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Toll Holdings Limited
ABN 25 006 592 089

18 February 2015

The Manager
Australian Stock Exchange
Company Announcement Office
Level 4
20 Bridge Street
Sydney NSW 2000

Lodged Through ASX On Line
Total No. of Pages: 76

Dear Sir

REPLACEMENT ASX AND MEDIA RELEASE – JAPAN POST

Toll Holdings Limited confirms that the Record Date for the FY15 Interim Dividend is **4 March 2015**.

Please find attached a Replacement ASX and Media Release which correctly reflects this date.

Yours faithfully
TOLL HOLDINGS LIMITED



Bernard McNerney
Company Secretary

Encl.





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ASX and media release

For Immediate Distribution

Wednesday 18 February 2015

Toll's Board unanimously recommends compelling transaction with Japan Post

- Japan Post proposal to acquire Toll under Scheme of Arrangement for \$9.04 per share in cash
- The cash payment of \$9.04 per share represents a 49% premium to yesterday's closing price and a 53% premium to the three month volume weighted average price of Toll shares
- The offer price represents an implied market capitalisation of \$6,486 million¹ and an implied enterprise value of \$8,019 million²
- In addition, Toll shareholders on register as at 4 March 2015 will be entitled to a \$0.13 per share fully franked interim dividend
- Japan Post is aiming to be a leading global logistics player and has selected Toll as the key growth platform
- Toll to retain and grow its own brand, becoming a division that spearheads Japan Post's global operations
- Toll management remains in place with Toll CEO reporting to Japan Post
- Toll Board believes it is a compelling transaction for shareholders and provides a unanimous recommendation to vote in favour of the Scheme

The Board of Toll Holdings Limited (Toll) announced today that it has entered into a Scheme Implementation Deed (SID) with Japan Post Co. Ltd (Japan Post) under which it is proposed that Japan Post will acquire all of the Toll shares by way of a scheme of arrangement (Scheme). The transaction will deliver Toll shareholders \$9.04 per share.

Toll shareholders on the register as at 4 March 2015 will also be entitled to a \$0.13 cash per share FY15 interim dividend (fully franked), payable on 2 April 2015.

The cash payment of \$9.04 per share represents a 49% premium to yesterday's closing price and a 53% premium to the three month volume weighted average price of Toll shares, an implied market capitalisation of \$6,486 million¹ and an implied enterprise value of \$8,019 million².

The proposed acquisition of Toll is an important step by Japan Post to become a leading global logistics player. Toll will be run as a division within Japan Post and will retain the Toll name.

Toll management will remain in place with CEO Brian Kruger reporting to Japan Post CEO Toru Takahashi.

Toll Chairman Ray Horsburgh said: "We are delighted to recommend to shareholders that Toll joins with Japan Post. Japan Post is one of the world's leading postal and logistics companies and Toll is the largest independent logistics group in the Asia Pacific. Together, this will be a very powerful combination and one of the world's top five logistics companies."

¹ Implied market capitalisation calculated as \$9.04 times 717.4 million shares, being the current number of Toll shares on issue

² Implied market capitalisation of \$6,486 million plus net debt of \$1,533 million as at 31 December 2014



"We are proud that Toll is a great Australian success story, having grown from small local origins in 1888 to this outstanding outcome today for Toll shareholders and employees. Critically, it will enhance our service to existing and new customers."

Toll CEO Brian Kruger said: "The proposed combination is a reflection of the strategic value of our business and our strong footprint throughout the Asia Pacific region. It will deliver great opportunities for our staff, customers and strategic partners. The great Toll culture built on safety and operational excellence will work well alongside Japan Post's established values. I am delighted to have been invited to lead this powerful new division of Japan Post and look forward to working with the rest of the group."

President and CEO of Japan Post Toru Takahashi said: "We believe the combination of Japan Post and Toll will be a transformational transaction for both our companies and we are very pleased we have been able to reach agreement. In partnership with Toll we are starting a new chapter of looking outward and becoming a leading global player."

The Board of Toll unanimously recommends that Toll's shareholders vote in favour of the Scheme at the shareholder meeting, in the absence of a superior proposal and subject to an Independent Expert concluding that the Scheme is in the best interests of Toll's shareholders. Subject to those same qualifications, each Director of Toll intends to vote all the Toll shares held or controlled by them in favour of the Scheme at the shareholder meeting.

Mr Horsburgh said, "The Board's primary concern has always been, and continues to be, to act in the best interests of Toll's shareholders and maximise value for them. The Board believes Japan Post's proposal of \$9.04 cash per share, which allows shareholders to receive a further \$0.13 interim dividend, reflects compelling value for Toll's shareholders."

Toll will appoint an Independent Expert to prepare a report on whether the offer is in the best interests of Toll shareholders. The Independent Expert's Report will be included in the Scheme Booklet which is expected to be distributed to shareholders in mid-April.

"Toll has become an iconic Australian transport and logistics business with significant operations in Asia. We will be complementary to Japan Post, and closely aligned in our target markets. Combined we will have an expansive geographical footprint with Toll providing expertise in the global logistics and transport markets. Japan Post will bring extra capability, financial strength and significant scale to accelerate growth. Together we will offer an enhanced value proposition while delivering innovative, efficient and cost effective solutions to our customers," Mr Kruger said.

The implementation of the Scheme is subject to certain customary conditions including:

- Toll shareholders approving the Scheme by the requisite majorities (being a majority in number of shareholders who vote and at least 75% of the total number of shares voted);
- approval from the Treasurer of the Commonwealth of Australia under Australia's foreign investment rules and other regulatory approvals; and
- court approval of the Scheme.

A copy of the executed SID entered into by Toll and Japan Post is attached to this announcement, which includes (among other things) all conditions precedent for the proposal and certain exclusivity provisions.

Timetable

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

The Scheme Booklet containing information relating to the proposal, the reasons for the Directors' unanimous recommendation and details of the shareholder meeting is expected to be sent to Toll's shareholders in April 2015.

It is anticipated that Toll shareholders will have the opportunity to vote on the proposal at a meeting to be held in May 2015.

Subject to the conditions of the Scheme being satisfied, the Scheme is expected to be implemented in early June 2015.

Toll is being advised by Lazard, as financial adviser, and Herbert Smith Freehills, as legal adviser.



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About Toll

Toll is the Asia Pacific's largest independent logistics group providing specialist logistics services, employing approximately 40,000 people across some 1,200 locations in more than 50 countries. Founded in 1888, it is an iconic Australian brand with 126 years of trading history. In the financial year ended 30 June 2014, Toll reported revenue of \$8,811.2 million and EBITDA of \$709.5 million.

Toll services a broad range of sectors, offering an extensive Australasian presence with global connectivity. From bulk cargo to a single package, from digital data to a warehouse of goods, from one person to an entire camp - they move, store and manage - delivering integrated logistics solutions across town, across countries and across the globe.

Toll is listed on the ASX under the code ASX:TOL.

About Japan Post

Japan Post is a subsidiary of Japan Post Holdings, established in 2007 under the Postal Service Privatization Act in Japan.

Japan Post Holdings provides postal, banking and insurance services through three wholly owned subsidiaries (Japan Post, Japan Post Bank, Japan Post Insurance). Japan Post Holdings has announced its intention to go public with preparations currently underway for an IPO in or after late 2015.

Japan Post Holdings had consolidated reported revenue of JPY 15,240 billion (AUD 163 billion³) and Net Ordinary Income of JPY 1,104 billion (AUD 11.8 billion³) in the financial year ended 31 March 2014.

Japan Post operates the postal business as well as the OTC business for the banking and insurance operations of Japan Post Holdings. Japan Post employs approximately 195,000 people across 13 branches and 24,224 postal locations throughout Japan.

³ Assumes an average exchange rate of 1 AUD = 93.5 Yen (1 April 2013 to 31 March 2014)



HERBERT
SMITH
FREEHILLS

Execution version

Scheme Implementation Deed

Toll Holdings Limited

Japan Post Co., Ltd.

rodd.levy@hsf.com



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Attachment A

Scheme

Attachment B

Deed Poll



The deed

Scheme Implementation Deed

Date ► 18 February 2015

Between the parties

Toll	Toll Holdings Limited (ABN 25 006 592 089) of Level 7, 380 St Kilda Road Melbourne VIC 3004 Australia (Toll)
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Japan Post	Japan Post Co., Ltd. of 1-3-2 Kasumigaseki, Chiyoda-ku, Tokyo 100-8798, Japan (Japan Post)
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Background	<ol style="list-style-type: none">1 Toll and Japan Post have agreed that Japan Post will acquire Toll by means of a scheme of arrangement under Part 5.1 of the Corporations Act between Toll and the Scheme Shareholders.2 The parties have agreed to implement the scheme of arrangement on the terms of this deed.
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The parties agree	as set out in the Operative part of this deed, in consideration of, among other things, the mutual promises contained in this deed.
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Operative part

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
ASIC	Australian Securities and Investments Commission.
associate	has the same meaning as in section 12 of the Corporations Act.
ASX	ASX Limited (ABN 98 008 624 691) and, where the context requires, the financial market that it operates.
Business Day	a weekday in which trading banks are open for business in Melbourne, Victoria, Australia.
Competing Transaction	<p>a proposal, transaction or arrangement pursuant to which a third party will, if the proposal, transaction or arrangement is entered into or completed:</p> <ol style="list-style-type: none"> 1 acquire a relevant interest in, become the holder of, or otherwise acquire, have a right to acquire or have an economic interest, directly or indirectly, in more than 20% of Toll Shares; 2 acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in all or a substantial part of the business of Toll and its subsidiaries; 3 acquire control (as determined in accordance with section 50AA of the Corporations Act, disregarding sub-section 50AA(4)) of Toll; or 4 otherwise acquire or merge with Toll, <p>whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger), or other transaction or arrangement.</p>
Confidentiality Deed	the confidentiality deed between Toll and Japan Post dated 9 January 2015.



Term	Meaning
Corporations Act	the <i>Corporations Act 2001</i> (Cth).
Corporations Regulations	the <i>Corporations Regulations 2001</i> (Cth).
Court	the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Toll and Japan Post.
Deed Poll	the deed poll to be entered into by Japan Post in favour of the Scheme Shareholders in the form set out in Attachment B or such other form as agreed in writing between the parties.
Due Diligence Materials	the written information, documents and responses disclosed or made available to Japan Post or its Representatives by Toll or its Representatives before 4.00pm on 16 February 2015 in the virtual data room (a CD of which has been initialled by the parties' lawyers for the purposes of identification).
Effective	when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.
Effective Date	the date on which the Scheme becomes Effective.
End Date	30 June 2015, unless extended under clause 3.4.
Executive Incentive Arrangement	a performance right, performance option, restricted right or deferred equity right or similar arrangement which in each case contemplates rights in respect of Toll Shares, or any other instrument, right or security convertible into Toll Shares, issued to an employee or former employee of the Toll Group.
Financial Advisor	any financial advisor retained by Toll in relation to the Scheme or a Competing Transaction from time to time acting in its capacity as such.
First Court Date	the first day on which an application made to the Court for an order under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

Term	Meaning
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state.
Implementation Date	the fifth Business Day after the Scheme Record Date.
Independent Expert	the independent expert appointed by Toll in respect of the Scheme.
Independent Expert's Report	the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating an opinion whether or not the Transaction is in the best interests of Toll Shareholders and setting out its reasons for that opinion.
Insolvency Event	<p>means, in relation to an entity:</p> <ol style="list-style-type: none"> 1 the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity; 2 a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its assets; 3 the entity executing a deed of company arrangement; 4 the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed; 5 the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation); or 6 the entity being deregistered as a company or otherwise dissolved.
Japan Post Group	Japan Post and each of its Related Bodies Corporate and a reference to a "Japan Post Group Member" or "a member of the Japan Post Group" is to Japan Post or any of its Related Bodies Corporate.
Japan Post Indemnified Parties	Japan Post and its Related Bodies Corporate and their respective directors, officers and employees.
Japan Post Information	<p>information regarding the Japan Post Group provided by Japan Post to Toll in writing for inclusion in the Scheme Booklet, being:</p> <ol style="list-style-type: none"> 1 information about Japan Post, its Related Bodies Corporate,

Term	Meaning
	<p>businesses and interests and dealings in Toll Shares, its intentions for Toll's employees, and funding; and</p> <p>2 any other information required under the Corporations Act, Corporations Regulations or RG 60 to enable the Scheme Booklet to be prepared that the parties agree is "Japan Post Information" and that is identified in the Scheme Booklet as such.</p>
Japan Post Representations and Warranties	the representations and warranties of Japan Post set out in clause 5.14(a) and Schedule 2.
JFTC	Japan Fair Trade Commission.
Listing Rules	the official listing rules of the ASX.
Material Adverse Change	<p>a matter, event or circumstance that occurs, is discovered or is announced after the date of this deed which has, has had, or is reasonably likely to have, either individually, or when aggregated with any other matters, events or circumstances of a similar kind or category, the effect of:</p> <ol style="list-style-type: none"> 1 diminishing the consolidated net assets of the Toll Group taken as a whole by at least \$270 million (which is 10% of the last reported figure); or 2 diminishing the future consolidated recurring earnings before interest and tax of the Toll Group by at least \$44 million per year (which is 10% of the last reported figure), <p>in each case other than matters, events or circumstances:</p> <ol style="list-style-type: none"> 3 required or specifically permitted by this deed or the Scheme; 4 resulting from changes in general economic or political conditions, the securities market in general or law; 5 fairly disclosed to ASX or to Japan Post prior to the date of this deed (or which ought reasonably have been expected to arise from a matter, event or circumstance which was so disclosed); 6 done or not done at the written request or with the written acknowledgement and approval of Japan Post, including any consequences arising as a result of such matters; 7 resulting from the actual or anticipated change of control of Toll contemplated by the Transaction; 8 resulting from changes in generally accepted accounting principles or the interpretation of them; or 9 resulting from an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, adverse weather conditions occurring on or after the date of this deed.



Term	Meaning
Registered Address	in relation to a Toll Shareholder, the address shown in the Share Register.
Regulatory Approval	the approval or consent specified in clause 3.1(a) and 3.1(b) and the confirmation that an order or objection specified in clause 3.1(c) will not be made.
Reimbursement Fee	an amount in cash in Australian dollars of \$65 million (exclusive of GST).
Related Bodies Corporate	has the meaning set out in the Corporations Act.
Representative	in respect of a party, its Related Bodies Corporate and each director, officer, employee, advisor, agent or representative of that party and its Related Bodies Corporate.
Restricted Period	the period from and including the time of this deed to the earlier of: 1 the termination of this deed; and 2 the End Date.
RG 60	Regulatory Guide 60 issued by ASIC in September 2011.
Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Toll and the Scheme Shareholders, the form of which is attached as Attachment A or such other form as agreed in writing between the parties.
Scheme Booklet	the information described in clause 5.3(b) to be approved by the Court and despatched to the Toll Shareholders and which must include the Scheme, an explanatory statement, an independent expert's report, notices of meeting and proxy form.
Scheme Consideration	the consideration to be provided by Japan Post in consideration for the transfer of the Toll Shares held by a Scheme Shareholder to Japan Post, being, in respect of each Scheme Share, \$9.04 cash.
Scheme Meeting	the meeting of Toll Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.



Term	Meaning
Scheme Record Date	5.00pm (Melbourne time) on the fifth Business Day after the Effective Date.
Scheme Share	a Toll Share held by a Scheme Shareholder.
Scheme Shareholder	a Toll Shareholder as at the Scheme Record Date.
Second Court Date	the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard, or if the application is adjourned for any reason, the first day on which the adjourned application is heard.
Share Register	the register of members of Toll maintained in accordance with the Corporations Act.
Subsidiary	has the meaning set out in the Corporations Act.
Timetable	the indicative timetable for the implementation of the Transaction agreed between and initialled by the parties' lawyers for the purposes of identification on or about the date of this deed.
Toll Board	the board of directors of Toll.
Toll Group	Toll and each of its Related Bodies Corporate and a reference to a "Toll Group Member" or a "member of the Toll Group" is to Toll or any of its Related Bodies Corporate.
Toll Indemnified Parties	Toll and its Related Bodies Corporate and their respective directors, officers and employees.
Toll Prescribed Occurrence	other than: <ol style="list-style-type: none">1 as expressly required or permitted by this deed or the Scheme;2 as fairly disclosed to ASX or to Japan Post in the Due Diligence Materials prior to the date of this deed;3 pursuant to any corporate restructure of wholly-owned solvent bodies corporate within the Toll Group within the ordinary or usual course of a group such as the Toll Group; or4 with the written consent of Japan Post not to be unreasonably withheld,

Term	Meaning
	the occurrence of any of the following between the date of this deed and 8.00am on the Second Court Date:
	1 Toll converting all or any of its shares into a larger or smaller number of shares;
	2 Toll resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
	3 Toll: <ul style="list-style-type: none"> entering into a buy-back agreement; or resolving to approve the terms of a buy-back agreement under the Corporations Act;
	4 a member of the Toll Group issuing shares, or granting a performance right or an option over an unissued share, or agreeing to make such an issue or grant such a right or an option, other than on vesting or exercise of, or in respect of, an Executive Incentive Arrangement existing as at the date of this deed and fairly disclosed in the Due Diligence Materials, in the ordinary course or in accordance with clause 5.13 of this deed;
	5 a member of the Toll Group issuing, or agreeing to issue, securities convertible into shares or debt securities;
	6 Toll declaring, paying or distributing any dividend, bonus or other share of its profits or assets, other than an interim dividend for the half-year ended 31 December 2014 of an amount not exceeding 13 cents per Toll Share which may be partly or fully franked;
	7 a member of the Toll Group disposing, or agreeing to dispose, of the whole, or a substantial part, of the Toll Group's business or property;
	8 a member of the Toll Group charging, or agreeing to charge, the whole, or a substantial part, of the Toll Group's business or property;
	9 a member of the Toll Group making any change to its constitution;
	10 a member of the Toll Group resolving that it be wound up;
	11 a liquidator or provisional liquidator of a member of the Toll Group being appointed;
	12 a court making an order for the winding up of a member of the Toll Group;
	13 an administrator of a member of the Toll Group being appointed under the Corporations Act;
	14 a member of the Toll Group executing a deed of company arrangement; or
	15 a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of the Toll Group.

Term	Meaning
Toll Registry	Boardroom Pty Limited ACN 003 209 836.
Toll Representations and Warranties	the representations and warranties of Toll set out in clauses 5.8(a), 5.9 and Schedule 1.
Toll Share	a fully paid ordinary share of Toll.
Toll Shareholder	each person who is registered as the holder of a Toll Share from time to time.
Transaction	the acquisition of Toll by Japan Post through implementation of the Scheme.

1.2 Interpretation

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

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;
- (e) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this deed, and a reference to this deed includes any attachment, exhibit and schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances, instruments or by laws amending, consolidating, modifying or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances, instruments and by laws issued under that statute;
- (g) a reference to any document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (h) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (i) the word “includes” in any form is not a word of limitation;
- (j) a reference to “\$” or “dollar” is to Australian currency;



- (k) a reference to any time is, unless otherwise indicated, a reference to Melbourne time;
- (l) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this deed;
- (m) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party; and
- (n) a reference to 'fairly disclosed' means disclosed to the extent that, and in sufficient detail so as to enable, a reasonable bidder (or one of its Representatives) experienced in transaction processes similar to that applicable to the Transaction and experienced in a business similar to any business conducted by the Toll Group, to reasonably identify the nature and scope of the relevant matter, event or circumstance.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.4 Contra proferentem excluded

No term or condition of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or a provision of it.

1.5 Awareness

- (a) Subject to clause 1.5(b), where a representation or warranty is given 'so far as Toll is aware' or with a similar qualification as to Toll's awareness or knowledge, Toll's awareness or knowledge is limited to and deemed only to include those facts, matters or circumstances of which Grant Devonport, Avi Gilboa, Brian Kruger or Bernard McInerney is actually aware as at the date of this deed.
- (b) The representation and warranty in paragraph (l)(3) of Schedule 1 is limited to and deemed only to include those facts, matters or circumstances of which Chris Pearce is actually aware as at the date of this deed.

2 Proceeding with the Transaction

2.1 Toll to propose Scheme

- (a) Toll agrees to propose the Scheme on and subject to the terms of this deed.
- (b) Japan Post agrees with Toll to assist Toll to propose the Scheme on and subject to the terms of this deed.

2.2 Japan Post may elect a Subsidiary

- (a) Japan Post may elect, under this clause 2.2, a wholly-owned Subsidiary of Japan Post to acquire all of the Scheme Shares under the Scheme by giving written notice to Toll of that relevant Subsidiary on or before the First Court Date.

- (b) Japan Post warrants that, if it elects a wholly-owned Subsidiary to acquire all of the Scheme Shares pursuant to clause 2.2(a):
 - (1) Japan Post and the wholly-owned Subsidiary will both enter into the Deed Poll;
 - (2) Japan Post will continue to be bound by this deed; and
 - (3) Japan Post will ensure that the wholly-owned Subsidiary completes the acquisition in accordance with the terms of this deed and the Deed Poll.

3 Conditions precedent and pre-implementation steps

3.1 Conditions precedent

Subject to this clause 3.1, the Scheme will not become Effective, and the obligations of Japan Post under clause 4.3 are not binding, until each of the following conditions precedent are satisfied or waived to the extent and in the manner set out in clauses 3.2 and 3.3.

- (a) **FIRB Approval:** before 5.00pm on the Business Day before the Second Court Date, Japan Post has received written notice by or on behalf of the Treasurer of the Commonwealth of Australia (**Treasurer**), advising that the Commonwealth Government has no objections to the Transaction under either the *Foreign Acquisitions and Takeovers Act 1975* (Cth) or Australia's foreign investment policies so far as applicable to Japan Post as a foreign government investor, either unconditionally or on terms that are acceptable to Japan Post acting reasonably.
- (b) **NZ OIO Approval:** before 5.00pm on the Business Day before the Second Court Date, if required, Japan Post has received in writing all consents required under the *Overseas Investment Act 2005* (New Zealand) and the *Overseas Investment Regulations 2005* (New Zealand) for the implementation of the Scheme, either unconditionally or on terms that are acceptable to Japan Post acting reasonably.
- (c) **JFTC Approval:** before 5.00pm on the Business Day before the Second Court Date, no order has been made in relation to the Transaction by the JFTC and no notice in writing has been given by the JFTC to Japan Post that it intends to object to the Transaction.
- (d) **Regulatory Intervention:** no temporary restraining order, preliminary or permanent injunction or other order, in each case issued by a court of competent jurisdiction in Australia in a proceeding brought by a Government Agency preventing or delaying the Transaction, is in effect at 8.00am on the Second Court Date.
- (e) **Executive Incentive Arrangements:** Toll has taken all necessary steps by 8.00am on the Second Court Date to give effect to the treatment of Executive Incentive Arrangements as contemplated in clause 5.13 and Japan Post is satisfied (acting reasonably) that those steps have been taken.
- (f) **Court Approval:** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (g) **Shareholder Approval:** Toll Shareholders agree to the Scheme at the Scheme Meeting by the requisite majorities under the Corporations Act.

- (h) **No Toll Prescribed Occurrence:** No Toll Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date.
- (i) **Toll Representations and Warranties:** the Toll Representations and Warranties are true and correct in all material respects as at the date of this deed and as at 8.00am on the Second Court Date, except where expressed to be operative at another date.
- (j) **Japan Post Representations and Warranties:** the Japan Post Representations and Warranties are true and correct in all material respects as at the date of this deed and as at 8.00am on the Second Court Date, except where expressed to be operative at another date.

3.2 Best endeavours

- (a) Japan Post undertakes to Toll to use its best endeavours to procure that each of the conditions precedent in clauses 3.1(a) (FIRB Approval), 3.1(b) (NZ OIO Approval), 3.1(c) (JFTC Approval) and 3.1(j) (Japan Post Representations and Warranties) is satisfied as soon as practicable after the date of this deed and continues to be satisfied until the last time that the relevant clause requires it to be satisfied.
- (b) Toll undertakes to Japan Post to use its best endeavours to procure that the conditions precedent in clauses 3.1(e) (Executive Incentive Arrangements), 3.1(f) (Court Approval), 3.1(g) (Shareholder Approval), 3.1(h) (No Toll Prescribed Occurrence) and 3.1(i) (Toll Representations and Warranties) are satisfied in accordance with their terms.
- (c) Each party undertakes to use its best endeavours to procure that there is no occurrence within the control of Toll or Japan Post (as the context requires) that would prevent a condition precedent in clause 3.1, which such party must use best endeavours to satisfy, being satisfied in accordance with its terms, provided that nothing in this clause 3.2 shall require either party to offer, agree to or accept, any undertakings, commitments or conditions other than as required under clause 3.2(d), 3.2(e) or 3.2(f).
- (d) Without limiting this clause 3.2:
 - (1) Japan Post must promptly apply for each Regulatory Approval and apply to JFTC for confirmation that it will take no action in relation to the Transaction and provide to Toll a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
 - (2) each party must take all steps it is responsible for as part of the Regulatory Approval process and as required by JFTC, including responding to requests for information at the earliest practicable time;
 - (3) each party must provide the other party with all information reasonably requested in connection with the applications for Regulatory Approvals and the application to JFTC;
 - (4) Japan Post must consult with Toll in advance in relation to the progress of obtaining the Regulatory Approvals and the no action confirmation from JFTC and keep Toll informed of the progress in relation to obtaining the approval or consent and the confirmation, including any matters raised or conditions or other arrangements proposed by the relevant Government Agency; and
 - (5) each party must promptly offer to the relevant Government Agency, and agree or accept, all undertakings, commitments and conditions

necessary or appropriate in order to obtain the approval or consent or the confirmation as soon as possible, unless it would be unreasonable to do so.

- (e) If Toll considers that any consent required to satisfy the condition precedent in clause 3.1(b) (NZ OIO Approval) may not be obtained before 5.00pm on the Business Day before the Second Court Date, Toll may (but is not obliged to) take action to divest itself of any interests that have created the need to obtain that consent on such terms as consented to by Japan Post (such consent not to be unreasonably withheld or delayed).
- (f) If the JFTC indicates that it may make a cease and desist order such that the condition precedent in clause 3.1(c) may not be satisfied, Toll and Japan Post must use reasonable endeavours to avoid the making of such an order, including divesting (or undertaking to divest) any interests that have resulted in the objection from the JFTC on such terms as approved by Japan Post (such approval not to be unreasonably withheld or delayed).

3.3 Waiver of conditions precedent

- (a) The conditions precedent in clauses 3.1(a) (FIRB Approval), 3.1(b) (NZ OIO Approval), 3.1(c) (JFTC Approval), 3.1(d) (Regulatory Intervention), 3.1(f) (Court Approval) and 3.1(g) (Shareholder Approval) cannot be waived.
- (b) The conditions precedent in clauses 3.1(e) (Executive Incentive Arrangements), 3.1(h) (No Toll Prescribed Occurrence) and 3.1(i) (Toll Representations and Warranties) are for the sole benefit of Japan Post and may only be waived by Japan Post (in its absolute discretion) in writing.
- (c) The condition precedent in clause 3.1(j) (Japan Post Representations and Warranties) is for the sole benefit of Toll and may only be waived by Toll (in its absolute discretion) in writing.
- (d) Waiver of a breach or non-fulfilment in respect of one condition precedent does not constitute:
 - (1) a waiver of breach or non-fulfilment of any other condition precedent resulting from the same event; or
 - (2) a waiver of breach or non-fulfilment of that condition precedent resulting from any other event.

3.4 Termination on failure of condition precedent

- (a) If any event occurs which would, or in fact does, prevent a condition precedent in clause 3.1 being satisfied and that condition precedent is not waived by Toll or Japan Post or both (as applicable) in accordance with clause 3.3, the parties must consult in good faith to:
 - (1) determine whether the Transaction may proceed by way of alternative means or methods;
 - (2) change the date of the application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by Toll and Japan Post (being a date no later than 5 Business Days before the End Date); or
 - (3) extend the relevant date or extend the End Date by a period of up to one month.



- (b) If the parties are unable to reach agreement under clause 3.4(a) within 5 Business Days of becoming aware of the relevant occurrence or relevant date or by the End Date, then unless that condition precedent is waived by Toll or Japan Post or both as provided in clause 3.3, either party may terminate this deed without any liability (except under clause 11, if applicable) to the other party because of that termination, unless the relevant occurrence or the failure of the condition precedent to be satisfied, or of the Scheme to become Effective, arises out of a breach by the terminating party.
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination, on termination of this deed, no party shall have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued prior to termination.
- (d) If the condition in clause 3.1(g) (Shareholder Approval) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section, provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is given, the condition in clause 3.1(g) (Shareholder Approval) is deemed to be satisfied for all purposes.

3.5 Certain notices

- (a) If Toll or Japan Post becomes aware that any condition precedent has been satisfied, it must promptly notify the other in writing of this fact.
- (b) If, before the time specified for satisfaction of a condition precedent, an event that will prevent, or is likely to prevent, that condition precedent being satisfied occurs, the party with knowledge of that event must immediately give the other party written notice of that event.
- (c) If a condition precedent is not satisfied or waived by the time and date specified for satisfaction of that condition precedent, then, unless there is no reasonable prospect that the condition precedent will be satisfied before the End Date, Toll may make an application to defer the Second Court Date until such time (being not later than the Business Day before the End Date) as reasonably required to enable the relevant condition precedent to be satisfied, with the prior written consent of Japan Post (such consent not to be unreasonably withheld or delayed prior to the End Date).
- (d) Toll and Japan Post (as the case may be) must promptly advise each other orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause:
 - (1) a representation or warranty provided in this deed by a relevant party to be false or misleading in any material respect;
 - (2) a breach or non-fulfilment of any of the conditions precedent; or
 - (3) a material breach of this deed by a relevant party.

4 Transaction steps

4.1 Scheme

Toll must propose a scheme of arrangement under which all of the Scheme Shares will be transferred to Japan Post and the Scheme Shareholders will be entitled to receive the Scheme Consideration.

4.2 Scheme Consideration

Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder subject to and in accordance with the terms of this deed and the Scheme.

4.3 Payment of Scheme Consideration

Subject to the terms and conditions of this deed and the Scheme, Japan Post undertakes and warrants to Toll (in its own right and separately as trustee or nominee for each of the Scheme Shareholders) that, in consideration of the transfer to Japan Post of each Toll Share held by a Scheme Shareholder at the Scheme Record Date under the terms of the Scheme, Japan Post will on the Implementation Date:

- (a) accept that transfer; and
- (b) pay or procure the payment of the Scheme Consideration in accordance with the Scheme.

4.4 No amendment to Scheme without consent

Toll 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 Japan Post.

5 Implementation

5.1 Obligations of both parties – certificate

At the hearing on the Second Court Date, Toll and Japan Post must provide to the Court a certificate confirming whether or not the conditions precedent in clause 3.1 (other than the condition in clause 3.1(f) (Court Approval)) have been satisfied or waived in accordance with this deed. A draft of such certificate shall be provided by each party to the other party by 3.00pm on the Business Day prior to the Second Court Date.

5.2 Obligations of both parties – timing

- (a) Subject to clause 5.2(b), the parties must use their best endeavours to:
 - (1) comply with their respective obligations under this clause 5; and
 - (2) take all necessary steps and exercise all rights necessary to implement the Transaction,in accordance with the Timetable.

- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.2(a) to the extent that such failure is due to circumstances and matters outside the party's control.
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree any necessary extension to ensure such matters are completed within the shortest possible timeframe.

5.3 Toll's obligations

Without limiting the general nature of clause 2.1, Toll must execute all documents and do all acts and things within its power as may be reasonably necessary or desirable for the implementation of the Transaction on a basis consistent with this deed and as expeditiously as possible and in particular Toll must:

- (a) **announce recommendation of Scheme:** following execution of this deed, announce, in a form agreed between Toll and Japan Post, that each of the directors of Toll:
 - (1) intends to recommend to Toll Shareholders that the Scheme be approved; and
 - (2) who holds Toll Shares intends to vote his or her Toll Shares in favour of the Scheme,
 subject to:
 - (3) the Independent Expert's Report concluding and continuing to conclude that the Scheme is in the best interests of Toll Shareholders; and
 - (4) there being no superior proposal;
- (b) **preparation of Scheme Booklet:** subject to clause 5.3(k), as soon as practicable after the date of this deed, prepare and despatch the Scheme Booklet:
 - (1) in accordance with all applicable laws and in particular with the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules; and
 - (2) unless there has been a change of recommendation, include in the Scheme Booklet a statement by the Toll Board:
 - (A) unanimously recommending that Toll Shareholders vote in favour of the Scheme subject to the Independent Expert's Report continuing to conclude that the Scheme is in the best interests of Toll Shareholders and there being no superior proposal; and
 - (B) that each Toll Board member who holds Toll Shares intends to vote his or her Toll Shares in favour of the Scheme subject to the Independent Expert's Report continuing to conclude that the Scheme is in the best interests of Toll Shareholders and there being no superior proposal;
- (c) **section 411(17)(b) statement:** apply to ASIC for the production of:

- (1) a letter stating that ASIC does not intend to appear at the First Court Date; and
 - (2) a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (d) **Court documents:** consult with Japan Post in relation to the content of the documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on or suggested amendments to those documents from Japan Post or its Representatives prior to filing those documents with the Court;
- (e) **Court direction:** promptly apply to the Court for orders directing Toll to convene the Scheme Meeting;
- (f) **Scheme Meeting:** convene the Scheme Meeting to agree to the Scheme in accordance with the orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (g) **Court approval:** (subject to all conditions precedent in clause 3.1, other than the condition in clause 3.1(f) (Court Approval), being satisfied or waived in accordance with this deed) promptly apply to the Court for orders approving the Scheme as agreed to by the Toll Shareholders at the Scheme Meeting;
- (h) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order approving the Scheme as agreed to by the Toll Shareholders at the Scheme Meeting on the day such office copy is received (or such later date as agreed in writing by Japan Post);
- (i) **Scheme Consideration:** close the Share Register as at the Scheme Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme and the Deed Poll;
- (j) **registration:** subject to the Scheme Consideration having been paid to Toll, register all transfers of Toll Shares held by Scheme Shareholders to Japan Post on, or as soon as practicable after, the Implementation Date;
- (k) **consultation with Japan Post:** consult with Japan Post as to the content and presentation of the Scheme Booklet including:
 - (1) providing to Japan Post drafts of the Scheme Booklet for the purpose of enabling Japan Post to review and comment on those draft documents (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to Japan Post);
 - (2) taking all comments made by Japan Post into account in good faith when producing a revised draft of the Scheme Booklet;
 - (3) providing to Japan Post a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and
 - (4) obtaining written approval from Japan Post for the form and content in which the Japan Post Information appears in the Scheme Booklet;
- (l) **ASIC review:** keep Japan Post informed of any matters raised by ASIC in relation to the Scheme Booklet, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by Japan Post;

- (m) **Independent Expert:** promptly appoint the Independent Expert and provide assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report for the Scheme Booklet as soon as practicable;
- (n) **listing:** not do anything to cause Toll Shares to cease being quoted on the ASX or to become permanently suspended from quotation prior to completion of the Transaction unless Japan Post has agreed in writing; and
- (o) **delisting:** if directed by Japan Post in writing at any time after the Effective Date, Toll must take all steps necessary for Toll to be removed from the official list of ASX, including lodging a request for removal with ASX and satisfying any conditions reasonably requested by ASX for it to act on that request.

5.4 Japan Post's obligations

Without limiting the general nature of clause 2.1, Japan Post must execute all documents and do all acts and things within its power as may be reasonably necessary or desirable for the implementation of the Transaction on a basis consistent with this deed and as expeditiously as possible, and in particular Japan Post must:

- (a) **Japan Post Information:** prepare and promptly provide to Toll the Japan Post Information for inclusion in the Scheme Booklet and consent to the inclusion of that information in the Scheme Booklet;
- (b) **Update Japan Post Information:** promptly provide to Toll any information that arises after the Scheme Booklet has been despatched and until the date of the Scheme Meeting that may be necessary to ensure that the Scheme Booklet, in relation to the Japan Post Information in it, does not contain any material statement that is false or misleading in a material respect including because of any material omission;
- (c) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Toll and provide comments promptly on those drafts in good faith;
- (d) **Independent Expert's Report:** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report to be sent together with the Scheme Booklet;
- (e) **representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act, at which through its counsel, Japan Post will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (f) **Deed Poll:** no later than the Business Day prior to the First Court Date, enter into the Deed Poll;
- (g) **accuracy of Japan Post Information:** before a draft of the Scheme Booklet is lodged with ASIC, and again before the Scheme Booklet is despatched to Toll Shareholders, confirm to Toll the accuracy and completeness of the Japan Post Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect including because of any material omission;
- (h) **Share transfer:** if the Scheme becomes Effective, accept a transfer of the Toll Shares as contemplated by clause 4.3(a); and

- (i) **Scheme Consideration:** if the Scheme becomes Effective, procure the provision of the Scheme Consideration in the manner and amount contemplated by clause 4.3 and the terms of the Scheme.

5.5 Content of Scheme Booklet

- (a) The parties agree that the Scheme Booklet will contain statements to the effect that:
- (1) Toll is responsible for the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Japan Post Information, the Independent Expert's Report or any other report or letter issued to Toll by a third party; and
 - (2) Japan Post is responsible for the Japan Post Information (and no other part of the Scheme Booklet).
- (b) If the parties disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form and content of the Scheme Booklet.
- (c) If within two Business Days of the consultation referred to in paragraph (b) above having commenced there is still no agreement between the parties, the final form and content of the Scheme Booklet shall be determined by Toll, acting reasonably, provided that if Japan Post disagrees with such final form and content:
- (1) Toll must include a statement to that effect in the Scheme Booklet; and
 - (2) if Toll's concerns relate to Japan Post Information, Toll must not include that Japan Post Information to the extent that Japan Post disagrees with the final form and content.

5.6 Conduct of business

- (a) From the date of this deed up to and including the Implementation Date, Toll must conduct, and must ensure that its Related Bodies Corporate conduct, their businesses in the ordinary and proper course of business, in substantially the same manner and at the same locations as previously conducted and, where appropriate for that purpose, use reasonable efforts to:
- (1) preserve intact current business organisations;
 - (2) keep available the services of its current officers and employees;
 - (3) maintain and preserve its relationships with customers, suppliers, licensors, licensees and others having business dealings with it; and
 - (4) maintain its business and assets, including maintaining at least its current level of insurance,
- except to the extent that:
- (5) it is expressly required to do, permitted to do or is permitted not to do, that thing under or in accordance with this deed;
 - (6) has been fairly disclosed to Japan Post prior to the date of this deed; or
 - (7) Japan Post provides its prior written consent (such consent not to be unreasonably withheld or delayed).

- (b) Without limiting clause 5.6(a), but for the avoidance of doubt subject to clauses 5.6(a)(5) to 5.6(a)(7), Toll must not, and must ensure that its Related Bodies Corporate do not, other than with the prior written consent of Japan Post, such consent not to be unreasonably withheld or delayed:
- (1) dispose, or agree to dispose of any securities, business, asset, interest in a joint venture, entity or undertaking, the value of which exceeds \$50 million, to any person other than another entity within the Toll Group, excluding a disposal which was approved by the Toll Board prior to the date of this deed and has been fairly disclosed to Japan Post prior to the date of this deed;
 - (2) acquire, or agree to acquire any securities, business, asset, interest in a joint venture, entity or undertaking the price or value of which exceeds \$50 million in relation to any individual item, from another person other than another entity within the Toll Group, excluding an acquisition which was approved by the Toll Board prior to the date of this deed and has been fairly disclosed to Japan Post prior to the date of this deed;
 - (3) undertake any capital expenditure or project expenditure in respect of which the price or value exceeds \$50 million in relation to any individual project, excluding any such expenditure that:
 - (A) is within, and materially consistent with, Toll's current year's capital expenditure budget fairly disclosed to Japan Post; or
 - (B) was approved by the Toll Board prior to the date of this deed and has been fairly disclosed to Japan Post prior to the date of this deed;
 - (4) either:
 - (A) enter into a new employment contract with a potential employee of the Toll Group (other than to replace an employee who has ceased to be an employee of the Toll Group); or
 - (B) enter into a new employment contract or amend (other than as part of any annual salary review conducted in the ordinary course) an employment contract with an existing employee of the Toll Group,

in respect of which the total employment costs payable to that existing or potential employee is in excess of \$1,000,000 per annum;
 - (5) enter into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this deed;
 - (6) settle or offer to settle any legal proceedings, claim, investigation, arbitration or other like proceeding where the settlement amount exceeds \$50 million;
 - (7) enter into a joint venture or strategic partnership with any person where the contractually committed investment by the Toll Group exceeds \$50 million; or
 - (8) authorise, commit or agree to do any of the matters set out above.

5.7 Confirmatory and planning due diligence

- (a) Prior to the date of this deed, Japan Post conducted due diligence investigations, with Toll's co-operation, regarding business, legal, accounting, tax and other areas identified by Japan Post. The parties agree that Japan Post will be able to conduct further review after the date of this deed as set out in clause 5.7(b), but, without prejudice to any express right of termination under this deed, the results of, and conclusions drawn from, that further review will not entitle Japan Post to terminate or re-negotiate the terms of this deed.
- (b) Accordingly, as soon as practicable after the date of this deed Toll must provide to Japan Post and its Representatives reasonable and timely access to information (subject to any existing confidentiality obligations owed to third parties or any other applicable legal restriction), premises or such senior executives of Toll as reasonably requested by Japan Post at mutually convenient times and afford Japan Post reasonable co-operation for the sole purpose of:
 - (1) further reviewing matters disclosed in the Due Diligence Materials or other areas identified by Japan Post for further due diligence;
 - (2) facilitating the development and the implementation of Japan Post's plans for Toll's operations following implementation of the Scheme; or
 - (3) any other purpose agreed between the parties in writing,
 provided that:
 - (4) Japan Post will focus on material issues, having regard to management commitments and the impact of due diligence on Toll's business;
 - (5) nothing in this clause will require Toll to provide information concerning Toll's directors and management's consideration of the Scheme;
 - (6) providing access or information to Japan Post pursuant to this clause does not result in unreasonable disruptions to the Toll Group's business, require Toll to make further disclosure to any other entity or Government Agency or require Toll to make any disclosure to Japan Post that would compromise its legal privilege; and
 - (7) Toll may provide to Japan Post its records at a place other than Toll's business premises.
- (c) In the event that Japan Post considers that access to information, premises or senior executives of Toll is being limited unreasonably or without due cause, a nominated representative of Japan Post must raise such concern with a nominated representative of Toll, who will attempt to resolve that matter through consultation.
- (d) The obligations of the parties pursuant to clause 5.7(b) cease to operate upon a majority of the Toll Board changing or withdrawing their recommendation that Toll Shareholders vote in favour of the Scheme, or recommending a Competing Transaction.

5.8 Change of control provisions

- (a) Toll represents and warrants to Japan Post that, so far as Toll is aware, it has fairly disclosed to Japan Post a sample of change of control or unilateral

termination rights in contracts with each material customer which may be triggered by or exercised in response to the implementation of the Transaction.

- (b) For the purposes of clause 5.8(a), a customer is considered material where the revenue earned by a business unit of the Toll Group under contracts with that customer is equal to or greater than \$40 million per annum.
- (c) As soon as practicable after the date of this deed, Toll and Japan Post must seek to identify and confirm any change of control or unilateral termination rights in material leases and material contracts to which Toll or a Toll Group Member is party which may be triggered by or exercised in response to the implementation of the Transaction. In respect of those leases and contracts:
 - (1) Toll and Japan Post will agree a proposed course of action (which, among other things, will have due regard to applicable legal restrictions) and then Toll will initiate contact, including joint discussions if required, with the relevant landlords and counterparties and request that they provide any consents or confirmations required or appropriate. Japan Post must not contact any landlords or counterparties without Toll present or without Toll's prior written consent (which is not to be unreasonably withheld or delayed).
 - (2) Toll must take all reasonable action necessary to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties.
 - (3) Japan Post must cooperate with, and provide all reasonable assistance to, Toll to obtain such consents or confirmations as expeditiously as possible, including by promptly providing any information reasonably required by counterparties.
 - (4) Provided Toll has used all reasonable endeavours, a failure by a Toll Group Member to obtain any third party consent or confirmation, or the exercise of a termination right, will not constitute a breach of this deed by Toll and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed.

5.9 Financing arrangements

Toll represents and warrants to Japan Post that, so far as Toll is aware, it has fairly disclosed in the Due Diligence Materials all change of control, unilateral termination rights or rights of review in material financing agreements (for the avoidance of doubt, not including hedging, swap or similar arrangements) to which Toll or a Toll Group Member is a party which may be triggered by or exercised in response to the implementation of the Transaction. In respect of those financing agreements, as soon as practicable after the date of this deed:

- (a) Toll must facilitate liaison between Japan Post and any Toll transactional banking, derivative instrument or other financing agreement counterparties; and
- (b) Toll must provide to Japan Post all reasonable assistance and all financial information which Japan Post or its Representatives reasonably require.

5.10 Toll Board recommendation

- (a) The Toll Board must not change or withdraw its recommendation in favour of the Scheme, unless the Toll Board determines, in good faith and after having

considered written advice from the Toll Board's external financial and legal advisers, that their fiduciary or statutory duties require them to do so.

- (b) Customary qualifications and explanations made in relation to a recommendation to vote in favour of the Scheme to the effect that the recommendation is made in the absence of a superior proposal and subject to the Independent Expert's Report concluding and continuing to conclude that the Scheme is in the best interests of Toll Shareholders will not be regarded as a failure to make, or a withdrawal of, a recommendation in favour of the Scheme.

5.11 Appointment of directors

On the Implementation Date, but subject to the Scheme Consideration having been paid to the Scheme Shareholders and receipt by Toll of signed consents to act, Toll must:

- (a) take all actions necessary to appoint the persons nominated by Japan Post as new directors of Toll and new directors of each member of the Toll Group; and
- (b) procure that all Toll's directors (other than the new Directors appointed pursuant to paragraph 5.11(a) or existing directors which Japan Post has agreed in writing will remain on the Toll Board) resign from the Toll Board by notice in writing which acknowledges that such Toll director has no outstanding claims against any Toll Group Member as at the date of the resignation,

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

5.12 Deeds of indemnity and insurance

- (a) Subject to the Scheme becoming Effective and the Transaction completing, Japan Post undertakes in favour of Toll and each other person who is a Toll Indemnified Party that it will:
 - (1) subject to clause 5.12(d), for a period of 7 years from the Implementation Date, ensure that the constitutions of Toll and each other Toll Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its 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 Toll Group Member; and
 - (2) procure that Toll and each other Toll Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained, subject to clause 5.12(d), for a period of 7 years from the retirement date of each director and officer.
- (b) The undertakings contained in clause 5.12(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (c) Toll receives and holds the benefit of clause 5.12(a), to the extent it relates to the other Toll Indemnified Parties, as trustee for them.
- (d) The undertakings contained in clause 5.12(a) are given until the earlier of the end of the relevant period specified in clause 5.12(a) or the relevant Toll Group Member ceasing to be part of the Japan Post Group.

5.13 Executive Incentive Arrangements

Toll must give effect to the treatment of Executive Incentive Arrangements as disclosed in writing to Japan Post prior to the date of this deed, with any vesting or payment to be subject to the Scheme becoming Effective and otherwise in accordance with the document disclosed.

5.14 Dealing with Toll directors or employees

- (a) Japan Post represents and warrants to Toll that, as at the date of this deed, neither it nor any of its associates has any agreement, arrangement or understanding with any director or employee of Toll relating in any way to the Transaction or operations of Toll after the Effective Date.
- (b) Japan Post must not enter into any agreement, arrangement or understanding contemplated by clause 5.14(a) without the prior written approval of the Chairman of Toll, which must not be unreasonably withheld.

6 Representations and warranties

6.1 Toll's representations and warranties

Toll represents and warrants to Japan Post (in its own right and separately as trustee or nominee for each of the other Japan Post Indemnified Parties) each of the Toll Representations and Warranties.

6.2 Toll's indemnity

Toll agrees with Japan Post (in its own right and separately as trustee or nominee for each of the other Japan Post Indemnified Parties) to indemnify the Japan Post Indemnified Parties from any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which Japan Post or any of the other Japan Post Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Toll Representations and Warranties.

6.3 Japan Post's representations and warranties

Japan Post represents and warrants to Toll (in its own right and separately as trustee or nominee for each of the other Toll Indemnified Parties) each of the Japan Post Representations and Warranties.

6.4 Japan Post's indemnity

Japan Post agrees with Toll (in its own right and separately as trustee or nominee for each of the other Toll Indemnified Parties) to indemnify the Toll Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising which Toll or any of the other Toll Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Japan Post Representations and Warranties.



6.5 Qualifications on Toll's representations, warranties and indemnities

The Toll Representations and Warranties in clause 6.1 and the indemnity in clause 6.2 are each subject to matters that have been fairly disclosed to ASX, in a document lodged with ASIC or to Japan Post prior to the date of this deed including in the Due Diligence Materials (or which ought reasonably have been expected to arise from a matter, event or circumstance which was so disclosed).

6.6 Survival of representations

Each representation and warranty referred to in clauses 6.1 and 6.3:

- (a) is severable; and
- (b) survives the termination of this deed.

6.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 6.2 and 6.4):

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

6.8 Timing of warranties

Each representation and warranty made or given under clauses 6.1 and 6.3 is given:

- (a) at the date of this deed;
- (b) at the date the Scheme Booklet is despatched to Toll Shareholders; and
- (c) at 8.00am on the Second Court Date; or
- (d) where expressed to be given at a particular time, at that time.

7 Releases

7.1 Toll directors and officers

- (a) Japan Post releases its rights, and agrees with Toll that it will not make a claim, against any Toll Indemnified Party (other than Toll or its Related Bodies Corporate) as at the date of this deed in connection with:
 - (1) any breach of any representations, covenants and warranties of Toll;
or
 - (2) any disclosures containing any statement which is false or misleading whether in content or by omission,except where that Toll Indemnified Party has not acted in good faith or has engaged in wilful misconduct.



- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly. Toll receives and holds the benefit of this clause to the extent it relates to each other Toll Indemnified Party as trustee for each of them.

7.2 Japan Post directors and officers

- (a) Toll releases its rights, and agrees with Japan Post that it will not make a claim, against any Japan Post Indemnified Party (other than Japan Post) as at the date of this deed in connection with:
- (1) any breach of any representations, covenants and warranties of Japan Post in this deed; or
 - (2) any disclosure containing any statement which is false or misleading whether in content or by omission,
- except where that Japan Post Indemnified Party has not acted in good faith or has engaged in wilful misconduct.
- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly. Japan Post receives and holds the benefit of this clause to the extent it relates to each other Japan Post Indemnified Party as trustee for each of them.

8 Public announcement

8.1 Initial announcement

Immediately after the execution of this deed, Toll must issue a public announcement in the form agreed between the parties.

8.2 Subsequent announcements

Toll must not refer to Japan Post or its business in any subsequent written public announcement made by it in connection with the Transaction without the prior written consent of Japan Post, except where Toll merely refers to Japan Post by name or repeats any material in relation to Japan Post from an announcement which has previously been released or approved by, or agreed with, Japan Post (in which case, where practicable, Toll must give Japan Post advance written notice).

9 Confidentiality

9.1 Confidentiality Deed

Toll and Japan Post acknowledge and agree that they continue to be bound by the Confidentiality Deed after the date of this deed.

9.2 Survival of obligations

The rights and obligations of the parties under the Confidentiality Deed survive termination of this deed.

10 Exclusivity

10.1 No-talk

Subject to clause 10.3, during the Restricted Period, Toll must not, and must ensure that none of its Related Bodies Corporate and none of their Representatives (including for the avoidance of doubt any Financial Advisors):

- (a) directly or indirectly participate in or continue or respond to any discussions or negotiations;
 - (b) provide or make available any information (including by way of providing information and access to perform due diligence);
 - (c) enter into any agreement, arrangement or understanding; or
 - (d) communicate any intention to do any of these things,
- in relation to, or which may reasonably be expected to lead to, a Competing Transaction.

10.2 No-shop

During the Restricted Period, Toll must not, and must ensure that none of its Representatives, Related Bodies Corporate and none of their Representatives (including for the avoidance of doubt any Financial Advisors):

- (a) solicit or invite enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to or encourage, a Competing Transaction; or
- (b) communicate to any person an intention to do any of the things referred to in clause 10.2(a).

10.3 Limitation to no-talk

Toll, its Related Bodies Corporate and their Representatives may undertake any action that would otherwise be prohibited by clause 10.1 in relation to a potential or proposed bona fide Competing Transaction which was not solicited by it and was not otherwise brought about as a result of any breach by it of its obligations under this clause 10, where:

- (a) the Toll Board, acting in good faith and after having considered written advice from the Toll Board's external legal advisers, determines that not undertaking that act would be likely to involve a breach of the fiduciary or statutory duties owed by any Toll director; or
- (b) it would otherwise be unlawful.

10.4 Notification of approaches

- (a) During the Restricted Period, Toll must notify Japan Post in writing if it, or any of its Related Bodies Corporate or any of their Representatives becomes aware of any:
 - (1) proposal whether written or otherwise made to Toll or any of its Related Bodies Corporate or their Representatives, in connection with, or in respect of any exploration or consummation of, a Competing Transaction or a proposed or potential Competing Transaction, whether unsolicited or otherwise, including details of the

- party making the proposal, the terms of the proposal and any material updates to the proposal; or
- (2) provision by Toll or any of its Related Bodies Corporate or their Representatives of any information relating to Toll or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Transaction.
- (b) The obligations in this clause 10.4 do not apply to the extent that it requires Toll to provide information if the Toll Board has determined in good faith, and after having considered written advice from the Toll Board's external legal advisers, that the consequences of providing the relevant information would be likely to constitute a breach of the fiduciary or statutory duties owed by any Toll director.

10.5 Matching right

- (a) Toll must use its best endeavours to procure that none of its directors publicly recommend a Competing Transaction, unless:
 - (1) Toll has provided Japan Post with written notification of the material terms and conditions of the Competing Transaction (including details of the party making the proposal); and
 - (2) Toll has given Japan Post at least 5 Business Days after the provision of the information referred to in paragraph (1) above to provide an irrevocable offer of a matching or superior proposal to the terms of the relevant Competing Transaction on terms which Japan Post considers in good faith to be no less favourable to the relevant Competing Transaction (**Japan Post Counter Proposal**).
- (b) Toll must use its best endeavours to procure that its directors, within 2 Business Days of receiving the Japan Post Counter Proposal, consider any Japan Post Counter Proposal in good faith and, if the Toll directors determine that the terms and conditions of the Japan Post Counter Proposal taken as a whole are no less favourable than those of the relevant Competing Transaction, Toll and Japan Post must each use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Japan Post Counter Proposal as soon as reasonably practicable, and Toll must use its best endeavours to procure that each of its directors makes a public statement recommending the Japan Post Counter Proposal to Toll Shareholders.

10.6 Presentations

Nothing in this clause 10 prevents Toll from continuing to make normal presentations to brokers, portfolio investors and analysts in the ordinary course of business.

11 Payment of costs

11.1 Background

- (a) Toll and Japan Post acknowledge that, having entered into this deed, if the Scheme is subsequently not implemented, Japan Post will incur significant costs.

- (b) In the circumstances referred to in clause 11.1(a), Japan Post has requested that provision be made for the payments outlined in clause 11.3, without which Japan Post would not have entered into this deed.
- (c) Toll confirms that the Toll Board has acknowledged that:
 - (1) it has received external legal advice in relation to this deed and the operation of this clause 11;
 - (2) it believes the implementation of the Scheme will provide significant benefits to Toll and Toll Shareholders, such that it is reasonable and appropriate for Toll to agree to the Reimbursement Fee in order to secure Japan Post's participation in the Transaction; and
 - (3) the Reimbursement Fee is intended by the parties to be compensatory in nature and represents a genuine and reasonable estimate of cost and loss that would be suffered by Japan Post if this deed was entered into and the Scheme is subsequently not implemented, including to compensate Japan Post for the costs and expenses referred to in clause 11.4.

11.2 Payment by Toll to Japan Post

If:

- (a) prior to the earlier of the Effective Date or the End Date, any member of the Toll Board fails to recommend or withdraws or adversely modifies his or her support of the Scheme or his or her recommendation that Toll Shareholders vote in favour of the Scheme, or makes a public statement indicating that they no longer support the Scheme or that they support a Competing Transaction, other than:
 - (1) as a result of the Independent Expert opining that the Scheme is not in the best interests of Scheme Shareholders (other than where the reason for that opinion is a Competing Transaction);
 - (2) as a result of any matter or thing giving Toll the right to terminate under clause 13.1(a)(1); or
 - (3) as a result of a failure of a condition precedent in clause 3.1(a) (FIRB Approval), 3.1(b) (NZ OIO Approval), 3.1(c) (JFTC Approval), 3.1(d) (Regulatory Intervention), 3.1(f) (Court Approval) or 3.1(g) (Shareholder Approval), other than as a result of a breach by Toll of clause 3.2; or
- (b) a Competing Transaction is announced prior to the Second Court Date and, within 6 months of the date of such announcement, the person announcing or making the Competing Transaction:
 - (1) acquires a relevant interest in, or becomes the holder of, or otherwise acquires, directly or indirectly, 30% or more of Toll Shares and that acquisition is unconditional and free of defeating conditions;
 - (2) acquires or becomes the holder of, or otherwise, acquires an economic interest in all or a substantial part of the business of Toll and its subsidiaries;
 - (3) acquires control (as determined in accordance with section 50AA of the Corporations Act, disregarding sub-section 50AA(4)) of Toll; or
 - (4) otherwise acquires or merges with Toll; or

- (c) Japan Post terminates this deed pursuant to clause 13.1(b)(2) or as a result of a failure of a condition precedent in clauses 3.1(h) (No Toll Prescribed Occurrence) or 3.1(i) (Toll Representations and Warranties) to be satisfied, then Toll must pay Japan Post the Reimbursement Fee in accordance with clause 11.3.

11.3 Satisfaction of payment obligation

- (a) Toll must pay Japan Post the amount claimed under clause 11.2 within 14 days after receipt by Toll of a demand for payment from Japan Post except to the extent that a finding has been made by a court, Takeovers Panel, regulatory authority or tribunal as described in clause 11.5(b).
- (b) Toll's obligation to make the payment referred to in clause 11.3(a) will be satisfied by the payment of the relevant amount in immediately available funds to the account nominated by Japan Post for the purposes of this clause.
- (c) For the avoidance of doubt, if any portion of the Reimbursement Fee is found to be unacceptable or unenforceable in accordance with clause 11.5(b), Toll must pay Japan Post that remaining portion of the Reimbursement Fee which is still acceptable or enforceable within 14 days of a determination to that effect.

11.4 Nature of payment

The amount payable by Toll under clause 11.3 is intended to be an amount to compensate Japan Post for:

- (a) advisory costs (including costs of advisors other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) the opportunity costs incurred by Japan Post in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives which Japan Post could have developed to further its business and objectives.

11.5 Qualifications

- (a) No amount shall be payable by Toll under this clause 11 if the Scheme becomes Effective, notwithstanding the occurrence of any event in clause 11.2. To the extent that any amounts have already been paid under this clause 11 and the Scheme becomes Effective, such amounts shall be immediately refunded to Toll.
- (b) This clause 11 does not impose an obligation on Toll to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the amount:
 - (1) constitutes unacceptable circumstances as declared by the Takeovers Panel; or
 - (2) is held to be unenforceable by one party against the other as determined by a court,
 after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted. The parties must take all reasonable steps to ensure that any such determination applies to the minimum extent possible.
- (c) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in clause 11.5(b).



- (d) A statement that shareholders should 'take no action pending further advice' (or words to that effect) is not regarded as an adverse modification of a recommendation for the purposes of clause 11.2(a), provided that the Toll Board publicly re-affirms its recommendation in favour of the Transaction at least 5 Business Days before the earlier of the date that the Scheme is considered by Toll Shareholders and the End Date.

11.6 Other claims

The maximum aggregate amount which Toll is required to pay in relation to this deed (including any breach of this deed by Toll) is the Reimbursement Fee and in no event will the aggregate liability of Toll under or in connection with this deed exceed the Reimbursement Fee.

11.7 Exclusive remedy

Notwithstanding any other provision under this deed, where the Reimbursement Fee is paid to Japan Post under this deed (or would be payable if a demand was made), Japan Post cannot make any claim against Toll or the other Toll Indemnified Parties in relation to any event or occurrence referred to in clause 11.2.

12 Conduct of Court proceedings

- (a) Toll and Japan Post are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) This deed does not give Toll or Japan Post any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- (c) Toll and Japan Post must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

13 Termination

13.1 Termination

- (a) Without prejudice to any other rights of termination under this deed, Toll may terminate this deed by written notice to Japan Post at any time before 8.00am on the Second Court Date if:
 - (1) Japan Post is in breach of this deed (including a breach of a Japan Post Representation and Warranty under clause 6) and:
 - (A) that breach is material;
 - (B) Toll has given written notice to Japan Post setting out the breach and stating an intention to terminate this deed if the breach is not remedied; and
 - (C) the breach is not remedied by Japan Post to Toll's reasonable satisfaction within 5 Business Days (or any shorter period ending on the Second Court Date) from the

- time the notice is given in accordance with sub-paragraph (B); or
- (2) a Toll Director changes or withdraws his or her recommendation to Toll Shareholders to vote in favour of the Scheme, or recommends a Competing Transaction.
- (b) Without prejudice to any other rights of termination under this deed, Japan Post may terminate this deed by written notice to Toll at any time before 8.00am on the Second Court Date if:
- (1) there is a Material Adverse Change;
 - (2) Toll is in breach of this deed (including a breach of a Toll Representation and Warranty under clause 6) and:
 - (A) that breach is material;
 - (B) Japan Post has given written notice to Toll setting out the breach and stating an intention to terminate this deed if the breach is not remedied; and
 - (C) the breach is not remedied by Toll to Japan Post's reasonable satisfaction within 5 Business Days (or any shorter period ending on the Second Court Date) from the time the notice is given in accordance with sub-paragraph (B); or
 - (3) a Toll Director withdraws or adversely modifies his or her recommendation to Toll Shareholders to vote in favour of the Scheme, or recommends a Competing Transaction.

13.2 Effect of termination

If this deed is terminated by either party under clauses 3.4(b) or 13.1, except to the extent that the termination results from a breach by either party of its obligations under this deed, this deed will become void and have no effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued prior to termination and other than in relation to the provisions of this clause 13 and of clauses 6 (Representations and warranties), 9 (Confidentiality), 11 (Payment of Costs), 14 (Duty, costs and expenses), 15 (GST) and 16 (General), which will remain in force after termination.

13.3 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this deed. Specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this deed by any party, notwithstanding the ability of any party to terminate this deed or seek damages for such a breach or threatened breach or, in the case of Japan Post, to demand payment of the Reimbursement Fee. This clause is not intended to, and does not, limit the operation of clauses 11.6 or 11.7.

14 Duty, costs and expenses

14.1 Stamp duty

Japan Post must pay all stamp duties 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.

14.2 Costs and expenses

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

15 GST

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with clause 15(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 15(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 15(b):
 - (1) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (2) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (3) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this deed:

- (1) if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred; and
- (2) no Additional Amount is payable under clause 15(b) in respect of a Supply to which s 84-5 of the GST Law applies.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term in this clause starting with a capital letter that is not defined in this deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

16 General

16.1 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 and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.
- (c) Each party acknowledges and confirms that clauses 16.1(a) and 16.1(b) do not prejudice any rights a party may have in relation to information which has been filed by the other party with ASIC or the ASX.

16.2 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

16.3 Consents and approvals

Any consent or approval referred to in, or required under, this deed from any party may not be unreasonably withheld, unless this deed expressly provides for that consent or approval to be given in that party's absolute discretion.

16.4 Notices

Any communication under or in connection with this deed:

- (a) must be in legible writing;
- (b) must be addressed as shown below:

Party	Address	Addressee	Email
Toll	Level 7 380 St Kilda Road Melbourne VIC 3004 Australia	Bernard McInerney, Company Secretary	bernard.mcinerney@tollgroup.com
Japan Post	1-3-2 Kasumigaseki Chiyoda-ku, Tokyo 100-8798 Japan	Hiroshi Shiraishi Executive Manager, Corporate Planning Division	hiroshi.shiraishi.tz@jp-post.jp
Copy to:	Nishimura & Asahi, Ark Mori Building, 1-12-32 Akasaka, Minato-ku, Tokyo 107-6029, Japan	Masakazu Iwakura Partner	m_iwakura@plus.jurists.co.jp
	Clayton Utz, Level 28, 71 Eagle Street Brisbane, QLD 4000	Darryl McDonough Partner	dmcdonough@claytonutz.com

(or as otherwise notified by that party to the other party from time to time);

- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered to the address, or sent by email to the email address, of the addressee, in accordance with clause 16.4(b); and
- (e) is regarded as received by the addressee:
 - (1) if emailed, when a delivery confirmation report is received by the sender which records the time that email was delivered to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee), unless it is not a Business Day, or is after 4.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day; and
 - (2) if delivered by hand, on delivery at the address of the addressee as provided in clause 16.4(b), unless delivery is not made on a Business Day, or after 4.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day.

16.5 Governing law and jurisdiction

- (a) This deed is governed by the laws of Victoria, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and courts competent to hear appeals from those courts.
- (c) Japan Post irrevocably appoints Clayton Utz to be its agent for service of process in connection with this deed and agrees that any service document in connection with this deed may be effectively served on it by service on its agent if sent to Darryl D McDonough at Clayton Utz, Level 28 Riparian Plaza 71 Eagle Street, Brisbane Qld 4000 Australia.

16.6 Waivers

- (a) Failure to exercise or enforce, 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 does 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 is only 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 operates as a waiver of another breach of that term or of a breach of any other term of this deed.

16.7 Variation

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

16.8 Assignment

A party may not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the other party.

16.9 Invalidity and enforceability

- (a) If any provision of this deed is invalid under the law of any jurisdiction, the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 16.9(a) does not apply where enforcement of the provision of this deed in accordance with clause 16.9(a) would materially affect the nature or effect of the parties' obligations under this deed.

16.10 Further action

Each party will do all things and execute all further documents necessary to give full effect to this deed.

16.11 Entire agreement

This deed supersedes all previous agreements, understandings, negotiations or deeds (other than the Confidentiality Deed and the document referred to in clause 5.13) in



respect of its subject matter and this deed, the Confidentiality Deed and that document embody the entire agreement between the parties.

16.12 Counterparts

This deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed by signing any counterpart.

Schedule 1

Toll Representations and Warranties

Toll represents and warrants to Japan Post (in its own right and separately as trustee or nominee for each of the other Japan Post Indemnified Parties) that:

- (a) **Information in Scheme Booklet:** the information contained in the Scheme Booklet (other than the Japan Post Information, the Independent Expert's Report or any other report or letter issued to Toll by a third party) as at the date the Scheme Booklet is despatched to Toll Shareholders:
 - (1) has been prepared and included in the Scheme Booklet in good faith; and
 - (2) complies in all material respects with the requirements of the Corporations Act, Corporations Regulations, Listing Rules and relevant ASIC regulatory guides;
- (b) **Information provided to the Independent Expert:** all information provided by Toll to the Independent Expert, as at the date that information is provided, has been provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing its report for inclusion in the Scheme Booklet;
- (c) **Scheme Booklet:** no information (other than the Japan Post Information, the Independent Expert's Report or any other report or letter issued to Toll by a third party) contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Toll Shareholders, will contain any statement which is materially misleading or deceptive, including by way of omission from that statement;
- (d) **Updating information:** it will, as a continuing obligation, ensure that the Scheme Booklet (but in respect of Japan Post Information, subject to Japan Post complying with its obligations to update Japan Post Information) will be updated by all such further or new information which may arise after the Scheme Booklet has been despatched until the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (including because of any material omission);
- (e) **Validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (f) **Authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Toll;
- (g) **Power:** Toll has full corporate power and lawful authority to execute and deliver this deed without seeking the consent of any other person or persons;
- (h) **No default:** this deed does not conflict with or result in the breach of or a default under:
 - (1) Toll's constitution or other constituent documents; or
 - (2) any writ, order or injunction, judgment, law, rule or regulation to which it is party or by which it is bound;

- (i) **Capital structure:** as at the date of this deed, there are on issue:
- (1) 717,437,878 Toll Shares;
 - (2) no more than 7,305,926 performance rights;
 - (3) no more than 15,902,834 performance options;
 - (4) no more than 549,316 restricted rights; and
 - (5) no more than 177,411 deferred equity rights,
- and no Toll Group Member has issued or agreed to issue any other securities, options, performance rights or instruments which are still outstanding (or become outstanding) and may convert into Toll Shares;
- (j) **Diluted capital:** as at 8.00am on the Second Court Date, there will be on issue no more than 741,373,365 Toll Shares, and no Executive Incentive Arrangements or any other securities, options, performance rights or instruments will be outstanding or become outstanding or convertible into Toll Shares;
- (k) **Indebtedness:** except as fairly disclosed in the Due Diligence Materials, so far as Toll is aware as at the date of this deed:
- (1) no Toll Group Member has incurred or agreed to incur any material indebtedness under any bank facility or other similar material arrangement providing financial accommodation of any description (excluding usual terms of trade with customers and suppliers and excluding hedges, swaps and similar arrangements); and
 - (2) other than the Transaction, no event has occurred which would entitle any person to require the repayment of any borrowings of the Toll Group or require any borrowings of the Toll Group to be repaid before their due date for any reason;
- (l) **Disclosure:** as at the date of this deed:
- (1) Toll is in compliance in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, except as fairly disclosed in the Due Diligence Materials, Toll is not withholding from disclosure to ASX any material information in reliance on Listing Rule 3.1A;
 - (2) the Due Diligence Materials were compiled and made available to Japan Post and its Representatives in good faith and, so far as Toll is aware, the Due Diligence Materials are materially true and accurate and not misleading or deceptive, including by omission; and
 - (3) so far as Toll is aware, the presentation made by Chris Pearce to Japan Post as part of the due diligence was materially true, accurate and not misleading;
- (m) **No material undisclosed liability:** other than as fairly disclosed in the Due Diligence Materials, so far as Toll is aware as at the date of this deed, there is no current or pending claim, dispute, demand, action, litigation, prosecution, arbitration, investigation, mediation or other proceeding which could reasonably be expected to result in an award, settlement, fine, penalty, order, loss or other liability to the Toll Group of more than \$50 million, nor is Toll aware of any anticipated matter of this kind; and
- (n) **Obligation to disclose liabilities and indebtedness:** it will, as a continuing obligation until 8.00am on the Second Court Date, inform Japan Post of any information of which Toll becomes aware after the date of this deed which



would have required disclosure in order for the representations and warranties under paragraph (k) or (m) to be correct had Toll been aware of that information as at the date of this deed.

Schedule 2

Japan Post Representations and Warranties

Japan Post represents and warrants to Toll (in its own right and separately as trustee or nominee for each of the other Toll Indemnified Parties) that:

- (a) **Japan Post Information:** the Japan Post Information contained in the Scheme Booklet as at the date the Scheme Booklet is despatched to Toll Shareholders:
 - (1) has been prepared and included in the Scheme Booklet in good faith; and
 - (2) complies in all material respects with the requirements of the Corporations Act, Corporations Regulations, Listing Rules and relevant ASIC regulatory guides;
- (b) **Information provided to the Independent Expert:** all information provided by Japan Post to the Independent Expert, as at the date that information is provided, has been provided in good faith and on the understanding that, to the extent accepted by the Independent Expert, the Independent Expert will rely on that information for the purpose of preparing its report for inclusion in the Scheme Booklet;
- (c) **Not misleading:** the Japan Post Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Toll Shareholders, will not contain any statement which is materially misleading or deceptive including by way of omission from that statement;
- (d) **Updating Japan Post Information:** it will, as a continuing obligation, provide to Toll all such further or new information which may arise after the Scheme Booklet has been despatched until the Scheme Meeting which is necessary to ensure that the Japan Post Information is not misleading or deceptive in any material respect (including because of any material omission);
- (e) **Validly existing:** it is a validly existing corporation registered under the laws of its place of incorporation;
- (f) **Authority:** the execution and delivery of this deed has been properly authorised by all necessary corporate action of Japan Post;
- (g) **Power:** it has full corporate power and lawful authority to execute, deliver and perform this deed without seeking the consent of any other person or persons;
- (h) **No default:** this deed does not conflict with or result in the breach of or a default under:
 - (1) Japan Post's constitution or other constituent documents; or
 - (2) any writ, order or injunction, judgment, law, rule or regulation to which it is party or by which it is bound;
- (i) **Insolvency Event or regulatory action:** no Insolvency Event has occurred in relation to it or a Related Body Corporate of Japan Post, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (j) **No dealings with Toll Shareholders:** neither it nor any of its associates has any agreement, arrangement or understanding with any Toll Shareholder under



which that Toll Shareholder (or an associate of that Toll Shareholder) would be entitled to receive consideration for their Toll Shares different from the Scheme Consideration or under which the Toll Shareholder agrees to vote in favour of the Scheme or against any Competing Transaction;

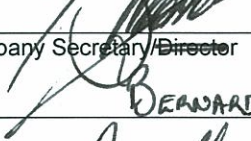
- (k) **Reasonable basis:** as at the date of this deed, Japan Post has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Japan Post's obligations to pay the Scheme Consideration in accordance with its obligations under this deed and the Deed Poll; and
- (l) **Unconditional cash reserves:** by 8.00am on the Second Court Date, Japan Post will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of Japan Post) sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Japan Post's obligations to pay the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll.




Signing page

Executed as a deed

Executed by
Toll Holdings Limited
in accordance with section 127 of the
Corporations Act 2001 (Cth)
by

sign here ► 
Company Secretary/Director
print name EDWARD MCINERNEY

sign here ► 
Director
print name BRIAN KRUGER.

Signed for
Japan Post
by

sign here ► _____
President and CEO
print name Toru Takahashi

in the presence of

sign here ► _____
Witness
print name Hiroshi Shiraishi



Signing page

Executed as a deed

Executed by
Toll Holdings Limited
in accordance with section 127 of the
Corporations Act 2001 (Cth)
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Signed for
Japan Post
by

sign here ► 高橋 亨
President and CEO

print name Toru Takahashi

in the presence of

sign here ► H. Shiraishi
Witness

print name Hiroshi Shiraishi



HERBERT
SMITH
FREEHILLS

Attachment A

Scheme



HERBERT
SMITH
FREEHILLS

Scheme of arrangement

Toll Holdings Limited

Scheme Shareholders



Scheme of arrangement

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

Between the parties

Toll	Toll Holdings Limited (ABN 25 006 592 089) of Level 7, 380 St Kilda Road Melbourne VIC 3004 Australia (Toll)
Scheme Shareholders	Each person who is registered as the holder of Toll Shares recorded in the Toll Share Register as at the Scheme Record Date (Scheme Shareholders)

1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this Scheme are set out below.

Term	Meaning
ASIC	the Australian Securities and Investments Commission.
ASX	ASX Limited ABN 98 008 624 691 and, where the context requires, the financial market that it operates.
Business Day	a weekday in which trading banks are open for business in Melbourne, Victoria, Australia.
CHESS	the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).



Term	Meaning
Corporations Regulations	the <i>Corporations Regulations 2001</i> (Cth).
Court	the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act agreed to in writing by Toll and Japan Post.
Deed Poll	the deed poll executed by Japan Post on [<i>insert date</i>] under which Japan Post covenants in favour of the Scheme Shareholders to perform the obligations attributed to it under this Scheme.
Effective	when used in relation to this Scheme, the coming into effect, under subsection 411(10) of the Corporations Act, of the Court order made under paragraph 411(4)(b) of the Corporations Act in relation to this Scheme.
Effective Date	the date on which this Scheme becomes Effective.
End Date	30 June 2015, or such other date as agreed in writing by Japan Post and Toll.
Government Agency	any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian.
Implementation Date	the fifth Business Day after the Scheme Record Date, or such other date as agreed in writing by Toll and Japan Post.
Implementation Deed	the scheme implementation deed dated 18 February 2015 between Toll and Japan Post relating to the implementation of this Scheme.
Japan Post	Japan Post Co., Ltd. of 1-3-2 Kasumigaseki, Chiyoda-ku, Tokyo 100-8798, Japan.
Japan Post Group	Japan Post and each of its Related Bodies Corporate and a reference to a "Japan Post Group Member" or "a member of the Japan Post Group" is to Japan Post or any of its Related Bodies Corporate.



Term	Meaning
Listing Rules	the official listing rules of ASX.
Operating Rules	the official operating rules of ASX.
Registered Address	in relation to a Toll Shareholder, the address shown in the Share Register as at the Scheme Record Date.
Scheme	this scheme of arrangement under Part 5.1 of the Corporations Act between Toll and the Scheme Shareholders subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Toll and Japan Post.
Scheme Booklet	the scheme booklet published by Toll and dated [<i>insert date</i>].
Scheme Consideration	for each Toll Share held by a Scheme Shareholder as at the Scheme Record Date, an amount of \$9.04 cash, subject to the terms of this Scheme.
Scheme Meeting	the meeting of the Toll Shareholders ordered by the Court to be convened under subsection 411(1) of the Corporations Act to consider and vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
Scheme Record Date	5.00pm (Melbourne time) on the fifth Business Day after the Effective Date.
Scheme Shareholder	a holder of Toll Shares recorded in the Share Register as at the Scheme Record Date.
Scheme Shares	all Toll Shares held by the Scheme Shareholders as at the Scheme Record Date.
Scheme Transfer	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, in favour of Japan Post as transferee, which may be a master transfer of all or part of the Scheme Shares.
Second Court Date	the first day on which an application made to the Court for an order under paragraph 411(4)(b) of the Corporations Act approving this Scheme is heard or, if the application is adjourned or subject to appeal

Term	Meaning
	for any reason, the day on which the adjourned application is heard.
Share Register	the register of members of Toll maintained by Toll or Toll Registry in accordance with the Corporations Act.
Subsidiary	has the meaning given in Division 6 of Part 1.2 of the Corporations Act.
Toll	Toll Holdings Limited (ABN 25 006 592 089).
Toll Registry	Boardroom Pty Limited ACN 003 209 836.
Toll Share	a fully paid ordinary share in the capital of Toll.
Toll Shareholder	a person who is registered as the holder of a Toll Share in the Share Register.

1.2 Interpretation

In this Scheme:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to a clause, party, part, schedule, attachment or exhibit is a reference to a clause or part of, and a party, schedule, attachment or exhibit to, this Scheme;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document (including this Scheme) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) the word 'includes' in any form is not a word of limitation;

- (j) a reference to '\$', 'A\$' or 'dollar' is to Australian currency unless denominated otherwise;
- (k) a reference to any time is, unless otherwise indicated, a reference to that time in Melbourne, Australia;
- (l) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme;
- (m) a reference to a party to a document includes that party's successors and permitted assignees;
- (n) no provision of this Scheme will be construed adversely to a party because that party was responsible for the preparation of this Scheme or that provision;
- (o) a reference to a body, other than a party to this Scheme (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

2 Preliminary matters

- (a) Toll is a public company limited by shares, incorporated in Australia, and has been admitted to the official list of the ASX.
- (b) As at the date of the Implementation Deed, there were on issue:
 - (1) 717,437,878 Toll Shares, which are quoted for trading on the ASX;
 - (2) no more than 7,305,926 performance rights, which are not quoted for trading on any stock exchange;
 - (3) no more than 15,902,834 performance options, which are not quoted for trading on any stock exchange;
 - (4) no more than 549,316 restricted rights, which are not quoted for trading on any stock exchange; and
 - (5) no more than 177,411 deferred equity rights, which are not quoted for trading on any stock exchange.
- (c) Japan Post is an unlisted company limited by shares incorporated in Japan.
- (d) If this Scheme becomes Effective:
 - (1) Japan Post must provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll; and
 - (2) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to Japan

Post and Toll will enter the name of Japan Post in the Share Register in respect of the Scheme Shares on the Implementation Date.

- (e) Toll and Japan Post have agreed, subject to the terms and conditions set out in the Implementation Deed, to implement this Scheme.
- (f) This Scheme attributes actions to Japan Post but does not itself impose an obligation on it to perform those actions. Japan Post has agreed, by executing the Deed Poll, to perform the actions attributed to it under this Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Shareholders.

3 Conditions

3.1 Conditions precedent

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

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in the Implementation Deed relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Implementation Deed by 8.00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under paragraph 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Japan Post and Toll;
- (d) such other conditions made or required by the Court under subsection 411(6) of the Corporations Act in relation to this Scheme and agreed to by Japan Post and Toll having been satisfied or waived; and
- (e) the orders of the Court made under paragraph 411(4)(b) (and, if applicable, subsection 411(6)) of the Corporations Act approving this Scheme coming into effect, pursuant to subsection 411(10) of the Corporations Act on or before the End Date (or any later date Toll and Japan Post agree in writing).

3.2 Certificate

- (a) Toll and Japan Post will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

4 Implementation of this Scheme

4.1 Lodgement of Court orders with ASIC

Toll must lodge with ASIC, in accordance with subsection 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible and in any event by 5.00pm on the first Business Day after the day on which the Court approves this Scheme.

4.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Japan Post, without the need for any further act by any Scheme Shareholder (other than acts performed by Toll as attorney and agent for Scheme Shareholders under clause 8.5), by:
 - (1) Toll delivering to Japan Post a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Toll, for registration; and
 - (2) Japan Post duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Toll for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a)(2), Toll must enter, or procure the entry of, the name of Japan Post in the Share Register in respect of all the Scheme Shares transferred to Japan Post in accordance with this Scheme.

5 Scheme Consideration

5.1 Provision of Scheme Consideration

- (a) Japan Post must, and Toll must use its best endeavours to procure that Japan Post does, by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the aggregate amount of the Scheme Consideration payable to each Scheme Shareholder, in an Australian dollar denominated trust account operated by Toll as trustee for the Scheme Shareholders and notified to Japan Post at least 3 Business Days prior to Implementation Date (provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Japan Post's account).
- (b) On the Implementation Date, subject to funds having been deposited in accordance with clause 5.1(a), Toll must pay or procure the payment from the trust account referred to in clause 5.1(a) the Scheme Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Share Register on the Scheme Record Date.
- (c) The obligations of Toll under clause 5.1(b) will be satisfied by Toll (in its absolute discretion):

- (1) where a Scheme Shareholder has, before the Scheme Record Date, made a valid election in accordance with the requirements of the Toll Registry to receive dividend payments from Toll by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
- (2) otherwise, whether or not the Scheme Shareholder has made an election referred to in clause 5.1(c)(1), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Scheme 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 5.2).
- (d) To the extent that, following satisfaction of Toll's obligations under clause 5.1(b), there is a surplus in the amount held by Toll as trustee for the Scheme Shareholders in the trust account referred to in that clause, that surplus shall be paid by Toll to Japan Post.

5.2 Joint holders

In the case of Scheme Shares held in joint names:

- (a) subject to clause 5.1(c), the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Toll, the holder whose name appears first in the Share Register as at the Scheme Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Toll, the holder whose name appears first in the Share Register as at the Scheme Record Date or to the joint holders.

5.3 Unclaimed monies

- (a) Toll may cancel a cheque issued under this clause 5 if the cheque:
 - (1) is returned to Toll; or
 - (2) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Toll (or the Toll Registry), Toll must reissue a cheque that was previously cancelled under this clause 5.3.
- (c) The *Unclaimed Money Act 2008* (VIC) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008* (VIC)).

5.4 Orders of a court or Government Agency

If written notice is given to Toll (or the Toll Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) 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 Toll in accordance with this clause 5, then Toll shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or

- (b) prevents Toll 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, Toll shall be entitled to retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as provision of the consideration in accordance with this clause 5 is permitted by that order or direction or otherwise by law.

6 Dealings in Toll Shares

6.1 Determination of Scheme Shareholders

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

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the relevant Toll Shares on or before the Scheme 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 the Scheme Record Date at the place where the Share Register is kept,

and Toll must not accept for registration, nor recognise for any purpose (except a transfer to Japan Post pursuant to this Scheme and any subsequent transfer by Japan Post 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.

6.2 Register

- (a) Toll must register registrable transmission applications or transfers of the Scheme Shares in accordance with clause 6.1(b) before the Scheme Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Toll to register a transfer that would result in a Toll Shareholder holding a parcel of Toll Shares that is less than a 'marketable parcel' (for the purposes of this clause 6.2(a) 'marketable parcel' has the meaning given in the Operating Rules).
- (b) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them on or after the Scheme Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Japan Post shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Toll must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Share Register in this form will solely determine entitlements to the Scheme Consideration.

- (d) All statements of holding for Toll Shares (other than statements of holding in favour of Japan Post) will cease to have effect after the Scheme Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Toll Share Register (other than entries on the Share Register in respect of Japan Post) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of Toll Shares relating to that entry.
- (e) As soon as possible on or after the Scheme Record Date, and in any event within one Business Day after the Scheme Record Date, Toll will ensure that details of the names, Registered Addresses and holdings of Toll Shares for each Scheme Shareholder as shown in the Share Register are available to Japan Post in the form Japan Post reasonably requires.

7 Quotation of Toll Shares

- (a) Toll must apply to ASX to suspend trading on the ASX in Toll Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Japan Post, Toll must apply:
 - (1) for termination of the official quotation of Toll Shares on the ASX; and
 - (2) to have itself removed from the official list of the ASX.

8 General Scheme provisions

8.1 Consent to amendments to this Scheme

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

- (a) Toll may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Japan Post has consented in writing; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions which counsel for Toll has consented to.

8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder:
 - (1) agrees to the transfer of their Toll Shares together with all rights and entitlements attaching to those Toll Shares in accordance with this Scheme;
 - (2) agrees to the variation, cancellation or modification of the rights attached to their Toll Shares constituted by or resulting from this Scheme;
 - (3) agrees to, on the direction of Japan Post, destroy any share certificates relating to their Toll Shares; and
 - (4) acknowledges that this Scheme binds Toll and all Scheme Shareholders (including those who do not attend the Scheme Meeting

or those who do not vote, or vote against this Scheme, at the Scheme Meeting).

- (b) Each Scheme Shareholder is taken to have warranted to Toll and Japan Post on the Implementation Date, and appointed and authorised Toll as its attorney and agent to warrant to Japan Post on the Implementation Date, that all their Toll Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Toll Shares to Japan Post together with any rights and entitlements attaching to those shares. Toll undertakes that it will provide such warranty to Japan Post as agent and attorney of each Scheme Shareholder.

8.3 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Japan Post will, at the time of transfer of them to Japan Post, vest in Japan Post free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5, Japan Post will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by Toll of Japan Post in the Share Register as the holder of the Scheme Shares.

8.4 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5, and until Toll registers Japan Post as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Japan Post as attorney and agent (and directed Japan Post in each such capacity) to appoint any director, officer, secretary or agent nominated by Japan Post 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) must not 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 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Japan Post reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.4(a), Japan Post and any director, officer, secretary or agent nominated by Japan Post under clause 8.4(a) may act in the best interests of Japan Post as the intended registered holder of the Scheme Shares.

8.5 Authority given to Toll

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

- (a) on the Effective Date, irrevocably appoints Toll and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing the Deed Poll against Japan Post, and Toll undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Japan Post on behalf of and as agent and attorney for each Scheme Shareholder; and
- (b) on the Implementation Date, irrevocably appoints Toll and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including (without limitation) executing the Scheme Transfer,

and Toll accepts each such appointment. Toll as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

8.6 Binding effect of Scheme

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

9 General

9.1 Stamp duty

Japan Post will:

- (a) pay all stamp duty and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

9.2 Consent

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

9.3 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Toll, it will not be taken to be received in the ordinary course of post or on a date and time other than the date



and time (if any) on which it is actually received at Toll's registered office or at the office of the Toll Registry.

- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Toll Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.4 Governing law

- (a) This Scheme is governed by the laws in force in Victoria, Australia.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

9.5 Further action

Toll must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

9.6 No liability when acting in good faith

Each Scheme Shareholder agrees that neither Toll, Japan Post nor any director, officer, secretary or employee of Toll or Japan Post, shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.



HERBERT
SMITH
FREEHILLS

Attachment B

Deed Poll



HERBERT
SMITH
FREEHILLS

Deed Poll

Japan Post Co., Ltd.

Deed Poll

Date ►

This deed poll is made

By	Japan Post Co., Ltd. of 1-3-2 Kasumigaseki, Chiyoda-ku, Tokyo 100-8798, Japan (Japan Post)
in favour of	each person registered as a holder of fully paid ordinary shares in Toll Holdings Limited (Toll) in the Toll Share Register as at the Scheme Record Date.
Recitals	<ol style="list-style-type: none">1 Toll and Japan Post entered into the Implementation Deed.2 In the Implementation Deed, Japan Post agreed to make this deed poll.3 Japan Post is making this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to perform its obligations under the Implementation Deed and the Scheme.

This deed poll provides as follows:

1 Definitions and interpretation

1.1 Definitions

(a) The meanings of the terms used in this deed poll are set out below.

Term	Meaning
First Court Date	the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
Implementation Deed	the scheme implementation deed entered into between Toll and Japan Post dated 18 February 2015.

Term	Meaning
Scheme	the scheme of arrangement under Part 5.1 of the Corporations Act between Toll and the Scheme Shareholders, the form of which is annexed to this deed poll, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to in writing by Japan Post and Toll.
(b)	Unless the context otherwise requires, terms defined in the Scheme have the same meaning when used in this deed poll.

1.2 Interpretation

Sections 1.2 and 1.3 of the Scheme apply to the interpretation of this deed poll, except that references to 'this Scheme' are to be read as references to 'this deed poll'.

1.3 Nature of deed poll

Japan Post 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 Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Toll and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Japan Post.

2 Conditions to obligations

2.1 Conditions

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

2.2 Termination

The obligations of Japan Post under this deed poll to the Scheme Shareholders will automatically terminate and the terms of this deed poll will be of no force or effect if:

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

unless Japan Post and Toll otherwise agree in writing.

2.3 Consequences of termination

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

- (a) Japan Post is released from its obligations to further perform this deed poll except those obligations under clause 7.1; and

- (b) each Scheme Shareholder retains the rights they have against Japan Post in respect of any breach of this deed poll which occurred before it was terminated.

3 Scheme Consideration

Subject to clause 2, Japan Post undertakes in favour of each Scheme Shareholder to:

- (a) deposit, or procure the deposit of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Toll as trustee for the Scheme Shareholders and notified to Japan Post at least 3 Business Days prior to Implementation Date, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to Japan Post's account; and
- (b) undertake all other actions attributed to it under the Scheme, subject to and in accordance with the terms of the Scheme.

4 Warranties

Japan Post represents and warrants in favour of each Scheme Shareholder, in respect of itself, 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; and
- (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 subject or by which it is bound.

5 Continuing obligations

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

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

6 Notices

6.1 Form of Notice

A notice or other communication in respect of this deed poll (**Notice**) must be:

- (a) in writing and in English and signed by or on behalf of the sending party; and
- (b) addressed to Japan Post in accordance with the details set out below (or any alternative details nominated by Japan Post by Notice).

	Address	Addressee	Email
	1-3-2 Kasumigaseki Chiyoda-ku, Tokyo 100-8798 Japan	Hiroshi Shiraishi Executive Manager, Corporate Planning Division	hiroshi.shiraishi.tz@jp-post.jp
Copy to:	Nishimura & Asahi, Ark Mori Building, 1-12-32 Akasaka, Minato-ku, Tokyo 107-6029, Japan	Masakazu Iwakura Partner	m_iwakura@plus.jurists.co.jp
	Clayton Utz, Level 28, 71 Eagle Street Brisbane, QLD 4000	Darryl McDonough Partner	dmcdonough@claytonutz.com

6.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below.

However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By email to the nominated email address	When the email (including any attachment) comes to the attention of the recipient party or a person acting on its behalf.

7 General

7.1 Stamp duty

Japan Post:

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

7.2 Governing law and jurisdiction

- (a) This deed poll is governed by the law in force in Victoria, Australia.
- (b) Japan Post irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll. Japan Post irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

7.3 Waiver

- (a) Japan Post may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) The meanings of the terms used in this clause 7.3 are set out below.

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

7.4 Variation

A provision of this deed poll may not be varied unless the variation is agreed to by Japan Post and:

- (a) if before the First Court Date, the variation is agreed to by Toll; or
- (b) if on or after the First Court Date, the variation is agreed to by Toll and the Court indicates that the variation would not of itself preclude approval of the Scheme,

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



7.5 Cumulative rights

The rights, powers and remedies of Japan Post 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.

7.6 Assignment

- (a) The rights created by this deed poll are personal to Japan Post and each Scheme Shareholder and must not be dealt with at law or in equity without the prior written consent of Japan Post.
- (b) Any purported dealing in contravention of clause 7.6(a) is invalid.

7.7 Further action

Japan Post must, at its own expense, do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.



Signing page

Executed as a deed poll

Signed for
Japan Post
by

sign here ► _____
President and CEO

print name Toru Takahashi

in the presence of

sign here ► _____
Witness

print name Hiroshi Shiraishi