

6 July 2022

## ASX ANNOUNCEMENT

### Kyckr agrees scheme implementation deed with RealWise at 8.0 cents per share

- Kyckr and RealWise have entered into a Scheme Implementation Deed under which it is proposed RealWise will acquire 100% of Kyckr for **8.0 cents per share** by way of a scheme of arrangement (**Scheme**)
- The cash consideration of 8.0 cents per Kyckr share (**Scheme Consideration**) represents a 63.3% premium to the Kyckr closing price of 4.9 cents on 5 July 2022
- RealWise is wholly owned by Mr. Richard White, a successful technology entrepreneur with a demonstrated track record of value creation as CEO and Founder of WiseTech Global Limited (ASX: WTC)
- Kyckr's Board unanimously recommends that Kyckr shareholders vote 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 Kyckr's shareholders

#### Offer Overview

Kyckr (ASX: KYK) (**Kyckr** or the **Company**) is pleased to announce that following an unsolicited approach, it has entered into a Scheme Implementation Deed (**SID**) with RealWise KYK AV Pty Ltd (**RealWise**), an entity 100% owned by Mr. Richard White. Under the SID it is proposed that RealWise will acquire 100% of Kyckr's shares by way of a Court-approved scheme of arrangement for a cash price of 8.0 cents per Kyckr share. The Scheme values Kyckr's equity at \$43.5m<sup>1</sup>.

Mr. White currently has a relevant interest in 122,346,906 shares in Kyckr, representing approximately 22.76% of Kyckr's current issued share capital.

Kyckr's entry into the SID with RealWise follows receipt by the Kyckr Board on 10 June 2022 of an unsolicited, indicative, non-binding and confidential proposal from RealWise to acquire all the shares on issue in Kyckr by scheme of arrangement.

#### Kyckr Board Recommendation

The Kyckr Board unanimously recommends that Kyckr shareholders vote in favour of the Scheme, and each Director intends to vote all of the Kyckr shares controlled or held by, or on behalf of, 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 Kyckr shareholders.

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<sup>1</sup> Assuming 537,599,849 current shares on issue and 6,140,350 performance rights

The Kyckr Board believes the Scheme provides:

- **Significant premium for control**
  - a premium of 63.3% to the closing price of Kyckr shares on 5 July 2022 of 4.9 cents, being the last price prior to the announcement of this Scheme;
  - a premium of 53.3% to the 1-month volume weighted average price of 5.2 cents; and
  - a premium of 77.8% to the undisturbed share price of 4.5 cents, being the closing share price on 4 April 2022 (the day prior to Mr White's notice of change of substantial interest)
- **Certainty of value:** The Scheme provides certainty of value to Kyckr shareholders and the opportunity to sell 100% of their shareholdings for cash.
- **Limited conditionality:** The Scheme is subject to limited customary conditions including Court approval, Kyckr shareholder approval, prescribed occurrences and no material adverse change. It is not subject to financing.

Mr. Rajarshi Ray, Chairman Kyckr commented "Transformation from a document reseller to an enhanced data and technology business over the last 12 months is testament to both the team and Kyckr's underlying technology capability. The Scheme with RealWise allows shareholders to financially benefit from this, while also providing Kyckr future funding certainty to enable Kyckr to continue to pursue growth".

Mr. Richard White, Director of RealWise said "By privatising and providing ongoing long term funding certainty, RealWise will enable Kyckr's management to focus on growing the business, helping it gain critical mass. I can see in Kyckr a strong team and product, with long term potential to mature without the distractions of public market complexities and volatilities."

#### **Scheme Implementation Deed:**

- The SID contains customary exclusivity provisions including "no shop" and "no talk" restrictions, a notification obligation and a matching right in favour of RealWise, subject to Kyckr Directors' fiduciary obligations where appropriate
- The SID also provides for a break fee of \$400,000 payable by Kyckr to RealWise under certain circumstances and for a reverse break fee of the same amount payable by RealWise to Kyckr also under certain circumstances
- The Scheme is expected to be implemented in or around October 2022, subject to Kyckr shareholder approval, Court approval, and other relevant conditions being satisfied

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

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

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

Subject to Court Approval, a Scheme Booklet is expected to be provided to Kyckr shareholders in August 2022.

The Scheme Booklet will contain information relating to the Scheme, the reasons for the Kyckr Board's unanimous recommendation, details of the Scheme meeting as well as an Independent Expert's Report providing an assessment as to whether the Scheme is in the best interests of Kyckr shareholders. Kyckr shareholders will then have the opportunity to vote on the Scheme at a Court-convened Scheme meeting, which is currently expected to be held in or around October 2022.

As mentioned above, the Scheme is subject to a number of conditions. Accordingly, the certainty of and timing for the completion of the Scheme cannot be confirmed at this time and any guidance on the timetable should be treated as indicative at this stage.

Kyckr will keep shareholders and the market informed in accordance with its continuous disclosure obligations.

### **Advisers**

Kyckr is being advised on the proposed Scheme by Latimer Partners as corporate adviser and Addisons as legal adviser.

RealWise is being advised by Macquarie Capital as corporate adviser and Gilbert + Tobin as legal adviser.

***This ASX announcement was authorised for release by the Kyckr Limited Board of Directors.***

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### **About Kyckr**

Kyckr enables organisations to verify, onboard and monitor their customers with instant access to primary source company data. This helps businesses to avoid the regulatory and commercial costs associated with using poor quality data and to succeed in the fight against financial crime.

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# **Scheme implementation deed**

RealWise KYK AV Pty Ltd

Kyckr Limited

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Date: 6 July 2022

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## Parties

- 1 **Kyckr Limited (ACN 609 323 257)** of Level 16, 1 Market Street, Sydney NSW 2000 (**Kyckr**)
- 2 **RealWise KYK AV Pty Ltd (ACN 660 041 074)** of Unit 3, 1 Coggins Place, Mascot NSW 2020 (**RealWise**)

The parties agree:

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## Background

- A The parties have proposed that RealWise will acquire all of the Scheme Shares by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Kyckr and the Scheme Shareholders.
  - B Kyckr and RealWise have agreed to implement the Transaction on and subject to the terms and conditions of this deed.
  - C Kyckr and RealWise have agreed certain other matters in connection with the Transaction as set out in this deed.
- 

## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

### 1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this deed.

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## 2 Agreement to propose Scheme

### 2.1 Proposal of Scheme

- (a) Kyckr will propose and implement the Scheme on and subject to the terms and conditions of this deed.
  - (b) RealWise will assist Kyckr in proposing and implementing the Scheme on and subject to the terms and conditions of this deed.
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## 2.2 Timetable

Kyckr and RealWise agree to take all reasonable actions within their control to implement the Transaction in accordance the Timetable, subject to the terms and conditions of this deed. To the extent a modification is required for the time to perform a step set out in the Timetable, Kyckr and RealWise will consult in good faith to agree any necessary extension of the time to perform that step (and any other step that is dependent on that step) to ensure that such matters are completed within the minimum period that is reasonably possible and that the overall time period for an extension for implementation of the Timetable is minimised.

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## 3 Conditions precedent and pre-implementation steps

### 3.1 Conditions to Scheme

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

- (a) **(Restraints)** no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any Court of competent jurisdiction or Governmental Agency or other legal restraint or prohibition preventing, prohibiting or materially restricting the implementation of the Scheme is in effect at 8.00am on the Second Court Date;
- (b) **(Orders convening Scheme Meeting)** the Court orders the convening of the Scheme Meeting under section 411(1) of the Corporations Act;
- (c) **(Shareholder approval)** the Scheme is approved by Kyckr Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (d) **(Court approval)** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably);
- (e) **(No Prescribed Occurrence)** no Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date;
- (f) **(No Material Adverse Change)** there is no Material Adverse Change between the date of this deed and 8.00am on the Second Court Date;
- (g) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to Kyckr, stating that in its opinion the Scheme is in the best interests of Kyckr Shareholders, on or before the date on which the Scheme Booklet is registered with ASIC under the Corporations Act, and the Independent Expert does not publicly change or withdraw this conclusion prior to 8.00am on the Second Court Date; and
- (h) **(Kyckr Performance Rights and Options)** before 8.00am on the Second Court Date, arrangements in accordance with clauses 4.4 and 4.5 have been put in place in relation to the Kyckr Performance Rights and Kyckr Options such that no Kyckr Performance Rights or Kyckr Options (or other securities in Kyckr other than Kyckr Shares) are in existence on the Record Date.

### **3.2 Benefit and waiver of conditions precedent**

- (a) The Conditions in clauses 3.1(b), 3.1(c) and 3.1(d) cannot be waived.
- (b) The Conditions in clauses 3.1(a) and 3.1(g) are for the benefit of both parties and any breach or non-satisfaction of any of it may only be waived in accordance with applicable law and with the written agreement of both parties.
- (c) The Conditions in clauses 3.1(e), 3.1(f) and 3.1(h) are for the sole benefit of RealWise and any breach or non-satisfaction of any of them may only be waived by RealWise in writing.
- (d) A party entitled to waive the breach or non-satisfaction of a Condition pursuant to this clause 3.2 (either individually or jointly) may do so in its absolute discretion.
- (e) Any waiver of the breach or non-satisfaction of a Condition by a party who is entitled to do so pursuant to this clause 3.2 is only effective if such waiver is given on or prior to 8.00am on the Second Court Date.
- (f) If a party waives the breach or non-satisfaction of any Condition, that waiver will not preclude it from suing the other party for any breach of this deed including a breach that resulted in the non-satisfaction of the Condition that was waived.
- (g) 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 event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition arising from any other event.

### **3.3 Reasonable endeavours**

Each party must use their respective reasonable endeavours to ensure or procure that:

- (a) each of the Conditions is satisfied as soon as reasonably practicable after the date of this deed or continues to be satisfied at all times until the last time they are to be satisfied (as the case may be); and
- (b) it does not take, or omit to take, any action that prevents, or would be reasonably likely to prevent, the satisfaction of any Condition (except to the extent such action is required to be taken or procured pursuant to, or is otherwise permitted by, this deed or the Scheme, or is required by law).

### **3.4 Notifications**

Each of RealWise and Kyckr must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied; and

- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.3).

### 3.5 Certificate

- (a) On the Second Court Date each of Kyckr and RealWise must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8:00am on the Second Court Date the Conditions have been satisfied or waived in accordance with this deed.
- (b) Each party must provide to the other party a draft of the certificate to be provided by it pursuant to clause 3.5(a) by 5.00pm on the day that is two Business Days prior to the Second Court Date.

### 3.6 Scheme voted down because of Headcount Test

If the Scheme is not approved by Kyckr Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Kyckr or RealWise considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then Kyckr must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to 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 Kyckr to represent it in Court proceedings related to the Scheme, in consultation with RealWise, 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.

### 3.7 Conditions not capable of being satisfied

- (a) If a Condition is not satisfied, or becomes incapable of being satisfied, before the earlier of the time and date specified in this deed for the satisfaction of that Condition and the End Date, then unless the relevant Condition (where capable of waiver) is waived:
  - (i) subject to clause 3.7(b), either party may give the other party written notice (**Consultation Notice**) within 5 Business Days after the relevant notice of that fact being given under clause 3.4(c);
  - (ii) upon delivery of the Consultation Notice, Kyckr and RealWise must consult in good faith with a view to determining whether they can reach agreement with respect to:
    - (A) the terms (if any) on which the party with the benefit of the relevant Condition will waive that Condition;
    - (B) an extension of the time for satisfaction of the relevant Condition or an extension of the End Date (as the case may be);
    - (C) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the

Scheme or adjourning that application (as applicable) to another date agreed by Kyckr and RealWise; or

- (D) the Transaction proceeding by way of alternative means or methods; and
- (iii) if Kyckr and RealWise are unable to reach such agreement within 5 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within the timeframe specified in clause 3.7(a)(i) then, subject to clause 3.7(b), either party may terminate this deed by notice to the other without any liability to any party by reason of that termination alone.
- (b) A party will not be entitled to give a Consultation Notice or terminate this deed pursuant to clause 3.7(a)(iii) if the relevant Condition has not been satisfied as a result of:
  - (i) a breach of this deed by that party; or
  - (ii) a deliberate act or omission of that party which directly and materially contributed to that Condition not being satisfied.

### 3.8 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being satisfied if there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the relevant date referred to in clause 3.7(a) (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this deed).

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## 4 Scheme and Scheme Consideration

### 4.1 Scheme

The parties acknowledge and agree that, subject to the Scheme becoming Effective, on the Implementation Date the general effect of the Scheme will be that all of the Scheme Shares will be transferred to RealWise and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Record Date, the Scheme Consideration.

### 4.2 Scheme Consideration

- (a) RealWise undertakes and warrants to Kyckr (in its own right and separately as trustee for each Scheme Shareholder) that, if the Scheme becomes Effective, in consideration for the transfer to RealWise of the Scheme Shares held by each Scheme Shareholder under the terms of the Scheme, RealWise will:
  - (i) accept that transfer on the Implementation Date; and
  - (ii) pay, or procure the payment, into a trust account operated by Kyckr as trustee for the Scheme Shareholders of an amount in cleared funds equal to the aggregate amount of the Scheme Consideration for all Scheme Shares, by no later than the Business Day before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) will accrue for the benefit of RealWise),

in each case in accordance with the terms of the Scheme.

- (b) Subject to the Scheme becoming Effective and RealWise complying with its obligations under clause 4.2(a), at 10.00am on the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:
  - (i) all existing Kyckr Shares at the Record Date will be transferred to RealWise; and
  - (ii) in exchange, each Scheme Shareholder will receive the Scheme Consideration for each Scheme Share held by that Scheme Shareholder as at the Record Date, which Kyckr will procure is paid to each Scheme Shareholder from the trust account referred to in clause 4.2(a)(ii).

#### 4.3 No amendment to Scheme without consent

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

#### 4.4 Kyckr Performance Rights

Kyckr must take such action as is necessary after the Effective Date and prior to the Record Date to ensure that any Performance Rights which have not already vested, lapsed or been cancelled, do vest, lapse or are cancelled prior to the Record Date, which action may include the Kyckr Board accelerating the vesting and/or exercise period such that all Kyckr Performance Rights convert or are exercised prior to the Record Date, and Kyckr issuing the relevant number of Kyckr Shares on such vesting and exercise so that the relevant holders of the Kyckr Performance Rights can participate in the Scheme.

#### 4.5 Kyckr Options

- (a) As soon as practicable after the date of this deed, Kyckr must use all reasonable endeavours to obtain the written agreement of each person who is a holder of Kyckr Options to have their options cancelled with effect from the Scheme becoming Effective on terms agreed by Kyckr and RealWise (acting reasonably).
- (b) Kyckr must as soon as practicable obtain any waiver of the Listing Rules necessary to cancel the Kyckr Options described in clause 4.5(a).

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## 5 Implementation of the Scheme

### 5.1 Kyckr's obligations

Kyckr must take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable, including taking each of the following steps:

- (a) **(Timetable)** use reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step;
- (b) **(Scheme Booklet)** subject to clauses 5.2(b) and 5.2(c), prepare the Scheme Booklet in compliance with all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules);
- (c) **(drafts of Scheme Booklet)** make available to RealWise drafts of the Scheme Booklet, consult with RealWise in relation to the content of those drafts, and

consider in good faith, for the purpose of amending those drafts, comments from RealWise on those drafts;

- (d) **(commission Independent Expert's Report)** promptly appoint an Independent Expert to provide the Independent Expert's Report, and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (e) **(approval of RealWise Information)** seek approval from RealWise for the form and context in which the RealWise Information appears in the Scheme Booklet, which approval RealWise must not unreasonably withhold or delay, and Kyckr must not lodge the Scheme Booklet with ASIC until such approval is obtained from (or unreasonably withheld by) RealWise;
- (f) **(liaison with ASIC):**
  - (i) provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
  - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep RealWise reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with RealWise, to resolve any such matters;
- (g) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Kyckr Board, or of a committee of the Kyckr Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to the Kyckr Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (h) **(seek ASIC intent)** apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date;
- (i) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.1(g) has been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Kyckr to convene the Scheme Meeting;
- (j) **(registration of Scheme Booklet)** if the Court directs Kyckr to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (k) **(convening Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Kyckr Shareholders and convening and holding the Scheme Meeting, provided that if this deed is terminated under clause 13 Kyckr will take all steps reasonably required to ensure the Scheme Meeting is not held;
- (l) **(updating Scheme Booklet)** until the date of the Scheme Meeting, promptly update the Scheme Booklet with any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material

respect (including because of any material omission from that statement), including where, after dispatch of the Scheme Booklet, Kyckr becomes aware:

- (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to Kyckr Shareholders under any applicable law but was not included in the Scheme Booklet;
- (m) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (n) **(Court approval application)** if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.6 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act), subject to all other Conditions being satisfied or waived in accordance with this deed (other than the Condition in clause 3.1(d)), apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- (o) **(implementation of Scheme)** if the Scheme is approved by the Court:
  - (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
  - (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
  - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to RealWise on the Implementation Date; and
  - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (p) **(documents)** consult with RealWise in relation to the content of the documents required for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders);
- (q) **(promote Scheme)** participate in efforts reasonably requested by RealWise to promote the merits of the Scheme and the Scheme Consideration, including, where requested by RealWise, meeting with key Kyckr Shareholders and soliciting proxy votes in favour of the Scheme;
- (r) **(proxy reports)** keep RealWise reasonably informed on the status of proxy forms received for the Scheme Meeting, including over the period commencing 10 Business Days before the Scheme Meeting and ending on the deadline for the receipt of proxy forms; and
- (s) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.



## 5.2 RealWise's obligations

RealWise must take all steps reasonably necessary to assist Kyckr to implement the Scheme as soon as reasonably practicable after the date of this deed, including taking each of the following steps:

- (a) **(Timetable)** use reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step;
- (b) **(RealWise Information)** prepare the RealWise Information in compliance with all applicable laws (in particular under the Corporations Act, RG 60 and Listing Rules to the extent relevant to the RealWise Information) as it relates to information about RealWise for inclusion in the Scheme Booklet;
- (c) **(drafts of RealWise Information)** make available to Kyckr drafts of the RealWise Information, consult with Kyckr in relation to the content of those drafts, and consider in good faith, for the purpose of amending those drafts, comments from Kyckr on those drafts;
- (d) **(confirmation of RealWise Information)** promptly after Kyckr requests that it does so, confirm in writing to Kyckr that it consents to the inclusion of the RealWise Information in the Scheme Booklet, in the form and context in which the RealWise Information appears;
- (e) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report for inclusion in the Scheme Booklet;
- (f) **(assistance with Scheme Booklet and Court documents)** promptly provide any assistance or information reasonably requested by Kyckr or its Advisers in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Kyckr Shareholders) and any documents required to be filed with the Court in respect of the Scheme;
- (g) **(Deed Poll)** before 5:00pm on the Business Day before the First Court Date, enter into the Deed Poll and deliver it to Kyckr;
- (h) **(representation)** procure that RealWise is represented by counsel at the Court hearings convened for the purposes of section 411(1) and 411(4)(b) of the Corporations Act; and
- (i) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

## 5.3 Conduct of Court proceedings

- (a) RealWise is entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) Nothing in this deed gives Kyckr or RealWise any right or power to give undertakings to the Court for or on behalf of the other party without that other party's written consent.

## **5.4 Appeal process**

If the Court refuses to make any orders directing Kyckr to convene the Scheme Meeting or approving the Scheme:

- (a) Kyckr and RealWise must consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) Kyckr must appeal the Court decision unless Kyckr and RealWise agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success before the End Date.

## **5.5 New information**

- (a) Kyckr must provide to RealWise all such further or new information of which Kyckr becomes aware that arises after the Scheme Booklet has been despatched to Kyckr Shareholders until the date of the Scheme Meeting where this is or may be necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (b) RealWise must provide to Kyckr all such further or new information of which RealWise becomes aware that arises after the Scheme Booklet has been despatched to Kyckr Shareholders until the date of the Scheme Meeting where this is or may be necessary to ensure that the RealWise Information continues to comply with the Corporations Act, RG 60 and the Listing Rules.

## **5.6 Verification**

- (a) Kyckr must undertake reasonable verification processes in relation to the information included in the Scheme Booklet (other than the RealWise Information and the Independent Expert's Report) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise).
- (b) RealWise must undertake reasonable verification processes in relation to the RealWise Information so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise).

## **5.7 Responsibility statements**

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

- (a) RealWise will be responsible for the RealWise Information contained in the Scheme Booklet and, to the maximum extent permitted by law, Kyckr will not be responsible for any RealWise Information and will disclaim any liability for RealWise Information appearing in the Scheme Booklet; and
- (b) Kyckr will be responsible for the Scheme Booklet (other than the RealWise Information, the Independent Expert's Report and any other report or letter issued to Kyckr by a third party) and, to the maximum extent permitted by law, RealWise will not be responsible for any information appearing in the Scheme Booklet other than the RealWise Information and will disclaim any liability for any information appearing in the Scheme Booklet other than the RealWise Information.

## 5.8 Disagreement on content

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

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

## 5.9 Good faith co-operation

Each party must procure that its Authorised Persons work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to implement the Scheme, to prepare all documents required relating to the Scheme, and to agree and execute the strategy described in clause 7.5.

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# 6 Board recommendation

## 6.1 Representation by Kyckr directors

Subject to clause 6.3, Kyckr represents and warrants to RealWise, as at the date of this deed, that it has been advised by each Kyckr director that he or she will act in accordance with this clause 6.

## 6.2 Recommendation

Subject to clause 6.3, Kyckr must ensure that:

- (a) the Kyckr Board unanimously recommends that Kyckr Shareholders vote in favour of the Scheme (**Recommendation**); and
- (b) the Scheme Booklet and all public announcements by Kyckr in relation to the Scheme will include a statement by each Kyckr director that he or she intends to vote in favour of the Scheme in respect of all Kyckr Shares controlled or held by, or on behalf of, that Kyckr director (**Voting Intention**),

in each case subject to:

- (c) no Superior Proposal emerging; and
- (d) the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Scheme is in the best interests of Kyckr shareholders.

## 6.3 Withdrawal or modification of recommendation and voting intention

- (a) Kyckr represents and warrants to RealWise, as at the date of this deed, that it has been advised by each Kyckr director that he or she does not intend to, and Kyckr must procure that each Kyckr director does not:

- (i) change, withdraw or modify his or her Recommendation or Voting Intention;  
or
- (ii) make any public statement or take any other action that is inconsistent with his or her recommendation of the Scheme,

in each case except:

- (iii) where Kyckr receives a Competing Proposal and the Kyckr Board determines, after all of RealWise's rights under clause 10.6 have been exhausted, that the Competing Proposal constitutes a Superior Proposal; or
  - (iv) where the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Kyckr Shareholders, or the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of Kyckr Shareholders but then changes or publicly withdraws this conclusion prior to 8.00am on the Second Court Date; or
  - (v) in respect of the Recommendation or Voting Intention of any Kyckr director, if a Court, ASIC, the Australian Takeovers Panel or other Governmental Agency requires that Kyckr director to change, withdraw, qualify or modify, or abstain from making, his or her Recommendation or Voting Intention.
- (b) For the purposes of clauses 6.2 and 6.3(a), customary qualifications and explanations contained in the Scheme Booklet or any public announcement in relation to a Recommendation or Voting Intention to the effect that the Recommendation or Voting Intention 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 Kyckr Shareholders'; or
  - (iii) in respect of the Scheme Booklet or any public announcements issued at the time of or after 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 Kyckr Shareholders',

will not be regarded as a failure to make, or a change, withdrawal or modification of, a Recommendation or Voting Intention, or be regarded as a public statement or action that is inconsistent with a Kyckr director's recommendation of the Scheme.

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## 7 Conduct of business before the Implementation Date

### 7.1 Conduct of Kyckr business

Subject to clause 7.3, from the date of this deed up to and including the Implementation Date, Kyckr must, and must ensure that each member of the Kyckr Group:

- (a) conducts and operates its businesses in the ordinary and usual course and in a manner substantially consistent (subject to any applicable laws and regulations) with the manner in which those businesses have been conducted in the 12 months prior to the date of this deed;

- (b) uses all reasonable endeavours to:
  - (i) preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them;
  - (ii) maintain the condition of its business and assets in accordance with the ordinary course of its business;
  - (iii) maintain (and where necessary use reasonable efforts to renew) each of its material authorisations, accreditations and licences applicable to each member of the Kyckr Group held by that member as at the date of this deed;
  - (iv) comply in all material respects with all Material Contracts to which a member of the Kyckr Group is a party, and with laws, authorisations and licences applicable to each member of the Kyckr Group; and
  - (v) retain the services of all key employees;
- (c) keep RealWise reasonably informed of any material developments concerning the Kyckr Group; and
- (d) not take or fail to take any action that constitutes or could reasonably be expected to constitute a Prescribed Occurrence.

## **7.2 Kyckr prohibited actions**

Subject to clause 7.3, from the date of this deed up to and including the Implementation Date, Kyckr must not, and must procure that the Kyckr Group does not:

- (a) declare, pay or distribute any dividend, bonus or other share of its profits or assets by way of a dividend, capital reduction or otherwise;
- (b) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds \$15,000 in aggregate;
- (c) in respect of any single transaction or series of related or similar transactions, incur or enter into commitments involving capital expenditure in excess of \$100,000 in aggregate;
- (d) enter into a single new employment contract with a potential employee of the Kyckr Group under which contract the total remuneration payable to that potential employee would exceed \$120,000 in any 12 month period;
- (e) enter into a series of new employment contracts with potential employees of the Kyckr Group under which contracts the total aggregate remuneration payable to those potential employees would exceed \$400,000 in aggregate in any 12 month period;
- (f) declare or pay any bonuses, salary increases or management charges to any employee, director, contractor or consultant in excess of the amount agreed between Kyckr and RealWise;
- (g) enter into any enterprise bargaining agreement or any other form of collective agreement concerning the terms of employment of employees of the Kyckr Group;

- (h) either (A) sell, assign, transfer or grant any exclusive license to, or (B) abandon or permit to let lapse or expire, any intellectual property material to the business of the Kyckr Group as conducted as at the date of this deed;
- (i) incur any additional financial indebtedness (except for draw-downs on existing banking facilities consistent with Kyckr's current budget), or guarantee or indemnify the obligations of any person other than a member of the Kyckr Group, other than in the usual and ordinary course of business and consistent with the practice in the 12 month period prior to the date of this deed;
- (j) enter into any new financing arrangement, agreement or otherwise provide financial accommodation, or amend the term of any existing financing arrangement, agreement or instrument, other than:
  - (i) in the usual and ordinary course of business and consistent with the practice in the 12 month period prior to the date of this deed; or
  - (ii) any such financing arrangement, agreement or financial accommodation (irrespective of what form that takes) to or among members of the Kyckr Group;
- (k) give or agree to give a financial benefit to a related party of Kyckr (other than a related party that is a Kyckr Group Member), except on arm's length terms;
- (l) except for amendments, terminations, or non-renewals in the ordinary course of business consistent with past practice that would not be material to the Kyckr Group, modify, amend, waive, fail to enforce (in each case, in any material respect), assign or terminate any Material Contract of the Kyckr Group or enter into a contract which would be material to the conduct of the Kyckr Group's business if entered into prior to the date of this deed (other than material contracts with customers entered into in the ordinary course of business consistent with past practice);
- (m) amend its constitution;
- (n) take out any insurance policy with respect to the Kyckr Group or any of its directors or officers, other than in the ordinary course of business;
- (o) waive any material third party default where:
  - (i) the financial impact of the waiver on the Kyckr Group as a whole will be in excess of \$10,000 (individually or in aggregate); and
  - (ii) the reasonable cost of recovery from the third party in respect of that default will be in excess of the financial impact of the waiver;
- (p) pay any third party costs or expenses incurred by the Kyckr Group in connection with the transactions contemplated by this deed, including Adviser fees, in excess of the amount Fairly Disclosed in the Disclosure Materials;
- (p) alter in any material respect any accounting policy of any member of the Kyckr Group, other than any change required by applicable accounting standards; or
- (q) agree to do any of the matters set out above.

### **7.3 Kyckr permitted activities**

The obligations of Kyckr under clauses 7.1 and 7.2 do not apply in respect of any matter of event:

- (a) required to be done or procured by Kyckr pursuant to this deed or the Scheme;
- (b) which has been Fairly Disclosed in the Disclosure Materials;
- (c) which has been Fairly Disclosed to the ASX before the date of this deed;
- (d) which is within the actual knowledge of RealWise as at the date of this deed;
- (e) for which RealWise has provided prior written consent (such consent not to be unreasonably withheld or delayed);
- (f) required to respond to an emergency, disaster or health advice of a Governmental Agency; or
- (g) required by any applicable law or regulation, or by an order, injunction or undertaking of a court or Governmental Agency.

### **7.4 Access**

- (a) Subject to clause 7.4(c), from the date of this deed to the Second Court Date, Kyckr must provide RealWise and its Representatives with:
  - (i) all reasonable access (subject to the Confidentiality Agreement) during normal business hours and on reasonable notice to the management, offices, books, records and business operations of Kyckr that RealWise reasonably requires; and
  - (ii) reasonable co-operation,for the purposes of:
  - (iii) implementing the Transaction;
  - (iv) obtaining general understanding of the operation and performance of the Kyckr Group's business;
  - (v) assisting RealWise to prepare for the transition of ownership of the Kyckr Group; or
  - (vi) any other purpose that is agreed in writing between Kyckr and RealWise.
- (b) Subject to clause 7.4(c), if requested by RealWise, Kyckr must provide regular reports on the financial affairs of the Kyckr Group, including the provision of the Kyckr Group's monthly management accounts, in a timely manner to RealWise.
- (c) Nothing in clause 7.4(a) or 7.4(b) requires Kyckr or any member of the Kyckr Group to:
  - (i) take any action that would conflict with or violate the entity's constituent documents or any applicable law;

- (ii) disclose or make available any information (including confidential or commercially sensitive information) in breach of an obligation of confidentiality to any person or applicable privacy laws, or which would result in a waiver or loss of legal professional privilege;
- (iii) without limitation to any of Kyckr's obligations and covenants in clause 10, disclose or make available any information concerning the consideration of the Transaction or any actual or potential Competing Proposal by the Kyckr Board (or a sub-committee of the Kyckr Board) or Kyckr management; or
- (iv) do anything that would, in the reasonable opinion of Kyckr (acting in good faith), result in undue disruption to the Kyckr Group's business in the ordinary course.

## 7.5 Change of control

As soon as practicable after the date of this deed, Kyckr must use reasonable endeavours to:

- (a) seek to identify any change of control or similar provisions in any Material Contract to which a member of the Kyckr Group is party which may be triggered by the implementation of the Transaction (**Change of Control Requirements**); and
- (b) in good faith, agree a proposed strategy with RealWise to obtain any consents required in accordance with the terms of any identified Change of Control Requirements, and, if agreed between Kyckr and RealWise as part of the proposed strategy, to then use reasonable efforts to promptly seek those consents in accordance with the agreed strategy.

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## 8 Board composition

Kyckr must procure that, with effect on and from the Implementation Date (subject to the provision of the Scheme Consideration in accordance with clause 4.2):

- (a) those persons nominated by RealWise are appointed to the Kyckr Board and the boards of other members of the Kyckr Group, provided that:
  - (i) such persons sign consents to act as a director of the relevant member(s) of the Kyckr Group; and
  - (ii) such consents to act are provided to Kyckr before the Implementation Date; and
- (b) those directors of Kyckr and directors of other members of the Kyckr Group, as nominated by RealWise before the Implementation Date, resign as a director of the relevant member(s) of the Kyckr Group (provided that nothing in this clause 8(b) requires any such director to forego any rights they may have under any deed of access and indemnity or policy of directors and officers insurance).

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## 9 Representations and warranties

### 9.1 RealWise representations and warranties

- (a) RealWise represents and warrants to Kyckr that each of the RealWise Warranties are true and correct as at the date of this deed and at 8.00am on the Second Court



Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).

(b) RealWise represents and warrants that:

- (i) RealWise is a validly existing corporation registered under the laws of its place of incorporation;
- (ii) the execution and delivery of this deed has been properly authorised by all necessary corporate action and RealWise has full corporate power and lawful authority to execute and deliver this deed and the Deed Poll, and to perform or cause to be performed its obligations under this deed and the Deed Poll;
- (iii) this deed constitutes legal, valid and binding obligations on it and this deed does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which RealWise is a party or is bound;
- (iv) as far as RealWise is aware, no regulatory approval is required to be obtained by RealWise in order for it to execute, deliver and perform this deed, other than those approvals set out in clause 3.1;
- (v) no member of the RealWise Group (or any of their respective Representatives) has any agreement, arrangement or understanding with any Scheme Shareholder under which that Scheme Shareholder would be entitled to receive any collateral benefit in relation to the Scheme, or under which the Scheme Shareholder has agreed to vote in favour of the Scheme;
- (vi) other than as disclosed to Kyckr and approved by the Kyckr Board, no member of the RealWise Group has any agreement, arrangement or understanding with any director or employee of the Kyckr Group relating in any way to the Transaction or operations of Kyckr after the Effective Date;
- (vii) RealWise has available to it sufficient cash amounts (whether from internal cash reserves or otherwise) to satisfy RealWise's obligations to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;
- (viii) the RealWise Information provided to Kyckr in accordance with clause 5.2(a) for inclusion in the Scheme Booklet will:
  - (A) be provided in good faith;
  - (B) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
  - (C) be provided on the understanding that Kyckr will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
- (ix) as at the date the Scheme Booklet is despatched to Kyckr Shareholders, the RealWise Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);

- (x) RealWise will, as a continuing obligation, provide to Kyckr all further or new information which arises after the Scheme Booklet has been despatched to Kyckr Shareholders until the date of the Scheme Meeting which is necessary to ensure that the RealWise Information is not misleading or deceptive in any material respect (including by way of omission);
- (xi) no Insolvency Event has occurred in relation to RealWise or another member of the RealWise Group, nor has any regulatory action of any nature of which RealWise is aware been taken that would prevent or restrict RealWise's ability to fulfil its obligations under this deed; and
- (xii) RealWise will have available to it on the Implementation Date sufficient cash amounts to satisfy RealWise's obligation to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.

## 9.2 RealWise's indemnity

RealWise agrees with Kyckr (on Kyckr's own behalf and separately as trustee for each of the other Kyckr Indemnified Parties) to indemnify and keep indemnified Kyckr and Kyckr Indemnified Parties against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Kyckr may suffer or incur by reason of any breach of any of the RealWise Warranties.

## 9.3 Kyckr representations and warranties

- (a) Kyckr represents and warrants to RealWise each of the Kyckr Warranties are true and correct as at the date of this deed and at 8.00am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Kyckr represents and warrants that:
  - (i) Kyckr is a validly existing corporation registered under the laws of its place of incorporation;
  - (ii) the execution and delivery of this deed by Kyckr has been properly authorised by all necessary corporate action and Kyckr has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed and the Scheme;
  - (iii) this deed constitutes legal, valid and binding obligations on Kyckr and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which Kyckr or any of its Subsidiaries is a party or to which they are bound;
  - (iv) no Prescribed Occurrence has occurred since 31 March 2022;
  - (v) the information contained in the Scheme Booklet (other than the RealWise Information):
    - (A) will be prepared and included in the Scheme Booklet in good faith; and
    - (B) will comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60;

- (vi) as at the date the Scheme Booklet is despatched to Kyckr Shareholders, the Kyckr Information contained in the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (vii) Kyckr will, as a continuing obligation (but in respect of the RealWise Information, only to the extent that RealWise provides Kyckr with updates to the RealWise Information), ensure that the Kyckr Information is updated to include all further or new information which arises after the Scheme Booklet has been despatched to Kyckr Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Kyckr Information is not misleading or deceptive (including by way of omission) in any material respect;
- (viii) all information provided by or on behalf of Kyckr to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;
- (ix) the issued capital of Kyckr as of the date of this deed is:
  - (A) 537,599,849 Kyckr Shares;
  - (B) 4,912,280 Kyckr Performance Rights; and
  - (C) 16,486,827 Kyckr Options,

and there are no other Kyckr options, performance rights, shares, warrants, convertible notes, instruments or other securities (or offers or agreements to issue any of the foregoing) that may convert into Kyckr Shares;
- (x) Kyckr's financial statements as disclosed to the ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as Kyckr is aware, there has not been any event, change, effect or development which would require Kyckr to restate its financial statements as disclosed to the ASX;
- (xi) any statement or belief contained in the Kyckr Information is honestly held and there are reasonable grounds for Kyckr holding that opinion or belief;
- (xii) each member of the Kyckr Group has complied in all material respects with all laws or regulations applicable to them (or order of any Regulatory Authority having jurisdiction over them);
- (xiii) no member of the Kyckr Group has received notice from any Governmental Agency of any material breach of Australian and foreign laws or regulations applicable to them or orders of Australian and foreign Governmental Agencies having jurisdiction over them;
- (xiv) with respect to Material Contracts, so far as Kyckr is aware:
  - (A) no member of the Kyckr Group is in default, or would be in default but for the requirements of notice or lapse of time, under any Material Contract;

- (B) no other party to any Material Contract is in default, or would be in default but for the requirements of notice or lapse of time, under that agreement; or
    - (C) no member of the Kyckr Group has received, or given, any notice of termination of any Material Contract;
  - (xv) the Kyckr Group has all material authorisations necessary for it to conduct the business of the Kyckr Group as presently being conducted and these material authorisations are in force and effect and are being complied with;
  - (xvi) as at the date of this deed, Kyckr is not aware of any materially adverse information relating to the Kyckr Group or any information that has or could reasonably be expected to give rise to a Material Adverse Change;
  - (xvi) Kyckr has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1 and, other than in relation to this Transaction, it is not relying on the carve-out in Listing Rule 3.1 to withhold any material information from public disclosure; and
  - (xvii) no Insolvency Event has occurred in relation to Kyckr or another member of the Kyckr Group, nor has any regulatory action of any nature of which Kyckr is aware been taken that would prevent or restrict Kyckr's ability to fulfil its obligations under this deed.
- (c) RealWise acknowledges and agrees that the Kyckr Warranties and the indemnity in clause 9.4 are given subject to those matters that:
- (i) are required or expressly permitted by this deed or the Scheme;
  - (ii) have been Fairly Disclosed in:
    - (A) the Disclosure Materials; or
    - (B) an announcement made by Kyckr to the ASX in the 12 months prior to the date of this deed;
  - (iii) would have been Fairly Disclosed to RealWise had RealWise conducted a search of the following Governmental Agencies' records which are open to public inspection on 5 July 2022:
    - (A) ASIC;
    - (B) PPS Register;
    - (C) IP Australia,
 (together, the **Relevant Searches**); or
  - (iv) are within the actual knowledge of RealWise as at the date of this deed.

#### 9.4 Kyckr's indemnity

Kyckr agrees with RealWise (on RealWise's own behalf and separately as trustee for each of the other RealWise Indemnified Parties) to indemnify and keep indemnified RealWise and RealWise Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses,

duties and other outgoings of whatever nature and however arising which RealWise may suffer or incur by reason of any breach of any of the Kyckr Warranties.

### **9.5 Notifications**

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

### **9.6 Survival of representations**

Each representation and warranty in clauses 9.1 and 9.3:

- (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.

### **9.7 Survival of indemnities**

Each indemnity in this deed (including those in clauses 9.2 and 9.4) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survive the termination of this deed.

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## **10 Exclusivity**

### **10.1 No existing discussions**

Kyckr represents and warrants to RealWise that, as at the date of this deed, Kyckr Group:

- (a) is not a party to any agreement with a Third Party entered into for the purpose of facilitating a Competing Proposal; and
- (b) is not participating in any discussions or negotiations with a Third Party that concern, or could reasonably be expected to lead to, a Competing Proposal.

### **10.2 No-shop**

During the Exclusivity Period, Kyckr must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) solicit, invite, initiate or encourage any Competing Proposal;
- (b) solicit, invite, initiate or encourage any enquiries, proposals, discussions or negotiations with any Third Party in relation to, or that could reasonably be expected to lead to, a Competing Proposal, including to undertake due diligence investigations in respect of Kyckr, its Related Bodies Corporate, or any of their

businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or

- (c) communicate any intention to do any of these things referred to in clauses 10.2(a) to 10.2(b).

### **10.3 No-talk**

Subject to clause 10.7, during the Exclusivity Period, Kyckr must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) negotiate or enter into or participate in negotiations or discussions with any Third Party; or
- (b) communicate any intention to do any of these things,

in relation to (or which may reasonably be expected to lead to) a Competing Proposal.

### **10.4 No due diligence**

Subject to clause 10.7, during the Exclusivity Period, except with the prior written consent of RealWise, Kyckr must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) disclose or otherwise make available to any Third Party or permit any Third Party to receive, other than as required by law or the rules of any prescribed financial market, any non-public information relating to Kyckr for the purposes of such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal (including providing such information for the purposes of the conduct of due diligence investigations); or
- (b) communicate any intention to do any of these things.

### **10.5 Notification of approaches**

- (a) During the Exclusivity Period, Kyckr must promptly (and, in any event, within 48 hours) notify RealWise in writing if it becomes aware of:
  - (i) any approach, inquiry or proposal made by any Third Party to Kyckr, any of its Related Bodies Corporate or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern (or that could reasonably be expected to lead to) a Competing Proposal; and
  - (ii) any request made by any Third Party to Kyckr, any of its Related Bodies Corporate, or any of their respective Authorised Persons, for any information relating to Kyckr, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) A notice given under clause 10.5(a) must be accompanied by all material details of the proposal, including:

- (i) to the extent known by Kyckr, the material terms and conditions (including price, conditions precedent and proposed timetable) of any Competing Proposal; and
  - (ii) the identity of the Third Party who made the proposal.
- (c) During the Exclusivity Period, Kyckr must promptly provide RealWise with:
- (i) in the case of written materials, a copy of; or
  - (ii) in any other case, a written statement of,

any material non-public information relating to Kyckr, its Related Bodies Corporate, or any of their businesses and operations made available or received by any Third Party in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which has not previously been provided to RealWise. This clause 10.5(c) does not require Kyckr to provide or make available to RealWise any information which Kyckr reasonably considers is likely to disclose information relation to that other person which is commercially sensitive information of that person.

## 10.6 Matching right

- (a) If Kyckr is permitted by virtue of clause 10.7 to engage in activity that would otherwise breach any of clauses 10.3 or 10.4, Kyckr must enter into a confidentiality agreement with the person who has made the applicable Competing Proposal (**Rival Acquirer**) on customary terms and must not enter into any other agreement, understanding or commitment in respect of a Competing Proposal or a potential Competing Proposal except as permitted by clause 10.6(b).
- (b) If Kyckr receives a Competing Proposal and as a result, during the Exclusivity Period, any Kyckr director proposes to either:
  - (i) change, withdraw or modify his or her recommendation of the Scheme; or
  - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal (other than a confidentiality agreement contemplated by clause 10.6(a)),

Kyckr must ensure that no Kyckr director does so until each of the following has occurred:

- (iii) the Kyckr Board has made the determination contemplated by clause 10.7 in respect of that Competing Proposal;
- (iv) Kyckr has given RealWise written notice (Relevant Notice) of the Kyckr director's proposal to take the action referred to in clauses 10.6(b)(i) or 10.6(b)(ii) (subject to RealWise's rights under clause 10.6(c));
- (v) Kyckr has given RealWise all information required by clause 10.5(b);
- (vi) RealWise's rights under clause 10.6(c) have been exhausted; and
- (vii) the Kyckr directors have made the determination contemplated by clause 10.7 in respect of that Competing Proposal after RealWise's rights under clause 10.6(c) have been exhausted and after evaluation of any Counter Proposal.

- (c) If Kyckr gives a Relevant Notice to RealWise under clause 10.6(b)(iv), RealWise will have the right, but not the obligation, at any time during the period of 4 Business Days following the receipt of the Relevant Notice, to amend the terms of the Transaction including increasing the amount of consideration offered under the Transaction or proposing any other form of transaction (each a **Counter Proposal**) and provide written notice of the Counter Proposal to Kyckr. If RealWise does so then the Kyckr Board must review the Counter Proposal in good faith. If the Kyckr Board determines that the Counter Proposal would be more favourable to Kyckr and the Kyckr Shareholders as a whole than the Competing Proposal (having regard to the matters noted in clause 10.7(b)), then Kyckr and RealWise must use their reasonable endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and Kyckr must use its reasonable endeavours to procure that the Kyckr directors recommend the Counter Proposal to the Shareholders and not recommend the applicable Competing Proposal (other than as permitted by this deed).
- (d) For the purposes of this clause 10.6, each successive material modification of any Third Party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.
- (e) Despite any other provision in this deed, any public announcement or other statement by Kyckr, the Kyckr Board or any Kyckr director to the effect that:
  - (i) the Kyckr Board has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in clause 10.6; or
  - (ii) Kyckr Shareholders should take no action pending the completion of the matching right process set out in clause 10.6,
 does not:
  - (iii) constitute a failure to make, or a change, withdrawal, modification or qualification of, a Recommendation or Voting Intention, or an endorsement of a Competing Proposal;
  - (iv) contravene clause 6 or any other provision of this deed;
  - (v) give rise to an obligation to pay the Kyckr Break Fee under clause 11; or
  - (vi) give rise to a termination right under clause 13 or any other provision of this deed.

## 10.7 Fiduciary out

The restrictions in clauses 10.3 and 10.4 do not apply to restrict Kyckr or any member of the Kyckr Group or any Kyckr Indemnified Party from taking or refusing to take any action with respect to a bona fide, actual, proposed or potential Competing Proposal provided that the Kyckr Board has determined in good faith after:

- (a) having consulted Kyckr's financial advisers, that the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal; and
- (b) receiving advice from Kyckr's external Australian legal adviser practising in the area of corporate law, that failing to take the action or refusing to take the action



(as the case may be) with respect to the Competing Proposal would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of the directors of Kyckr.

## **10.8 Compliance with law**

- (a) This clause 10 imposes obligations on Kyckr only to the extent that the performance of all or part of those obligations:
  - (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel; and
  - (ii) is not determined to be unlawful by a court (including by virtue of it being a breach of the Kyckr Board's fiduciary or statutory duties),subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Australian Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 10.8(a) and, in the event that any such application is made by a third party, must take all reasonable steps (including by making submissions against the declaration or determination) to ensure that any such determination is not made or applies to the minimum extent possible.

## **10.9 Normal provision of information**

Nothing in this clause 10 prevents Kyckr from:

- (a) providing information to its Representatives;
- (b) providing information to any Governmental Agency;
- (c) providing information required to be provided by law, including to satisfying its obligations under the Listing Rules or to any Governmental Agency;
- (d) providing information to its auditors, customers, financiers, joint venturers, suppliers, contractual counterparties or shareholders acting in that capacity in the ordinary course of business, provided such engagements do not relate to Kyckr soliciting, inviting, encouraging or initiating an actual or proposed or potential Competing Proposal;
- (e) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts, institutional investors or institutional lenders and other third parties in the ordinary course of business; or
- (f) promoting the merits of the Transaction.

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# **11 Break Fee**

## **11.1 RealWise declaration**

RealWise represents and warrants to Kyckr that it would not have entered into this deed without the benefit of this clause 11 and it would not have entered into and continued the negotiations leading up to this deed unless RealWise had a reasonable expectation that Kyckr would agree to enter into a clause of this kind.

## 11.2 Acknowledgments in relation to Kyckr Break Fee

- (a) Kyckr acknowledges that RealWise has incurred and will incur significant costs, including significant opportunity costs, if they enter into this deed and the Scheme is subsequently not implemented. Those costs include external advisory costs, some internal costs of a similar kind and out-of-pocket expenses.
- (b) Kyckr represents and warrants that:
  - (i) it has received legal advice on this deed and the operation of this clause 11; and
  - (ii) it considers that it is appropriate to agree to the terms in this clause 11 in order to secure the significant benefits to it (and its Shareholders) resulting from the Scheme.
- (c) The parties acknowledge that:
  - (i) the amount of the costs is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
  - (ii) the Kyckr Break Fee represents a genuine and reasonable estimate of cost and loss that RealWise will suffer if the Scheme is subsequently not implemented.

## 11.3 Kyckr Break Fee

- (a) Subject to clauses 11.4 and 11.5, Kyckr must pay to RealWise the Kyckr Break Fee, within 10 Business Days after receipt of a written demand for payment from RealWise in accordance with clause 11.3(b), if:
  - (i) at any time before the End Date, or if earlier, the date the deed is terminated in accordance with clause 13, the Kyckr Board withdraws or adversely modifies its recommendation that Kyckr Shareholders vote in favour of the Scheme, other than where:
    - (A) the withdrawal or adverse modification is as a result of the Independent Expert opining in the Independent Expert Report (including any update, revision, amendment or supplement thereto) that the Scheme is not in the best interests of Scheme Shareholders (other than where the reason for that opinion is a Competing Proposal); or
    - (B) the withdrawal or adverse modification is permitted by clause 6.3(a)(v); or
    - (C) Kyckr has terminated this deed pursuant to clause 13.1(a) or 13.1(c) prior to the withdrawal or adverse modification of the recommendation;
  - (ii) a Competing Proposal is announced before the End Date or, if earlier, the date this deed is terminated under clause 13, and, within 9 months of the Competing Proposal being announced, the Competing Proposal results in a Third Party obtaining Control of Kyckr, merging or amalgamating with Kyckr or acquiring (directly or indirectly) an interest in all or a substantial part of the business or assets of the Kyckr Group; or

- (iii) RealWise has terminated this deed under clause 13.1(a) and the Transaction does not complete.
- (b) The payment of the Kyckr Break Fee by Kyckr to RealWise provided for in this clause 11.3 must be made within 10 Business Days of receipt of a written demand for payment by RealWise. The demand may only be made after the occurrence of an event referred to in clause 11.3(a).

#### 11.4 Qualifications

- (a) No Kyckr Break Fee is payable if the Scheme becomes Effective, even if an event under clause 11.3(a) has occurred. To the extent that any amounts have already been paid to RealWise under this clause 11 and the Scheme becomes Effective, such amounts must be promptly refunded to Kyckr (and in any case, within 5 Business Days after the Scheme becomes Effective).
- (b) The Kyckr Break Fee is not payable by Kyckr if, prior to the relevant event in clause 11.3(a) occurring Kyckr validly terminates this deed in accordance with clause 13.1(a).
- (c) Notwithstanding any other provision of this deed, the Kyckr Break Fee is only payable once and the maximum amount payable by Kyckr for any claims under or in connection with this deed is the amount of the Kyckr Break Fee.
- (d) Notwithstanding any other provision of this deed:
  - (i) a payment by Kyckr of the Kyckr Break Fee in accordance with this clause 11 represents the sole and absolute liability of Kyckr to RealWise under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Kyckr to RealWise in connection with this deed, other than in relation to fraud or wilful default by Kyckr of this deed; and
  - (ii) the amount of the Kyckr Break Fee payable to RealWise under this clause 11 shall be reduced by the amount of any loss or damage recovered by RealWise in relation to a breach of any other clause of this deed.
- (e) This clause 11 does not impose an obligation on Kyckr to pay the Kyckr Break Fee to the extent (and only to the extent) that the obligation to pay the Kyckr Break Fee:
  - (i) constitutes unacceptable circumstances as declared by the Australian Takeovers Panel; or
  - (ii) is held to be unenforceable by one party against another as determined by a court,

after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted.
- (f) During the course of the Australian Takeovers Panel or court proceedings (including any appeal or review thereof) referred to in clause 11.4(e), the parties must take all reasonable steps to ensure that any such declaration or determination has the minimum effect possible.
- (g) The parties must not make or cause or permit to be made, any application to a court or the Australian Takeovers Panel for or in relation to a determination referred to in clause 11.4(e).

### **11.5 Regulatory Intervention**

If any regulatory body (including ASIC or the Australian Takeovers Panel) or a court requires any modification (including requiring such a modification as a condition of consenting to or approving the Scheme or as a condition of not opposing the Scheme) to the Kyckr Break Fee, including as to the amount or circumstances in which it is to be paid, then:

- (a) the parties will accept this determination and amend this deed to that extent; and
- (b) it will not result in a breach of this deed or termination of the transactions contemplated by it.

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## **12 Reverse Break Fee**

### **12.1 Kyckr declaration**

Kyckr represents and warrants to RealWise that it would not have entered into this deed without the benefit of this clause 12 and it would not have entered into and continued the negotiations leading up to this deed unless Kyckr had a reasonable expectation that RealWise would agree to enter into a clause of this kind.

### **12.2 Acknowledgments in relation to RealWise Break Fee**

- (a) RealWise acknowledges that Kyckr has incurred and will incur significant costs, including significant opportunity costs, if they enter into this deed and the Scheme is subsequently not implemented. Those costs include external advisory costs, some internal costs of a similar kind and out-of-pocket expenses.
- (b) RealWise represents and warrants that:
  - (i) it has received legal advice on this deed and the operation of this clause 12; and
  - (ii) it considers that it is appropriate to agree to the terms in this clause 12 in order to secure the significant benefits to it resulting from the Scheme.
- (c) The parties acknowledge that:
  - (i) the amount of the costs is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
  - (ii) the RealWise Break Fee represents a genuine and reasonable estimate of cost and loss that Kyckr will suffer if the Scheme is subsequently not implemented.

### **12.3 RealWise Break Fee**

- (a) Subject to clauses 12.4 and 12.5, RealWise must pay to Kyckr the RealWise Break Fee, within 10 Business Days if Kyckr has terminated this deed pursuant to clause 13.1(a) and the Transaction does not complete.
- (b) The payment of the RealWise Break Fee by RealWise to Kyckr provided for in this clause 12.3 must be made within 10 Business Days of receipt of a written demand

for payment by Kyckr. The demand may only be made after the occurrence of an event referred to in clause 12.3(a).

#### 12.4 Qualifications

- (a) No RealWise Break Fee is payable if the Scheme becomes Effective. To the extent that any amounts have already been paid to Kyckr under this clause 12 and the Scheme becomes Effective, such amounts must be promptly refunded to RealWise (and in any case, within 5 Business Days after the Scheme becomes Effective).
- (b) The RealWise Break Fee is not payable by RealWise if, prior to the event in clause 12.3 occurring RealWise validly terminates this deed in accordance with clause 13.1(a).
- (c) Subject to clause 12.4(e), the RealWise Break Fee is only payable once and the maximum amount payable by RealWise for any claims under or in connection with this deed is the amount of the RealWise Break Fee.
- (d) Notwithstanding any other provision of this deed but subject to clause 12.4(e):
  - (i) a payment by RealWise of the RealWise Break Fee in accordance with this clause 12 represents the sole and absolute liability of RealWise to Kyckr under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by RealWise to Kyckr in connection with this deed, other than in relation to fraud or wilful default by RealWise of this deed; and
  - (ii) the amount of RealWise Break Fee payable to Kyckr under this clause 12 shall be reduced by the amount of any loss or damage recovered by Kyckr in relation to a breach of any other clause of this deed.
- (e) In the event that the Scheme becomes Effective, nothing in clauses 12.4(c) and 12.4(d) or otherwise in this deed will limit RealWise's obligation to pay the Scheme Consideration under and in accordance with clause 4.2 of this deed and the Deed Poll.
- (f) This clause 12 does not impose an obligation on RealWise to pay the RealWise Break Fee to the extent (and only to the extent) that the obligation to pay the RealWise Break Fee:
  - (i) constitutes unacceptable circumstances as declared by the Australian Takeovers Panel; or
  - (ii) is held to be unenforceable by one party against another as determined by a court,after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted.
- (g) During the course of the Australian Takeovers Panel or court proceedings (including any appeal or review thereof) referred to in clause 12.4(f), the parties must take all reasonable steps to ensure that any such declaration or determination has the minimum effect possible. The parties must not make or cause or permit to be made, any application to a court or the Australian Takeovers Panel for or in relation to a determination referred to in clause 12.4(f).

## 12.5 Regulatory Intervention

If any regulatory body (including ASIC or the Australian Takeovers Panel) or a court requires any modification (including requiring such a modification as a condition of consenting to or approving the Scheme or as a condition of not opposing the Scheme) to the RealWise Break Fee, including as to the amount or circumstances in which it is to be paid, then:

- (a) the parties will accept this determination and amend this deed to that extent; and
- (b) it will not result in a breach of this deed or termination of the transactions contemplated by it.

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## 13 Termination

### 13.1 Termination by either party

Either Kyckr or RealWise may, by notice in writing to the other, terminate this deed:

- (a) at any time prior to 8.00am on the Second Court Date if:
  - (i) either:
    - (A) the other party is in material breach of any of its obligations (including, for the avoidance of doubt, any breach of any of its material obligations) under this deed (other than the breaching party's respective representations and warranties not being true and correct);
    - (B) a representation and warranty given by the other party (being the Kyckr Warranties where the "other party" is Kyckr, and being the RealWise Warranties where the "other party" is RealWise) is not true and correct, where that breach of representation and warranty is material in the context of the Transaction as a whole;
  - (ii) the party wishing to terminate has given written notice to the other party in a timely manner setting out details of the relevant circumstance and stating an intention to terminate this deed; and
  - (iii) if capable of remedy, the relevant circumstances continue to exist for 15 Business Days (or any shorter period ending at 5.00 pm on the day before the Second Court Date) from the time the notice is given; or
- (b) in accordance with clause 3.7; or
- (c) if Kyckr Shareholders have not agreed to the Scheme at the Scheme Meeting by the requisite majorities and notice is not given under clause 3.7; or
- (d) at any time if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date.

### 13.2 Termination by Kyckr

Kyckr may, by notice in writing to RealWise, terminate this deed at any time prior to 8.00am on the Second Court Date if at any time before then a majority of the Kyckr Board has failed to make a recommendation in the Scheme Booklet or has changed, withdrawn

or modified their recommendation of the Scheme in the manner contemplated in clause 6.3.

### **13.3 Termination by RealWise**

RealWise may, by notice in writing to Kyckr, terminate this deed at any time prior to 8.00am on the Second Court Date if, at any time before then:

- (a) either:
  - (i) the Kyckr public announcement to be issued in accordance with clause 15.2;  
or
  - (ii) the Scheme Booklet,does not include the Recommendation and Voting Intention in respect of every Kyckr director;
- (b) any Kyckr director:
  - (i) fails to make the Recommendation or Voting Intention, or changes, withdraws, modifies or qualifies his or her Recommendation or Voting Intention;
  - (ii) adversely changes or withdraws its recommendation of the Scheme; or
  - (iii) recommends or supports a Competing Proposal,

in each case other than as expressly permitted by this deed.

### **13.4 Effect of termination**

- (a) In the event of termination of this deed under clause 3.7 or this clause 13, this deed will become void and have no effect, except that the provisions of clauses 9.6, 9.7, 11, 12, 14, 15 and 17.2 to 17.14 (inclusive) survive termination.
- (b) Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination.

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## **14 Releases**

### **14.1 Release of Kyckr Indemnified Parties**

- (a) Subject to any restrictions imposed by law, RealWise releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with Kyckr that it will not make any Claim, against any Kyckr Indemnified Party in connection with:
  - (i) any breach of any covenant, representation or warranty given by Kyckr under this deed;
  - (ii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
  - (iii) any failure to provide information,

except where a Kyckr Indemnified Party has acted in fraud or has engaged in wilful misconduct. To avoid doubt, nothing in this clause 14.1(a) limits the rights of RealWise to terminate this deed under clause 13.

- (b) Kyckr receives and holds the benefit of clause 14.1(a) as trustee for the Kyckr Indemnified Parties.

#### **14.2 Release of RealWise Indemnified Parties**

- (a) Subject to any restrictions imposed by law, Kyckr releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with RealWise that it will not make any Claim, against any RealWise Indemnified Party in connection with:

- (i) any breach of any covenant, representation or warranty given by RealWise under this deed;
- (ii) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
- (iii) any failure to provide information,

except where a RealWise Indemnified Party has acted in fraud or has engaged in wilful misconduct. To avoid doubt, nothing in this clause 14.2(a) limits the rights of Kyckr to terminate this deed under clause 13.

- (b) RealWise receives and holds the benefit of clause 14.2(a) as trustee for the RealWise Indemnified Parties.

#### **14.3 Directors and officers**

- (a) Subject to the Scheme becoming Effective and the Transaction completing, RealWise undertakes in favour of each member of the Kyckr Group and each other Kyckr Indemnified Party that it will:
  - (i) for a period of seven years from the Implementation Date, ensure that the constitutions of Kyckr and each other member of the Kyckr Group contains rules that provide for each company to indemnify each of its current and previous directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Kyckr Group; and
  - (ii) procure that each member of the Kyckr Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.
- (b) RealWise acknowledges that, notwithstanding any other provision of this deed, Kyckr may, prior to the Implementation Date, enter into arrangements to secure directors' and officers' run-off insurance for the Kyckr Group's directors and officers for up to a period of seven years from the retirement date of each director and officer (**D&O Policy**), and that any actions to facilitate that insurance or in connection with such insurance will not be a Prescribed Occurrence or breach any provision of this deed, or give rise to any right to terminate this deed, and will be disregarded when assessing the operation of any other part of this deed, provided that:



- (i) Kyckr uses all reasonable endeavours to place the D&O Policy on reasonable commercial terms; and
    - (ii) the scope and amount of the cover of the D&O Policy is on the same terms, or terms that are reasonably the same in all material respects, as the existing insurance policies in place for the directors and officers of Kyckr as at the date of this deed.
  - (c) If Kyckr enters into arrangements with respect to a D&O Policy, from the Implementation Date, Kyckr must not, and RealWise must procure that Kyckr does not:
    - (i) vary or cancel the D&O Policy; or
    - (ii) unless required under the D&O Policy, commit any act or omission that may prejudice any claim by a director or officer of Kyckr under the D&O Policy.
  - (d) The undertakings contained in clause 14.3(a) are subject to any Corporations Act restriction and will be read down accordingly.
  - (e) Kyckr receives and holds the benefit of clause 14.3(a), to the extent it relates to the other Kyckr Indemnified Parties, as trustee for them.
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## **15 Confidentiality and Public Announcement**

### **15.1 Confidentiality**

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Agreement save that the terms of this deed will prevail over the Confidentiality Agreement to the extent of any inconsistency.

### **15.2 Public Announcements on execution**

Immediately after the date of this deed, the parties must issue public announcements in the form previously agreed to in writing between them.

### **15.3 Further public announcements**

- (a) Subject to clause 15.3(b), the parties must:
  - (i) consult with each other before issuing and, to the extent practicable, give each other a reasonable opportunity to review and consider in good faith the views of the other party regarding, any press release or other public statement with respect to the Transaction; and
  - (ii) must not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable law, fiduciary duties or the Listing Rules.
- (b) The provisions of clause 15.3(a) do not apply to:
  - (i) any announcement, document or publication in connection with a Competing Proposal or withdrawal of a Kyckr Board recommendation; or
  - (ii) any disclosure by Kyckr or RealWise of any information concerning this deed or the transactions contemplated by this deed in connection with any dispute

between the parties regarding this deed, the Scheme or the transactions contemplated by this deed.

#### 15.4 Disclosure on termination of agreement

The parties agree that, if this deed is terminated in accordance with its terms, Kyckr may disclose the fact that this deed has been terminated, where such disclosure is required by law or the Listing Rules or is in the reasonable opinion of Kyckr required to ensure that the market in its securities is properly informed.

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## 16 Notices

### 16.1 Service of notices

- (a) A notice, consent or other communication under this deed (**Notice**) is only effective if:
- (i) it is in writing, signed by or on behalf of the party giving it; and
  - (ii) it is directed to the recipient's address for notices as follows:

#### **Kyckr**

Address: Level 16, 1 Market Street, Sydney NSW 2000  
E-mail: [rajarshi.ray@kyckr.com](mailto:rajarshi.ray@kyckr.com)  
Attn: Rajarshi Ray

with a copy to Addisons:

Address: Level 12, 60 Carrington Street, Sydney NSW 2000  
E-mail: [jeff.mansfield@addisons.com](mailto:jeff.mansfield@addisons.com) & [li-jean.chew@addisons.com](mailto:li-jean.chew@addisons.com)  
Attn: Jeff Mansfield & Li-Jean Chew

#### **RealWise**

Address: Unit 3, 1 Coggins Place, Mascot NSW 2020  
E-mail: [s.karousos@realwiseholdings.com](mailto:s.karousos@realwiseholdings.com)  
Attn: Stratos Karousos

with a copy to Gilbert + Tobin:

Address: Level 35, Tower 2, International Towers Sydney,  
200 Barangaroo Avenue, Barangaroo, NSW 2000  
E-mail: [ccondoleon@gtlaw.com.au](mailto:ccondoleon@gtlaw.com.au)  
Attn: Costas Condoleon

- (b) If a party changes address and fails to notify the other party of this change and the new address, delivery of Notices to a new address, or otherwise brought to the attention of the addressee, are deemed compliance with the notice obligations under this clause 16.1.

### 16.2 Effective on receipt

A Notice given in accordance with clause 16.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia); or
- (c) if sent by email:
  - (i) when the sender receives an automated message confirming delivery;
  - (ii) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; or
  - (iii) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

but if the delivery or transmission under clause 16.2(a) or 16.2(b) is not on a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

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## 17 General

### 17.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this deed.

### 17.2 Payments

Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this deed, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

### 17.3 Consents or approvals

Except as expressly provided in this deed, a party may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under this deed.

### 17.4 GST

- (a) Any reference in this clause 17.4 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 17.4(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 17.4(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 17.4 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.
- (f) Unless expressly included, any monetary thresholds specified in this deed are exclusive of GST.

## 17.5 Stamp duty

RealWise must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme (including the acquisition or transfer of Scheme Shares pursuant to the Scheme).

## 17.6 Expenses

Except as otherwise provided in this deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this deed and the Scheme Booklet and the proposed, attempted or actual implementation of this deed and the Scheme.

## 17.7 Amendments

This deed may only be varied by a document signed by or on behalf of each of the parties.

## 17.8 Assignment

A party must not assign or novate this deed or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the other party, which consent may be withheld at the absolute discretion of the party from whom consent is sought.

## **17.9 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

## **17.10 Electronic signing and Counterparts**

- (a) To the extent permitted by law, this deed may be electronically signed.
- (b) Each party consents to this deed being electronically signed by or on behalf of a party.
- (c) Where this deed is electronically signed by or on behalf of a party, the party warrants and agrees that:
  - (i) the electronic signature has been used to identify the person signing and to indicate that the party intends to be bound by electronic signature; and
  - (ii) they or anyone signing on their behalf has affixed their own electronic signature.
- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart (including each electronic or scanned copy of a counterpart) constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the email address of the other party specified in clause 16, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

## **17.11 Entire agreement**

This deed and any other documents specified by RealWise and Kyckr for the purposes of this clause 17.11:

- (a) embody the entire understanding of the parties and constitute the entire terms agreed on between the parties with respect to their subject matter; and
- (b) supersede any prior agreement (whether or not in writing) between the parties with respect to their subject matter.

#### **17.12 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.
- (c) For the avoidance of doubt, Kyckr makes no representation or warranty whatsoever:
  - (i) in relation to any information, document, representation, statement, view or opinion to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking at the date of this deed; or
  - (ii) as to the adequacy or sufficiency of the Disclosure Materials for the purpose of RealWise acquiring the Scheme Shares or its entry into the Transaction, which are matters of which RealWise has to satisfy itself.

#### **17.13 No merger**

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

#### **17.14 Governing law**

- (a) This deed is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

### 1    Dictionary

#### 1.1    Defined terms

In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

**Accounting Standards** means:

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

**Adviser** means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to Kyckr or RealWise.

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

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

**Authorised Person** means, in respect of a person:

- (a) a director, officer, agent or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales.

**Change of Control Requirements** has the meaning given to that term in clause 7.5.

**Claim** means a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

**Competing Proposal** means any proposal, offer or transaction by a Third Party that, if completed substantially in accordance with its terms, would result in:

- (a) a Third Party:
  - (i) acquiring a relevant interest or voting power in 15% or more of the Kyckr Shares;
  - (ii) acquiring, obtaining a right to acquire, or otherwise obtaining a legal, beneficial or economic interest (including by way of equity swap or other

synthetic, economic or derivative transaction) in 15% or more of the Kyckr Shares;

- (iii) directly or indirectly acquiring, obtaining a right to acquire, or otherwise obtaining a legal, beneficial or economic interest in all or a substantial part of the business conducted by, or assets or property of, Kyckr or Kyckr Group (taken as a whole);
  - (iv) acquiring Control of Kyckr; or
  - (v) otherwise acquiring, or merging with, Kyckr; or
- (b) Kyckr or RealWise being required to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed company structure, joint venture or partnership, synthetic merger, deed of company arrangements, debt for equity arrangement or any proposal by Kyckr to implement any reorganisation of capital or other transaction or arrangement.

**Conditions** means the conditions set out in clause 3.1 and **Condition** means any one of them.

**Confidentiality Agreement** means the confidentiality agreement between Kyckr and RealWise dated 24 June 2022.

**Consultation Notice** has the meaning given to that term in clause 3.7(a)(i).

**Control** has the meaning given under section 50AA of the Corporations Act. **Controlled** has the equivalent meaning.

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

**Counter Proposal** has the meaning given to that term in clause 10.6(c).

**Court** means the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act as Kyckr and RealWise may agree in writing.

**Deed Poll** means the deed poll to be executed by RealWise prior to the First Court Date, substantially in the form set out in Schedule 4 or in such other form as is acceptable to Kyckr acting reasonably.

**Disclosure Letter** means the letter so entitled from Kyckr provided to RealWise on or prior to the date of this deed and countersigned by RealWise.

**Disclosure Materials** means the information and materials disclosed by or on behalf of the Kyckr Group to any RealWise Group member or its Authorised Persons pursuant to or as described in the Disclosure Letter.

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

**Effective Date**, with respect to the Scheme, means the date on which the Scheme becomes Effective.



**End Date** means the later of:

- (a) the date that is 6 months after the date of this deed; or
- (b) such other date and time agreed in writing between RealWise and Kyckr.

**Excluded Shareholder** means any Kyckr Shareholder who is RealWise or an entity that is wholly-owned by RealWise.

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

- (a) the End Date;
- (b) the Effective Date; and
- (c) the date this deed is terminated in accordance with its terms.

**Fairly Disclosed** means disclosed in writing to any of that party or any of its Authorised Persons in good faith and in sufficient detail so as to reasonably apprise a party (or one of its Authorised Persons) as to the nature and scope of the relevant matter, event or circumstance.

**First Court Date** means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

**GST** means a goods and services tax, or similar value added tax, levied or imposed in Australia under the GST Law.

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

**GST Exclusive Consideration** has the meaning given to that term in clause 17.4(c).

**GST Law** has the meaning given to it in the GST Act.

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

**Implementation Date** means, with respect to the Scheme, the fifth Business Day, or such other Business Day as Kyckr and RealWise agree, following the Record Date for the Scheme.

**Independent Expert** means an expert, independent of the parties, engaged by Kyckr in good faith to opine on whether the Scheme is in the best interests of Kyckr Shareholders.

**Independent Expert's Report** means the report from the Independent Expert commissioned by Kyckr for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in its opinion, the Scheme is in the best interests

of Kyckr Shareholders, and includes any update, revision or amendment of, or supplement to, that report by the Independent Expert.

**Insolvency Event** means in relation to a person:

- (a) **(insolvency official)** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **(arrangements)** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **(winding up)** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **(ceasing business)** the person ceases or threatens to cease to carry on business;
- (e) **(insolvency)** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (f) **(deregistration)** the person being deregistered as a company or otherwise dissolved;
- (g) **(deed of company arrangement)** the person executing a deed of company arrangement;
- (h) **(person as trustee or partner)** the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
  - (i) a breach of trust or obligation as partner by the person;
  - (ii) the person acting outside the scope of its powers as trustee or partner;
  - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
  - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (i) **(analogous events)** anything analogous to those set out in any of paragraphs (a) to (f) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person shall be **Insolvent** if any event specified in paragraphs (a) to (i) inclusive occurs in respect of that person.

**Kyckr Board** means the board of directors of Kyckr as constituted from time to time (or any committee of the board of directors of Kyckr constituted from time to time to consider the Transaction on behalf of Kyckr).

**Kyckr Break Fee** means \$400,000.

**Kyckr Group** means Kyckr and its Subsidiaries.

**Kyckr Indemnified Parties** means each Authorised Person of a member of the Kyckr Group.

**Kyckr Information** means information regarding the Kyckr Group provided by Kyckr for inclusion in the Scheme Booklet (which for the avoidance of doubt does not include the RealWise Information or the Independent Expert's Report).

**Kyckr Knowledge Individuals** means the individuals agreed between Kyckr and RealWise as the "Kyckr Knowledge Individuals".

**Kyckr Option** means an option conferring on its holder the right, but not the obligation, to acquire a Kyckr Share.

**Kyckr Performance Right** means a right to be issued a Kyckr Share.

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

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

**Kyckr Shareholder** means each person who is registered in the Kyckr Register as a holder of Kyckr Shares.

**Kyckr Warranties** means the representations and warranties of Kyckr set out in clause 9.3.

**Listing Rules** means the official listing rules of ASX as amended from time to time.

**Material Adverse Change** means:

- (a) an event, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to RealWise (whether it becomes public or not) after the date of this deed, that (individually or when aggregated with other events, occurrences or matters) has or is reasonably likely to have the effect of diminishing the annual revenue of the Kyckr Group by more than \$400,000 (determined in accordance with Accounting Standards); or
- (b) any of the following events, occurrences or matters occurs, is announced, is disclosed or otherwise becomes known to RealWise (whether it becomes public or not) after the date of this deed:
  - (i) a serious ransomware or cyberattack that results in a significant outage of Kyckr's systems or that is reasonably likely to result in material loss of Kyckr's reputation or a material loss of trust in Kyckr, its business or its systems;
  - (ii) a substantial or reportable data leak or data exfiltration affecting Kyckr or any of the data or information it owns, controls or holds (including customer data);

- (iii) a substantial or reportable General Data Protection Regulation or similar data privacy law breach that is reasonably likely to result in material loss of Kyckr's reputation or a material loss of trust in Kyckr, its business or its systems; or
- (iv) any improper acts or omissions of or by one or more of Kyckr's officers, directors or senior managers that is reasonably likely to result in material loss of Kyckr's reputation or a material loss of trust in Kyckr, its business or its systems,

other than events, occurrences or matters:

- (c) required to be done, procured by Kyckr, or expressly required or permitted, pursuant to this deed or the Scheme;
- (d) to the extent it was Fairly Disclosed to the ASX in the 12 months before the date of this deed, or was Fairly Disclosed in the Disclosure Materials or in the Relevant Searches;
- (e) to the extent it was actually known to the RealWise Group prior to the date of the deed (which does not include mere knowledge of the risk of an event, matter or circumstance occurring);
- (f) which RealWise has previously approved or requested in writing;
- (g) which arise from:
  - (i) changes in exchange rates or interest rates;
  - (ii) general economic, political or business conditions;
  - (iii) changes to accounting standards or policies, applicable laws, or policies of a Governmental Agency, or the interpretation of any of them;
  - (iv) any act of terrorism, outbreak or escalation of war (whether or not declared) or major hostilities, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, other natural disaster or adverse weather conditions or the like; or
  - (v) the COVID-19 virus (or any mutation, variation or derivative), including in connection with lockdowns, travel restrictions, quarantining, closures, social distancing and restrictions of and on activities, venues and gatherings or from any law, order, rule, recommendation, guidance or direction of any Governmental Agency in relation thereto.

**Material Contracts** means any agreement or arrangement to which Kyckr or a member of the Kyckr Group is party, that:

- (a) requires or may require payments to or by Kyckr or a member of the Kyckr Group in excess of \$200,000 in aggregate; or
- (b) might otherwise reasonably be expected to be material to the operations or profitability of Kyckr or a member of the Kyckr Group.

**Notice** has the meaning given to that term in clause 16.1(a).

**PPS Register** means the register established under the PPSA.

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

**Prescribed Occurrence** means the occurrence of any of the following on or after the date of this deed and before 8.00am on the Second Court Date:

- (a) Kyckr converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) Kyckr resolves to reduce its share capital in any way;
- (c) any member of the Kyckr Group:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Kyckr Group declares, pays or distributes any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital;
- (e) any member of the Kyckr Group issues shares, or grants a performance right, a phantom performance right, or an option over its shares, or agrees to make such an issue or grant such a performance right, phantom performance right or an option;
- (f) any member of the Kyckr Group issues, or agrees to issue, convertible notes;
- (g) any member of the Kyckr Group disposes, or agrees to dispose, of the whole, or a substantial part, of the business or property of the Kyckr Group;
- (h) any member of the Kyckr Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the usual and ordinary course of business consistent with past practice; or
- (i) any member of the Kyckr Group becomes Insolvent,

provided that a Prescribed Occurrence will not include any matter:

- (j) required to be done or procured by Kyckr pursuant to this deed or the Scheme;
- (k) to the extent it is Fairly Disclosed in filings of Kyckr with the ASX in the 12 months prior to the date of this deed;
- (l) to the extent it is Fairly Disclosed in the Disclosure Materials or in the Relevant Searches;
- (m) which is within the actual knowledge of RealWise before the date of this deed;
- (n) required by law, regulation or by an order of a court or Governmental Agency;
- (o) expressly permitted pursuant to this deed; or
- (p) the undertaking of which RealWise has previously approved in writing (which approval must not be unreasonably withheld or delayed).

**RealWise Break Fee** means \$400,000.

**RealWise Group** means RealWise and any Related Bodies Corporate, and the Relevant Person.

**RealWise Indemnified Parties** means each Authorised Person of a member of the RealWise Group.

**RealWise Information** means information regarding RealWise that is provided by or on behalf of RealWise to Kyckr in writing for inclusion in the Scheme Booklet, as required by clause 5.2(b).

**RealWise Knowledge Individuals** means the individuals agreed between Kyckr and RealWise as the “RealWise Knowledge Individuals”.

**RealWise Warranties** means the representations and warranties of RealWise set out in clause 9.1.

**Receiving Party** has the meaning given to that term in clause 17.2.

**Recipient** has the meaning given to that term in clause 17.4(c).

**Recommendation** has the meaning given to the term in clause 6.2(a).

**Record Date** means, in respect of the Scheme, 7.00pm on the third Business Day (or such other Business Day as Kyckr and RealWise agree in writing) following the Effective Date.

**Regulatory Authority** means:

- (a) a government or governmental, semi-governmental, administrative, fiscal or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, tribunal, agency, board, authority or organisation of any government;
- (c) any regulatory organisation established under statute; and
- (d) includes the FIRB, the ACCC, ASX and ASIC.

**Related Body Corporate** of a person, means a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

**Relevant Expense** has the meaning given to that term in clause 17.4(e).

**Relevant Person** means Richard White.

**Relevant Searches** has the meaning given to that term in clause 9.3(c)(iii).

**Representative** of a party includes an employee, agent, officer, director, adviser, partner, joint venturer or sub-contractor of that party.

**Rival Acquirer** has the meaning given to that term in clause 10.6(a).

**RG 60** means Regulatory Guide 60 issued by ASIC.

**Scheme** means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Kyckr and Scheme Shareholders in respect of all Scheme

Shares, substantially in the form set out in Schedule 3 or in such other form as Kyckr and RealWise agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Kyckr and RealWise.

**Scheme Booklet** means the explanatory booklet to be prepared by Kyckr in respect of the Transaction in accordance with the terms of this deed and to be despatched to Kyckr Shareholders.

**Scheme Consideration** means an amount of \$0.08 for each Scheme Share.

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

**Scheme Share** means a Kyckr Share on issue as at the Record Date other than any Kyckr Share then held by an Excluded Shareholder (but including any such Kyckr Share held on behalf of one or more third parties or otherwise in a fiduciary capacity).

**Scheme Shareholder** means a person who holds one or more Scheme Shares as at the Record Date.

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

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

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal which the Kyckr Board determines, acting in good faith and in order to satisfy what the Kyckr Board reasonably considers to be its fiduciary or statutory duties, would, if completed substantially in accordance with its terms, be likely to result in a transaction more favourable to Kyckr Shareholders as a whole than the Transaction (including the latest Counter Proposal provided by RealWise to Kyckr) having regard to all aspects of the Competing Proposal, including consideration, conditionality, funding, certainty and timing and the identity, reputation and financial condition of the proponent.

**Supplier** has the meaning given to that term in clause 17.4(c).

**Third Party** means a person other than members of the RealWise Group.

**Timetable** means the indicative timetable in relation to the Transaction set out in Schedule 2 with such modifications as may be agreed in writing by Kyckr and RealWise.

**Transaction** means the proposed acquisition by RealWise, in accordance with the terms and conditions of this deed, of all of the Kyckr Shares (other than the Kyckr Shares held by an Excluded Shareholder) through the implementation of the Scheme.

**Voting Intention** has the meaning given to that term in clause 6.2(b).

## 1.2 Interpretation

In this deed the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
  - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its agents, successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
  - (vi) this deed includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
  - (ix) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (x) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) a reference to time is to Sydney, Australia time;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it; and



- (k) an obligation imposed by this deed on a party to use reasonable endeavours to ensure that an act or thing occurs or does not occur is to be read as including an obligation on that party to cause its subsidiaries to use reasonable endeavours to ensure that such act or thing occurs or does not occur, as the case may be.

### **1.3 Knowledge, belief or awareness of Kyckr**

- (a) If any Kyckr Warranty is qualified by the expression “so far as Kyckr is aware” or any similar expression referring to Kyckr’s awareness, knowledge or belief, the facts of which Kyckr is aware or that are within Kyckr’s knowledge are taken to be limited to all facts of which:
  - (i) the Kyckr Knowledge Individuals are actually aware at the relevant time; or
  - (ii) all matters which the Kyckr Knowledge Individuals would reasonably be expected to be aware before the date of this deed had that person made reasonable enquiries of their direct reports.
- (b) The Kyckr Knowledge Individuals will not bear any personal liability as a result of them being included in paragraph (a) above.

### **1.4 Knowledge, belief or awareness of RealWise**

- (a) For the purposes of any reference in this deed to the actual knowledge of RealWise or any similar expression referring to RealWise’s awareness, knowledge or belief, the facts of which RealWise is aware or that are within RealWise’s knowledge are taken to include all facts of which any of the RealWise Knowledge Individuals are actually aware at the relevant time.
- (b) The RealWise Knowledge Individuals will not bear any personal liability as a result of them being included in paragraph (a) above.

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## Schedule 2      Indicative Timetable

Event	Date
Enter into Scheme Implementation Deed	6 July 2022
Lodge Scheme Booklet with ASIC for review and comment	Early to mid August 2022
First Court Date	September 2022
Scheme Booklet registered with ASIC	September 2022
Despatch Scheme Booklet to Kyckr Shareholders	September 2022
Scheme Meeting	October 2022
Second Court Date	October 2022
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	October / Early November 2022
Record Date	October / Early November 2022
Implementation Date: Pay Scheme Consideration to participants in the Scheme. Reconstitute boards of each Kyckr Group company.	October / Early November 2022

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## Schedule 3      Scheme of arrangement

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## **Scheme of arrangement**

Kyckr Limited

Each person who holds one or more Scheme Shares

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## Parties

- 1 **Kyckr Limited (ACN 609 323 257)** of Level 16, 1 Market Street, Sydney NSW 2000 (**Kyckr**)
  - 2 Each person who holds one or more Scheme Shares (**Scheme Shareholders**)
- 

## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1, has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

### 1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

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## 2 Preliminary matters

- (a) Kyckr is a public company limited by shares, incorporated in Australia and registered in Victoria, and is admitted to the official list of ASX.
- (b) As at the date of the Scheme Implementation Deed, Kyckr had on issue or had granted (as applicable):
  - (i) 537,599,849 Kyckr Shares;
  - (ii) 4,912,280 Kyckr Performance Rights; and
  - (iii) 16,486,827 Kyckr Options, comprising of:
    - (A) 1,000,000 options exercisable at \$0.2000 on or before 10 August 2022;
    - (B) 1,000,000 options exercisable at \$0.2600 on or before 10 August 2022;
    - (C) 3,000,000 options exercisable at \$0.1005 on or before 1 January 2023;
    - (D) 559,900 options exercisable at \$0.2900 on or before 27 November 2023;
    - (E) 3,000,000 options exercisable at \$0.1650 on or before 1 January 2024;

- (F) 3,000,000 options exercisable at \$0.1140 on or before 1 January 2025; and
  - (G) 4,926,927 options exercisable at \$0.0690 on or before 22 November 2025.
- (c) RealWise is a proprietary company limited by shares incorporated in Australia.
  - (d) On [●], RealWise and Kyckr entered into the Scheme Implementation Deed pursuant to which, amongst other things, Kyckr has agreed to propose this Scheme to the Scheme Shareholders, and each of Kyckr and RealWise have agreed to take certain steps to give effect to this Scheme.
  - (e) If this Scheme becomes Effective, then all the Scheme Shares and all of the rights and entitlements attaching to them on the Implementation Date will be transferred to RealWise, and the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the provisions of this Scheme and the Deed Poll.
  - (f) This Scheme attributes actions to RealWise but does not itself impose obligations on it to perform those actions. RealWise has entered into the Deed Poll for the purposes of covenanting in favour of Scheme Shareholders to perform all actions attributed to them under this Scheme, including the obligation to provide or procure the provision of the Scheme Consideration to the Scheme Shareholders.

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## 3 Conditions

### 3.1 Conditions to this Scheme

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

- (a) as at 8.00am on the Second Court Date, each of the conditions set out in clause 3.1 of the Scheme Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(d) of the Scheme Implementation Deed) have been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
- (b) as at 8.00am on the Second Court Date, neither the Scheme Implementation Deed nor the Deed Poll have been terminated in accordance with their terms;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act either unconditionally or subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and that are agreed to by RealWise and Kyckr (such agreement not to be unreasonably withheld or delayed);
- (d) such conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme, and that are agreed to by RealWise and Kyckr (each acting reasonably), have been satisfied or waived; and
- (e) the coming into effect of the Scheme Order, in accordance with section 411(10) of the Corporations Act, on or before the End Date.



### 3.2 Certificate

Kyckr will provide to the Court on the Second Court Date certificates signed by RealWise and Kyckr (or such other evidence as the Court requests) confirming (in respect of matters within their knowledge) whether or not the conditions in clauses 3.1(a) and 3.1(b) to this Scheme have been satisfied or waived in accordance with the terms of the Scheme Implementation Deed as at 8.00am on the Second Court Date.

---

## 4 The Scheme

- (a) Subject to clause 3.1, this Scheme takes effect for all purposes on and from the Effective Date.
- (b) This Scheme will lapse and be of no further force or effect if:
  - (i) the Effective Date has not occurred on or before the End Date; or
  - (ii) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with its terms unless Kyckr and RealWise otherwise agree in writing.

---

## 5 Implementation of the Scheme

### 5.1 Lodgement of Scheme Order with ASIC

If the conditions in clauses 3.1(a) to 3.1(d) are satisfied or waived, Kyckr must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Scheme Order approving this Scheme as soon as possible after, and in any event by 5.00pm on the first Business Day after, the day on which the Court approves this Scheme.

### 5.2 Transfer of Scheme Shares

Subject to this Scheme becoming Effective, the following actions will occur (in the order set out below):

- (a) RealWise will deposit (or procure the deposit of) the Scheme Consideration in the manner contemplated by clause 6.2(a); and
- (b) subject to clause 5.2(a) being satisfied, on the Implementation Date:
  - (i) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to RealWise, without the need for any further act by any Scheme Shareholder (other than acts performed by Kyckr as attorney and agent for Scheme Shareholders under clause 9) by:
    - (A) Kyckr delivering to RealWise a duly completed Scheme Transfer (and one or more Scheme Transfers can be a master transfer on all or part of all Scheme Shares), executed on behalf of the Scheme Shareholders by Kyckr; and
    - (B) RealWise duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Kyckr for registration; and

- (ii) immediately following receipt of the Scheme Transfer in accordance with clause 5.2(b)(i)(B) or the transfer being effected under section 1074D of the Corporations Act (as the case may be), Kyckr must enter, or procure the entry of, the name of RealWise in the Register in respect of all the Scheme Shares transferred to RealWise in accordance with this Scheme.

---

## 6 Scheme Consideration

### 6.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, on the Implementation Date, in consideration for the transfer to RealWise of the Scheme Shares, each Scheme Shareholder will be entitled to the Scheme Consideration in respect of each of their Scheme Shares.

### 6.2 Provision of Scheme Consideration

- (a) RealWise must, by no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to the Scheme Shareholders in an Australian dollar denominated trust account operated by or on behalf of Kyckr as trustee of the Scheme Shareholders (the **Trust Account**) provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to RealWise's account.
- (b) Subject to RealWise having complied with clause 6.2(a), Kyckr must, on the Implementation Date and from the Trust Account, pay or procure the payment to each Scheme Shareholder the Scheme Consideration attributable to that Scheme Shareholder, based on the number of Scheme Shares held by that Scheme Shareholder as at the Record Date.
- (c) Kyckr's obligation under clause 6.2(b) will be satisfied by Kyckr (in its absolute discretion):
  - (i) where a Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Kyckr Share Registry to receive dividend payments from Kyckr by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount of Australian currency by electronic means in accordance with that election; or
  - (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Shareholder by an appropriate authority from the Scheme Shareholder to Kyckr; or
  - (iii) whether or not the 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 to the Scheme Shareholder by prepaid post to their address shown in the Kyckr Register as at the Record Date, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 6.3), for the relevant amount.
- (d) If, following satisfaction of RealWise's obligations under clause 6.2(a) but prior to the occurrence of all of the events described in clause 5, this Scheme lapses under clause 4(b):

- (i) Kyckr must immediately repay (or cause to be repaid) to or at the direction of RealWise the funds that were deposited in the Trust Account plus any interest on the amounts deposited (less bank fees and other charges);
- (ii) the obligation to transfer Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, to RealWise under clause 5 will immediately cease;
- (iii) RealWise must return the Scheme Transfers, if provided pursuant to clause 5; and
- (iv) Kyckr is no longer obliged to enter, or procure the entry of, the name of RealWise in the Kyckr Register in accordance with clause 5.

### **6.3 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to Scheme Shareholders will be payable to the joint holders and will be forwarded to the holder whose name appears first in the Kyckr Register on the Record Date; and
- (b) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Kyckr Register as at the Record Date or to the joint holders.

### **6.4 Unclaimed monies**

- (a) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (b) Kyckr may cancel a cheque issued under this clause 6.2(c) if the cheque:
  - (i) is returned to Kyckr; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (c) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Kyckr (or the Kyckr Share Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Kyckr must reissue a cheque that was previously cancelled under this clause 6.4.

### **6.5 Remaining monies (if any) in Trust Account**

To the extent that, following satisfaction of Kyckr's obligations under the provisions of clause 5 and the other provisions of this clause 6 and provided RealWise has by that time acquired the Scheme Shares in accordance with this Scheme, there is a surplus in the Trust Account, then subject to compliance with applicable laws, the other terms of this Scheme, the Deed Poll and the Scheme Implementation Deed, that surplus (less any bank fees and related charges) shall be paid by Kyckr (or the Kyckr Share Registry on Kyckr's behalf) to RealWise.

## **6.6 Orders of a Court or Governmental Agency**

- (a) If written notice is given to Kyckr (or the Kyckr Share Registry) of an order or direction made by a court or Governmental Agency that:
  - (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Kyckr in accordance with clause 5, then Kyckr shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (ii) prevents Kyckr from providing consideration to any particular Scheme Shareholder in accordance with clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Kyckr shall be entitled to (as applicable) retain an amount equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration in accordance with clause 5 as permitted by that (or another) court or direction or otherwise by law.
- (b) To the extent that amounts are so deducted or withheld in accordance with clause 6.6(a), such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted as required.

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## **7 Dealings in Kyckr Shares**

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

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

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Kyckr Register as the holder of the relevant Kyckr Shares on or before the Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before 5.00pm on the Record Date at the place where the Kyckr Register is kept,

and Kyckr must not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders nor for any other purpose (except a transfer to RealWise pursuant to this Scheme and any subsequent transfer by RealWise or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### **7.2 Register**

- (a) Kyckr must register, or cause to be registered, all registrable transmission applications or transfers of the Scheme Shares in accordance with clause 7.1(b) on or before the Record Date.
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that Scheme Shareholder) must not dispose of, or purport or

agree to dispose of, any Scheme Shares or any interest in them after 5.00pm on the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Kyckr shall be entitled to disregard any such disposal, purported disposal or agreement.

- (c) For the purpose of determining entitlements to the Scheme Consideration, Kyckr must maintain the Kyckr Register in accordance with the provisions of this clause 7.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Kyckr Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All certificates and statements of holding for Scheme Shares (other than statements of holding in favour of RealWise) will cease to have effect after the Record Date as documents of title (or evidence thereof) in respect of those shares and, as from the Record Date, each entry on the Register (other than entries on the Register in respect of RealWise and subsequent transferees) will cease to have effect, except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (e) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, Kyckr will ensure that details of the names, registered addresses and holdings of Kyckr Shares for each Scheme Shareholder as shown in the Kyckr Register as at the Record Date are available to RealWise in the form RealWise reasonably requires.

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## 8 Quotation of Kyckr Shares

- (a) Kyckr must apply to ASX to suspend trading of Kyckr Shares on the ASX with effect from the close of trading on the Effective Date.
- (b) Kyckr will apply:
  - (i) to the ASX for termination of the official quotation of Kyckr Shares on the ASX; and
  - (ii) to have itself removed from the official list of the ASX,

in each case with effect on and from the close of the trading day immediately following the Implementation Date or on such other date after the Implementation Date as determined by RealWise.

---

## 9 General Scheme provisions

### 9.1 Appointment of agent and attorney

- (a) On this Scheme becoming Effective, each Scheme Shareholder, without the need for any further act, irrevocably appoints Kyckr as its agent and attorney for the purposes of:
  - (i) executing and delivering any document or form or doing any other act necessary or expedient to give effect to the terms of this Scheme including, without limitation, the effecting of a valid transfer or transfers or the execution and delivery of the Share Transfer; and
  - (ii) enforcing the Deed Poll against RealWise,

and Kyckr accepts such appointment.

- (b) Kyckr, as agent and attorney of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 9.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

## **9.2 Enforcement of Deed Poll**

Kyckr undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against RealWise (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

## **9.3 Scheme Shareholders' agreements**

Under this Scheme:

- (a) each Scheme Shareholder irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to RealWise in accordance with the terms of this Scheme;
- (b) each Scheme Shareholder irrevocably agrees to the variation, cancellation or modification (if any) of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) each Scheme Shareholder irrevocably acknowledges that this Scheme binds Kyckr and all Scheme 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 constitution of Kyckr; and
- (d) each Scheme Shareholder irrevocably consents to Kyckr and RealWise 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,

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

## **9.4 Warranty by Scheme Shareholders**

- (a) Each Scheme Shareholder is deemed to have warranted to RealWise, and to the extent enforceable, to have appointed and authorised Kyckr as that Scheme Shareholder's agent and attorney to warrant to RealWise, that:
  - (i) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to RealWise pursuant to this Scheme, be fully paid and free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and
  - (ii) they have full power and capacity to sell and to transfer their Scheme Shares, and all rights and entitlements attaching to those Scheme Shares, to RealWise under this Scheme.

- (b) Kyckr undertakes in favour of each Scheme Shareholder that it will provide such warranty, to the extent enforceable, to RealWise on behalf of that Scheme Shareholder.

## 9.5 Title to Scheme Shares

- (a) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in accordance with clause 6.2, RealWise will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Kyckr of RealWise in the Kyckr 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 RealWise will, at the time of transfer of them to RealWise, vest in RealWise free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.

## 9.6 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in accordance with clause 6.2, and until Kyckr registers RealWise as the holder of all Scheme Shares in the Kyckr Register, each Scheme Shareholder:

- (a) is deemed to have appointed RealWise as attorney and agent (and directed RealWise in each such capacity) to appoint any director, officer, secretary or agent nominated by RealWise as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution;
- (b) acknowledges that no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 9.6(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as RealWise reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers conferred in clause 9.6(a), RealWise and any director, officer, secretary or agent nominated by RealWise under that clause may act in the best interests of RealWise as the intended registered holder of the Scheme Shares.

## 9.7 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Kyckr, 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 Kyckr's registered office or at the Kyckr Share Registry as the case may be.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Kyckr Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

## **9.8 Inconsistencies**

This Scheme binds Kyckr and all Scheme Shareholders, and to the extent of any inconsistency, overrides the Kyckr constitution.

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

None of RealWise, Kyckr nor any director, officer, secretary or employee of RealWise or Kyckr will be liable for anything done or omitted to be done in good faith in the performance of this Scheme or the Deed Poll.

## **9.10 Further assurance**

Each Scheme Shareholder and Kyckr 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 and the transactions contemplated by it.

## **9.11 Alterations and conditions**

If the Court proposes to approve this Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act, Kyckr may, by its counsel, and with the prior consent of RealWise:

- (a) consent on behalf of all persons concerned, including each Kyckr Shareholder, to those alterations or conditions; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which Kyckr has consented to.

## **9.12 Consent**

Each of the Scheme Shareholders consents to Kyckr doing all things necessary or incidental to the implementation of this Scheme, whether on behalf of the Scheme Shareholders, Kyckr or otherwise.

## **9.13 Stamp Duty**

RealWise will:

- (a) pay any stamp duty (and any related fines, penalties and interest) payable on the transfer by Scheme Shareholders of the Scheme Shares to RealWise; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.13(a).

## **9.14 Governing Law**

- (a) This Scheme is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.



### 1    Dictionary

In this deed:

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

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

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales.

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

**Corporations Act** means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

**Court** means the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

**Deed Poll** means the deed poll executed by RealWise substantially in the form of Schedule 4 of the Scheme Implementation Deed under which RealWise covenants in favour of the Scheme Shareholders to perform all actions attributed to it under this Scheme.

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

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

**End Date** means the later of:

- (a) the date that is 6 months after the date of the Scheme Implementation Deed;
- (b) such other date and time agreed in writing between RealWise and Kyckr.

**Excluded Shareholder** means any Kyckr Shareholder who is RealWise or an entity that is wholly-owned by RealWise.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, Australian Taxation Office, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

**Implementation Date** means the fifth Business Day, or such other Business Day as RealWise and Kyckr agree, following the Record Date.

**Kyckr Option** means an option conferring on its holder the right, but not the obligation, to acquire a Kyckr Share.

**Kyckr Performance Right** means a right to be issued a Kyckr Share.

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

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

**Kyckr Shareholder** means each person who is registered in the Kyckr Register as a holder of Kyckr Shares.

**Kyckr Share Registry** means Boardroom Pty Limited or any replacement provider of share registry services to Kyckr.

**Listing Rules** means the official listing rules of ASX as amended from time to time.

**RealWise** means RealWise KYK AV Pty Ltd (ACN 660 041 074).

**Record Date** means, in respect of this Scheme, 7.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

**Scheme** means this scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Kyckr and the Scheme Shareholders as set out in this document together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and that are agreed to by RealWise and Kyckr.

**Scheme Consideration** means the consideration to be provided to Scheme Shareholders under the terms of this Scheme for the transfer to RealWise of their Scheme Shares, being an amount of \$0.08 for each Scheme Share.

**Scheme Implementation Deed** means the scheme implementation deed dated [●] between RealWise and Kyckr, as amended or varied from time to time.

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

**Scheme Order** means 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 this Scheme.

**Scheme Share** means a Kyckr Share on issue as at the Record Date other than any Kyckr Share then held by an Excluded Shareholder (but including any such Kyckr Share held on behalf of one or more third parties or otherwise in a fiduciary capacity).

**Scheme Shareholder** means each person who holds one or more Scheme Shares.

**Scheme Transfer** means, in relation to each Scheme Shareholder, a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Scheme Shares.

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

**takes effect** or **taking effect** means on and from the first time when an office copy of the Scheme Order approving the Scheme pursuant to section 411(4)(b) of the Corporations Act is lodged with ASIC pursuant to section 411(10) of the Corporations Act.

**Trust Account** has the meaning given in clause 6.2(a).

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## 2 Interpretation

In this Scheme, except where the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
  - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its agents, successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Scheme;
  - (vi) this Scheme includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
  - (ix) an agreement other than this Scheme includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (x) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;

- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) a reference to time is to Sydney, Australia time; and
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Scheme or any part of it.

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## Schedule 4      Deed Poll

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## **Deed poll**

RealWise KYK AV Pty Ltd

in favour of each Scheme Shareholder

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Date:

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## This deed poll is made by

RealWise KYK AV Pty Ltd (ACN 660 041 074) of Unit 3, 1 Coggins Place, Mascot NSW 2020 (RealWise)

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## In favour of

each Scheme Shareholder.

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## Background

- A RealWise and Kyckr Limited (ACN 609 323 257) (**Kyckr**) have entered into a scheme implementation deed with respect to the Scheme and associated matters (**Scheme Implementation Deed**).
- B The effect of the Scheme will be to transfer all Scheme Shares to RealWise in exchange for the Scheme Consideration.
- C RealWise is entering into this deed poll to covenant in favour of the Scheme Shareholders that it will perform all actions attributed to it under the Scheme.

The parties agree:

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## 1 Defined terms and interpretation

### 1.1 Defined terms

In this deed poll, unless otherwise defined, capitalised words and phrases have the same meaning as given to them in the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Kyckr and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 4 of the Scheme Implementation Deed or in such other form as Kyckr and RealWise agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Kyckr and RealWise (**Scheme**).

### 1.2 Interpretation

In this deed poll, headings are for convenience only and do not affect its interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) a reference to any document (including the Scheme) is to that document as varied, novated, ratified or replaced; and
- (c) a reference to a clause, party, annexure or schedule is a reference to a clause of, and a party, annexure and schedule to, this deed poll and a reference to this deed poll includes any annexure and schedule.



### 1.3 Nature of deed poll

RealWise acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms, even though the Scheme Shareholder is not party to it; and
- (b) under the Scheme, from the Effective Date, each Scheme Shareholder irrevocably appoints Kyckr as its agent and attorney to enforce this deed poll against RealWise on behalf of that Scheme Shareholder.

---

## 2 Condition precedent and termination

### 2.1 Condition precedent to obligations of the Scheme

This deed poll and the obligations of RealWise under this deed poll are subject to the Scheme becoming Effective.

### 2.2 Termination

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

- (a) the Scheme Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective by the End Date,

unless RealWise and Kyckr agree otherwise in writing.

### 2.3 Consequences of termination

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

- (a) RealWise is released from its obligations to further perform this deed poll, except those obligations under clause 6.7 which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights it has against RealWise in respect of any breach of this deed poll which occurs before it is terminated.

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## 3 Scheme obligations

Subject to clause 2, RealWise covenants in favour of each Scheme Shareholder to:

- (a) by no later than the Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds an amount equal to the aggregate Scheme Consideration payable to the Scheme Shareholders in an Australian dollar denominated trust account operated by or on behalf of Kyckr as trustee of the Scheme Shareholders, provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to RealWise's account; and
- (b) perform all other obligations and actions attributed to it under, and otherwise comply with, the Scheme as if it were a party to the Scheme.

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## 4 Warranties

RealWise represents and warrants with respect to itself in favour of each Scheme Shareholder that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms;
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or by which it is bound, and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed poll; and
- (f) it is not subject to any Insolvency Event (as that term is defined in the Scheme Implementation Deed).

---

## 5 Continuing obligations

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

- (a) RealWise has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

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## 6 General

### 6.1 Notices

Any notice or other communication to RealWise in respect of this deed poll (**Notice**):

- (a) is only effective if:
  - (i) it is in writing, signed by the person making the communication or by a person duly authorised by that person;
  - (ii) it is directed to the recipient's address for notices as follows:

Address: Unit 3, 1 Coggins Place, Mascot NSW 2020  
E-mail: [s.karousos@realwiseholdings.com](mailto:s.karousos@realwiseholdings.com)  
Attn: Stratos Karousos

with a copy to Gilbert + Tobin:

Address: Level 35, Tower 2, International Towers Sydney,  
200 Barangaroo Avenue, Barangaroo NSW 2000  
E-mail: [ccondoleon@gtlaw.com.au](mailto:ccondoleon@gtlaw.com.au)  
Attn: Costas Condoleon

- (b) takes effect when received (or at a later time specified in it), and is taken to be received:
    - (i) if hand delivered, on delivery;
    - (ii) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia);
    - (iii) if sent by email:
      - (A) when the sender receives an automated message confirming delivery; or
      - (B) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,
- whichever happens first,
- but if the delivery or transmission under clause 6.1(b)(i) or 6.1(b)(ii) is not on a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

## **6.2 Governing law**

- (a) This deed poll is governed by and will be construed according to the laws of New South Wales.
- (b) RealWise irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

## **6.3 Waiver**

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 single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

## **6.4 Variation**

This deed poll may not be varied unless:

- (a) if before the First Court Date (as defined in the Scheme Implementation Deed), the variation is agreed to by Kyckr; or
- (b) if on or after the First Court Date but before the Second Court Date (both as defined in the Scheme Implementation Deed), the variation is agreed to by Kyckr and the Court indicates that the variation would not of itself preclude approval of the Scheme,

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

#### **6.5 Cumulative rights**

The rights, powers and remedies of RealWise and the Scheme Shareholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

#### **6.6 Assignment**

The rights created by this deed poll are personal to RealWise and each Scheme Shareholder and may only be assigned with the prior written consent of RealWise and Kyckr.

#### **6.7 Stamp duty**

RealWise must:

- (a) pay any stamp duties and any related fines, penalties and interest in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under or pursuant to this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.7(a).

#### **6.8 Further assurances**

RealWise must promptly do all things necessary or expedient to be done by it in connection with the matters referred to in this deed poll and to implement the Scheme.

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## Execution page

Executed as a deed poll.

---

Signed, sealed and delivered by **RealWise KYK AV Pty Ltd (ACN 660 041 074)** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

---

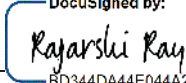
Signature of **Richard John White** who is the sole director and who states that **RealWise KYK AV Pty Ltd (ACN 660 041 074)** does not have a company secretary as at the date of signing

Execution page

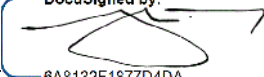
Executed as a deed.

Kyckr

Signed, sealed and delivered by **Kyckr Limited**  
**(ACN 609 323 257)** in accordance with section  
127 of the *Corporations Act 2001* (Cth) by:

DocuSigned by:  
  
BD344DA44E044A2...  
Signature of director

Rajarshi Ray  
Name of director (print)

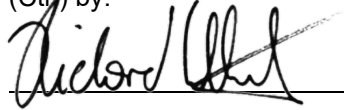
DocuSigned by:  
  
6A8132F1877D4DA...  
Signature of director/secretary

Glenn Day  
Name of director/secretary (print)

**RealWise**

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Signed, sealed and delivered by **RealWise KYK AV Pty Ltd (ACN 660 041 074)** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

A handwritten signature in black ink, appearing to read 'Richard White', is written over a horizontal line.

Signature of **Richard John White** who is the sole director and who states that **RealWise KYK AV Pty Ltd (ACN 660 041 074)** does not have a company secretary as at the date of signing