

ASX Announcement/Press Release: 14th October 2024
Xref Limited (ASX: XF1)

XREF ENTERS INTO EXCLUSIVITY DEED WITH SEEK

Global HR technology platform Xref Limited (ASX: XF1) (**Xref** or the **Company**) today announces that it has entered into an Exclusivity Deed with Seek Limited (ASX: SEK) (**SEEK**) following receipt of a non-binding indicative offer (**Indicative Proposal**) to acquire all of the ordinary Xref shares on issue for \$0.218¹ in cash per Xref share, by way of a scheme of arrangement (**Proposed Transaction**).

Strategic review update

On 21 May 2024, the Xref Board announced it would conduct a strategic review of Xref's business following preliminary interest expressed by a number of parties regarding a potential acquisition of the Company. Subsequent to this announcement, Xref undertook a period of engagement and preliminary commercial due diligence with interested parties, including SEEK, following which SEEK submitted the Indicative Proposal which was conditional on an exclusivity regime.

Intention to recommend

After careful consideration of the Indicative Proposal, the Xref Board unanimously determined that it is in the best interests of Xref shareholders to progress the Indicative Proposal in order for SEEK to provide a binding proposal to the Xref Board in respect of the Proposed Transaction.

The Directors of Xref intend to unanimously recommend shareholders vote in favour of the Proposed Transaction (at the offer price of \$0.218¹ in cash per Xref share), subject to the parties entering into a binding scheme implementation deed (**SID**) on terms consistent with the Indicative Proposal and following completion of SEEK's confirmatory due diligence.

The intended recommendation will be subject to no superior offer being received and an independent expert concluding (and continuing to conclude) that the Proposed Transaction is in the best interests of Xref shareholders.

Exclusivity Deed

Xref and SEEK have entered into an Exclusivity Deed to allow SEEK to undertake confirmatory due diligence and work with Xref towards agreeing and executing a binding SID. This period of exclusive confirmatory due diligence access has been granted for a period of four weeks from entry into the Exclusivity Deed (**Exclusivity Period**).

The exclusivity provisions that will apply during the Exclusivity Period include customary "no shop", "no talk", "no due diligence" and "notification" obligations that apply during the Exclusivity Period. A fiduciary exception does not apply to Xref's "no talk" and "no due diligence" obligations for the entirety of the Exclusivity Period.

The Exclusivity Deed is attached to this announcement as Appendix A.

Xref will continue to keep the market informed of any material developments in accordance with its continuous disclosure requirements. There is no certainty that the Indicative Proposal will result in a binding transaction being put forward to shareholders for consideration and shareholders do not need to take any action in relation to the Indicative Proposal at this time.

This announcement has been approved by the Board of Directors of Xref.

To learn more or ask questions, please visit

Website: xref.com

Investor Centre and Presentation: xf1.com

¹ Based on 189m ordinary shares on issue and assuming that all out of the money options are cancelled on terms satisfactory to SEEK.

Xref Limited (ASX:XF1)

ACN 122 404 666

Lv 20, 135 King Street, Sydney, NSW 2000

Phone: +61 2 8244 3099

Website: xref.com

Email: investors@xref.com

Appendix A: Exclusivity Deed

Xref Limited (ASX:XF1)
ACN 122 404 666

Lv 20, 135 King Street, Sydney, NSW 2000
Phone: +61 2 8244 3099
Website: xref.com
Email: investors@xref.com

Exclusivity Deed

Dated

Xref Limited (“**Xref**”) (ABN 34 122 404 666)

and

SEEK Limited (“**SEEK**”) (ABN 46 080 075 314)

King & Wood Mallesons

Level 27
Collins Arch
447 Collins Street
Melbourne VIC 3000
Australia
T +61 3 9643 4000
www.kwm.com

Exclusivity Deed

Details	2
General terms	3
1 Exclusivity	3
1.1 No existing discussions	3
1.2 No shop	3
1.3 No talk or due diligence	3
1.4 Exceptions	4
1.5 Notice of unsolicited approach	4
1.6 Acknowledgements and compliance with law	4
1.7 Takeovers Panel	4
2 Announcement of intention to recommend	5
2.1 Intention to recommend	5
2.2 Announcement of the Transaction	5
3 Standstill	5
3.1 Confidentiality Agreement	5
3.2 Standstill	6
3.3 Exceptions to standstill	6
3.4 Standstills with other bidders	6
4 Termination	7
4.1 Termination	7
4.2 Survival	7
5 Notices	7
6 General	7
6.1 Confidentiality	7
6.2 Variation and waiver	7
6.3 Consents, approvals or waivers	7
6.4 Discretion in exercising rights	7
6.5 Partial exercising of rights	7
6.6 Remedies cumulative	8
6.7 Counterparts	8
6.8 Entire agreement	8
6.9 Severability	8
7 Definitions and interpretation	8
7.1 Definitions	8
7.2 General interpretation	10
8 Governing law	11
8.1 Governing law and jurisdiction	11
8.2 Serving documents	11
Signing page	12

Details

Parties	SEEK and Xref	
SEEK	Name	SEEK Limited
	ABN	46 080 075 314
	Address	60 Cremorne Street, Cremorne, Victoria, 3121
	Email	legalofficer@seek.com.au
	Attention	General Counsel
Xref	Name	Xref Limited
	ABN	34 122 404 666
	Address	Level 20, 135 King Street, Sydney NSW 2000 Australia
	Email	lee@xref.com
	Attention	Lee Seymour
Business Day place (s)	Sydney, NSW	
Governing law	New South Wales	
Recitals	A	The parties entered into the Confidentiality Agreement (defined below) under which they have disclosed to each other certain confidential information in respect of the Approved Purpose (as defined in the Confidentiality Agreement).
	B	SEEK provided to Xref a non- binding indicative offer letter (Proposal) in respect of a potential acquisition by SEEK of all the issued shares in Xref by way of scheme of arrangement (Proposed Transaction).
	C	On the basis of the Proposal and subsequent discussions, Xref has agreed to enable SEEK to continue its due diligence in respect of the Proposed Transaction on an exclusive basis in accordance with this deed (Exclusivity Deed).

Exclusivity Deed

General terms

1 Exclusivity

1.1 No existing discussions

- (a) Xref represents and warrants that, as at the date of this document, other than the discussions with SEEK in respect of the Proposed Transaction, it has terminated all existing negotiations or discussions in respect of any Competing Transaction with any Third Party.
- (b) During the Exclusivity Period, Xref will promptly enforce the terms of any confidentiality agreement (or equivalent document) entered into with a party other than SEEK in relation to a Competing Transaction and will immediately request the return or destruction of all Xref Confidential Information (as defined in the Confidentiality Agreement) from that party and terminate their access to any confidential information

1.2 No shop

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

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction.

1.3 No talk or due diligence

During the Exclusivity Period, Xref must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into;
- (b) participates in negotiations or discussions with any other person regarding; or
- (c) provides due diligence or other information access to any other person in furtherance of,

a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Xref or any of its Representatives or the person has publicly announced the Competing Transaction provided that nothing in this clause 1.3 prevents or restricts Xref, or any of its Representatives, from responding to a Third Party in respect of an enquiry, expression of interest, offer, proposal, discussion, negotiation or other communication by that Third Party in relation to, or that would reasonably be expected to lead to the making of, a Competing Proposal to merely:

- (d) acknowledge receipt; or
- (e) advise that Third Party that Xref is bound by customary no talk and no due diligence restrictions (and these restrictions are not subject to any fiduciary carve-outs).

1.4 Exceptions

Nothing in this document prevents Xref from:

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

1.5 Notice of unsolicited approach

During the Exclusivity Period, Xref must promptly and in any event within 1 Business Day inform SEEK if it or any of its Representatives:

- (a) receives any unsolicited approach with respect to any Competing Transaction and must disclose to SEEK all material details of the Competing Transaction, including details (including the identity) of the proposed bidder or acquirer; and
- (b) receives any request for information relating to Xref or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of Xref or any of its Related Bodies Corporate, which Xref has reasonable grounds to suspect may relate to a current or future Competing Transaction.

1.6 Acknowledgements and compliance with law

- (a) Xref acknowledges that it has received legal advice on this document, including the operation of this clause 1.
- (b) If it is finally determined following the exhaustion of all reasonable avenues of appeal and review, judicial or otherwise, to the Takeovers Panel or a court that all or any part of this clause 1:
 - (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the Xref Board; or
 - (ii) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act; or
 - (iii) is unlawful for any other reason,

then, to that extent (and only to that extent), Xref will not be obliged to comply with that part of this clause 1.

1.7 Takeovers Panel

- (a) Xref 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 declaration or determination of the kind referred to in clause 1.6(b)(ii); and
- (b) If any Third Party makes any application to a court or the Takeovers Panel for or in relation to a declaration or determination of the kind

referred to in clause 1.6(b)(ii), then the parties must each make submissions in the course of those proceedings supporting to the fullest extent reasonably practicable the position that no such declaration or determination should be made.

2 Announcement of intention to recommend

2.1 Intention to recommend

- (a) Xref represents and warrants to SEEK that, as at the date of this document, each director of Xref has confirmed that he or she intends, subject to entry into a binding scheme implementation deed (or equivalent document) to:
 - (i) unanimously recommend to Xref Shareholders to vote; and
 - (ii) to vote or procure that any ordinary shares in Xref in which a director of Xref has a Relevant Interest is voted,

in favor of any scheme of arrangement required to implement the Proposed Transaction, in the absence of a Superior Transaction and subject to an independent expert concluding (and continuing to conclude) that the Proposed Transaction is in the best interests of Xref Shareholders (other than SEEK).
- (b) During the Exclusivity Period, Xref must use reasonable endeavours to procure that no director publicly changes, withdraws or qualifies their intention to recommend that Xref Shareholders vote in favour of the Proposed Transaction (in each case subject to a scheme implementation deed (or equivalent document) being entered into) unless this deed is validly terminated.

2.2 Announcement of the Transaction

Notwithstanding any provision of the Confidentiality Agreement:

- (a) immediately after the execution of this document the parties will make public announcements regarding the Proposed Transaction in a form agreed in writing between the parties; and
- (b) where a party proposes to make any subsequent public announcement in connection with the Proposed Transaction, it must, to the extent practicable and lawful to do so and permitted by the rules of any stock exchange, consult with the other party prior to making the relevant disclosure and take account of any reasonable comments received from the other party in relation to the timing, form and content of the announcement or disclosure as well as the content or existence of negotiations between the parties prior to making the announcement.

3 Standstill

3.1 Confidentiality Agreement

Subject to clause 3.4, the parties agree and acknowledge that clause 3.2 in this document supersedes and replaces clause 6 ("Standstill") in the Confidentiality Agreement in its entirety.

3.2 Standstill

Subject to clause 3.3, during the Standstill Period, SEEK must not directly or indirectly:

- (a) acquire, agree to acquire or make an invitation, offer or proposal to acquire, any securities or property or any right or option to acquire any securities or property of Xref;
- (b) enter into any arrangements involving the conferring of rights, the economic effect of which is equivalent, or substantially equivalent, to anything referred to in clause 3.2(a);
- (c) solicit proxies from shareholders of Xref or otherwise, whether alone or in concert with others, seek to influence, change or control the management or policies of Xref;
- (d) disclose any intention, plan or arrangement to do anything referred to in clauses 3.2(a) to 3.2(c) (inclusive); or
- (e) aid, abet, counsel or induce any other person to do any of the things referred to in clauses 3.2(a) to 3.2(d) (inclusive),

except with the prior written consent of Xref or pursuant to the Proposed Transaction.

3.3 Exceptions to standstill

Clause 6 ("Standstill") of the Confidentiality Agreement will cease to apply to SEEK at the time at which a bona fide Third Party makes, or announces its intention to make, a takeover bid or enters into an agreement to implement a scheme of arrangement, or offers to do either of those things or otherwise announces a Competing Transaction, in each case, in respect of Xref.

3.4 Standstills with other bidders

- (a) Xref must not, during the Standstill Period, enter into a document, arrangement or understanding with any person who is participating, or proposes to participate, in a Competing Transaction (**Competing Bidder**) which:
 - (i) does not contain restrictions on that Competing Bidder and its Affiliates which are consistent in all material respects with clause 6 of the Confidentiality Agreement and clause 3.3 of this document; and/or
 - (ii) contains restrictions which are more favourable (in any material respect) to that Competing Bidder and its Affiliates than the restrictions in clauses 3.2 and 3.3 are on SEEK,

without, in either case, SEEK being offered (as soon as reasonably practicable and in any event within 24 hours) a replacement to the provisions in clauses 3.2 and 3.3 of this document on equivalent terms.

- (b) During the Standstill Period, Xref undertakes in favour of SEEK not to waive, and to enforce, any standstill contemplated in clause 3.4(a) other than a waiver in favour of, or with consent of, SEEK.

4 Termination

4.1 Termination

Subject to clause 4.2, this document, and the parties' obligations under it, will terminate on the earliest of the following to occur:

- (a) the expiry of the Exclusivity Period; and
- (b) Xref giving SEEK written notice of termination with immediate effect following a breach of this document or the Confidentiality Agreement by SEEK.

No party may terminate or rescind this document except as permitted under this clause 4.

4.2 Survival

Clauses 3, 5, 6, 7 and 8 survive termination of this document.

5 Notices

Notices and other communications in connection with this document must be in writing. They must be sent to the address or email address referred to in the Details and (except in the case of email) marked for the attention of the person referred to in the Details. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

6 General

6.1 Confidentiality

The parties agree that the existence and terms of this deed and any disclosure made by one party to the other under or in connection with it are to be treated as Confidential Information (as defined in the Confidentiality Agreement).

6.2 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

6.3 Consents, approvals or waivers

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

6.4 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

6.5 Partial exercising of rights

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

6.6 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given in any other document or by law independently of this document.

6.7 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

6.8 Entire agreement

This document and the Confidentiality Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

6.9 Severability

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

7 Definitions and interpretation

7.1 Definitions

Unless the contrary intention appears, these meanings apply:

Associate has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

Business Day means a day on which banks are open for general banking business in the place specified in the Details (not being a Saturday, Sunday or public holiday in that place).

Competing Bidder has the meaning given to it in clause 3.4(a).

Competing Transaction means any expression of interest, proposal, offer, agreement, arrangement, or transaction which, if entered into, completed or implemented substantially in accordance with its terms (whether existing before, on or after the date of this document), could result in:

- (a) a bona fide Third Party (either alone or together with any Associate), directly or indirectly:
 - (i) acquiring, or obtaining a right to acquire, an interest (including any legal, beneficial, or economic interest) or Relevant Interest in, or control of, 20% or more of Xref Shares;
 - (ii) acquiring Control of Xref;
 - (iii) acquiring, or obtaining a right to acquire, an interest (including any legal, beneficial or economic interest) in all or a substantial part or a material part of Xref's business or assets; or

- (iv) otherwise acquiring, merging or amalgamating with Xref or its Subsidiaries,

whether by way of takeover bid, scheme of arrangement, reverse takeover, securityholder approved acquisition, capital reduction, buy-back or repurchase, sale or purchase of shares, securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement; or

- (b) requiring Xref to abandon, or otherwise fail to proceed with, the Transaction.

For the avoidance of doubt, each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Transaction will constitute a new Competing Transaction.

Confidentiality Agreement means the confidentiality agreement between the parties dated on or about 21 June 2024.

Control has the meaning given to that term by section 50AA of the Corporations Act.

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

Details means the section of this document headed "Details".

Exclusivity Deed has the meaning given the Recitals.

Exclusivity Period means the period from and including the date of this document to the date that is 20 Business Days after the date of this document (being 11.59pm on 8 November 2024), unless this document is terminated earlier in accordance with its terms.

Proposed Transaction has the definition in the Details.

Related Body Corporate has the meaning it has in the Corporations Act.

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

Representative means, in relation to a party:

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

Standstill Period means the period commencing on the date of this document and ending on the date 6 months from the date of the Confidentiality Agreement (being 11.59pm on 21 December 2024).

Subsidiary of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; or
- (b) is part of the consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares or would be if the first entity was required to prepare consolidated financial statements.

Superior Transaction means a proposal which satisfies paragraph (a)(ii), (iii) or (iv) of the definition Competing Transaction which Xref Board, acting in good faith, and after taking advice from its legal and financial advisers, determines is:

- (a) reasonably capable of being completed; and
- (b) reasonably likely to result in a transaction more favourable to Xref Shareholders as a whole than the Proposed Transaction,

in each case, taking into account all aspects of the Competing Transaction, including the identity, reputation and financial condition of the person making such proposal, the type of consideration offered, the actual or implied premium of the purchase price, conditionality, funding, certainty, timing and other relevant legal, regulatory and financial matters.

Takeovers Panel means the review body constituted under section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth).

Third Party means any person other than a member of SEEK, any Subsidiary of SEEK and any Associate of any of those persons.

Xref Board means the board of directors of Xref.

Xref Group means Xref and its Subsidiaries.

Xref Share means an ordinary fully paid share in the capital of Xref.

7.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney, Australia;

- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (m) an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (n) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (p) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (q) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next Business Day; and
- (r) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day.

8 Governing law

8.1 Governing law and jurisdiction

The law in force in New South Wales governs this document. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

8.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being physically or electronically delivered or left at that party's address set out in the Details.

EXECUTED as an agreement

Exclusivity Deed

Signing page

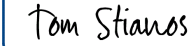
DATED: _____

EXECUTED by XREF LIMITED (ABN 34 122 404 666) in accordance with section 127(1) of the Corporations Act 2001 (Cth):

DocuSigned by:


ACB02C7F043F48E
Signature of director

Lee-Martin Seymour
Name of director (block letters)

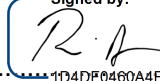
DocuSigned by:

CDA177673CC747A
Signature of director/company secretary

Tom Stianos
Name of director/company secretary (block letters)

EXECUTED by SEEK LIMITED (ABN 46 080 075 314) in accordance with section 127(1) of the Corporations Act 2001 (Cth):

Signed by:

1ECC3B94F7274DD
Signature of director

Ian Narev
Name of director (block letters)

Signed by:

1D4DF0460A4F41A
Signature of director/company secretary

Rachel Agnew
Name of director/company secretary (block letters)