of the TAA, and the basis of the calculation of the CGT Withholding Amount; and
 - (v) the Company has not, at least 5 Business Days prior to the Implementation Date, given information to the Bidder which demonstrates (to the Bidder's satisfaction, acting reasonably) that the CGT Withholding Amount should be nil.
- (b) The Company agrees that the Bidder may approach the Australian Taxation Office to obtain clarification as to the application of Subdivision 14-D of Schedule 1 of the TAA to the Transaction and will provide all information and assistance that the Bidder reasonably requires in making any such approach. The Bidder agrees:
 - (i) to provide the Company a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office; and

- (ii) not to contact any Scheme Shareholder in connection with the application of Subdivision 14-D of Schedule 1 of the TAA to the Transaction without the Company's prior written consent.

6. CONDUCT OF BUSINESS

6.1 Conduct of the Company's business

- (a) From the date of this deed up to and including the Implementation Date:
 - (i) the Company must use, and procure that each member of the Company Group uses, reasonable endeavours to ensure that the business and operations of the Company Group are conducted:
 - (A) in the ordinary course, in substantially the same manner as previously conducted in the 12 month period prior to the date of this deed; and
 - (B) in accordance in all material respects with its legal and contractual obligations;
 - (ii) the Company must maintain adequate working capital consistent with past practice, after taking into account costs of the transaction contemplated by this deed that were Disclosed by the Company prior to the date of this deed;
 - (iii) the Company must not, and must ensure that each member of the Company Group does not, pay, or agree to pay or incur, any third party costs or expenses in connection with the transactions contemplated by this deed (including legal, financial, tax, accounting, communications and public relations, counsel, expert and court fees and fees payable to Regulatory Authorities) above \$1,219,500 (in aggregate) and as Disclosed by the Company prior to the date of this deed, other than as agreed by the Bidder and the Company;
 - (iv) the Company must not enter into any line of business or other activities in which it has not engaged as at the date of this deed;
 - (v) the Company must keep the Bidder reasonably informed of any material developments concerning the conduct of its business;
 - (vi) the Company must use, and procure that each member of the Company Group uses, reasonable endeavours to:
 - (A) preserve its current business organisation, including keeping available the services of its senior officers and employees;
 - (B) preserve its relationships with material customers and suppliers and others having material business dealings with it; and
 - (C) maintain the conditions of its business and assets, including maintaining at least its current level of

insurance (provided such level of insurance continues to be generally on commercially reasonable terms);

- (vii) the Company must ensure that a Company Prescribed Occurrence does not occur or is rectified to the reasonable satisfaction of the Bidder prior to the Decision Time; and
 - (viii) maintain such policies of insurance as are appropriate to the Company Group's operations, property and assets, in such amounts and against such risks as are customarily carried and insured by owners of the comparable businesses and assets, provided that there is no obligation on the Company to procure insurance in addition to what was Disclosed prior to the date of this deed; and
 - (ix) keep the Bidder informed of any current, pending or threatened Tax of duty audits, reviews or investigation or tax demands relating to any member of the Company Group, and procure that no member of the Company Group settles, compromises or otherwise deals with such audits, reviewed or investigations or tax demands without the prior written consent of the Bidder (which must not be unreasonably withheld or delayed).
- (b) From the date of this deed up to and including the Implementation Date, the Company must not, and must procure that each other member of the Company Group does not:
- (i) either:
 - (A) engage any new director or any executive or officer level employee;
 - (B) enter into or offer to enter into a new employment contract with a potential employee of a member of the Company Group whose total employment costs per annum exceed \$200,000;
 - (C) make any material change to the terms of employment of any employee; or
 - (D) terminate an employment contract with an existing employee of a member of the Company Group (other than for cause), in each case in respect of which the base salary payable to that existing or potential employee is in excess of \$200,000;
 - (ii) other than in the ordinary course of business and consistent with past practice (and in any event by no more than 4% of aggregate base salaries (not including superannuation)), increase the remuneration (including any short term incentive or long term incentives) of or the benefits (including with regard to superannuation benefits) provided to or pay any bonus or issue any incentive options to, any of its directors or employees;
 - (iii) amend the terms of any option plan, performance rights plan, incentive plan or share plan;

- (iv) pay any of its director or employee a termination, redundancy or retention payment, other than as required by any applicable laws;
- (v) accelerate the rights of any of its directors, officers or employees to compensation or benefits of any kind (excluding any acceleration of Company Performance Rights and Company Performance Shares in accordance with clauses 4.2(s) to 4.2(u) (inclusive));
- (vi) create, or agree to create, issue any securities under, or become liable for obligations under, or provide, or agree to pay or provide, any bonuses or benefits to any employee or officer that such employee or officer is not entitled to in accordance with an existing contract in place as at the date of this deed which has been Disclosed;
- (vii) enter into, terminate, amend in a material manner or waive any material third party default, any material claims or rights in respect of, or waive the benefit of any material provision of, a Material Contract, except for the:
 - (A) entry into any agreement by a member of the Company Group that is on substantially the same terms as agreements that have been entered into by that member of the Company Group and that has been Disclosed (other than agreements with a Regulatory Authority); or
 - (B) renewal or extension of a lease, or entry into a new lease, in respect of real property that is leased by a member of the Company Group as at the date of this deed (in each case, on substantially the same terms but subject to any market-based increases in rent);
- (viii) commence, threaten in writing, settle or compromise any legal proceeding, claim, investigation, arbitration or other like proceeding against a member of the Company Group involving:
 - (A) the possible payment or receipt of amounts greater than \$100,000; or
 - (B) any admission of criminal liability or otherwise accept any undertakings or conditions by a member of the Company Group which will cause material reputational damage to the Company Group (taken as a whole);
- (ix) commit to any capital expenditure on tangible assets in excess of \$100,000 whether in one transaction or a series of related transactions;
- (x) enter into a loan, advance or financing arrangement (other than with another member of the Company Group) as lender;
- (xi) incur any additional financial indebtedness other than drawing down on undrawn amounts under the Working Capital Facility for

- the purposes of managing its cash flow and working capital requirements in the usual and ordinary course;
- (xii) guarantee or indemnify the obligations of any other person other than a member of the Company Group;
 - (xiii) alter in any material respect any accounting policy of any member of the Company Group other than any change required by the Accounting Principles;
 - (xiv) make, change or revoke any material election in respect of Taxes, change any material method of Tax accounting applied in the 12 months prior to the date of this deed, change any Tax accounting period, amend any material Tax return;
 - (xv) cease, or threaten to cease, to carry on a substantial part of its business; or
 - (xvi) agree to do any of the matters set out above.
- (c) The Company must promptly notify the Bidder of any suspected or actual breach of clause 6.1 (a) or clause 6.1 (b).
- (d) Nothing in this clause 6.1 restricts the ability of the Company or any member of the Company Group to take any action:
- (i) expressly permitted or required to be done by the Company under the Transaction Documents;
 - (ii) where the Company has first notified the Bidder in writing in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter;
 - (iii) that has been Disclosed by the Company prior to the date of this deed;
 - (iv) required by law or by a Regulatory Authority, or otherwise arising as a result of any court or Regulatory Authority order, injunction or undertaking or as required to meet contractual obligations; or
 - (v) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property, or a disease epidemic or pandemic) provided that, to the extent reasonably practicable having regard to the nature of the relevant emergency or disaster, Company has consulted with Bidder in good faith in respect of the proposal to take such action or not take such action (as applicable).
- (e) Without limiting clause 8, nothing in clauses 6.1(a) or 6.1(b) restricts the ability of the Company to respond to a Competing Proposal in accordance with the terms of this deed.

6.2 Access and Information

Between the date of this deed and the Implementation Date, the Company must, and must cause each member of the Company Group to, promptly afford the Bidder and its Representatives reasonable access to information (subject to any existing confidentiality obligations owed to third parties), premises or such senior executives of any member of the Company Group as reasonably requested, at mutually convenient times and afford the Bidder reasonable co-operation for the purposes of:

- (a) keeping the Bidder informed as to the status and conduct of the business of the Company Group;
- (b) obtaining an understanding, or furthering its understanding of the Company Group in order to allow the Bidder to develop plans for the Company Group following implementation of the Scheme;
- (c) implementation of the Scheme and the performance of its obligations under this deed, provided that nothing in this sub-clause will require the Company to provide information concerning the Company's directors and management's consideration of the Schemes, any Competing Proposal, or any potential Competing Proposal; and
- (d) any other purpose agreed between the parties,

provided that:

- (e) such requests do not result in unreasonable disruptions to the business of the Company Group; and
- (f) the Company may provide its records to the Bidder and its Representatives at a place other than at the Company Group's business premises.

6.3 Confidentiality

The parties acknowledge that all information that is provided pursuant to clause 6.2 is provided subject to the terms of the Confidentiality Deed. Without limiting the foregoing, Bidder must, and must procure that its Representatives, each other Bidder Group member and their respective Representatives:

- (a) provide the Company with reasonable notice of any request for information or access; and
- (b) comply with the reasonable requirements of the Company in relation to any access granted.

6.4 Counterparty consents

The Company and the Bidder will cooperate with each other in good faith, and will take all actions reasonably required, to seek to identify and obtain all counterparty consents which are necessary or desirable to implement in connection with the Scheme.

6.5 Cooperation with financing

- (a) The Company must:
- (i) provide timely cooperation and assistance in connection with the syndication, implementation and consummation of any debt financing by the Bidder Group in connection with the transactions contemplated by this deed (**Debt Financing**); and
 - (ii) take all actions in connection with the Debt Financing, as reasonably requested by the Bidder or its Representatives, including furnishing the Bidder and its financing sources (within a reasonable timeframe) with financial or other pertinent information regarding the Company Group as may be reasonably requested by the Bidder or its Representatives.
- (b) Nothing in this clause 6.5 will require any member of the Company Group to provide cooperation with financing to the extent that it would:
- (i) provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of the Company Group taken as a whole, or would be reasonably likely to jeopardise any attorney-client or other legal privilege;
 - (ii) require a Company Party to execute prior to the implementation of the Scheme any agreements, including any credit or other agreements, pledge or security documents or other certificates, legal opinions or documents in connection with any financing;
 - (iii) to the extent it would cause undue disruption to the operation of the Company Group's business in the ordinary course; or
 - (iv) provide any financial assistance that the Company reasonably considers requires shareholder approval under Part 2 J.3 of Chapter 2J of the Corporations Act.

7. RECOMMENDATION AND INTENTIONS

7.1 Company Board Recommendation and Voting Intention

- (a) Subject to clause 7.1(b), the Company must use its reasonable endeavours to procure that each of the Company directors:
- (i) recommend that Company Shareholders vote in favour of the resolution to approve the Scheme (**Recommendation**); and
 - (ii) state that he or she intends to cause any and all Company Shares in which he or she has a Relevant Interest to be voted in favour of the resolution to approve the Scheme (**Voting Intention**),

in each case, qualified only by the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Company Shareholders, and the Company must ensure that the Company

Announcement, the Scheme Booklet and all other public announcements by the Company in relation to the Scheme include a statement to that effect from the Company directors.

- (b) A Company director may adversely change or modify, or withdraw his or her Recommendation and Voting Intention if:
- (i) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Company Shareholders (or the Independent Expert adversely changes or publicly withdraws its conclusion that the Scheme is in the best interests of Company Shareholders) prior to the Delivery Time;
 - (ii) the Company has received a Competing Proposal (other than as a result of a breach of clause 8) and the Company Board has determined, after the procedure in clause 8.8 has been complied with, that the Competing Proposal constitutes a Superior Proposal;
 - (iii) this deed is validly terminated in accordance with its terms;
 - (iv) the Company has become entitled to terminate this deed pursuant to clause 14.3(b)(i) and has given the required notice to the Bidder; or
 - (v) they are required to do so by or in order to comply with an order of a court of competent jurisdiction or ASIC or the Takeovers Panel.
- (c) For the purposes of clause 7.1(b), customary qualifications and explanations contained in the Scheme Booklet and any public announcements in relation to a Recommendation to the effect that the Recommendation is made:
- (i) in the absence of a Superior Proposal;
 - (ii) in respect of any public announcement issued before the issue of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of the Company's Shareholders; and
 - (iii) in respect of the Scheme Booklet and any public announcements issued at the time of or after the issue of the Scheme Booklet, 'subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of the Company's Shareholders',
- will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation.
- (d) Despite anything to the contrary in this clause 7.1 or elsewhere in this deed, a statement made by the Company, its board of directors or any Company director to the effect that no action should be taken by Company Shareholders pending the assessment of a Competing

Proposal by the Company's board or the completion of the matching right process set out in clause 8.8 will not contravene this clause 7.1 or any other provision of this deed.

- (e) For the avoidance of doubt, the Company will not be in breach of any term of this deed, and will not be liable to the Bidder under this deed other than in accordance with its terms (including the obligation to pay the Break Fee under clause 9), solely as a result of a Company director publicly (or otherwise) adversely changing, withdrawing, adversely modifying or adversely qualifying his or her recommendation to vote in favour of the Scheme as expressly permitted by clause 7.1.

7.2 Confirmation

The Company warrants to the Bidder that each of the Company's directors has confirmed they each hold the Recommendation and the Voting Intention, and their agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clause 7.1(b).

7.3 Notification

Subject to the Listing Rules and all applicable laws and regulations, if the Company becomes aware that a Company director proposes to withdraw, change or modify his or her Recommendation or Voting Intention, the Company must notify the Bidder in writing as soon as practicable (and in any event within 24 hours).

7.4 Company Announcement

Immediately after the execution of this deed the Company must issue the Company Announcement to the ASX.

8. EXCLUSIVITY ARRANGEMENTS

8.1 No current discussions regarding a Competing Proposal

The Company represents and warrants that, as at the date of this deed:

- (a) neither the Company, nor any of the Company's Representatives, is in negotiations, discussions or other communications (and has ceased any negotiations, discussions or other communications) with any person (other than, for the avoidance of doubt, the discussions with the Bidder and its Representatives in respect of the Transaction) in respect of, or which could reasonably be expected to lead to, any actual, proposed or potential Competing Proposal; or
- (b) any due diligence access granted to any Third Party for the purposes of such Third Party making, formulating, developing or finalising any actual, proposed or potential Competing Proposal has been terminated and any person to whom non-public information has been made available for the purpose of the person making, formulating, developing or finalising any actual, proposed or potential Competing Proposal has been requested to return or destroy that non-public information in accordance with the terms of the confidentiality agreement in place with that person. The

Company will enforce its rights to require the return or destruction of such non-public information and agrees not to waive and to enforce any standstill obligations owed to it by any Third Party.

8.2 No shop

During the Exclusivity Period, the Company must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any Competing Proposal or any enquiries, expressions of interest, offers, proposals, negotiations or discussions by any person in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or
- (b) communicates to any person any intention to do any of those things referred to in clause 8.2(a).

8.3 No talk

Subject to clause 8.5, during the Exclusivity Period, the Company must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) negotiates, accepts or enters into; or
- (b) participates in negotiations or discussions with any Third Party regarding, a Competing Proposal or any inquiry, offer, proposal or expression of interest, agreement, understanding or arrangement in relation to or that could be reasonably expected to lead to a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the Company or any of its Representatives or the person has publicly announced the Competing Proposal; or
- (c) communicate to any person any intention to do any of the things referred to in clause 8.3(a) or 8.3(b).

8.4 No due diligence

Subject to clause 8.5, during the Exclusivity Period, the Company must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) enables any Third Party other than the Bidder or any of its Representatives to undertake due diligence investigations on any member of the Company Group, any of the operations or assets of the Company Group's businesses or any part thereof; or
- (b) makes available to any Third Party, or permits any Third Party to receive, other than the Bidder or any of its Representatives (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the Company Group, any of the operations or assets of the Company Group's businesses or any part thereof.

8.5 Fiduciary out

Each of clauses 8.3 and 8.4 do not apply to the extent that the relevant clause restricts the Company or the Company Board from taking or refusing to take any

action in relation to a bona fide written Competing Proposal (in relation to which there has been no contravention of this clause 8) provided that the Company Board has determined, acting in good faith after:

- (a) consultation with its external financial advisers who are experienced in advising on Australian public M&A transactions and external legal advisers, that such a genuine written Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) receiving written legal advice from its external legal advisors, that compliance with clauses 8.3 or 8.4 (as applicable) would or would be reasonably likely to constitute a breach of the fiduciary or statutory obligations owed by any Company director.

8.6 Equivalent obligations

If during the Exclusivity Period, the Company proposes that any non-public information be provided to a Third Party in connection with a Competing Proposal which but for clause 8.5, it would be prohibited from providing under clause 8.4, the Company must:

- (a) not provide any information to that Third Party until that Third Party is bound by a confidentiality agreement in favour of the Company which imposes obligations on that Third Party that are no less onerous in any respect to the obligations imposed on Accel-KKR Capital Partners VII, LP under the Confidentiality Deed (including with respect to standstill obligations); and
- (b) promptly provide to the Bidder any non-public information provided to that Third Party that has not already been provided to the Bidder.

8.7 Notification of approaches

During the Exclusivity Period, as soon as practicable and in any case within 24 hours after the Company receives any written proposal with respect to a Competing Proposal, is approached to engage in any activity that is prohibited by this clause 8, or determines that clause 8.5 applies (each, a **Notifiable Proposal**), the Company must give the Bidder notice in writing of:

- (a) the existence of the Notifiable Proposal; and
- (b) the name and identity of the Third Party who has made the applicable Notifiable Proposal (and any other Third Party involved in the Notifiable Proposal) and all other material terms of the applicable Notifiable Proposal (including details of the proposed price or implied value (including details of the consideration if not cash alone), conditions, timing and break fee (if any), together with a copy of any material confidential information concerning the operations of the Company Group provided to any person associated with the Notifiable Proposal not previously provided to the Bidder.

8.8 Matching right

- (a) If during the Exclusivity Period any Competing Proposal is made, announced, or received, the Company must:

- (i) not, and must ensure that no member of the Company Group enters into any legally binding agreement, arrangement or understanding (whether or not in writing and whether conditional or unconditional) to give effect to, consent to, accept or implement any Competing Proposal; and
- (ii) ensure that no member of the Company Board withdraws or change their Recommendation or Voting Intention or publicly recommends, supports or endorses a Competing Proposal or a proposed or potential Competing Proposal,

unless:

- (iii) the Company Board, acting in good faith in order to satisfy what the Company Board considers to be its statutory and fiduciary duties (having received written advice from its external legal advisers), determined that the Competing Proposal is a Superior Proposal;
- (iv) the Company has given the Bidder (or its Related Entities) until 5 Business Days after provision of the information in clause 8.7 (**Matching Date**) the ability to provide a matching or superior proposal to the terms of the Competing Proposal (**Bidder Counter Proposal**); and
- (v) either:
 - (A) the Bidder has not announced or provided to the Company a Bidder Counter Proposal by the end of the Matching Date; or
 - (B) the Bidder has, by the end of the Matching Date, announced or provided to the Company a Bidder Counter Proposal and:
 - 1) the Company Board has reviewed the Bidder Counter Proposal in good faith and concluded after having consulted the Company's external legal advisors and financial advisors that the Bidder Counter Proposal does not provide an equivalent or superior outcome for the Company Shareholders (as a whole) compared with the Competing Proposal (having regard to matters including, but not limited to, consideration, conditionality, funding, certainty and timing); and
 - 2) the Company has notified the Bidder of that conclusion in writing stating reasons for the conclusion.

- (b) The Company agrees that each successive modification of any Competing Proposal that is made, announced, or received will constitute a new Competing Proposal for the purposes of the requirements under clauses 8.7 and 8.8 and accordingly the Company must comply with clauses 8.7 and 8.8 in respect of any new Competing Proposal that is made, announced, or received.

- (c) If, by the end of the Matching Date, the Bidder has announced or provided to the Company a Bidder Counter Proposal, the Company must procure that the Company Board promptly (and in any case, within five Business Days) reviews the Bidder Counter Proposal in good faith. If the Company Board, acting in good faith, determines (after having consulted the Company's external legal advisors and financial advisors) that the Bidder Counter Proposal provides an equivalent or superior outcome for the Company's shareholders compared with the applicable Competing Proposal (having regard to matters including, but not limited to, consideration, conditionality, funding, certainty and timing), then:
- (i) the Company and the Bidder must use their best endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Bidder Counter Proposal as soon as reasonably practicable; and
 - (ii) the Company must continue to ensure that each of the directors of Company Board do not do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) as modified by the Bidder Counter Proposal.

8.9 Normal provision of information

Nothing in this clause 8 prevents the Company from:

- (a) providing any information required to be provided by any applicable law, including to satisfy its obligations under the Listing Rules or to any Regulatory Authority; or
- (b) providing any information to its auditors, consultants, customers, joint venturers, suppliers, contractual counterparts or shareholders in the ordinary course of business; or
- (c) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts, institutional investors, financiers and other Third Parties in the ordinary course of business.

8.10 Compliance with law

- (a) If it is finally determined by a court of competent jurisdiction or the Takeovers Panel that any part of this clause 8:
 - (i) involves a breach of the fiduciary or statutory duties of the Company Board or any Company director;
 - (ii) constitutes Unacceptable Circumstances or breaches an order of the Takeovers Panel; or
 - (iii) was, is or would be unlawful for any reason,then to that extent none of the Company, the Company Board or a Company director shall be obliged to comply with that relevant provision of this clause 8.

- (b) The parties:

- (i) must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 8.10; and
- (ii) agree that if a Third Party makes an application to the Takeovers Panel or a court for or in relation to a declaration or determination regarding any provision of this clause 8, then each party must make submissions in the course of those proceedings supporting (to the fullest extent possible) that no such declaration or determination should be made.

9. BREAK FEE

9.1 Background

This clause 9 has been agreed in circumstances where:

- (a) the Company believes that the Scheme will provide significant benefits to the Company and the Company Shareholders, and the Bidder and the Company acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, the Bidder will incur significant cost and the costs, including those set out in clause 9.5;
- (b) the Bidder requested that provision be made for the Break Fee, without which the Bidder would not have entered into this deed;
- (c) the Company and the Company Board believes it is appropriate for it to agree to the payment referred to in this clause 9 to secure the Bidder's entry into this deed and the Bidder's participation in the Scheme; and
- (d) both parties have received legal advice on this deed and the operation of this clause 9,

provided that despite anything in this deed, no Break Fee will be payable if the Scheme does not proceed solely as a result of a Condition not being satisfied or having been satisfied, ceased to be satisfied, provided the Company has complied with its obligations in this deed.

9.2 Payment by Company to Bidder

The Company agrees to pay the Break Fee to the Bidder without deduction, set-off or withholding if:

- (a) **(Competing Proposal)** an actual, proposed or potential Competing Proposal is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions), and within 12 months after the Competing Proposal being announced, the Competing Proposal results in a person or persons (other than a member of the Bidder Group):
 - (i) completing in all material respects a transaction of the kind referred to in the definition of Competing Proposal; or
 - (ii) acquiring a Relevant Interest in more than 50% of Company Shares or Voting Power of more than 50% of the Company; or

(b) **(Change of Recommendation)** during the Exclusivity Period (even if permitted under this deed), any of the Company directors:

- (i) fails to make, or makes and then withdraws or adversely changes, or qualifies their Recommendation or Voting Intention, or otherwise makes a public statement that they no longer recommend, support or endorse the Scheme;
- (ii) publicly recommends, supports or endorses a Competing Proposal,

unless it occurs after:

- (iii) the Independent Expert has concluded that the Scheme is not in the best interests of Company Shareholders (including in any update of, or revision, amendment or addendum to the Independent Expert's Report), other than where the reason (wholly or partly) for that opinion is a Competing Proposal; or
- (iv) the Company has become entitled to terminate this deed pursuant to clause 14.3(b)(i) and has given the required notice to the Bidder;
- (v) an order is made by a court of competent jurisdiction or the Takeovers Panel, and the Board is required to take such action in order to comply with such order; or
- (vi) the adverse change, withdrawal, adverse modification or adverse qualification occurs because of a requirement or request by a court or Regulatory Authority that one or more Company directors abstain from making a recommendation that Company Shareholders vote in favour of the Scheme after the date of this deed.

(c) **(Termination)**

- (i) the Bidder terminates this deed in accordance with clause 14.2(b)(i) or clause 14.2(b)(iii), having given the required notice to the Company, and the Scheme does not become Effective; or
- (ii) the Company terminates this deed in accordance with clause 14.3(b)(ii) because a majority of the Company directors publicly withdraw, fail to make or adversely change their Recommendation or Voting Intention, or publicly recommend a Competing Proposal in accordance with clause 7.1(b)(ii), having given the required notice to the Company, and the Scheme does not become Effective.

9.3 No amount payable if Scheme becomes Effective

(a) Notwithstanding the occurrence of any event in clause 9.2, if the Scheme becomes Effective:

- (i) no amount is payable by the Company under clause 9.2; and

- (ii) if any amount has already been paid under clause 9.2 it must be refunded by the Bidder within 10 Business Days after the Scheme becomes Effective.
- (b) The Company can only ever be liable to pay the Break Fee once.
- (c) The Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.

9.4 Timing of payment

- (a) A demand by the Bidder for payment of the Break Fee under clause 9.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account into which the Company must pay the Break Fee.
- (b) The Company must pay the Break Fee to the Bidder under clause 9.2 without withholding or set-off within 10 Business Days of receipt by the Company of a valid demand for payment from the Bidder under clause 9.4(a).

9.5 Nature of payment

The Break Fee is an amount intended to compensate the Bidder for:

- (a) fees for legal, financial and other professional advice in planning and implementing the Scheme (excluding success fees);
- (b) costs of management and directors' time in planning and implementing the Scheme;
- (c) out-of-pocket expenses incurred by the Bidder and its respective employees, advisers and agents in planning and implementing the Scheme;
- (d) damage to the Bidder's reputation associated with a failed transaction and the implications of that damage to the Company's business,

in each case, incurred by the Bidder directly or indirectly as a result of having entered into this deed and pursuing the Scheme, and the Company and Bidder agree that:

- (e) the costs actually incurred by the Bidder will be of such a nature that they cannot all be accurately ascertained; and
- (f) the Break Fee is a genuine and reasonable pre-estimate of those costs.

9.6 Limitation of liability

The parties acknowledge and agree that other than in respect of any wilful or deliberate material breach of this deed by a Company Party, taken in the context of the Scheme as a whole:

- (a) the maximum aggregate liability of the Company Group to the Bidder under or in connection with this deed including in respect of any breach of this deed will be the Break Fee and in no event will the aggregate liability of the Company under or in connection with a breach of this deed exceed an amount equal to the Break Fee; and
- (b) the payment by the Company of the Break Fee represents the sole and absolute amount of liability of the Company to the Bidder under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by the Company to the Bidder in connection with this deed, provided that nothing in this clause 9.6 impacts the Bidder's ability to seek and obtain the remedy of specific performance.

9.7 Exclusive remedy

Notwithstanding any other provision under this deed, where the Break Fee is paid to Bidder under this deed (or would be payable if a demand was made) Bidder cannot make any claim against the Company or any other person through the Company in relation to any event or occurrence referred to in clause 9.2, but without limiting the remedy of specific performance.

9.8 Compliance with law

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal by the Takeovers Panel or a court that all or any part of the Break Fee (**Impugned Amount**):
 - (i) would, if paid, be unlawful for any reason;
 - (ii) involves a breach of the fiduciary or statutory duties of the Company Board; or
 - (iii) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act or breaches an order of the Takeovers Panel,then
 - (iv) the requirement to pay the Break Fee does not apply to the extent of the Impugned Amount; and
 - (v) if the Bidder has received the Impugned Amount, it must refund it within 10 Business Days of the final determination.
- (b) The Company and the Bidder must not make, or cause to be made, any application to the Takeovers Panel or a Court for or in relation to a determination referred to in this clause 9.8.

9.9 Survival

Any accrued obligations under this clause 9 survive termination of this deed.

9.10 Bidder acknowledgement

The Bidder acknowledges and agrees that the Company holds the benefit of clauses 9.6 and 9.7, the extent each relates to each other Company Party, as trustee for them, and that each Company Party may in its own name enforce and rely on the benefits conferred by each of clauses 9.6 and 9.7.

10. REVERSE BREAK FEE

10.1 Background to Reverse Break Fee

This clause 10 has been agreed in circumstances where:

- (a) the Company and Bidder acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, the Company will incur significant costs, including those set out in clause 10.4;
- (b) the Company has requested that provision be made for the Reverse Break Fee, without which the Company would not have entered into this deed;
- (c) the Bidder acknowledges and agrees that it believes that the implementation of the Scheme will provide benefits to the Bidder and that it is appropriate for Bidder to agree to the Reverse Break Fee in accordance with this clause 10, in order to secure the Company's participation in the Scheme; and
- (d) the Bidder and the Company must not make or cause or permit to be made any application to the Takeovers Panel or a court for or in relation to a declaration or determination that the Reverse Break Fee is invalid or unenforceable,

provided that despite anything in this deed, no Reverse Break Fee will be payable if the Scheme does not proceed solely as a result of a Condition not being satisfied or having been satisfied, ceased to be satisfied, provided the Bidder has complied with its obligations in this deed.

10.2 Reverse Break Fee trigger

The Bidder must pay the Reverse Break Fee to the Company if the Company has terminated this deed pursuant to clause 14.3(b)(i), having given the required notice to the Bidder, and the Scheme does not become Effective.

10.3 Payment of Reverse Break Fee

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

- (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of the Company into which the Bidder is to pay the Reverse Break Fee.
- (b) The Bidder must pay the Reverse Break Fee into the account nominated by the Company without set-off or withholding within 10 Business Days after receiving a valid demand for payment under clause 10.3(a) from the Company.

10.4 Basis of Reverse Break Fee

Bidder and the Company acknowledge and agree that the amount of the Reverse Break Fee has been calculated to reimburse the Company for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Scheme (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Scheme;
- (c) costs of management and directors' time in planning and implementing the Scheme;
- (d) out of pocket expenses incurred by the Company in planning and implementing the Scheme; and
- (e) damage to the Company's reputation associated with a failed transaction and the implications of that damage to the Company's business,

in each case, incurred by the Company directly or indirectly as a result of having entered into this deed and pursuing the Scheme, and the Company and Bidder agree that:

- (a) the costs actually incurred by the Company will be of such a nature that they cannot all be accurately ascertained; and
- (b) the Reverse Break Fee is a genuine and reasonable pre-estimate of those costs.

10.5 Reverse Break Fee payable only once

Where the Reverse Break Fee becomes payable to the Company under clause 10.2 and is actually paid to the Company, the Company cannot make any claim against Bidder for payment of any subsequent Reverse Break Fee.

10.6 Other Claims

Notwithstanding any other provision of this deed (other than clause 10.7):

- (a) where an amount becomes payable to the Company under clause 10.2 and is actually paid to the Company, the Company may not make any claim (other than a claim under this clause 10) or commence legal proceedings against the Bidder which relates to the event referred to clause 10.2;

- (b) the maximum aggregate damages payable by the Bidder to the Company for any claims under this deed, the Transaction or the Scheme (including in respect of any breach of this deed) is the Reverse Break Fee and in no event will the aggregate liability of the Bidder for claims under this deed and in connection with the Scheme exceed the Reverse Break Fee; and
- (c) payment by the Bidder to the Company of the Reverse Break Fee in accordance with this clause 10 represents the sole and absolute damages, fees, expenses or reimbursements payable by the Bidder to the Company under or in connection with this deed, the Transaction and the Scheme and no further damages, fees, expenses or reimbursements of any kind will be payable by the Bidder to the Company in connection with this deed, the Transaction and the Scheme.

10.7 Exceptions to limitation of liability

The limitations in clause 10.6 do not apply if, and to the extent, that Bidder has:

- (a) engaged in fraud, gross negligence, wilful breach, wilful misconduct, wilful concealment;
- (b) acted in bad faith; or
- (c) acted in a manner designed or intended to deliberately frustrate the Transaction.

11. LIABILITY OF DIRECTORS, OFFICERS AND EMPLOYEES

11.1 Liability of the Company and the Company Parties

To the maximum extent permitted by law, the Bidder and (as from the Implementation Date) the Company Group (for whom the Company acts as agent) releases any and all rights that it may have as at the date of this deed and from time to time against, and agrees that it will not make any claim against, any Company Party (other than the Company and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:

- (a) the Company's execution or delivery of this deed;
- (b) any breach of any representation or warranty of the Company in this deed;
- (c) the implementation of the Scheme;
- (d) any disclosure containing any statement which is false or misleading (whether by omission or otherwise);
- (e) the Company Board or any Company director's consideration and conduct of the Scheme; or
- (f) any failure to provide information in connection with the Transaction,

whether current, future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent arising from the fraud, dishonesty or wilful misconduct of the relevant Company Party. For the avoidance of doubt,

nothing in this clause 11.1 limits the Bidder's rights to terminate this deed under clause 14.2.

11.2 Liability of the Bidder and the Bidder Indemnified Parties

To the maximum extent permitted by law, the Company releases any and all rights that it may have as at the date of this deed and from time to time against, and agrees that it will not make any claim against, any Bidder Party (other than the Bidder and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:

- (a) the Bidder's execution or delivery of this deed;
- (b) any breach of any representation or warranty of the Bidder in this deed;
- (c) the implementation of the Scheme;
- (d) any disclosure containing any statement which is false or misleading (whether by omission or otherwise);
- (e) the Bidder board's or any Bidder director's consideration and conduct of the Scheme; or
- (f) any failure to provide information in connection with the Transaction,

whether current, future, known or unknown, arising at common law, in equity, under statute or otherwise, except to the extent arising from the fraud, dishonesty or wilful misconduct of the relevant Bidder Indemnified Party. For the avoidance of doubt, nothing in this clause 11.2 limits the Company's rights to terminate this deed under clause 14.3.

11.3 Directors' and officers' insurance

The Bidder and Company acknowledge and agree that:

- (a) prior to the Implementation Date, the Company will arrange and pay all premiums required for run off directors' and officers' liability insurance cover (**Run Off Cover**) to be put in place for the benefit of each Beneficiary provided that:
 - (i) so far as practicable, terms (including as to limits of liability and deductibles) no less favorable than under the Policy; and
 - (ii) the Company keeps the Bidder reasonably informed of all material developments in relation to the Run Off Cover and consults with the Bidder in good faith in relation to the Run Off Cover prior to securing the Run Off Cover; and
- (b) the Run Off Cover will cover claims made up to 7 years after the Implementation Date in respect of conduct or matters occurring on or before the Implementation Date.

11.4 Obligations in relation to directors' and officers' insurance

Subject to the Scheme becoming Effective, from the Implementation Date, the Bidder must procure that the Company does not:

- (a) vary or cancel the Run Off Cover; or
- (b) unless required under the Run Off Cover, commit any act or omission that may prejudice any claim by a Beneficiary under the Run Off Cover.

11.5 Directors' and officers' indemnities

Without limiting any other term of this deed and subject to the Scheme becoming Effective, the Bidder undertakes that it will, from the Implementation Date and in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by a member of the Company Group (**Relevant Entity**) in favour of a director or officer of any member of the Company Group, whether past or present, (**Indemnified Person**) from time to time procure that:

- (a) the Relevant Entity complies with the Relevant Deed; and
- (b) to the extent that the Relevant Entity ceases to exist after the Implementation Date, each Indemnified Person has the benefit of an indemnity from another member of the Company Group of good financial standing or from the Bidder (at the Indemnified Person's election) on terms no less favorable to the Indemnified Person than those contained in the Relevant Deed as at the Implementation Date.

11.6 Compliance with law and benefit

- (a) Clause 11.1, clause 11.2 and clause 11.5 are subject to any restriction under the Corporations Act and will (if and to the extent required) be read down accordingly.
- (b) The Bidder acknowledges and agrees that the Company holds the benefit of this clause 11 to the extent it relates to each Company Party as trustee for them.
- (c) The Company acknowledges and agrees that the Bidder holds the benefit of this clause 11 to the extent it relates to each Bidder Indemnified Party as trustee for them.

12. REPRESENTATIONS AND WARRANTIES

12.1 Representations and warranties by the Bidder

The Bidder represents and warrants to the Company (on its own behalf and separately as trustee for each of the Company Parties) that each of the Bidder Warranties is true and correct in all material respects:

- (a) as at the date of this deed;
- (b) the date of despatch of the Scheme Booklet;
- (c) the date of the Scheme Meeting; and
- (d) as at 7:30am on the Second Court Date,

unless the relevant Bidder Warranty is expressed to be given only at a particular time in which case it is given as at that time.

12.2 Qualification of the Bidder Warranties

The Bidder Warranties are subject to facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Bidder under the Transaction Documents;
- (b) are required by any applicable law, regulation or by a Regulatory Authority;
- (c) were within the knowledge of the Company as described in clause 1.3; or
- (d) were fairly disclosed to the Company in writing prior to the date of this deed.

12.3 Representations and warranties by the Company

The Company represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that each of the Company Warranties is true and correct in all material respects:

- (a) as at the date of this deed;
- (b) the date of despatch of the Scheme Booklet;
- (c) the date of the Scheme Meeting; and
- (d) as at 7:30am on the Second Court Date,

unless the relevant Company Warranty is expressed to be given only at a particular time in which case it is given as at that time.

12.4 Qualification of the Company Warranties

The Company Warranties are subject to any facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Company under the Transaction Documents;
- (b) are required by any applicable law, regulation or by a Regulatory Authority;
- (c) are or would have been revealed by a search of the records open to or available for public enquiry or inspection in Australia maintained by the following bodies, as at the dates specified:
 - (i) the PPSR; and
 - (ii) the Australian Securities and Investments Commission,

in each case, on the date that is two (2) Business Days prior to the date of this deed in respect of the Company and each of its subsidiaries;

- (d) were within the knowledge of the Bidder as described in clause 1.4; or

(e) have been Disclosed by the Company prior to the date of this deed.

12.5 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 12.

12.6 Status of representations and warranties

Each representation and warranty in this clause 12:

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

12.7 No limitation on rights

No representations or warranties given under this clause 12 shall prejudice or otherwise limit any rights of the Company or the Company's ability to recover any loss at law.

12.8 No representation of reliance

- (a) Despite anything in this deed, each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

13. CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS

13.1 Confidentiality Deed

The Company and the Bidder acknowledge and agree that they continue to be bound by the Confidentiality Deed after the date of this deed in respect of all information received by it from the other party on, before or after the date of this deed, provided that the terms of this deed will prevail over the terms of the Confidentiality Deed to the extent of any inconsistency.

13.2 Survival of obligations

The rights and obligations of the Company and the Bidder in relation to confidential information under the Confidentiality Deed survive termination of this deed.

13.3 Disclosure on termination of agreement

The parties agree that, if this deed is terminated under clause 14, any party may disclose:

- (a) the fact that this deed has been terminated, where such disclosure is required by the Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed; and
- (b) the fact that this deed has been terminated to any Regulatory Authority.

13.4 Public announcements

- (a) Immediately after execution of this deed, the Company must issue the Company Announcement to ASX.
- (b) Where a party proposes or is required to make any subsequent public announcement or disclosure in connection with the Transaction or the Scheme, except in relation to any Competing Proposal, that party must, before making such announcement, to the extent lawful and practicable to do so, consult with the other party prior to making the relevant announcement or disclosure and unless immediate disclosure is required must give the other party a reasonable opportunity to comment on the form and content of the public announcement or disclosure and consider in good faith any such comments from the other party.

14. TERMINATION AND REMEDIES

14.1 Limited termination events

This deed may only be terminated by either party in the circumstances contemplated by clauses 14.2 and 14.2(c), or if the Company and the Bidder agree in writing to terminate this deed.

14.2 Termination by the Bidder

The Bidder may terminate this deed at any time before the Delivery Time:

- (a) in accordance with clause 3.4(b) or clause 4.8(c); or
- (b) by notice in writing to the Company if:
 - (i) the Company is in breach of any clause of this deed (including in relation to the Company Warranties) and the relevant breach is material when taken in the context of the Scheme as a whole;
 - (ii) there is a Company Material Adverse Change; or
 - (iii) there is a Company Prescribed Occurrence,

provided that:

- (iv) the Bidder has given written notice to the Company setting out the relevant circumstances and stating an intention to terminate this deed; and
 - (v) the relevant circumstances are not remedied to the satisfaction of the Bidder (acting reasonably) and have continued to exist for 10 Business Days from the time such notice is received by the Company (or any shorter period ending at the Delivery Time);
- (c) by notice in writing to the Company if Maptek Pty Ltd publicly:
- (i) withdraws or adversely changes its intention to cause any and all Company Shares in which it has a Relevant Interest to be voted in favour of the resolution to approve the Scheme; or
 - (ii) publicly endorses or supports any Competing Proposal, or otherwise makes a public statement that they no longer support or endorse the Scheme, for any reason;
- (d) by notice in writing to the Company if Peter Johnson publicly withdraws or adversely changes his Recommendation or Voting Intention or publicly recommends, endorses or supports any Competing Proposal, or otherwise makes a public statement that they no longer recommend, support or endorse the Scheme, for any reason, whether or not permitted to do so under this deed;
- (e) by notice in writing to the Company if a majority of the unconflicted directors of the Company publicly withdraws or adversely changes their Recommendation or Voting Intention or publicly recommends, endorses or supports any Competing Proposal, or otherwise makes a public statement that they no longer recommend, support or endorse the Scheme, for any reason, whether or not permitted to do so under this deed; or
- (f) by notice in writing to the Company if a member of the Company Group enters into a definitive agreement (whether conditional or unconditional) to give effect to or implement a Competing Proposal.

14.3 Termination by the Company

The Company may terminate this deed at any time before the Delivery Time:

- (a) in accordance with clause 3.4(b) or clause 4.8(c); or
- (b) by notice in writing to the Bidder if:
 - (i) the Bidder is breach of any clause of this deed (including in relation to the Bidder Warranties) and the relevant breach is material when taken in the context of the Scheme as a whole, provided that:
 - (A) the Company has given written notice to the Bidder setting out the relevant circumstances and stating an intention to terminate this deed; and

- (B) the relevant circumstances are not remedied to the satisfaction of the Company (acting reasonably) and have continued to exist for 10 Business Days from the time such notice is received by the Bidder (or any shorter period ending at the Delivery Time); or
- (ii) a majority of the Company directors publicly withdraw, fail to make or adversely change their Recommendation or Voting Intention, or publicly recommend a Competing Proposal where they are entitled to do so in accordance with clause 7.1(b).

14.4 Effect of termination

If this deed is terminated in accordance with this clause 14, all further obligations and liabilities of the parties under this deed shall cease to have effect, except for the provisions of (and obligations set out in) this clause 14 and clauses 1, 9, 11.1, 11.2, 11.6, 13, and 15 to 17 (inclusive), which will survive termination, and each party will retain any rights it has or may have against the other party in respect of any breach of this deed prior to its termination.

14.5 Remedies

Subject to the limitations in clauses 9.6 and 10.6, and in addition to the rights of termination under clauses 14.2 and 14.3, where there is no appropriate remedy for the breach in this deed (other than termination), the non-defaulting party is entitled to damages for losses suffered by it and expenses incurred by it as a result of the breach of the terms of this deed.

15. GST

15.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (c) To the extent any consideration for a supply is expressly specified to be inclusive of GST, that consideration must not be taken into account in calculating the GST payable under clause 15.4(a) in relation to that supply.

15.2 GST exclusive

Unless this deed expressly states otherwise, all consideration to be provided under this deed is exclusive of GST.

15.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity (or the representative member of the GST group of which

the entity seeking reimbursement is a member of) is entitled for the acquisition to which the cost, expense or amount relates.

15.4 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this deed then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 15.4(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 15.4(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 15.4(a).
- (d) Clauses 15.4(a) to 15.4(c) do not apply to the extent that the consideration for the supply is subject to a reverse-charge.

16. NOTICES

16.1 General

A notice, demand, certification, process or other communication (**Notice**) relating to this deed must be in writing in English and may be given by an agent of the sender.

16.2 How notice to be given

In addition to any other lawful means, a Notice may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) attached to an email that states that the attachment is a communication under this deed; or
- (e) sent by such other form of communication as the parties may from time to time agree.

16.3 Particulars for delivery of Notices

- (a) The particulars for delivery of Notices are as follows:
 - (i) **Company**

Address: Level 4
502 Hay Street
Subiaco WA 6008

Email: [REDACTED]

Attention: Nic Pollock

With a copy to be sent to:

Address: Steinepreis Paganin
Level 14, QV1 Building
250 St Georges Terrace
Perth WA 6000

Email: thicks@steinpag.com.au

Attention: Toby Hicks

(ii) **Bidder**

Address: C/- DLA Piper Level 22, 1 Martin Place, Sydney
NSW 2000

Email: [REDACTED]

Attention: Andy Rich, Scotty Lu

With a copy to be sent to:

Address: DLA Piper Australia
Level 22
1 Martin Place
Sydney NSW 2000

Email: david.ryan@dlapiper.com,
elliott.cheung@dlapiper.com

Attention: David Ryan, Elliott Cheung

- (b) Each party may change its particulars for delivery of Notices by Notice to each other party.

16.4 Notices by post

Subject to clause 16.7, a Notice is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia an address outside of Australia, 10 Business Days after posting.

16.5 Notices by email

Subject to clause 16.7, a Notice is given if sent by email when the sender receives an email receipt or other confirmation from the recipient to the sender which indicates that the email was received at the email address of the recipient.

16.6 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings in relation to this deed may be served by any method contemplated by this clause 16 or in accordance with any applicable law.

16.7 After hours Notices

If a Notice is given:

- (a) after 5.00pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken to have been given at 9.00am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

17. MISCELLANEOUS

17.1 Amendment

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

17.2 Waiver and exercise of rights

- (a) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- (b) A single or partial exercise or waiver by a party of a right relating to this deed does not prevent any other exercise of that right or the exercise of any other right.
- (c) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

17.3 Rights cumulative

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

17.4 Consents

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

17.5 Further steps

Except as expressly stated otherwise in this deed, each party must promptly do whatever any other party reasonably requires of it to give effect to this deed and to perform its obligations under it.

17.6 Governing law and jurisdiction

This deed is governed by, and is to be construed in accordance with, the laws of Western Australia. Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts that have jurisdiction to hear appeals from any of those courts; and
- (b) irrevocably waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

17.7 Assignment

Neither party may assign any of its rights under this deed without the prior written consent of the other party.

17.8 Counterparts

This deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

17.9 Entire understanding

- (a) This deed contains the entire understanding between the parties as to the subject matter of this deed.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this deed are merged in and superseded by this deed and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

17.10 Approvals and consents

Except where this deed expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this deed.

17.11 Severability

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the term of this deed continue in force.

17.12 Relationship

Except where this deed expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

17.13 No merger

The warranties, undertakings and indemnities in this deed will not merge on completion of any transaction under this deed.

17.14 Legal advice

The parties acknowledge they have obtained, or have had the opportunity to obtain, independent legal advice in relation to this deed (including in relation to their rights and obligations under this deed).

17.15 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing each Transaction Document.

17.16 Electronic execution

This deed may be executed electronically. A party may sign electronically a soft copy of this deed (or a counterpart) and bind itself accordingly. This will satisfy any statutory or other requirements for this deed to be in writing and signed by that party.

17.17 Duties

The Bidder must pay any duties payable on the transfer by Scheme Shareholders of the Scheme Shares to the Bidder Acquirer (as applicable).

SCHEDULE 1 – THE BIDDER WARRANTIES

The Bidder represents and warrants to the Company (on its own behalf and separately as trustee for each of the Company Parties) that:

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Bidder of the Transaction Documents to which the Bidder is party has been properly authorised by all necessary corporate action and the Bidder has full corporate power, capacity and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Bidder is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Bidder is party (and the Bidder's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of the Bidder or any of its Related Bodies Corporate; or
 - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Bidder or any of its Related Bodies Corporate is party, or by which the Bidder or any of its Related Bodies Corporate is bound;
- (e) **(No approvals)** other than as expressly contemplated by clause 3.1, no shareholder or Regulatory Authority approvals are required to be obtained by any member of the Bidder Group in order for it to execute and perform the Transaction Documents to which it is party (including any approvals, exemptions, notifications or otherwise as may be required under any applicable laws);
- (f) **(Bidder Information)** as at the First Court Date, the date of despatch of the Scheme Booklet and the date of the Scheme Meeting:
 - (i) the Bidder Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Company and the Company Parties have relied, and will continue to rely, on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme;
 - (ii) the Bidder Information in the form and context in which it appears in the Scheme Booklet complies in all material respects with, and contains all information regarding the Bidder and the Bidder Group required by, all relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
 - (iii) the Bidder Information (other than to the extent that it consists of information relating to the Company Group that was provided by or on behalf of the Company, or has been extracted from announcements made by the Company to ASX regarding the Company Group) in the form and context in which it appears in the Scheme Booklet does not

contain any material statements that are misleading or deceptive in any material respect and does not contain any material omission;

- (iv) any statement of opinion or belief contained in the Bidder Information in the form and context in which it appears in the Scheme Booklet is honestly held and so far as the Bidder is aware, there are reasonable grounds for holding the opinion or belief;
 - (v) the Bidder has complied, and will continue to comply, with its obligations under clause 4.3(i); and
 - (vi) all information provided by or on behalf of the Bidder to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report; and
- (g) **(Insolvency)** no Insolvency Event has occurred in relation to the Bidder or any of its Related Bodies Corporate.

SCHEDULE 2 – THE COMPANY WARRANTIES

The Company represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that:

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Company of the Transaction Documents to which the Company is party has been properly authorised by all necessary corporate action and the Company has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Company is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Company is party (and the Company's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of the Company or any of its subsidiaries; or
 - (ii) any writ, order, injunction, judgment, law, rule, obligation or regulation to which the Company or any of its subsidiaries is party, or by which the Company or any of its subsidiaries is bound;
- (e) **(No approvals)** other than as expressly contemplated by clause 3.1, no shareholder or Regulatory Authority approvals are required to be obtained by any member of the Company Group in order for it to execute and perform the Transaction Documents to which it is party (including any approvals, exemptions, notifications or otherwise as may be required under any applicable laws) and as at the date of this deed, no regulatory action of any nature has been taken that would prevent or restrict the Company's ability to perform its obligations under this deed;
- (f) **(Capital structure)** as at the date of this deed:
 - (i) the total issued capital of the Company is comprised of:
 - (A) 186,927,189 Company Shares;
 - (B) 483,280 Company Options issued with an exercise price of \$0.497;
 - (C) 9,459,815 ZEPOs;
 - (D) 660,000 Company Performance Rights; and
 - (E) 3,063,140 Company Performance Shares; and
 - (ii) the Company has not issued any other securities, shares, warrants, options, performance rights, convertible notes, instruments or rights (or

obligations, offers or agreements to issue any of the foregoing) which may convert into Company Shares which are still outstanding;

- (iii) all the issued securities of each member of the Company Group (other than the Company) are held by either the Company or another member of the Company Group that is directly or indirectly wholly-owned by the Company; and
 - (iv) no member of the Company Group has issued or granted (or agreed to issue or grant) any other securities, shares, options, warrants, performance rights, convertible notes, instruments or rights which are still outstanding and may convert into shares and no member of the Company Group is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any other securities, shares, options, warrants, performance rights, convertible notices, instruments or rights in a member of the Company Group, other than as set out in paragraph (f)(i) of this Schedule 2;
- (g) **(Scheme Booklet)**: as at the date of despatch of the Scheme Booklet, as far as the Company is aware, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (h) **(Company Information)** as at the First Court Date, the date of despatch of the Scheme Booklet and the date of the Scheme Meeting:
- (i) the Company Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Bidder and the Bidder Indemnified Parties have relied, and will rely, on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet and implementing the Scheme;
 - (ii) the Company Information complies in all material respects with relevant laws and contains all information regarding the Company and the Company Group and the Scheme Consideration required by all relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
 - (iii) the Company Information in the form and context in which it appears in the Scheme Booklet does not contain a statement which is misleading or deceptive (whether by omission or otherwise) in any material respect and does not contain any material omission, including having regard to applicable disclosure requirements and will comply with the requirements of the Corporations Act, the *Corporations Regulations 2001* (Cth), the Listing Rules and relevant Regulatory Guides;
 - (iv) any statement of opinion or belief contained in the Company Information is honestly held and so far as the Company is aware there are reasonable grounds for holding the opinion or belief;
 - (v) the Company has complied, and will continue to comply, with its obligations under clause 4.2(q); and
 - (vi) all information provided by or on behalf of the Company to the Independent Expert has been prepared and provided in good faith and

on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;

- (i) **(Complete and accurate information)** all the information provided to the Bidder by the Company in connection with this deed, whether under due diligence or not, has been prepared and provided in good faith and the Company has not knowingly provided any information which was misleading or deceptive in any material respect (whether by omission or otherwise);
- (j) **(Continuous disclosure)** the Company is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this deed);
- (k) **(No default)** no member of the Company Group is in default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice of lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any document or agreement with that effect;
- (l) **(Financial statements)** there has not been any event, change, effect or development that would require the Company to restate the Company's financial statements as disclosed to the ASX within three years prior to the date of this deed, and in particular, the Company's financial statements for the financial years ended 30 June 2023, 30 June 2022 and 30 June 2021:
 - (i) were prepared in accordance with the Corporations Act, Accounting Principles and all other applicable laws and regulations; and
 - (ii) give a true and fair view in all material respects of the financial position and the assets and liabilities of the Company Group as at the end of the relevant period to which they relate;
- (m) **(Tax)** all Taxes in relation to any period or part period up to and including the date of this deed for which any member of the Company Group is liable and which has fallen due for payment on or before the date of this deed has been duly paid as at the date of this deed (or has not been paid but has been provided for in the Company's financial statements);
- (n) **(Compliance with laws)**
 - (i) each member of the Company Group has complied in all material respects with all Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Regulatory Authorities including laws and regulations relating to anti-money laundering and anti-bribery (including Tax Laws and Australian laws implemented pursuant to the OECD Anti-Bribery Convention, the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth));
 - (ii) the Company Group has all material licences, permits and authorisations necessary for it to conduct its activities as they are conducted as at the date of this deed and no member of the Company Group;

- (A) is in material breach of, or default under any such licence, permit or authorisation; or
 - (B) has received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, permit or authorisation;
- (o) **(Insolvency)** no Insolvency Event has occurred in relation to the Company or any of its Related Bodies Corporate; and
- (p) **(Litigation)**: to the best of the Company's knowledge:
 - (i) there are no material actions, suits, arbitrations, legal or administrative proceedings pending or threatened against any material member of the Company Group or any business in which the Company Group has an interest;
 - (ii) no member of the Company Group or any business in which the Company Group has an interest is the subject of any material pending or material threatened investigation; and
 - (iii) no member of the Company Group or any business in which the Company Group has an interest nor the respective assets, properties or business of the Company or any member of the Company Group is subject to any judgement, order, writ, injunction or decree of any court, government agency or arbitration tribunal.

SCHEDULE 3 – TIMETABLE

Event	Date
First Court Date	Week commencing 19 August 2024
Distribute Scheme Booklet to shareholders	Week commencing 26 August 2024
Scheme Meeting	Week commencing 23 September 2024
Second Court Date for approval of the Scheme	Week commencing 30 September 2024
Effective Date	1 Business Day after the Second Court Date
Record Date	2 Business Days after the Effective Date
Implementation Date	5 Business Days after the Record Date

EXECUTED by the Parties as a Deed.

EXECUTED by **K2FLY LIMITED**)
ACN 125 345 502)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):)



Signature of director

Pauline Vamos

Name of director

* please delete as applicable



Signature of director/company secretary*

Neil Canby

Name of director/company secretary*

EXECUTED by **ARGYLE BIDCO PTY LTD**)
ACN 676 002 332)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):)

Signature of director

Name of director

* please delete as applicable

Signature of director/company secretary*

Name of director/company secretary*

EXECUTED by the Parties as a Deed.

EXECUTED by **K2FLY LIMITED**)
ACN 125 345 502)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):)

Signature of director

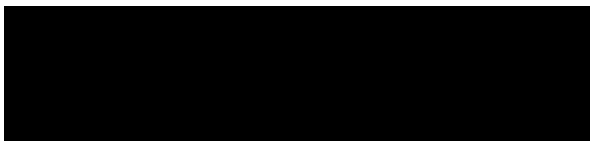
Signature of director/company secretary*

Name of director

Name of director/company secretary*

* please delete as applicable

EXECUTED by **ARGYLE BIDCO PTY LTD**)
ACN 676 002 332)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):)





Signature of director

Signature of director/company secretary*

Director

Yang Lu

Name of director

Name of director/company secretary*

* please delete as applicable

ANNEXURE 1 – SCHEME OF ARRANGEMENT

[commencing on following page]

**K2FLY LIMITED
ACN 125 345 502**

AND

SCHEME SHAREHOLDERS

SCHEME OF ARRANGEMENT

STEINEPREIS PAGANIN 

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions	1
1.2	Interpretations	4
2.	PRELIMINARY MATTERS.....	5
2.1	Company	5
2.2	Bidder	5
2.3	Implementation Deed	5
2.4	Deed Poll	6
3.	CONDITIONS PRECEDENT.....	6
3.1	Conditions to the Scheme.....	6
3.2	Certificates in relation to Conditions Precedent	6
4.	SCHEME.....	7
4.1	Effective Date of the Scheme	7
4.2	Termination	7
5.	IMPLEMENTATION OF THE SCHEME.....	7
5.1	Lodgement.....	7
5.2	Consequences of the Scheme becoming Effective.....	7
5.3	Transfer of Scheme Shares	8
6.	SCHEME CONSIDERATION	8
6.1	Entitlement to Scheme Consideration.....	8
6.2	Provision of Scheme Consideration	8
6.3	Amounts to be withheld or retained.....	10
6.4	Foreign resident capital gains withholdings.....	10
6.5	Joint holders	11
6.6	Unclaimed monies.....	11
6.7	Rounding	12
7.	DEALINGS IN COMPANY SHARES.....	12
7.1	Dealings in Company Shares by Scheme Shareholders	12
7.2	Company Share Register.....	12
7.3	Information to be made available to the Bidder.....	13
7.4	Effect of share certificates and holding statements.....	13
7.5	No disposals after Record Date.....	13
8.	SUSPENSION AND TERMINATION OF QUOTATION	13
9.	GST	13
9.1	Interpretation	13
9.2	GST exclusive.....	13
9.3	Reimbursements and similar payments.....	14
9.4	GST payable.....	14
10.	GENERAL SCHEME PROVISIONS	14
10.1	Appointment of agent and attorney	14
10.2	Enforcement of Deed Poll	14
10.3	Scheme Shareholders' consent.....	15
10.4	Scheme Shareholders' agreements	15
10.5	Warranty by Scheme Shareholders.....	15
10.6	Title to Scheme Shares and transfer free from Encumbrance.....	15

10.7	Alterations and Conditions.....	16
10.8	Notices	16
10.9	Inconsistencies	16
10.10	Further assurance	16
10.11	Stamp duty	16
10.12	Governing Law	16

BETWEEN

K2FLY LIMITED (ACN 125 345 502) of Level 4, 502 Hay Street SUBIACO WA 6008 (**Company**);

AND

Each person registered as a holder of fully paid ordinary shares in the capital of the Company as at the Record Date.

RECITALS

- A.** The Company and the Bidder have entered into the Implementation Deed pursuant to which, amongst other things, the Company has agreed to propose the Scheme to the Company Shareholders, and each of the Company and the Bidder have agreed to take certain steps to give effect to the Scheme.
- B.** If the Scheme becomes Effective, then:
- (a) all the Scheme Shares will be transferred to the Bidder or the Nominee (if applicable) and the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the provisions of this Scheme; and
 - (b) the Company will enter the name and address of the Bidder or the Nominee (if applicable) in the Company Share Register as the holder of the Scheme Shares.
- C.** The Bidder [and the Nominee have / has] entered into the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform (or procure the performance of) the obligations under the Scheme.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Aggregate Scheme Consideration means the aggregate amount of the Scheme Consideration payable to Scheme Shareholders for all Scheme Shares under the Scheme.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ACN 008 624 691) or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Bidder means Argyle BidCo Pty Ltd (ACN 676 002 332).

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in Perth, Western Australia.

CHES means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlements Pty Limited (ABN 49 008 504 532).

Company Options has the meaning given in the Implementation Deed.

Company Performance Right has the meaning given in the Implementation Deed.

Company Performance Share has the meaning given in the Implementation Deed.

Company Shareholder means each person who is registered in the Company Share Register as a holder of one or more Company Shares.

Company Share Register means the register of members of the Company maintained by or on behalf of the Company in accordance with section 168(1) of the Corporations Act.

Company Shares means fully paid ordinary shares in the capital of the Company.

Condition means each condition to the Scheme set out in clause 3.1.

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

Court means the Supreme Court of Western Australia or such other court of competent jurisdiction as the Company and the Bidder agree in writing.

Deed Poll means the deed poll dated [insert date] executed by the Bidder and (if applicable) the Nominee in favour of the Scheme Shareholders (subject to any amendments permitted by its terms).

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

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

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

End Date means the date that is six months after the date of the Implementation Deed or such other date agreed in writing between the Company and the Bidder.

Implementation Deed means the scheme implementation deed dated 20 June 2024 between the Company and the Bidder under which, amongst other things, the Company has agreed to propose the Scheme to Scheme Shareholders, and each of the Bidder and the Company has agreed to take certain steps to give effect to this Scheme.

Implementation Date means the date which is 5 Business Days after the Record Date or such other date as the Company and the Bidder agree in writing or as ordered by the Court.

Listing Rules means the official listing rules of ASX.

Record Date means 5.00 pm (Perth time) on the date which is 2 Business Days after the Effective Date or such other time and date agreed in writing between the Bidder and the Company.

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

Regulatory Authority has the meaning given in the Implementation Deed.

Relevant Amount has the meaning given in clause 1.1.1(a).

Scheme means the scheme of arrangement under part 5.1 of the Corporations Act between the Company and the Company Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and approved in writing by the Bidder and the Company.

Scheme Consideration means the consideration to be provided to Scheme Shareholders for the transfer to the Bidder (or the Nominee, if applicable) of their Scheme Shares, being a cash amount per Scheme Share equal to \$0.19.

Scheme Meeting means the meeting of the Company Shareholders to be convened under section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme, and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Shares means a Company Share on issue as at the Record Date.

Scheme Shareholder means each person registered in the Company Share Register as the holder of one or more Scheme Shares as at the Record Date.

Scheme Transfer means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

Second Court Date means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Security Interest has the meaning given in section 12 of the *Personal Property Securities Act 2009* (Cth).

Separate Account has the meaning given in clause 6.2(d).

Settlement Rules means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.

Share Registry means Automic Group.

Trust Account means an Australian dollar denominated trust account which is operated by or on behalf of the Company as trustee for the Scheme Shareholders, details of which the Company must notify to the Bidder at least 5 Business Days prior to the Implementation Date, being the account into which the Bidder will deposit an amount equal to the total Scheme Consideration.

Unclaimed Consideration has the meaning given in clause 6.2(d).

Withholding Amount has the meaning given in clause 1.1.1(a).

ZEPO has the meaning given in the Implementation Deed.

1.2 Interpretations

In the Scheme, unless provided otherwise:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all genders;
 - (iii) a person includes an individual, corporation or other body corporate, partnership, trust, joint venture, unincorporated body, Regulatory Authority or other entity, whether or not it is a separate legal entity;
 - (iv) a clause, schedule or annexure is a reference to a clause, schedule or annexure of the Scheme;
 - (v) the Scheme includes any schedule or annexure to it;
 - (vi) a party includes that party's successors, permitted substitutes and permitted assigns;
 - (vii) dollars or \$ is a reference to Australian dollars;
 - (viii) the Scheme or another document includes that document as amended, supplemented, novated or replaced from time to time;
 - (ix) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of it;
 - (x) subsidiary, holding company, related body corporate, relative and substantial holding has the same meaning as in the Corporations Act;
 - (xi) a day, month, quarter or year means a calendar day, calendar month, calendar quarter or calendar year respectively;
 - (xii) time is to the time in Perth, Australia; and
 - (xiii) writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form (and includes communication by email);
- (b) where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning;
- (c) any recital, heading or table of contents is for convenience only and does not affect the interpretation of the Scheme;
- (d) a provision of the Scheme must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Scheme or the inclusion of the provision in the Scheme;

- (e) where an act would be required to be done, or a time limit or period would expire, on a day which is not a Business Day, the act must be done, or the limit or period will expire, on the following Business Day;
- (f) if a period of time is specified from or after a given day, the period is to be calculated exclusive of that day;
- (g) any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression must be construed as illustrative and will not limit the sense of the words preceding those terms; and
- (h) references to “the parties” are to the parties to the Scheme and include their respective permitted successors in title and permitted assignees.

2. PRELIMINARY MATTERS

2.1 Company

- (a) The Company is a public company limited by shares incorporated in the state of Western Australia.
- (b) The Company is admitted to the official list of ASX and the Company Shares are officially quoted on the ASX.
- (c) As at the date of the Implementation Deed the following securities were on issue in the Company:
 - (i) 186,927,189 Company Shares;
 - (ii) 483,280 Company Options issued with an exercise price of \$0.497;
 - (iii) 9,459,815 ZEPOs;
 - (iv) 660,000 Company Performance Rights; and
 - (v) 3,063,140 Company Performance Shares.

2.2 Bidder

- (a) The Bidder is a private company limited by shares incorporated in the state of New South Wales.
- (b) Pursuant to clause 2.2 of the Implementation Deed, the Bidder may nominate a wholly-owned Subsidiary of the Bidder (**Nominee**) to pay the Scheme Consideration and to which the Scheme Shares are to be transferred in accordance with the Scheme.

2.3 Implementation Deed

The Bidder and the Company have agreed, by executing the Implementation Deed, to implement the Scheme (among other things). In particular, the Company and the Bidder have agreed that each of them will perform their respective obligations under the Scheme which relate to each of them respectively and have agreed to take certain steps to give effect to the Scheme.

2.4 Deed Poll

The Bidder and (if applicable) the Nominee have agreed, by executing the Deed Poll, to perform their respective obligations under the Scheme, including the obligation to provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of the Scheme.

3. CONDITIONS PRECEDENT

3.1 Conditions to the Scheme

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following Conditions, and the provisions of clauses 4 and 5 will not come into effect unless and until each of these Conditions have been satisfied (other than in respect of clause 5.1 only, the Condition in clause 3.1(e)):

- (a) as at 8.00 am on the Second Court Date each of the conditions set out in clause 3.1 of the Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(b) of the Implementation Deed) have been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) as at 8.00 am on the Second Court Date neither the Implementation Deed nor the Deed Poll is terminated in accordance with their respective terms;
- (c) the Court approves the Scheme under section 411(4)(b) of the Corporations Act with or without modification acceptable to the Bidder and the Company (each acting reasonably);
- (d) subject to clause 10.7, such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to the Bidder and the Company (each acting reasonably) have been satisfied or been waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to the Scheme.

3.2 Certificates in relation to Conditions Precedent

Before 8:00am on the Second Court Date:

- (a) the Company must provide to the Court a certificate signed by a duly authorised representative (or such other evidence as Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00 am on the Second Court Date the conditions set out in clause 3.1 (other than clause 3.1(b)) of the Implementation Deed have been satisfied or waived in accordance with the Implementation Deed; and
- (b) the Bidder must provide to the Court a certificate signed by a duly authorised representative (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00 am on the Second Court Date the conditions set out in clause 3.1 (other than clause 3.1(b) of the Implementation Deed have been satisfied or waived in accordance with the Implementation Deed.

The certificates referred to in this clause 3.2 will constitute conclusive evidence (in the absence of manifest error) of whether the Conditions referred to in clause 3.1(a) and clause 3.1(b) have been satisfied or waived as at 8:00am on the Second Court Date.

4. SCHEME

4.1 Effective Date of the Scheme

Subject to clause 4.2, the Scheme will take effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

4.2 Termination

The Scheme will lapse and be of no further force or effect if the Implementation Deed or Deed Poll is terminated in accordance with their terms before the Scheme becomes Effective. Without limiting any rights under the Implementation Deed, in the event that the Implementation Deed is terminated in accordance with its terms before 8.00 am on the Second Court Date, the Company and the Bidder and the Nominee (if any) are each released from:

- (a) any further obligation to take steps to implement the Scheme; and
- (b) any liability with respect to the Scheme.

5. IMPLEMENTATION OF THE SCHEME

5.1 Lodgement

If the Conditions (other than the Condition in clause 3.1(e)) are satisfied, the Company must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving the Scheme as soon as possible after, and in any event by no later than 5.00 pm on the Business Day following, the date on which the Court approves the Scheme or such other Business Day as the Company and the Bidder agree in writing.

5.2 Consequences of the Scheme becoming Effective

If the Scheme becomes Effective:

- (a) in consideration for the transfer of each Scheme Share to the Bidder (or the Nominee, if applicable), the Bidder (or the Nominee, if applicable) will provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the Scheme and the Deed Poll;
- (b) subject to the Bidder (or the Nominee, if applicable) fulfilling its obligations under clauses 5.2(a) and 6.2(a), all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to the Bidder (or the Nominee, if applicable); and
- (c) the Company will enter, or procure the entry of, the name of the Bidder (or the Nominee, if applicable) in the Company Share Register in respect of all the Scheme Shares in accordance with the Scheme.

5.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 6.2(a) and the Bidder (or the Nominee, if applicable) having provided the Company with written confirmation thereof, all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, be transferred to the Bidder (or the Nominee, if applicable) without the need for any further act by any Scheme Shareholder (other than acts performed by the Company or its directors, officers or secretaries as attorney or agent for Scheme Shareholders under the Scheme), by:
 - (i) the Company delivering to the Bidder (or the Nominee, if applicable) a duly completed and executed Scheme Transfer to transfer all of the Scheme Shares to the Bidder (or the Nominee, if applicable), executed on behalf of the Scheme Shareholders by the Company (or any of its officers) as their agent and attorney; and
 - (ii) the Bidder (or the Nominee, if applicable) duly executing such Scheme Transfer and delivering the executed and, if necessary, stamped, Scheme Transfer to the Company for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 5.3(a)(ii), the Company entering, or procuring the entry of, the name of the Bidder (or the Nominee, if applicable) in the Company Share Register in respect of all the Scheme Shares.

6. SCHEME CONSIDERATION

6.1 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to the Bidder (or the Nominee, if applicable) of all of the Scheme Shares, each Scheme Shareholder will be entitled to the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms of the Scheme.

6.2 Provision of Scheme Consideration

- (a) Subject to clause 6.5, the obligation of the Bidder to provide, or procure the provision of, the Scheme Consideration to Scheme Shareholders in accordance with the Scheme and the Deed Poll will be satisfied by the Bidder (or the Nominee, if applicable):
 - (i) paying, or procuring the payment, into the Trust Account, of an amount in cleared funds equal to the Aggregate Scheme Consideration by no later than one Business Day before the Implementation Date to be held by or on behalf of the Company on trust for the Scheme Shareholders (except that any interest on the amount deposited less bank fees and other charges will be for the account of the Bidder (or the Nominee, if applicable)); and
 - (ii) providing the Company with written confirmation that payment has been made in accordance with clause 6.2(a)(i) above.

- (b) Subject to the Bidder (or the Nominee, if applicable) complying with its obligations under clause 6.2(a), the Company must on the Implementation Date pay, or procure the payment, from the Trust Account to each Scheme Shareholder an amount equal to the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder as set out in the Company Share Register on the Record Date, less any amount retained by Company under clause 6.3 or Bidder under clause 6.4.
- (c) The Company's obligations under clause 6.2(b) will be satisfied by the Company:
- (i) where a Scheme Shareholder has, on or before the Record Date, made an election in accordance with the requirements of the Share Registry to receive dividend payments from the Company by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount to that Scheme Shareholder in Australian currency by electronic means in accordance with that election; or
 - (ii) whether or not a Scheme Shareholder has made an election referred to in clause 6.2(c)(i), dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to that Scheme Shareholder by prepaid post to the Registered Address of that Scheme Shareholder, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 6.5).
- (d) If either:
- (i) a Scheme Shareholder does not have a Registered Address and no account has been notified in accordance with clause 6.2(c)(i) or a deposit into such an account is rejected or refunded; or
 - (ii) a cheque issued under this clause 6 has been cancelled in accordance with clause 6.6(a),

(Unclaimed Consideration), the Company as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of the Company (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with as Unclaimed Consideration in accordance with clause 6.6. To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with as Unclaimed Consideration in accordance with clause 6.6. Until such time as the amount is dealt with as Unclaimed Consideration in accordance with clause 6.6, the Company must hold the amount on trust for the relevant Scheme Shareholder but any interest or other benefit accruing from the amount will be to the benefit of the Bidder (or the Nominee, if applicable). The Company must maintain records of the amounts paid, the people who are entitled to the amount and any transfers of the amount(s). If, following satisfaction of the Company's obligations under this clause 6.2(d), there is a surplus in the amount held by the Company as trustee for the Scheme Shareholders in the Trust

Account, that surplus must be paid by the Company to the Bidder (or the Nominee, applicable).

- (e) If the Scheme lapses after the Bidder (or the Nominee, if applicable) has provided some or all of the Scheme Consideration in accordance with clause 6.2(a), but prior to Bidder (or the Nominee, if applicable) being entered into the Company Share Register as the holder of the Scheme Shares in accordance with clause 5.3(b) the Company must refund (or procure the refund) to Bidder (or the Nominee, if applicable) of the amount deposited into the Trust Account in accordance with 6.2(a), together with any interest earned (less bank fees and charges).

6.3 Amounts to be withheld or retained

If written notice is given to the Company (or the Share Registry) or the Bidder (or the Nominee, if applicable) of an order or direction made by a court of competent jurisdiction or another Regulatory Authority that:

- (a) requires payment to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which amount would otherwise be payable to that Scheme Shareholder by the Company in accordance with clause 6, then the Company will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents the Company from making a payment to a particular Scheme Shareholder in accordance with clause 6, or such payment is otherwise prohibited by applicable law, the Company will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with clause 6 is permitted by that order or direction or otherwise by law,

and the payment or retention by or on behalf of the Company will constitute the full discharge of the Company's obligations under the Scheme with respect to the amount so paid or retained until, in the case of clause 6.3(b), it is no longer required to be retained.

6.4 Foreign resident capital gains withholdings

- (a) Notwithstanding any other provision of this Scheme, if the Bidder (or the Nominee, if applicable) determines (acting reasonably and in good faith) that an amount is required to be withheld under Subdivision 14-D of Schedule 1 of the TAA from the Scheme Consideration payable to a Scheme Shareholder, the Bidder (or the Nominee, if applicable):
 - (i) may withhold and remit to the Australian Taxation Office a portion of the Scheme Consideration payable to that Scheme Shareholder (**CGT Withholding Amount**);
 - (ii) is taken to have paid the CGT Withholding Amount to the Scheme Shareholder for the purposes of this Scheme and the Scheme; and
 - (iii) will not be required to pay any additional amount to the Scheme Shareholder on account of any CGT Withholding Amount, and will, on payment of the Scheme Consideration less the CGT Withholding Amount, be deemed for all purposes to have paid the full and final amount of the Scheme Consideration (or other payment) required under this Scheme,

provided that:

- (iv) the Bidder (or the Nominee, if applicable) has, at least 10 Business Days prior to the Implementation Date, given the Company notice in writing and information which is to the Company's satisfaction (acting reasonably), which identifies the reasons as to why a liability arises under Subdivision 14-D of Schedule 1 of the TAA, and the basis of the calculation of the CGT Withholding Amount; and
 - (v) the Company has not, at least 5 Business Days prior to the Implementation Date, given information to the Bidder (or the Nominee, if applicable) which demonstrates (to the Bidder's (or the Nominee's, if applicable) satisfaction, acting reasonably) that the CGT Withholding Amount should be nil.
- (b) The Company agrees that the Bidder (or the Nominee, if applicable) may approach the Australian Taxation Office to obtain clarification as to the application of Subdivision 14-D of Schedule 1 of the TAA to the Transaction and will provide all information and assistance that the Bidder (or the Nominee, if applicable) reasonably requires in making any such approach. The Bidder (or the Nominee, if applicable) agrees:
- (i) to provide the Company a reasonable opportunity to review the form and content of all materials to be provided to the Australian Taxation Office; and
 - (ii) not to contact any Scheme Shareholder in connection with the application of Subdivision 14-D of Schedule 1 of the TAA to the Transaction without the Company's prior written consent.

6.5 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under the Scheme will be made payable to the joint holders and sent at the sole discretion of the Company, either to the holder whose name appears first in the Company Share Register as at the Record Date or to the joint holders (unless the joint holders have nominated a bank account under clause 6.2(c)(i), in which case the amount must be deposited directly to the nominated bank account of the joint holders); and
- (b) any other document required to be sent under the Scheme will be forwarded at the sole discretion of the Company, either to the holder whose name appears first in the Company Share Register as at the Record Date or to the joint holders.

6.6 Unclaimed monies

- (a) To the extent that a cheque properly despatched by or on behalf of the Company pursuant to clause 6.2(c) is returned to the Company (or its agents) as undelivered or the cheque is not presented by a Scheme Shareholder earlier than six months after the Implementation Date, the Company may cancel (or procure the cancellation of) a cheque sent under clause 6.2(c)(ii).

- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to the Company (or the Share Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), the Company must reissue a cheque that was previously cancelled under clause 6.6(a).
- (c) The Company must deal with the Unclaimed Consideration in accordance with any applicable unclaimed moneys legislation.
- (d) Any interest or other benefit accruing from Unclaimed Consideration (less bank fees and other charges) will be to the benefit of the Bidder (or the Nominee, if applicable).
- (e) Subject to the Company complying with its obligations under clause 6.6(b), the Company is discharged from liability to any Scheme Shareholder in respect of the Unclaimed Consideration.

6.7 Rounding

Where the calculation of the Scheme Consideration to be provided to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up to the nearest whole cent.

7. DEALINGS IN COMPANY SHARES

7.1 Dealings in Company Shares by Scheme Shareholders

For the purposes of establishing who are Scheme Shareholders, dealings in Company Shares will be recognised by the Company provided that:

- (a) in the case of dealings of the type to be effected on CHES, the transferee is registered in the Company Share Register as the holder of the relevant Company Shares by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the place where the Company Share Register is kept by 3:00 pm on the day which is the Record Date (in which case the Company must register such transfers before 5:00 pm on that day),

and the Company will not accept for registration, or recognise for the purpose of establishing who are Scheme Shareholders, any transmission application or transfer in respect of the Company Shares received after such times on the Record Date.

7.2 Company Share Register

The Company will, until the Scheme Consideration has been paid and the Bidder (or the Nominee, if applicable) has been entered in the Company Share Register as the holder of all of the Scheme Shares, maintain the Company Share Register in accordance with the provisions of this clause 7 and the Company Share Register in this form and the terms of the Scheme will solely determine entitlements to the Scheme Consideration.

7.3 Information to be made available to the Bidder

The Company must procure that within one Business Day after the Record Date, details of the names, registered addresses and holdings of Company Shares of every Scheme Shareholder shown in the Company Share Register at the Record Date are made available to the Bidder in such form as the Bidder may reasonably require.

7.4 Effect of share certificates and holding statements

As from the Record Date (and other than for the Bidder (or the Nominee, if applicable) following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the Company Share Register at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

7.5 No disposals after Record Date

If the Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date.

8. SUSPENSION AND TERMINATION OF QUOTATION

- (a) The Company must apply to ASX for suspension of trading of the Company Shares on ASX with effect from the close of business on the Effective Date.
- (b) The Company must apply to ASX for termination of official quotation of the Company Shares on ASX and the removal of the Company from the official list of ASX with effect from the Business Day immediately following the Implementation Date.

9. GST

9.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (c) To the extent any consideration for a supply is expressly specified to be inclusive of GST, that consideration must not be taken into account in calculating the GST payable under clause 9.4(a) in relation to that supply.

9.2 GST exclusive

Unless this Scheme expressly states otherwise, all consideration to be provided under this Scheme is exclusive of GST.

9.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this Scheme that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity (or the representative member of the GST group of which the entity seeking reimbursement is a member of) is entitled for the acquisition to which the cost, expense or amount relates.

9.4 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this Scheme then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 9.4(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) If the GST payable in relation to a supply made under or in connection with this Scheme varies from the additional amount paid by the Recipient under clause 9.4(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 9.4(a).
- (d) Clauses 9.4(a) to 9.4(c) do not apply to the extent that the consideration for the supply is subject to a reverse-charge.

10. GENERAL SCHEME PROVISIONS

10.1 Appointment of agent and attorney

Each Scheme Shareholder, without the need for any further act, irrevocably appoints the Company as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including, without limitation, the execution of the share transfers) to be delivered under clause 5.3 and the giving of the Scheme Shareholders' consent under clause 10.3; and
- (b) enforcing the Deed Poll against the Bidder (or the Nominee, if applicable),

and the Company accepts such appointment. The Company, as agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 10.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

10.2 Enforcement of Deed Poll

The Company undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against the Bidder (or the Nominee, if applicable) (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

10.3 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably:

- (a) consents to the Company and the Bidder (or the Nominee) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme; and
- (b) acknowledges that this Scheme binds the Company and all of the Company Shareholders from time to time (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme).

10.4 Scheme Shareholders' agreements

Under this Scheme each Scheme Shareholder:

- (a) agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to the Bidder (or the Nominee, if applicable) in accordance with the terms of this Scheme; and
- (b) who holds Company Shares in a CHES Holding (as defined in the Settlement Rules) agrees to the conversion of those Company Shares to an Issuer Sponsored Holding (as defined in the Settlement Rules), and irrevocably authorises the Bidder (or the Nominee) to do anything necessary, expedient or incidental (whether required by the Settlement Rules or otherwise) to effect or facilitate that conversion.

10.5 Warranty by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to the Bidder (and the Nominee, if applicable) and, to the extent enforceable, appointed and authorised the Company as its agent to warrant to the Bidder (and the Nominee, if applicable) that all its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to the Bidder (or the Nominee, if applicable), be fully paid and free from all Encumbrances and from any restrictions on transfer of any kind, and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to the Bidder (or the Nominee, if applicable) under this Scheme.

10.6 Title to Scheme Shares and transfer free from Encumbrance

- (a) The Bidder (or the Nominee, if applicable) will be beneficially entitled to the Scheme Shares transferred to it under the Scheme pending registration by the Company of the Bidder (or the Nominee, if applicable) in the Company Share Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to the Bidder (or the Nominee, if applicable), will, at the time of transfer to the Bidder (or the Nominee, if applicable), vest in the Bidder (or the Nominee, if applicable) free from all Encumbrances and free from any restrictions on transfer of any kind.

10.7 Alterations and Conditions

The Company may, by its counsel or solicitors, and with the consent of the Bidder, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to this Scheme which the Court thinks fit to impose. Each Scheme Shareholder agrees to any modification or amendment which the Company has consented to.

10.8 Notices

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

10.9 Inconsistencies

The Scheme binds the Company and all Company Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the Company's constitution.

10.10 Further assurance

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

10.11 Stamp duty

The Bidder (or the Nominee, if applicable) will pay any stamp duty payable on the transfer by Scheme Shareholders of the Scheme Shares to the Bidder (or the Nominee, if applicable).

10.12 Governing Law

The Scheme is governed by, and is to be construed in accordance with, the laws of Western Australia. Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts that have jurisdiction to hear appeals from any of those courts; and
- (b) irrevocably waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

ANNEXURE 2 – DEED POLL

[commences on following page]

ARGYLE BIDCO PTY LTD
ACN 676 002 332

DEED POLL

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TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions	1
1.2	Interpretation	2
1.3	Nature of this deed poll	2
2.	CONDITIONS	2
2.1	Conditions Precedent	2
2.2	Termination	2
2.3	Consequences of termination	2
3.	COMPLIANCE WITH SCHEME OBLIGATIONS	2
3.1	Scheme Consideration	2
3.2	Manner and timing of satisfaction	3
3.3	Other obligations of the Bidder	3
4.	WARRANTIES.....	3
5.	CONTINUING OBLIGATIONS.....	3
6.	GST	4
6.1	Interpretation	4
6.2	GST exclusive	4
6.3	Reimbursements and similar payments	4
6.4	GST payable	4
7.	GENERAL	5
7.1	Stamp Duty	5
7.2	Waiver	5
7.3	Variation	5
7.4	Rights cumulative	5
7.5	Assignment	5
7.6	Further steps	5
7.7	Governing law and jurisdiction	6

BY

ARGYLE BIDCO PTY LTD (ACN 676 002 332) of Level 22, 1 Martin Place, Sydney NSW 2000
(Bidder)

[[insert Nominee details if applicable] **(Nominee)**]

IN FAVOUR OF

Each person registered as a holder of fully paid ordinary shares in the capital of K2Fly Limited (ACN 125 345 502) **(Company)** on issue as at the Record Date **(Scheme Shareholders)**.

RECITALS

- A.** The Company and the Bidder have entered into the Implementation Deed.
 - B.** The Company has agreed in the Implementation Deed to propose a scheme of arrangement between the Bidder and the Scheme Shareholders, the effect of which will be that the Bidder [or **Nominee**] acquires all of the Scheme Shares from Scheme Shareholders for the Scheme Consideration, subject to the satisfaction of certain conditions.
 - C.** In accordance with clause 4.3(j) of the Implementation Deed, the Bidder [and **Nominee**] is entering into this deed poll to covenant in favour of the Scheme Shareholders that they will observe and perform their obligations under the Scheme.
-

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed poll:

Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between the Company and the Scheme Shareholders, a copy of which is annexed to this deed poll, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and approved in writing by the Bidder and the Company.

Implementation Deed means the scheme implementation deed dated 20 June 2024 between the Company and the Bidder under which, amongst other things, the Company has agreed to propose the Scheme to Scheme Shareholders, and each of the Bidder and the Company has agreed to take certain steps to give effect to the Scheme.

Capitalised terms have the meaning given to them in the Scheme, unless the context requires otherwise.

1.2 Interpretation

The provisions of clause 1.2 of the Scheme form part of this deed poll as if set out in full in this deed poll, except that references to "Scheme" in those clauses will be taken to be references to "deed poll".

1.3 Nature of this deed poll

The Bidder [and **Nominee**] acknowledge[s] that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder appoints the Company and each of its directors, officers and secretaries (jointly and individually) as its agent and attorney to enforce this deed poll against the Bidder [or **Nominee**].

2. CONDITIONS

2.1 Conditions Precedent

The Bidder's [and **Nominee's**] obligations under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

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

- (a) the Implementation Deed is terminated in accordance with its terms before the Scheme becomes Effective; or
- (b) the Scheme terminates and ceases to be of any force or effect in accordance with its terms,

unless the Company and the Bidder otherwise agree in accordance with the Implementation Deed (and, if required, as approved by the Court).

2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, then in addition and without prejudice to any other rights, powers or remedies available to Scheme Shareholders, the Bidder [and **Nominee**] [is/are] released from their obligations to further perform this deed poll except those obligations under clause 7.1 and any other obligations which by their nature survive termination.

3. COMPLIANCE WITH SCHEME OBLIGATIONS

3.1 Scheme Consideration

Subject to clause 2, in consideration for the transfer to the Bidder [or **Nominee**] of each Scheme Share, on the Implementation Date the Bidder [or **Nominee**] will pay to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by them in accordance with the terms of the Scheme.

3.2 Manner and timing of satisfaction

Pursuant to and subject to the Scheme and subject to clause 2 the obligations of the Bidder [or **Nominee**] to provide the Scheme Consideration to each applicable Scheme Shareholder will be satisfied by the Bidder [or **Nominee**] complying with its obligations under clause 7.2 of the Scheme.

3.3 Other obligations of the Bidder

Subject to clause 2, the Bidder:

- (a) must procure that all obligations of the Bidder [or **Nominee**] to pay the Scheme Consideration to each Scheme Shareholder in accordance with clause 6.2 of the Scheme are met; and
- (b) covenants in favour of the Scheme Shareholders to perform all other obligations that are attributed to it under the Scheme, as if named as a party to the Scheme.

4. WARRANTIES

The Bidder [and **Nominee**] represent[s] and warrant[s] that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery by it of this deed poll has been properly authorised by all necessary corporate action and it has full corporate power and lawful authority to perform or cause to be performed its obligations under this deed poll and to carry out or cause to be carried out the transactions contemplated by this deed poll; and
- (c) this deed poll will constitute legally, valid and binding obligations on it enforceable in accordance with its terms (subject to any necessary stamping) and does not conflict with or result in a breach of or default under:
 - (i) the constitution or equivalent constituent documents of it or any of its Related Bodies Corporate (as defined in the Implementation Deed); or
 - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party, or by which it is bound.

5. CONTINUING OBLIGATIONS

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) the Bidder [and **Nominee**] has fully performed their obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

6. GST

6.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (c) To the extent any consideration for a supply is expressly specified to be inclusive of GST, that consideration must not be taken into account in calculating the GST payable under clause 6.4(a) in relation to that supply.

6.2 GST exclusive

Unless this deed poll expressly states otherwise, all consideration to be provided under this deed poll is exclusive of GST.

6.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed poll that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity (or the representative member of the GST group of which the entity seeking reimbursement is a member of) is entitled for the acquisition to which the cost, expense or amount relates.

6.4 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this deed poll then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 6.4(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) If the GST payable in relation to a supply made under or in connection with this deed poll varies from the additional amount paid by the Recipient under clause 6.4(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 6.4(a).
- (d) Clauses 6.4(a) to 6.4(c) do not apply to the extent that the consideration for the supply is subject to a reverse-charge.

7. GENERAL

7.1 Stamp Duty

The Bidder [or **Nominee**] will:

- (a) pay or procure the payment of all stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.1 (a).

7.2 Waiver

- (a) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- (b) A single or partial exercise or waiver by a party of a right relating to this deed poll does not prevent any other exercise of that right or the exercise of any other right.
- (c) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

7.3 Variation

A provision of this deed poll may not be varied unless:

- (a) before the Second Court Date, the variation is agreed to in writing by the Company and the Bidder; or
- (b) on or after the Second Court Date, the variation is agreed to in writing by the Company and the Bidder, and is approved by the Court,

in which event the Bidder [and **Nominee**] will enter into a further deed poll in favour of the Scheme Shareholders giving effect to such amendment or variation.

7.4 Rights cumulative

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

7.5 Assignment

The rights and obligations of the Bidder [and **Nominee**] and the rights of each Scheme Shareholder under this deed poll are personal and must not be assigned, charged or otherwise dealt with at law or in equity.

7.6 Further steps

Except as expressly stated otherwise in this deed poll, each party must promptly do whatever any other party reasonably requires of it to give effect to this deed poll and to perform its obligations under it.

7.7 Governing law and jurisdiction

This deed poll is governed by, and is to be construed in accordance with, the laws of Western Australia.

Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts that have jurisdiction to hear appeals from any of those courts; and
- (b) irrevocably waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

EXECUTED AS A DEED POLL

EXECUTED by)
ARGYLE BIDCO PTY LTD)
ACN 676 002 332)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):

Signature of director

Signature of director/company secretary*

Name of director

Name of director/company secretary*

* please delete as applicable

[Insert Nominee signature block if applicable]