

*Execution Version*

# Deed of Company Arrangement

The companies listed at Schedule 1  
Deed Companies

Salvatore Algeri, Jason Tracy, Matthew Donnelly and David Orr in their  
capacities as joint and several voluntary administrators of the Deed  
Companies  
Deed Administrators

WBHO Construction (Pty) Ltd, a company incorporated pursuant to the  
laws of South Africa with Registration Number 1983/011953/07  
Proponent

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Our reference 20556/19580/81021333

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# Deed of Company Arrangement

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**Date** 21 July 2022

**Parties** The companies listed at Schedule 1 ( **Deed Companies** )

**Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as joint and several voluntary administrators of each of the Deed Companies** of C/- Deloitte Financial Advisory, 477 Collins Street, Melbourne VIC 3000 ( **Deed Administrators** )

**WBHO Construction (Pty) Ltd**, a company incorporated pursuant to the laws of South Africa with Registration Number 1983/011953/07 of 53 Andries Street, Wynberg Sandton 2090, South Africa ( **Proponent** )

## Background

- A. On 23 February 2022, Sal Algeri, Jason Tracy, David Orr and Matt Donnelly were appointed as joint and several voluntary administrators of the Deed Companies pursuant to section 436A of the Corporations Act.
- B. At a meeting held on 30 June 2022 and convened pursuant to section 439A of the Corporations Act ( **Second Meeting** ), the Creditors of the Deed Companies resolved under section 439C of the Corporations Act that the Deed Companies execute the deed of company arrangement proposed by the Proponent under section 444B(2) of the Corporations Act ( **Section 439C Resolution** ).
- C. The Deed Companies, the Deed Administrators and the Proponent have agreed to execute this Deed to give effect to the Section 439C Resolution.
- D. The Deed Administrators have consented to be the administrators of this Deed.
- E. Subject to the terms of this Deed, this Deed binds all Creditors of the Deed Companies, in accordance with section 444D of the Corporations Act and also binds the Deed Companies and their Officers and Members in accordance with section 444G of the Corporations Act.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Deed:

**Administrators** means Sal Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as joint and several voluntary administrators of the Deed Companies (and any successor to that office appointed pursuant to the Corporations Act) as set out in Schedule 1.

**Administrators' Liabilities** means the remuneration (as approved in accordance with the Corporations Act), costs, charges, liabilities and expenses (including legal expenses and claims made against the Administrators) of the Administrators.

**Admitted Claim** means a Claim admitted by the Deed Administrators after adjudication in accordance with this Deed.

**Admitted Creditor** means a Claim against the Deed Companies that is admitted by the Deed Administrators in accordance with the terms of this Deed.

**Admitted Employee Creditor** means an Employee Creditor who has an Admitted Claim.

**Admitted Insurance Bond Creditor** means an Insurance Bond Creditor who has an Admitted Claim.

**Admitted Small Creditor** means a Small Creditor who has an Admitted Claim.

**Admitted Unsecured Creditor** means an Unsecured Creditor who has an Admitted Claim.

**Appointment Date** means 23 February 2022.

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

**ATO GST Priority Amount** means the lesser of:

- (a) an amount equal to the Proceeds of Realisable Assets of Prodev 4 (prior to pooling of such assets in accordance with the terms of this Deed) less costs of realisation (including the Administrators' or Deed Administrators' fees and expenses) and any priority entitlements pursuant to section 556 of the Corporations Act; and
- (b) amounts owing to the Australian Taxation Office in respect of unpaid GST owed by the relevant tax group including Prodev 4.

**ATO Income Tax Priority Amount** means the lesser of:

- (a) an amount equal to the Proceeds of Realisable Assets of Northcoast Holdings (prior to pooling of such assets in accordance with the terms of this Deed) less costs of realisation (including the Administrators' or Deed Administrators' fees and expenses) and any priority entitlements pursuant to section 556 of the Corporations Act; and
- (b) amounts owing to the Australian Taxation Office in respect of unpaid income tax owed by the relevant tax group including Northcoast Holdings.

**BLU System** means the software platform owned and operated by the Proponent.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for business generally in Melbourne.

**Called Guarantees** means CBA Bank Guarantees, which have been called by the relevant holder and in respect of which the Proponent has paid an amount equivalent to the amount called to CBA.

**CBA** means Commonwealth Bank of Australia in its capacity as "Fronting Bank" under the CBA Facility Agreement.

**CBA Bank Guarantees** means bank guarantees issued under the CBA Facility Agreement.

**CBA Facility Agreement** means the Bank Guarantee Facility and Reimbursement Agreement dated 14 December 2017 between, among others, CBA and Probuild (as amended from time to time).

**CBA Guarantee Recovered Funds** means any amounts recovered by the Deed Companies in respect of the Called Guarantees but does not include amounts recovered in respect of the Curtin Uni Performance Guarantees.

**Caulfield Contingent Amount** means \$500,000 (GST inclusive, if any).

**Caulfield Conditions** means each of the conditions precedent contain in clause 7.2(a) of this Deed.

**Caulfield Satisfaction Date** means the date on which all of the Caulfield Conditions have been satisfied.

**Claim** means any action, demand, suit, proceeding, debt, claim, loss, damage or other liability (whether present or future, certain or contingent, ascertained or sounding only in damages) whatsoever and however incurred, arising directly or indirectly from any act or omission by the Deed Companies (or any one of them) or by any agreement, circumstance or event, occurring on or before the Appointment Date, but does not include an Excluded Claim.

**Commencement Date** means that date upon which each relevant party executes this Deed.

**Completion** means the date being 5 Business Days after the date that each of the Conditions are satisfied.

**Conditions** means each of the conditions precedent contained in clause 4 of this Deed.

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

**Court** means the Federal Court of Australia or the Supreme Court of Victoria.

**CP Satisfaction Date** means the date that is no later than 8 weeks after the Commencement Date.

**Creditor** means a person who, or an entity that, has a Claim against a Deed Company.

**Curtin Uni Performance Guarantees** means:

- (a) bank guarantee G636680 issued by CBA in favour of Live-In Learning Custodians Pty Ltd guaranteeing an amount equal to \$504,043.28; and
- (b) bank guarantee G636676 issued by CBA in favour of National Australia Bank Limited guaranteeing an amount equal to \$7,956,892.67.

**Deed** means this Deed of Company Arrangement between the Parties.

**Deed Administrators' Liabilities** means the remuneration (as approved in accordance with the Corporations Act), costs, charges, liabilities and expenses (including legal expenses and claims made against the Deed Administrators) of the Deed Administrators.

**Deed Fund** has the meaning given to it in clause 6.1.

**Deed Period** means the period commencing on the Commencement Date and ending on the date this Deed Terminates.

**Directors** has the meaning ascribed to that term in section 9 of the Corporations Act.

**Effectuation** means the date upon which effectuation of this Deed is to occur, being one month after the date that the final distribution is made from the Deed Fund and the Deed Administrators have attended to all matters necessary to certify that the Deed has been effectuated.

**Employee Creditor** means an employee Creditor with a Claim that, in a liquidation of the Deed Companies, would be entitled to priority of payment pursuant to sections 556(1)(e), (f) to (h) (inclusive), 560 or 561 of the Corporations Act and:

- (a) includes:

- (i) an employee Creditor that would otherwise be an “excluded employee” pursuant to subsection (c) of the definition of “excluded employee” in section 556(2) of the Corporations Act; and
  - (ii) an employee Creditor that would otherwise be impacted by subsection (c) of the definition of “non-priority day” in section 556(2) of the Corporations Act; and
- (b) does not include an employee whose employment with a Deed Company was transferred to a third party prior to the Commencement Date.

**Enforcement Process** has the meaning ascribed to that term in section 9 of the Corporations Act.

**Excluded Assets** are:

- (a) any loans owing to any of the Deed Companies by Brad Duggan; and
- (b) CBA Guarantee Recovered Funds.

**Excluded Claim** means:

- (a) a Claim by any of the Deed Companies to receive a distribution in respect of an intercompany receivable;
- (b) a Claim by the Proponent to receive a distribution as an Admitted Creditor; or
- (c) a Claim by a relevant finance party or relevant guarantor under the CBA Facility Agreement to receive a distribution as an Admitted Creditor.

**Final Distribution Date** means the date upon which the final distribution is made to Creditors from the Deed Fund.

**Finance Party and Proponent Consent** means the agreement of the Proponent, relevant finance parties and relevant guarantors under the CBA Facility Agreement not to receive a distribution as an Admitted Creditor pursuant to the terms of this Deed.

**GST** has the meaning given to that term in the GST Act.

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

**Guarantee Recovery Payment** means an amount equal to the CBA Guarantee Recovered Funds.

**Initial Contribution Amount** means \$9,080,000.

**Intragroup Claim** means all Claims as between each of the Deed Companies and the Proponent.

**Insolvency Practice Rules** means the *Insolvency Practice Rules (Corporations) 2016* (Cth).

**Insolvency Practice Schedule** means Schedule 2 of the Corporations Act.

**Insurance Bond Creditor** means AAI Limited t/as Vero Insurance, Allianz Australia Insurance Limited, Tokio Marine & Nichido Fire Insurance Co Limited C/- BCC Surety Pty Ltd and AIG Australia Limited.

**Members** means all the shareholders of the Deed Companies.



**Northcoast Holdings** means Northcoast Holdings Pty Ltd (Administrators Appointed) ACN 009 296 780.

**Officers** has the meaning ascribed to that term in section 9 of the Corporations Act.

**Operating Expenditure Amount** means a cash payment in the amount of \$580,000 payable by the Proponent in recognition of operating expenditure incurred or to be incurred by the Administrators or Deed Administrators (as applicable) that has, or will, provide a benefit to the Proponent.

**Parties** means the Deed Companies listed at Schedule 1, the Deed Administrators and the Proponent and **Party** means any one of them.

**Pool A Fund** means the Pool A Fund Amount, to be made available for distribution in accordance with clause 8.1.

**Pool A Fund Amount** means:

- (a) \$6,000,000 by way of cash payment by Proponent;
- (b) the Operating Expenditure Amount (subject to clause 7.3(b));
- (c) the Caulfield Contingent Amount (subject to satisfaction of the Caulfield Conditions);
- (d) Proceeds of the Realisable Assets; and
- (e) the SRG DOCA Distribution.

**Pool B Fund** means the Pool B Fund Amount, to be made available for distribution in accordance with clause 8.2.

**Pool B Fund Amount** means \$2,500,000.

**Pool C Fund** means the Pool C Fund Amount, to be made available for distribution in accordance with clause 8.3(a)(i).

**Pool C Fund Amount** means any amounts remaining in the Pool A Fund after the distributions have been made in accordance with clause 8.1(a).

**Pool D Fund** means the Pool D Fund Amount to be made available for distribution in accordance with clause 8.3(a)(ii).

**Pool D Fund Amount** means the Proceeds of the Realisable Assets from the Pool A Fund in an amount equal to the ATO GST Priority Amount and the ATO Income Tax Liability Amount.

**Pooled Companies** means the Deed Companies.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it.

**PPSR** means the register established pursuant to the PPSA and any regulations made pursuant to it.

**Prescribed Provisions** means the provisions set out in Schedule 8A to the Regulations.

**Probuild** means Probuild Constructions (Aust) Pty Ltd (Administrators Appointed) ACN 095 250 945.

**Proceeds** means, in relation to a Realisable Asset, the proceeds from the sale or other dealing with a Realisable Asset excluding GST.

**Prodev 4** means Prodev Investments 4 Pty Ltd (Administrators Appointed) ACN 629 246 653.

**Proponent Bank Account** means the following AUD bank account operated by the Proponent:

Account name: Korda Client ADM

BSB: 013 040

Account number: 837288181

**Realisable Assets** means all assets of the Deed Companies, with the exception of the Excluded Assets, which will be available to be realised by the Deed Administrators to form the Pool A Fund, Pool C Fund and Pool D Fund (as applicable).

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

**Related Party** means a Related Body Corporate or Related Entity (as those terms are defined in the Corporations Act) of a Deed Company.

**Second Meeting** has the meaning given to that term in Recital B.

**Section 439C Resolution** has the meaning given to that term in Recital B.

**Security** means a mortgage, charge, pledge, lien, security interest, title retention, preferential right, trust arrangement, contractual right of set-off and any other encumbrance, security agreement or arrangement in favour of any person, including any Security Interest (as that term is defined in section 12 of the PPSA).

**Small Creditor** means a Creditor with a total Claim not exceeding \$25,000 (inclusive of GST).

**SRG Assignment Consent** means the consent of the Proponent and the relevant finance parties under the CBA Facility Agreement to assign their interests in the SRG DOCA Distribution to the Deed Fund.

**SRG DOCA Distribution** means any entitlement of the relevant finance parties under the CBA Facility Agreement and the Proponent to receive a distribution under the deed of company arrangement entered into by, among others, SRG Global Infrastructure Pty Ltd (formerly WBHO Infrastructure Pty Ltd).

**Superannuation Contribution** has the meaning given to that term in section 556(2) of the Corporations Act.

**Superannuation Guarantee Charge** has the meaning given to that term in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Termination** means the termination of this Deed pursuant to clause 10.

**Termination Amount** means \$8,500,000.

**Trust Account** means the following AUD bank account operated by the Deed Administrators:

Account name: Probuild Constructions (Aust) Pty Ltd DOCA Trust

BSB: 014-002

Account number: 838464677

**Unsecured Creditor** means an unsecured Creditor who is not:

- (a) a Small Creditor;
- (b) an Insurance Bond Creditor;
- (c) a Related Party; or
- (d) if they are a Small Creditor, has not submitted a proof of debt in respect of the Pool B Fund.

## 1.2 Interpretation

In this Deed:

- (a) headings and the table of contents are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **"includes"** in any form is not a word of limitation; and
- (k) a reference to **"AUD"** or **"\$"** is a reference to Australian currency.

## 1.3 Inconsistency

- (a) If there is any inconsistency between the provisions of this Deed and the Corporations Act, the Regulations, the Insolvency Practice Schedule, or the Insolvency Practice Rules, this Deed prevails to the extent permitted by law.

- (b) If there is any inconsistency between this Deed and the constitution of the Deed Companies or any other obligations binding on the Deed Companies, then this Deed prevails to the extent of that inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency.

## 1.4 Business Days

Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, that act, matter or thing will be done on the immediately succeeding Business Day.

## 1.5 Bar to claims

Subject to section 444D of the Corporations Act, this Deed may be pleaded and tendered by:

- (a) the Deed Companies or the Deed Administrators against any person having or asserting a Claim released, discharged and extinguished by clause 15.3; and
- (b) the recipient of any release or covenant contained in this Deed,

as an absolute bar and defence to any legal proceeding brought or made at any time in respect of a claim, release or covenant as the case may be.

## 1.6 Prescribed Provisions

- (a) Subject to clause 1.6(b), the Prescribed Provisions are deemed to be incorporated in and form part of this Deed, save that to the extent of any inconsistency between the terms of this Deed and the Prescribed Provisions, the terms of this Deed will prevail.
- (b) Clause 3 (*Termination of deed where arrangement fails*) and clause 11 (*Committee of inspection*) of the Prescribed Provisions are excluded in their entirety from the terms of this Deed.

## 1.7 Required provisions

To the extent that the Corporations Act requires any provision to be included in this Deed which is not expressly included in this Deed, such provision will be deemed to be included in this Deed.

## 1.8 Deed components

This Deed includes any Schedule.

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## 2. Operation of this Deed

### 2.1 Commencement Date

This Deed will commence and take effect on the Commencement Date.

### 2.2 Interim effect

To the extent that a person would be bound by this Deed if it had already been executed, the person must not, at any time after the Section 439C Resolution is passed but before this Deed is executed, do anything inconsistent with the terms of this Deed, except with the leave of the Court.

## 2.3 Termination

This Deed continues until it is terminated in accordance with this Deed.

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## 3. Objective and effect

### 3.1 Objectives

- (a) The purpose and objective of the arrangements set out in this Deed, amongst other matters, are to provide:
  - (i) a better return than liquidation for all Creditors;
  - (ii) a quicker return for Employee Creditors than liquidation;
  - (iii) a quicker return for Small Creditors than liquidation; and
  - (iv) continued access and ongoing support available to the Deed Administrators in respect of the BLU System.

### 3.2 Effect of the Deed on Officers of the Deed Companies

- (a) The Directors of the Deed Companies will remain in office throughout the Deed Period unless they resign or are removed by the Deed Administrators in accordance with this Deed.
- (b) During the Deed Period, unless authorised in writing by the Deed Administrators, the Directors and Officers of the Deed Companies cannot perform or exercise, and must not purport to perform or exercise, a right, function or power as a Director or Officer of the Deed Companies.
- (c) For the avoidance of doubt, the Directors of the Deed Companies will not pass a resolution to place the Deed Companies into voluntary administration or take any step to wind up the Deed Companies except with the written approval of the Deed Administrators.
- (d) While they remain Directors of the Deed Companies, the Directors of the Deed Companies will not be relieved of their statutory duties as Directors of the Deed Companies and for the avoidance of doubt, the Deed Administrators will not be responsible for such statutory obligations during the Deed Period.
- (e) During the Deed Period, the Directors of the Deed Companies must:
  - (i) co-operate with and assist the Deed Administrators in the performance by the Deed Administrators of their obligations under this Deed;
  - (ii) carry out and perform such operations, functions, powers and other matters as may be delegated to them by the Deed Administrators; and
  - (iii) perform their obligations pursuant to the Deed.

### 3.3 Effect of this Deed on Members

- (a) Until this Deed Terminates, any Member, and any Creditor holding any Security over any shares in the Deed Companies must not without the prior written consent of the Deed Administrators deal with, or attempt to deal with any shares in the Deed Companies or exercise shareholder rights over any shares in the Deed Companies in a way that is contrary to this Deed or the purpose of the Deed.

- (b) The Deed Administrators must not, and must not allow:
  - (i) the shares in the Deed Companies to be transferred; or
  - (ii) further shares of any class to be issued in the Deed Companies.

## **4. Conditions Precedent**

### **4.1 Conditions**

The following Conditions must be satisfied by the CP Satisfaction Date:

- (a) execution of this Deed by each Party;
- (b) the provision of the Finance Party and Proponent Consent; and
- (c) the provision of the SRG Assignment Consent.

### **4.2 Obligation to satisfy Conditions and transparency**

- (a) To the extent that it is within the relevant Party's control, that Party must use reasonable endeavours to ensure that the Conditions are satisfied as soon as possible and prior to the CP Satisfaction Date.
- (b) On and from the Commencement Date, the Parties must respond promptly to all reasonable requests for information from any other Party in relation to the status and expected timing for satisfaction of the Conditions.

### **4.3 Waiver of Conditions**

The Conditions in clauses 4.1 may only be waived or amended in writing by all of the Parties.

### **4.4 Consequence of non-satisfaction of the Conditions**

- (a) In the event:
  - (i) one or more of the Conditions is not satisfied, or waived or amended in accordance with clause 4.3, by the CP Satisfaction Date; or
  - (ii) the Deed Administrators and the Proponent are of the opinion that one or more of the Conditions are incapable of being satisfied by the CP Satisfaction Date,  
  
then:
    - (iii) the Parties will cease to be bound by this Deed on and from the CP Satisfaction Date and will have no liability under it; and
    - (iv) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Deed Companies.

### **4.5 Non-execution**

If this Deed is not executed in accordance with clause 4.1(a) on or prior to the expiration of 15 Business Days (or such further period as the Court allows) after the Section 439C Resolution is passed, then this Deed will terminate automatically.

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## **5. Pooling**

### **5.1 Pooling**

- (a) Upon satisfaction of the Conditions, for the purposes of this Deed:
  - (i) the Assets of the Pooled Companies and any other amounts received by the Pooled Companies during the Deed Period will be pooled;
  - (ii) the Pooled Companies will be treated as a single company (namely, as if the Pooled Companies were Probuild); and
  - (iii) a Creditor of a Pooled Company will be treated as a Creditor of the Pooled Companies as a whole.

### **5.2 Intercompany loan balances**

- (a) Immediately upon pooling taking place in accordance with clause 5.1 of this Deed:
  - (i) each debt payable by a Pooled Company to any Pooled Company is satisfied or extinguished; and
  - (ii) each Claim that a Pooled Company has against any Pooled Company, including a Claim against the Proponent is satisfied or extinguished.

### **5.3 Books and records**

The books and records of each Deed Company transfers to Probuild upon pooling.

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## **6. Deed Fund**

### **6.1 Establishment of Deed Fund**

- (a) On payment of the Initial Contribution Amount the following funds are established, which together constitute the Deed Fund:
  - (i) Pool A Fund;
  - (ii) Pool B Fund;
  - (iii) Pool C Fund; and
  - (iv) Pool D Fund.
- (b) The Deed Fund will comprise funds to discharge the following:
  - (i) Administrators' Liabilities;
  - (ii) Deed Administrators' Liabilities; and
  - (iii) Admitted Claims.
- (c) The Excluded Assets are excluded from the Deed Fund.
- (d) The money in the Deed Fund from time to time is held by the Deed Administrators on trust for the benefit of those so entitled and will be distributed in accordance with this Deed.

## 6.2 Accounts

The Deed Administrators may establish any interest bearing accounts controlled by the Deed Administrators and held with an "authorised deposit taking institution" (as that term is defined in the *Banking Act 1959* (Cth)) that they consider appropriate.

## 6.3 Monies held by Deed Administrators

The Deed Administrators are entitled to use the Deed Fund to make distributions in accordance with clause 8.

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## 7. Cash Contribution

### 7.1 Contribution Amount

The Proponent must pay or procure the payment of the Initial Contribution Amount to the Trust Account operated by the Deed Administrators within 4 Business Days of the Commencement Date.

### 7.2 Caulfield Contingent Payment

- (a) The Proponent agrees to transfer the Caulfield Contingent Amount to the Trust Account to be applied to the Pool A Fund on the satisfaction of the following conditions:
  - (i) practical completion of the project known as "Caulfield Village Precinct 2 North" (**Caulfield Village Project**);
  - (ii) entry into a deed of release by the Administrators or Deed Administrators (as relevant) releasing BPG Caulfield Village Pty Limited in respect of all claims in connection with the Caulfield Village Project;
  - (iii) return of bank guarantees (reference numbers G666422 and G666423) by BPG Caulfield Village Pty Limited in connection with the Caulfield Village Project totalling \$9,559,881 in return for a settlement payment by the Proponent of not more than \$5,700,000; and
  - (iv) BPG Caulfield Village Pty Limited to replace cash security deposits held by Glen Eira City Council in the amount of \$300,000 and Department of Transport in the amount of \$400,000 and procure the return of these deposits to the Administrators or Deed Administrators.
- (b) Subject to clause 7.2(a), the Proponent must pay or procure the payment of the Caulfield Contingent Amount to the Trust Account operated by the Deed Administrators within 5 Business Days of the Caulfield Satisfaction Date.

### 7.3 Application of Initial Contribution Amount

- (a) On the date that is 10 weeks from the Commencement Date, the Deed Administrators will apply the Initial Contribution Amount strictly in accordance with this Deed as follows:
  - (i) \$6,580,000 to the Pool A Fund to form part of the Pool A Fund Amount; and
  - (ii) \$2,500,000 to the Pool B Fund to form the Pool B Fund Amount.



- (b) The Deed Administrators acknowledge that the Initial Contribution Amount includes the Operating Expenditure Amount and is only payable upon receipt of an invoice from the Deed Administrators or Administrators (as applicable).

## **7.4 Transfer of Caulfield Contingent Amount**

Subject to satisfaction of the Caulfield Conditions, the Deed Administrators will apply the Caulfield Contingent Amount strictly in accordance with this Deed to the Pool A Fund to form part of the Pool A Fund Amount.

## **7.5 Certificate of Satisfaction**

- (a) Within 3 Business Days of receiving payment in full of the Initial Contribution Amount in accordance with clause 7.1, the Deed Administrators shall provide the Proponent with a certificate in writing stating all non-contingent financial obligations of the Proponent under this Deed have been satisfied.
- (b) Within 3 Business Days of receiving payment in full of the Caulfield Contingent Amount (subject to satisfaction of the Caulfield Conditions) in accordance with clause 7.2, the Deed Administrators shall provide the Proponent with a certificate in writing stating all financial obligations of the Proponent under the Deed have been satisfied.

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# **8. Distribution of Deed Fund**

## **8.1 Pool A Fund**

- (a) Subject to clause 8.4, on or after the date that is 10 weeks from the Commencement Date, the Deed Administrators must pay or procure the payment of the Pool A Fund as follows:
  - (i) first, in payment of the Administrators' Liabilities (to the extent not already paid in full);
  - (ii) second, in payment of each Admitted Employee Creditor in full;
  - (iii) third, once the distributions in 8.1(a)(i) and 8.1(a)(ii) have been made in full, from the Proceeds of the Realisable Assets, to the Pool D Fund in an amount that is equal to the ATO GST Priority Amount plus the ATO Income Tax Liability Amount; and
  - (iv) fourth, to the extent that the payments made in accordance with clause 8.1(a)(i), 8.1(a)(ii) and 8.1(a)(iii) are less than the total value of the Pool A Fund, any excess funds will be made available to the Pool C Fund.

## **8.2 Pool B Fund**

- (a) Within 45 Business Days of Admitted Employee Creditors having been paid in full in accordance with clause 8.1(a)(ii), the Deed Administrators must distribute or procure the distribution of the Pool B Fund as follows:
  - (i) first, in payment of each Admitted Small Creditor on a pro-rata basis; and
  - (ii) second, to the Pool A Fund to the extent that:
    - A. Admitted Small Creditors have been paid in full; and
    - B. any residual funds remain in the Pool B Fund.

### 8.3 Pool C Fund and Pool D Fund

- (a) Subject to clause 8.4, the Deed Administrators must distribute or procure the distribution of the Pool C Fund and Pool D Fund, including by way of interim distributions, as follows:
  - (i) In respect of the Pool C Fund:
    - A. first, in payment of the Deed Administrators' Liabilities; and
    - B. second, in payment of each Admitted Unsecured Creditor and Insurance Bond Creditor on a pro rata basis.
  - (ii) In respect of the Pool D Fund:
    - A. first, in payment of an Admitted Claim of the Australian Taxation Office in respect of GST liabilities up to the ATO GST Priority Amount; and
    - B. second, in payment of an Admitted Claim of the Australian Taxation Office in respect of income liabilities up to the ATO Income Tax Liability Amount.
- (b) The Deed Administrators must not make any distributions from the Pool C Fund and the Pool D Fund until the Pool B Fund has been distributed in full in accordance with clause 8.2.

### 8.4 Administrators' Liabilities and Deed Administrators' Liabilities

Notwithstanding any other term of this Deed, the Deed Administrators may draw:

- (a) the Administrators' Liabilities from Pool A at any time on or after the Commencement Date; and
- (b) the Deed Administrators' Liabilities, but only in relation to third party costs and liabilities, not related to remuneration, from Pool A or Pool C from time to time.

### 8.5 Insured Claims

Subject to the terms of this Deed, section 562 of the Corporations Act is to be incorporated into this Deed as if references to a liquidator were references to the Deed Administrators and with any other amendments as necessary in the context of this Deed.

### 8.6 Manner of distribution

Subject to the other provisions of this Deed:

- (a) distributions may be paid by the Deed Administrators from the Deed Fund in a manner (including by way of interim distribution) and at the time determined by the Deed Administrators in their absolute discretion;
- (b) the Deed Administrators may declare and pay distributions from different Pools at different times;
- (c) the Deed Administrators need not pay a distribution to an Admitted Creditor if the amount due to them in respect of the distribution would be less than \$25.00; and
- (d) the Deed Administrators may pay distributions to Admitted Creditors by electronic funds transfer.

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## 9. CBA Bank Guarantees

### 9.1 Guarantee Recovery Payment

- (a) The Parties acknowledge that as at the Commencement Date, the Proponent has made payments to CBA equal to the value of the Called Guarantees.
- (b) The Deed Administrators agree to pay to the Proponent any CBA Guarantee Recovered Funds by way of the Guarantee Recovery Payment immediately on receipt of any CBA Guarantee Recovered Funds.

### 9.2 Assignment of Claims

- (a) The Deed Administrators agree to assign, transfer or otherwise convey the rights and interests of the Deed Companies in respect of the CBA Bank Guarantees, including any Called Guarantees to the Proponent on the Proponent's request.

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## 10. Termination of the Deed

### 10.1 Termination on effectuation of Deed

The Deed will Terminate immediately on Effectuation, unless terminated earlier in accordance with this Deed.

### 10.2 Termination on failure of Deed

This Deed automatically Terminates upon the happening of any one of the following events:

- (a) the Court makes an order terminating this Deed under section 445D of the Corporations Act;
- (b) by a resolution of the Creditors passed at a meeting convened pursuant to Division 75-10 of the Insolvency Practice Schedule; or
- (c) the creditors of the Deed Companies pass a resolution terminating this Deed in accordance with sections 445C(b) of the Corporations Act, in the event that any of the Conditions are not satisfied (or waived or amended in accordance with clause 4.3) on or before the CP Satisfaction Date in accordance with clause 4.4.

### 10.3 Notice of Effectuation of Deed

Upon Termination in accordance with clause 10.1, the Deed Administrators or one of them must immediately certify, in writing that the terms of this Deed have been fulfilled and, as soon as practicable, must lodge with ASIC a notice substantially in the following form in respect of the Deed Companies:

‘We, **[name of administrators]** of **[address]** as administrators of the deed of company arrangement executed on **[date]**, CERTIFY that the deed has been wholly effectuated in respect to **[name of Deed Companies]**.’

and the execution of the notice terminates this Deed and all Claims of Creditors of the Deed Companies will be extinguished, discharged and released if not extinguished or released earlier under the Deed.

### 10.4 Effect of Termination

In accordance with section 445H of the Corporations Act, the Termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.

## 10.5 Severance

If any part of this Deed is or becomes illegal, ineffective, invalid or unenforceable, that part will be severed from this Deed and that severance will not affect the effectiveness, validity or enforceability of the remaining part of this Deed.

## 10.6 Consequences of Termination of the Deed for non-performance

Upon Termination of the Deed under clause 10.2, unless the Deed Administrators and the Proponent consider it appropriate to convene a further meeting of Creditors pursuant to Division 75-10 of the Insolvency Practice Schedule to consider a variation of the Deed:

- (a) the Deed Companies will be taken to have passed special resolutions under section 491 of the Corporations Act that each the Deed Companies be voluntarily wound up and that the Deed Administrators be the Deed Companies' liquidators; and
- (b) the Deed Companies will be wound up.

## 10.7 Survival of clauses

Despite any other provision of this Deed, clauses 1 (*Definitions and interpretation*), 10 (*Termination of the Deed*), 13 (*Remuneration and indemnity*), 15 (*Moratorium and release*), 16 (*Tax*), 17 (*Notices*) and 18 (*General*) survive the Termination of this Deed.

## 10.8 Termination Amount Payable on Termination

- (a) Notwithstanding clause 10.7, if this Deed is Terminated or terminates for whatever reason prior to the Deed Administrators having completed (or substantially completed as agreed and determined by the Proponent acting reasonably) distribution of the Pool B Fund, the Deed Administrators must promptly pay into the Proponent Bank Account the Termination Amount.
- (b) For the avoidance of doubt, the Termination Amount will not be payable by the Deed Administrators to the Proponent if this Deed is Terminated or terminates for whatever reason following the distribution of the Pool B Fund.

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## 11. Deed Administrators' appointment

### 11.1 Appointment

On the Commencement Date, the Deed Administrators are appointed joint and several administrators of the Deed.

### 11.2 Acceptance of appointment

The Deed Administrators:

- (a) accept the appointment as administrators of the Deed; and
- (b) agree to act as administrators of the Deed during the Deed Period or until the Deed Administrators retire or are removed from office in accordance with the Deed or the Corporations Act.

### 11.3 Deed Administrators are agents

In exercising the powers conferred by the Deed and carrying out the duties arising under the Deed, the Deed Administrators will act as agent for and on behalf of the Deed Companies.

## 11.4 Joint and several

The rights, powers and privileges of the Deed Administrators may be exercised by them jointly and severally.

## 11.5 Deed Administrators' resignation

Any Deed Administrator may resign at any time by giving not less than 28 days' prior written notice to each of the Parties unless that resignation would result in there being no remaining Deed Administrator in which event the Deed Administrator must:

- (a) convene meetings of Creditors of the Deed Companies in accordance with clause 12.3 for the purpose of nominating a replacement deed administrator;
- (b) assign to a replacement deed administrator nominated by the Creditors the Deed Administrators' rights, title and benefit under this Deed subject to any accrued rights, indemnities or liens the Deed Administrators may have as at the date of the assignment; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 11.5(b).

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## 12. Powers of the Deed Administrators

### 12.1 Powers

- (a) For the purposes of administering this Deed, the Deed Administrators shall have all of the powers set out in this Deed, in the Prescribed Provisions and as otherwise provided to deed administrators by the Act, Regulations or generally at law or in equity.
- (b) The powers of the Deed Administrators shall include:
  - (i) the power to remove from office a Director or company secretary in accordance with the terms of this Deed;
  - (ii) to convene and hold meetings of Creditors in accordance with clause 12.3;
  - (iii) to adjudicate Claims in accordance with this Deed;
  - (iv) to insure property of the Deed Companies;
  - (v) to repair, renew or enlarge property of the Deed Companies;
  - (vi) to administer the assets available for the payments of Claims or Creditors in accordance with the provisions of this Deed;
  - (vii) to bring, prosecute and defend in the name and on behalf of the Deed Companies or in the name of the Deed Administrator any actions, suits or proceedings (subject to obtaining the prior written consent of the Proponent, unless such action, suit or proceeding has been commenced by or involves a claim against the Proponent);
  - (viii) to refer to arbitration any question affecting the Deed Companies (subject to obtaining the prior written consent of the Proponent, unless such question directly relates to the rights or obligations of the Proponent);

- (ix) to make payments to any Secured Creditor of the Deed Companies and any person who is the owner or lessor of property possessed used or occupied by Deed Companies in accordance with this Deed;
  - (x) to make interim or other distributions of the Proceeds of the realisation of the assets available for the payment of Claims of Creditors in accordance with this Deed;
  - (xi) to permit any person authorised by the Deed Administrator to operate any account in the name of the Deed Companies;
  - (xii) to do all acts and execute in the name and on behalf of the Deed Companies all deeds, receipts and other documents, using the Deed Companies' common or official seal when necessary subject to and in accordance with the provisions of this Deed;
  - (xiii) subject to the *Bankruptcy Act 1966*, to prove in the bankruptcy of any contributory or debtor of the Deed Companies or under any deed executed under that act;
  - (xiv) subject to the Corporations Act, to prove in the winding up of any contributory or debtor of the Deed Companies or under any scheme of arrangement entered into, or deed of company arrangement executed, under the Corporations Act;
  - (xv) to defend an application for the winding up of the Deed Companies;
  - (xvi) subject to the terms of this Deed, to compromise any debts or claims brought by or against the Deed Companies on such terms as the Deed Administrator thinks fit and to take security for the discharge of any debt forming part of the property of the Deed Companies;
  - (xvii) to do anything that is incidental to exercising a power set out in this clause 12.1;
  - (xviii) the power to access, control and retain custody of the books and records of the Deed Companies for the purposes of administering this Deed; and
  - (xix) to do anything else that is necessary or convenient for the purpose of administering this Deed.
- (c) Where a right, power, privilege, authority or discretion is conferred on the Deed Administrators (whether by this Deed, the Corporations Act or otherwise), the Deed Administrators may exercise that right, power, privilege, authority or discretion in such manner as they, in their absolute discretion, consider fit.

## 12.2 Solicitors, advisers and consultants

- (a) The Deed Administrators may engage the services of their partners, employees, directors, officers, contractors, advisers, delegates, solicitors and consultants to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed and the Deed Companies will pay such Deed Administrators' Liabilities, including costs of any solicitors and consultants engaged by the Deed Administrators up to the maximum amount of the Deed Administrators' Liabilities.
- (b) The Deed Administrators may delegate their powers under this clause 12 including by way of appointing agents and authorising such agents to act on behalf of the Deed Administrators or the Deed Companies.

### 12.3 Creditors' meetings

The Deed Administrators may convene a meeting or meetings of Creditors at any time, and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of Part 3 of the Insolvency Practices Rules applies, with such modifications as are necessary, to meetings of Creditors held under this Deed as if references to the 'external administrator' or chairperson, as the case may be, were references to the Deed Administrators.

### 12.4 Reporting

- (a) Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators will advise all Creditors of the date of the Termination of this Deed and may, in their absolute discretion, otherwise report to Creditors during the Deed Period at such times as the Deed Administrators consider appropriate and on matters which the Deed Administrators consider ought to be brought to the attention of Creditors.
- (b) The Deed Administrators are required to report generally on a collective basis the status of realisations of the Deed Companies' assets (including all funds and recoveries under its control) to Creditors from time to time.

### 12.5 Books and records

- (a) The Administrators and Deed Administrators must provide or procure that the Proponent be provided with access to any financial or other records of the Deed Companies and any other information as requested by the Proponent from time to time, including any records or information being held by third parties.
- (b) On the Commencement Date, the Proponent agrees to provide access to the BLU System to the Deed Administrators and the Deed Administrators' staff to the extent required for the Deed Administrators to fulfil their obligations under this Deed, subject to the conditions set out in clause 12.5(c) below.
- (c) The Proponent will provide access to the BLU System as contemplated by clause 12.5(b):
  - (i) by granting one user licence to the Deed Administrators for the operation and control of the BLU System on the basis that the ongoing use will be subject to the Deed Administrators and their staff complying with all security requirements as specified by the Proponent from time to time during the Deed Period; and
  - (ii) until the earlier of:
    - A. the date this Deed Terminates; and
    - B. 24 months after the Commencement Date.
- (d) For the avoidance of doubt:
  - (i) access to the BLU System as contemplated by clause 12.5(b) and 12.5(c) is only being granted to the Deed Companies; and
  - (ii) the Proponent may revoke the Deed Administrators and the Deed Administrators' staff's access to the BLU System in the event the Deed Administrators or their staff fail to comply with the conditions set out in clause 12.5(b) of this Deed.

## 12.6 Proponent's reporting obligations

The Proponent is required to prepare any financial or other reporting it requires in respect of the Deed Companies to the extent necessary to comply with its own reporting obligations.

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## 13. Remuneration and indemnity

### 13.1 Remuneration

- (a) The Deed Administrators, their partners and employees will be remunerated by the Deed Companies in respect of the Deed Administrators' Liabilities at the hourly rates charged from time to time by the firm of which the Deed Administrators are partners or employees as set out in the report to Creditors issued with their notice of the meeting of Creditors.
- (b) The Deed Administrators' may draw the Deed Administrators' Liabilities from the Deed Fund in accordance with the terms of this Deed.
- (c) The Deed Administrators are entitled to be reimbursed from the Deed Fund in respect of all Deed Administrators' Liabilities in accordance with the terms of this Deed.
- (d) Subject to clause 8.3(a)(i) and 8.4(b), the Deed Administrators may draw the Deed Administrators' Liabilities at the end of each month.

### 13.2 No personal liability

Subject to the Corporations Act and to the extent permitted by law, the Deed Administrators will not be personally liable for:

- (a) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Deed Administrators in administering this Deed or exercising their duties and obligations under this Deed;
- (b) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Deed Companies; or
- (c) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities suffered or sustained or incurred by any directors, officers or Creditors of the Deed Companies.

### 13.3 Indemnity

- (a) The Deed Administrators and Administrators (whether or not they are still acting in either capacity and whether or not the Deed remains on foot) are entitled to be indemnified out of the assets of the Deed Companies up to the maximum amount of the Deed Administrators' Liabilities (in the case of the Deed Administrators) and the maximum amount of the Administrators' Liabilities (in the case of the Administrators) for:
  - (i) as to the Deed Administrators in their capacities as Deed Administrators:
    - A. the Deed Administrators' right to remuneration and reimbursement under the Deed and otherwise at law and in equity; and



- B. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, in connection with or incidental to any debts incurred by the Deed Companies, the Deed Administrators or the Deed Administrators' partners or employees in the course of the administration of this Deed; and
  - C. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Deed Administrators or the Deed Administrators' partners or employees, arising out of, or in connection with or incidental to the Deed Administrators' administration of this Deed;
- (ii) as to the Deed Administrators in their former capacities as Administrators of the Deed Companies:
- A. the Administrators' right of remuneration and reimbursement as voluntary administrators of the Deed Companies pursuant to Part 5.3A of the Corporations Act; and
  - B. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, or in connection with or incidental to any debts incurred by the Deed Companies, the Administrators or the Administrators' partners or employees in the course of the administration of the Deed Companies; and
  - C. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Administrators or the Administrators' partners or employees, arising out of, or in connection with or incidental to the Administrators' administration of the Deed Companies.
- (b) The Deed Administrators are not entitled to an indemnity out of the assets of the Deed Companies against any claims arising out of any fraudulent or negligent act or omission by the Deed Administrators or the Deed Administrators' partners or employees.

#### **13.4 Indemnity not to be affected or prejudiced**

The indemnities under clause 13.3 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Administrators or Deed Administrators and extends to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Deed Administrators, the approval or execution of the Deed or otherwise;
- (b) affect or prejudice all or any rights that the Deed Administrators may have against the Deed Companies or any person to be indemnified against the Costs, charges, expenses and liabilities incurred by the Deed Administrators by or incidental to the exercise or performance of any of the powers or authorities conferred on the Deed Administrators by this Deed or otherwise; or

- (c) be affected by the removal of the Deed Administrators and the appointment of a replacement deed administrator or the termination of this Deed for any reason.

### **13.5 Satisfaction of Claims**

The Deed Administrators are entitled to exercise the Deed Administrators' right of indemnity conferred by clause 13.3(a) whether or not the Administrators have paid or satisfied the Claims.

### **13.6 Deed Administrators' lien**

Until this Deed Terminates, the Deed Administrators are entitled to exercise a lien on all property and assets of the Deed Companies to secure the Administrators' right of indemnity under clause 13.3(a) of this Deed and otherwise at law and equity.

### **13.7 Insufficient funds**

The Deed Administrators are not obliged to take any action under this Deed in the event there are insufficient funds to pay the Administrators' Liabilities or Deed Administrators' Liabilities.

### **13.8 Priority**

The Deed Administrators' right of indemnity under clause 13.3 and their lien under clause 13.6 have priority over the Claims of Creditors to the extent set out in this Deed.

### **13.9 Statutory liability and indemnity**

Nothing in this Deed will affect or limit the operation of Subdivision B of Division 9 of Part 5.3A of the Corporations Act, which is to apply with all necessary modifications to the Administrators' voluntary administration of the Deed Companies and Deed Administrators' subsequent administration of this Deed.

### **13.10 Deed Administrators' Liabilities if pooling does not occur**

If this Deed Terminates prior to pooling occurring in accordance with clause 5.1, the Deed Administrators' right of indemnity under clause 13.3 and lien under clause 13.6 with respect to the Deed Administrators' Liabilities will attach to and be recoverable from the assets and property of the respective Deed Companies in proportion to their estimated realisable value as at the Commencement Date.

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## **14. Making of claims by Creditors**

### **14.1 Proofs of debt**

Creditors who have submitted a proof of debt to the Administrators before the Commencement Date are taken to have submitted a final proof of debt in respect of their Claims with the Deed Administrators on the basis of that proof of debt.

### **14.2 Request notice to Creditors**

- (a) To the extent that clause 14.1 does not adequately address the Claims to be paid under this Deed, or in the Deed Administrators' discretion, the Deed Administrators may ask the Creditors to formally submit a proof of debt for their Claims within 14 days of such request. Any such request notice to Creditors will comply with Regulation 5.6.48 of the Regulations, with such modifications as the Deed Administrators may deem necessary, including:
- (i) references to the 'liquidator' to be read as references to the Deed Administrators; and

(ii) references to a 'creditor' to be read as references to a Creditor.

- (b) For the purposes of this clause 14.2 and Regulation 5.6.39 of the Regulations, the Deed Administrators may fix different times for lodgement of proofs of debt for Creditors.

### **14.3 Determination**

- (a) The Deed Administrators will determine (including by adjudicating on those formal proofs of the Claims that have been submitted in accordance with paragraph 14.1 and 14.2) the amount required to satisfy the relevant Creditor's entitlement to receive a distribution from the Deed Fund in accordance with this Deed.
- (b) Subject to any appeal rights under the Corporations Act, any determination by the Deed Administrators in accordance with clause 14.3 is final and binding.

### **14.4 Adjudication of Claims**

Regulations 5.6.53 to 5.6.56 of the Regulations will apply to the adjudication of Claims with such modifications as the Deed Administrators may deem necessary, including:

- (a) references to the 'liquidator' to be read as references to the Deed Administrators; and
- (b) references to a 'creditor' to be read as references to a Creditor.

### **14.5 Admitted Employee Creditors**

In accordance with section 444DA of the Corporations Act, the Deed Administrators are to apply the Deed Fund so that an Admitted Employee Creditor will be entitled to a priority at least equal to what they would have been entitled if the Deed Fund were applied in accordance with sections 556, 560 and 561 of the Corporations Act.

### **14.6 Claims against two or more Deed Companies**

If a Creditor is a Creditor of two or more Deed Companies in respect of Claims that arise from a common underlying obligation or in connection with the same underlying transaction (for example, where one Deed Company is a guarantor, indemnifier or co-obligor of an obligation or debt owing by another Deed Company) that Creditor is only entitled to receive a distribution under this Deed for one of those Claims, and where they are for different amounts, for the largest Claim.

### **14.7 Intragroup Claims**

The Deed Administrators agree:

- (a) they will not pursue any Intragroup Claims of any kind other than those expressly dealt with under the terms of this Deed; and
- (b) immediately upon and with effect from the date that the Pool B Fund is distributed and the Termination Amount is no longer payable by the Deed Administrators to the Proponent in accordance with clause 10.8, all such Intragroup Claims are otherwise extinguished and released.

For the avoidance of doubt, this clause 14.7 includes any Claims against the Proponent.

### **14.8 Unclaimed moneys**

If the Deed Administrators have under their control any assets being distributed that have remained unclaimed for more than 6 months after the day when the amount payable to an

Admitted Creditor became payable or transferable, the Deed Administrators may pay or transfer those assets to ASIC to be dealt with under Part 9.7 of the Corporations Act or any other relevant statutory authority, and the Deed Administrators will cease to be under any further obligation or liability in respect of them.

## **14.9 Costs**

Any costs or expenses incurred by a Creditor in seeking to prove a Claim will be borne by the respective Creditor and will not form part of the Creditor's Claim.

## **14.10 Interest**

Interest shall not accrue, and shall not be payable, in respect of any Claims of any Creditor.

## **14.11 Abandonment of Claims**

A Creditor will be deemed to have abandoned its Claim if, before the payment of a final dividend from the relevant Pool, the Creditor:

- (a) fails to submit a formal proof of debt or claim in respect of its Claim; or
- (b) having submitted a formal proof of debt or claim in respect of its Claim which is rejected, that Creditor fails to appeal to the Court against the rejection, within the time allowed for such an appeal under the Regulations as if the proof were rejected in the liquidation of the Deed Companies.

## **14.12 Conversion of foreign currency**

Conversion of foreign currency debts into Australian currency shall be converted in accordance with the "general rate sheet of historical foreign exchange rates provided by the Reserve Bank of Australia on the Relevant Date."

## **14.13 The whole of a Superannuation Contribution debt**

- (a) In accordance with sections 444DB(1) and 444DB(2) of the Corporations Act, the Deed Administrators must determine that the whole of a Claim by way of a Superannuation Contribution is not admissible to proof against a Deed Company if:
  - (i) a Claim by way of Superannuation Guarantee Charge:
    - A. has been paid; or
    - B. is, or is to be, admissible to proof against that Deed Company; and
  - (ii) the Deed Administrators are satisfied that that Superannuation Guarantee Charge is attributable to the whole of the first mentioned Claim.
- (b) If the Deed Administrators determine, under clause 14.13(a), that the whole of the first mentioned Claim is not admissible to proof against the Deed Company, the whole of the Claim is extinguished.

## **14.14 Part of a Superannuation Contribution debt**

- (a) In accordance with sections 444DB(3) and 444DB(4) of the Corporations Act, the Deed Administrators must determine that a particular part of a Claim by way of a Superannuation Contribution is not admissible to proof against a Deed Company if:
  - (i) a Claim by way of Superannuation Guarantee Charge:

- A. has been paid; or
  - B. is, or is to be, admissible to proof against that Deed Company; and
- (ii) the Deed Administrators are satisfied that the Superannuation Guarantee Charge is attributable to that part of the first-mentioned Claim.
- (b) If the Deed Administrators determine, under clause 14.14(a), that a part of the first mentioned Claim is not admissible to proof against the Deed Company, that part of the Claim is extinguished.

## **15. Moratorium and release**

### **15.1 Binding effect**

Without limiting sections 444D and 444G of the Corporations Act this Deed binds:

- (a) each Creditor in relation to Claims arising on or before the Appointment Date; and
- (b) each Member and Officer of the Deed Companies.

### **15.2 Moratorium**

- (a) While this Deed remains in force, no Creditor, in relation to that Creditor's Claim, or Officer or Member, may:
  - (i) make or concur in an application for an order to wind up the Deed Companies;
  - (ii) proceed with such an application made before this Deed became binding on such person;
  - (iii) begin, revive or continue or take any further steps in any action, suit, mediation or proceeding against the Deed Companies or in relation to any of its property;
  - (iv) begin, revive or continue or take any further steps in respect of any Enforcement Process in relation to the Deed Companies' property;
  - (v) commence, continue or take any additional step in any arbitration against the Deed Companies or to which the Deed Companies are a party;
  - (vi) exercise any right of set-off or defence, cross-claim or cross action to which that Creditor would not have been entitled had the Deed Companies been wound up on the Appointment Date;
  - (vii) take any action whatsoever to seek to recover any part of its Claim from the Deed Companies; or
  - (viii) otherwise enforce any right it may have or acquire against the Deed Companies,

except, in the case only of clauses 15.2(a)(iii) and 15.2(a)(iv), with the consent in writing of the Deed Administrators or the leave of a Court and in accordance with such terms (if any) as a Court imposes.

- (b) For the purposes of this clause 15.2, "**property**" includes property used or occupied by, or in the possession of, the Deed Companies except if the Administrators have issued a notice under section 443B of the Corporations Act in relation to that property.
- (c) A person who is an Officer or a Member of a Deed Company shall not, during the term of the Deed Period exercise any rights it has or may have as an Officer or a Member (as applicable) of that Deed Company.

### **15.3 Release and discharge of Claims**

- (a) Creditors must accept their entitlements under the Deed Fund (if any) in full satisfaction and complete release and discharge of all Claims which they have, or claim to have, against the Deed Companies on or before the Appointment Date.
- (b) Notwithstanding any other provision of this Deed except for clause 15.2, this Deed does not affect any rights of recourse Creditors may have in respect of bank guarantees, insurance bonds, other sureties and insurers.
- (c) Each Creditor must, if required by the Deed Companies or the Deed Administrators, execute any document that the Deed Companies or a Deed Administrator may require from time to time to give effect to the releases in clause 15.3(d).
- (d) Immediately upon and with effect from the Final Distribution Date, the Claims of all Creditors will be fully released and extinguished.

### **15.4 Execution of all necessary documents**

Each Creditor must, if required by the Deed Administrators, execute and deliver to the Deed Administrators such form of acknowledgement or release of any Claim as reflects the release and discharge of that Claim pursuant to clause 15.3.

### **15.5 Bar to Creditors' Claims**

Subject to section 444D of the Corporations Act, this Deed may be pleaded by the Deed Companies or the Deed Administrators against any Creditor as an absolute bar and defence to any Claim to the extent that the Deed Companies' liability has been released and discharged in relation to that Claim pursuant to clause 15.3.

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## **16. Tax**

### **16.1 Interpretation**

The Parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 16 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16;
- (c) unless otherwise expressly stated, all consideration to be provided under any other provision of this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 16;

- (d) a reference to the GST payable by an entity or the input tax credit entitlements of an entity will include a reference to the GST payable or input tax credit entitlements of the representative member of any GST group to which that entity may belong;
- (e) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts; and
- (f) if any value added tax, goods and services tax or other similar tax is payable pursuant to a law of another jurisdiction on any supply made under or in connection with this Deed, then the provisions of this clause 16 apply as if references to a word or expression defined in the GST Act were to the corresponding concepts in the law of that other jurisdiction.

## **16.2 Reimbursements and similar payments**

Any reimbursement or similar payment required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates plus an amount calculated in accordance with clause 16.3 where applicable.

## **16.3 GST payable**

If GST is payable in relation to a supply made by a party (**Supplier**) under or in connection with this Deed then the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the amount of GST payable in relation to the supply at the same time as the other consideration is to be provided for that supply.

## **16.4 Tax invoice**

The Supplier must issue a valid tax invoice to the Recipient for any taxable supply it makes under this Agreement, except where the Recipient is required to issue the tax invoice.

## **16.5 Variation to GST payable**

If the GST payable in relation to a supply made under or in connection with this Deed varies from the additional amount paid by the Recipient under clause 16.3 then the Supplier must promptly issue an adjustment notice to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 16.3.

## **16.6 Taxation obligations**

The Deed Administrators must ensure that the Deed Companies meet all of their taxation obligations as and when they fall due throughout the Deed Period.

---

# **17. Notices**

## **17.1 How to give notices**

- (a) Any notice to a party under the provisions of this Deed is valid and effective if delivered personally, by courier or e-mail, to or, if given by registered mail, postage prepaid, addressed to, the details for that party specified in clause 17.3 and is deemed to have been given on the date of delivery personally or by courier or e-mail if so delivered prior to 5:00 pm (Sydney time) and otherwise on the next calendar day, or on the fifth Business Day after such letter has been mailed, as the case may be.

- (b) Any notice provided for in this Deed may be waived in writing by the party entitled to receive such notice, either before or after the event.
- (c) A notice in connection with this Deed must be:
  - (i) in writing in English; and
  - (ii) signed by the party or its agent.
- (d) Where two or more persons comprise a party, notice to or by one is effective notice to and by all.

## 17.2 Change of details

- (a) A party may at any time change its contact details by notice to each other party.
- (b) If details are so changed, this clause applies as if those changed details were set out in the 'Parties' section of this Deed.

## 17.3 Notice details

### Administrators

Name: Salvatore Algeri, Jason Tracy, Matthew Donnelly and David Orr in their capacities as joint and several voluntary administrators of the Deed Companies

Address: C/- Deloitte Financial Advisory Pty Ltd,  
477 Collins Street,  
Melbourne VIC 3000

Email: saalgeri@deloitte.com.au

For the attention of: Salvatore Algeri

### Deed Companies

Name: The companies as listed in Schedule 1

Address: C/- Deloitte Financial Advisory Pty Ltd,  
477 Collins Street,  
Melbourne VIC 3000

Email: saalgeri@deloitte.com.au

For the attention of: Salvatore Algeri

### Proponent

Name: WBHO Construction (Pty) Ltd

Address: 53 Andries Street, Wynberg Sandton 2090, South Africa

Email: Charles-henwood@wbho.co.za

For the attention of: Charles Henwood

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## 18. General

### 18.1 Variation

- (a) Subject to the provisions of the Corporations Act, this Deed may only be varied:
  - (i) by a resolution passed at a meeting of the Creditors convened in accordance with Division 75-10 of the Insolvency Practice Schedule, but only if the variation is not materially different from a proposed variation set out in a notice of meeting; and



(ii) with written agreement of the Parties.

(b) Nothing in any variation of this Deed shall limit the operation of sections 445D and 445E of the Corporations Act.

## **18.2 Assignment**

Rights arising out of or under this Deed are not assignable by a party, except if the assignor is required to make the assignment pursuant to clause 11.5(b) or makes the assignment with the prior written consent of the other parties.

## **18.3 Further assurances**

Each party and each person bound by this Deed must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

## **18.4 Governing law and jurisdiction**

This Deed is governed by the law in force in Victoria and the Parties submit to the non-exclusive jurisdiction of the Courts of Victoria and any Court which may hear appeals from those Courts.

## **18.5 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

## **18.6 Counterparts**

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one and the same instrument.
- (c) A party may execute this Deed by signing any counterpart.
- (d) Without limitation, the Parties agree that their communication of an offer or acceptance of this Deed, including exchanging counterparts, may be by any electronic method that evidences each Parties' execution of this Deed.

## **18.7 Creditor's power of attorney**

Each Creditor irrevocably appoints each of the Deed Administrators jointly and severally as its attorney to execute any document to give effect to the releases in clause 15.

## **18.8 Joint Parties**

If two or more parties are included within the same defined term in this Deed:

- (a) liability of those parties under this Deed is a joint liability of all of them and a several liability of each of them;
- (b) a right given to those parties under this deed is a right given severally to each of them; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

## **18.9 Costs**

- (a) Each party must pay its own costs of negotiating, preparing and executing this Deed.
- (b) The Administrators' costs of and incidental to the preparation and execution of this Deed are taken to be costs, charges and expenses incurred by the Deed Administrators in connection with or incidental to the administration of this Deed,

## **18.10 Acknowledgement**

The Parties acknowledge that the terms set out in this Deed are subject to the obligations the Administrators and Deed Administrators have to Creditors under law and statute.

## **18.11 Accumulative rights**

The rights, power and remedies provided by this Deed are accumulative and do not exclude any rights, powers, authorities, discretions or remedies provided by law.

## **18.12 Entire agreement**

This Deed contains everything that the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party before this Deed was executed.

## **18.13 Further cooperation**

Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to this Deed.

## **18.14 Relationship of the parties**

This Deed does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties.

**EXECUTED** as a deed.

## The Deed Companies

**SIGNED, SEALED AND DELIVERED** for  
and on behalf of **WBHO Australia Pty Ltd** )  
(Administrators Appointed) ACN 095 983 )  
**681; WBHO Construction Australia Pty** )  
**Ltd (Administrators Appointed) ACN 149** )  
**901 931; Northcoast Holdings Pty Ltd** )  
(Administrators Appointed) ACN 009 296 )  
**780; Probuild Constructions (Aust) Pty** )  
**Ltd (Administrators Appointed) ACN 095** )  
**250 945; Probuild Civil Pty Ltd (formerly** )  
**Probuild Civil (QLD) Pty Ltd** )  
(Administrators Appointed) ACN 010 870 )  
**587; PCA (QLD) Pty Ltd (Administrators** )  
**Appointed) (formerly Probuild** )  
**Constructions (QLD) Pty Ltd) ACN 141** )  
**148 245; Probuild Constructions (NSW)** )  
**Pty Ltd (Administrators Appointed) ACN** )  
**165 675 874; Probuild Constructions** )  
**(VIC) Pty Ltd (Administrators Appointed)** )  
**ACN 165 675 865; Probuild** )  
**Constructions (WA) Pty Ltd** )  
(Administrators Appointed) ACN 165 676 )  
**095; Probuild Constructions (QLD) Pty** )  
**Ltd (Administrators Appointed) ACN 166** )  
**966 034; ACN 098 866 794 Pty Ltd** )  
(Administrators Appointed) (formerly )  
**Probuild Constructions (NSW) Pty Ltd)** )  
**ACN 098 866 794; Contexx Holdings Pty** )  
**Ltd (Administrators Appointed) ACN 144** )  
**707 022; Contexx Pty Ltd (Administrators** )  
**Appointed) ACN 147 249 796; Prodev** )  
**Murphy Pty Ltd (Administrators** )  
**Appointed) ACN 120 758 803; Prodev** )  
**Investments 4 Pty Ltd (Administrators** )  
**Appointed) ACN 629 246 653 and Monaco** )  
**Hickey Pty Ltd (Administrators** )  
**Appointed) ACN 144 945 611 by its one of** )  
its joint and several voluntary )  
administrators: )



.....  
Signature of Administrator

SALVATORE ALGERI

.....  
Name of Administrator (block letters)



.....  
Signature of witness

DANIEL LINAKER

.....  
Name of witness (block letters)

By signing this document the witness states  
that they witnessed the signature of the  
signatory over audio visual link in  
accordance with s12 of the *Electronic  
Transactions (Victoria) Act 2000* (Vic).

**Deed Administrators**

**SIGNED, SEALED AND DELIVERED** )  
 by **SALVATORE ALGERI** in his )  
 capacity as joint and several voluntary )  
 administrator of the Deed Companies in )  
 the presence of: )



..... )  
 Signature of witness )

DANIEL LINAKEER )

..... )  
 Name of witness (block letters) )

By signing this document the witness )  
 states that they witnessed the signature )  
 of the signatory over audio visual link in )  
 accordance with s12 of the *Electronic* )  
*Transactions (Victoria) Act 2000* (Vic). )



..... )  
 Signature of SALVATORE ALGERI )

**SIGNED, SEALED AND DELIVERED** )  
 by **JASON TRACY** in his capacity as )  
 joint and several voluntary )  
 administrator of the Deed Companies in )  
 the presence of: )



..... )  
 Signature of witness )

DANIEL LINAKEER )


..... )  
 Name of witness (block letters) )

By signing this document the witness )  
 states that they witnessed the signature )  
 of the signatory over audio visual link in )  
 accordance with s12 of the *Electronic* )  
*Transactions (Victoria) Act 2000* (Vic). )



..... )  
 Signature of JASON TRACY )

**SIGNED, SEALED AND DELIVERED** )  
by **DAVID ORR** in his capacity as joint )  
and several voluntary administrator of )  
the Deed Companies in the presence )  
of: )


  
..... )  
Signature of witness )

DANIEL LINAKER )  
..... )  
Name of witness (block letters) )

By signing this document the witness )  
states that they witnessed the signature )  
of the signatory over audio visual link in )  
accordance with s12 of the *Electronic* )  
*Transactions (Victoria) Act 2000* (Vic). )

  
..... )  
Signature of DAVID ORR )

**SIGNED, SEALED AND DELIVERED** )  
by **MATTHEW DONNELLY** in his )  
capacity as joint and several voluntary )  
administrator of the Deed Companies in )  
the presence of: )

  
..... )  
Signature of witness )

DANIEL LINAKER )  
..... )  
Name of witness (block letters) )

By signing this document the witness )  
states that they witnessed the signature )  
of the signatory over audio visual link in )  
accordance with s12 of the *Electronic* )  
*Transactions (Victoria) Act 2000* (Vic). )

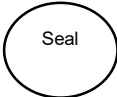
  
..... )  
Signature of MATTHEW DONNELLY )

**Proponent**

**SIGNED, SEALED AND DELIVERED** )  
by **WBHO CONSTRUCTION (PTY)** )  
**LTD** in the presence of: )  
 )  
 )  
 )  
 )  
 )  
 )  
 )

..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

  
..... )  
Signature of authorised signatory )  
..... )  
Name of authorised signatory )

**Schedule 1 - Deed Companies**

1. WBHO Australia Pty Ltd (Administrators Appointed) ACN 095 983 681
2. WBHO Construction Australia Pty Ltd (Administrators Appointed) ACN 149 901 931
3. Northcoast Holdings Pty Ltd (Administrators Appointed) ACN 009 296 780
4. Probuild Constructions (Aust) Pty Ltd (Administrators Appointed) ACN 095 250 945
5. Probuild Civil Pty Ltd (formerly Probuild Civil (QLD) Pty Ltd (Administrators Appointed) ACN 010 870 587
6. PCA (QLD) Pty Ltd (Administrators Appointed) (formerly Probuild Constructions (QLD) Pty Ltd) ACN 141 148 245
7. Probuild Constructions (NSW) Pty Ltd (Administrators Appointed) ACN 165 675 874
8. Probuild Constructions (VIC) Pty Ltd (Administrators Appointed) ACN 165 675 865
9. Probuild Constructions (WA) Pty Ltd (Administrators Appointed) ACN 165 676 095
10. Probuild Constructions (QLD) Pty Ltd (Administrators Appointed) ACN 166 966 034
11. ACN 098 866 794 Pty Ltd (Administrators Appointed) (formerly Probuild Constructions (NSW) Pty Ltd) ACN 098 866 794
12. Contexx Holdings Pty Ltd (Administrators Appointed) ACN 144 707 022
13. Contexx Pty Ltd (Administrators Appointed) ACN 147 249 796
14. Prodev Murphy Pty Ltd (Administrators Appointed) ACN 120 758 803
15. Prodev Investments 4 Pty Ltd (Administrators Appointed) ACN 629 246 653
16. Monaco Hickey Pty Ltd (Administrators Appointed) ACN 144 945 611

*Execution Version*

# Deed of Company Arrangement

The companies listed at Schedule 1  
Deed Companies

Salvatore Algeri, Jason Tracy, Matthew Donnelly and David Orr in their  
capacities as joint and several voluntary administrators of the Deed  
Companies  
Deed Administrators

WBHO Construction (Pty) Ltd, a company incorporated pursuant to the  
laws of South Africa with Registration Number 1983/011953/07  
Proponent

Clayton Utz  
Level 15 1 Bligh Street  
Sydney NSW 2000  
GPO Box 9806  
Sydney NSW 2001  
Tel +61 2 9353 4000  
Fax +61 2 8220 6700  
[www.claytonutz.com](http://www.claytonutz.com)

Our reference 20556/19580/81021333

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# Deed of Company Arrangement

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**Date** 21 July 2022

**Parties** The companies listed at Schedule 1 (**Deed Companies**)

**Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as joint and several voluntary administrators of each of the Deed Companies of C/- Deloitte Financial Advisory, 477 Collins Street, Melbourne VIC 3000 (Deed Administrators)**

**WBHO Construction (Pty) Ltd**, a company incorporated pursuant to the laws of South Africa with Registration Number 1983/011953/07 of 53 Andries Street, Wynberg Sandton 2090, South Africa (**Proponent**)

## Background

- A. On 23 February 2022, Sal Algeri, Jason Tracy, David Orr and Matt Donnelly were appointed as joint and several voluntary administrators of the Deed Companies pursuant to section 436A of the Corporations Act.
- B. At a meeting held on 30 June 2022 and convened pursuant to section 439A of the Corporations Act (**Second Meeting**), the Creditors of the Deed Companies resolved under section 439C of the Corporations Act that the Deed Companies execute the deed of company arrangement proposed by the Proponent under section 444B(2) of the Corporations Act (**Section 439C Resolution**).
- C. The Deed Companies, the Deed Administrators and the Proponent have agreed to execute this Deed to give effect to the Section 439C Resolution.
- D. The Deed Administrators have consented to be the administrators of this Deed.
- E. Subject to the terms of this Deed, this Deed binds all Creditors of the Deed Companies, in accordance with section 444D of the Corporations Act and also binds the Deed Companies and their Officers and Members in accordance with section 444G of the Corporations Act.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Deed:

**Administrators** means Sal Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as joint and several voluntary administrators of the Deed Companies (and any successor to that office appointed pursuant to the Corporations Act) as set out in Schedule 1.

**Administrators' Liabilities** means the remuneration (as approved in accordance with the Corporations Act), costs, charges, liabilities and expenses (including legal expenses and claims made against the Administrators) of the Administrators.

**Admitted Claim** means a Claim admitted by the Deed Administrators after adjudication in accordance with this Deed.

**Admitted Creditor** means a Claim against the Deed Companies that is admitted by the Deed Administrators in accordance with the terms of this Deed.

**Admitted Employee Creditor** means an Employee Creditor who has an Admitted Claim.

**Admitted Insurance Bond Creditor** means an Insurance Bond Creditor who has an Admitted Claim.

**Admitted Small Creditor** means a Small Creditor who has an Admitted Claim.

**Admitted Unsecured Creditor** means an Unsecured Creditor who has an Admitted Claim.

**Appointment Date** means 23 February 2022.

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

**ATO GST Priority Amount** means the lesser of:

- (a) an amount equal to the Proceeds of Realisable Assets of Prodev 4 (prior to pooling of such assets in accordance with the terms of this Deed) less costs of realisation (including the Administrators' or Deed Administrators' fees and expenses) and any priority entitlements pursuant to section 556 of the Corporations Act; and
- (b) amounts owing to the Australian Taxation Office in respect of unpaid GST owed by the relevant tax group including Prodev 4.

**ATO Income Tax Priority Amount** means the lesser of:

- (a) an amount equal to the Proceeds of Realisable Assets of Northcoast Holdings (prior to pooling of such assets in accordance with the terms of this Deed) less costs of realisation (including the Administrators' or Deed Administrators' fees and expenses) and any priority entitlements pursuant to section 556 of the Corporations Act; and
- (b) amounts owing to the Australian Taxation Office in respect of unpaid income tax owed by the relevant tax group including Northcoast Holdings.

**BLU System** means the software platform owned and operated by the Proponent.

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for business generally in Melbourne.

**Called Guarantees** means CBA Bank Guarantees, which have been called by the relevant holder and in respect of which the Proponent has paid an amount equivalent to the amount called to CBA.

**CBA** means Commonwealth Bank of Australia in its capacity as "Fronting Bank" under the CBA Facility Agreement.

**CBA Bank Guarantees** means bank guarantees issued under the CBA Facility Agreement.

**CBA Facility Agreement** means the Bank Guarantee Facility and Reimbursement Agreement dated 14 December 2017 between, among others, CBA and Probuild (as amended from time to time).

**CBA Guarantee Recovered Funds** means any amounts recovered by the Deed Companies in respect of the Called Guarantees but does not include amounts recovered in respect of the Curtin Uni Performance Guarantees.

**Caulfield Contingent Amount** means \$500,000 (GST inclusive, if any).

**Caulfield Conditions** means each of the conditions precedent contain in clause 7.2(a) of this Deed.

**Caulfield Satisfaction Date** means the date on which all of the Caulfield Conditions have been satisfied.

**Claim** means any action, demand, suit, proceeding, debt, claim, loss, damage or other liability (whether present or future, certain or contingent, ascertained or sounding only in damages) whatsoever and however incurred, arising directly or indirectly from any act or omission by the Deed Companies (or any one of them) or by any agreement, circumstance or event, occurring on or before the Appointment Date, but does not include an Excluded Claim.

**Commencement Date** means that date upon which each relevant party executes this Deed.

**Completion** means the date being 5 Business Days after the date that each of the Conditions are satisfied.

**Conditions** means each of the conditions precedent contained in clause 4 of this Deed.

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

**Court** means the Federal Court of Australia or the Supreme Court of Victoria.

**CP Satisfaction Date** means the date that is no later than 8 weeks after the Commencement Date.

**Creditor** means a person who, or an entity that, has a Claim against a Deed Company.

**Curtin Uni Performance Guarantees** means:

- (a) bank guarantee G636680 issued by CBA in favour of Live-In Learning Custodians Pty Ltd guaranteeing an amount equal to \$504,043.28; and
- (b) bank guarantee G636676 issued by CBA in favour of National Australia Bank Limited guaranteeing an amount equal to \$7,956,892.67.

**Deed** means this Deed of Company Arrangement between the Parties.

**Deed Administrators' Liabilities** means the remuneration (as approved in accordance with the Corporations Act), costs, charges, liabilities and expenses (including legal expenses and claims made against the Deed Administrators) of the Deed Administrators.

**Deed Fund** has the meaning given to it in clause 6.1.

**Deed Period** means the period commencing on the Commencement Date and ending on the date this Deed Terminates.

**Directors** has the meaning ascribed to that term in section 9 of the Corporations Act.

**Effectuation** means the date upon which effectuation of this Deed is to occur, being one month after the date that the final distribution is made from the Deed Fund and the Deed Administrators have attended to all matters necessary to certify that the Deed has been effectuated.

**Employee Creditor** means an employee Creditor with a Claim that, in a liquidation of the Deed Companies, would be entitled to priority of payment pursuant to sections 556(1)(e), (f) to (h) (inclusive), 560 or 561 of the Corporations Act and:

- (a) includes:

- (i) an employee Creditor that would otherwise be an “excluded employee” pursuant to subsection (c) of the definition of “excluded employee” in section 556(2) of the Corporations Act; and
  - (ii) an employee Creditor that would otherwise be impacted by subsection (c) of the definition of “non-priority day” in section 556(2) of the Corporations Act; and
- (b) does not include an employee whose employment with a Deed Company was transferred to a third party prior to the Commencement Date.

**Enforcement Process** has the meaning ascribed to that term in section 9 of the Corporations Act.

**Excluded Assets** are:

- (a) any loans owing to any of the Deed Companies by Brad Duggan; and
- (b) CBA Guarantee Recovered Funds.

**Excluded Claim** means:

- (a) a Claim by any of the Deed Companies to receive a distribution in respect of an intercompany receivable;
- (b) a Claim by the Proponent to receive a distribution as an Admitted Creditor; or
- (c) a Claim by a relevant finance party or relevant guarantor under the CBA Facility Agreement to receive a distribution as an Admitted Creditor.

**Final Distribution Date** means the date upon which the final distribution is made to Creditors from the Deed Fund.

**Finance Party and Proponent Consent** means the agreement of the Proponent, relevant finance parties and relevant guarantors under the CBA Facility Agreement not to receive a distribution as an Admitted Creditor pursuant to the terms of this Deed.

**GST** has the meaning given to that term in the GST Act.

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

**Guarantee Recovery Payment** means an amount equal to the CBA Guarantee Recovered Funds.

**Initial Contribution Amount** means \$9,080,000.

**Intragroup Claim** means all Claims as between each of the Deed Companies and the Proponent.

**Insolvency Practice Rules** means the *Insolvency Practice Rules (Corporations) 2016* (Cth).

**Insolvency Practice Schedule** means Schedule 2 of the Corporations Act.

**Insurance Bond Creditor** means AAI Limited t/as Vero Insurance, Allianz Australia Insurance Limited, Tokio Marine & Nichido Fire Insurance Co Limited C/- BCC Surety Pty Ltd and AIG Australia Limited.

**Members** means all the shareholders of the Deed Companies.

**Northcoast Holdings** means Northcoast Holdings Pty Ltd (Administrators Appointed) ACN 009 296 780.

**Officers** has the meaning ascribed to that term in section 9 of the Corporations Act.

**Operating Expenditure Amount** means a cash payment in the amount of \$580,000 payable by the Proponent in recognition of operating expenditure incurred or to be incurred by the Administrators or Deed Administrators (as applicable) that has, or will, provide a benefit to the Proponent.

**Parties** means the Deed Companies listed at Schedule 1, the Deed Administrators and the Proponent and **Party** means any one of them.

**Pool A Fund** means the Pool A Fund Amount, to be made available for distribution in accordance with clause 8.1.

**Pool A Fund Amount** means:

- (a) \$6,000,000 by way of cash payment by Proponent;
- (b) the Operating Expenditure Amount (subject to clause 7.3(b));
- (c) the Caulfield Contingent Amount (subject to satisfaction of the Caulfield Conditions);
- (d) Proceeds of the Realisable Assets; and
- (e) the SRG DOCA Distribution.

**Pool B Fund** means the Pool B Fund Amount, to be made available for distribution in accordance with clause 8.2.

**Pool B Fund Amount** means \$2,500,000.

**Pool C Fund** means the Pool C Fund Amount, to be made available for distribution in accordance with clause 8.3(a)(i).

**Pool C Fund Amount** means any amounts remaining in the Pool A Fund after the distributions have been made in accordance with clause 8.1(a).

**Pool D Fund** means the Pool D Fund Amount to be made available for distribution in accordance with clause 8.3(a)(ii).

**Pool D Fund Amount** means the Proceeds of the Realisable Assets from the Pool A Fund in an amount equal to the ATO GST Priority Amount and the ATO Income Tax Liability Amount.

**Pooled Companies** means the Deed Companies.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) and any regulations made pursuant to it.

**PPSR** means the register established pursuant to the PPSA and any regulations made pursuant to it.

**Prescribed Provisions** means the provisions set out in Schedule 8A to the Regulations.

**Probuild** means Probuild Constructions (Aust) Pty Ltd (Administrators Appointed) ACN 095 250 945.

**Proceeds** means, in relation to a Realisable Asset, the proceeds from the sale or other dealing with a Realisable Asset excluding GST.

**Prodev 4** means Prodev Investments 4 Pty Ltd (Administrators Appointed) ACN 629 246 653.

**Proponent Bank Account** means the following AUD bank account operated by the Proponent:

Account name: Korda Client ADM

BSB: 013 040

Account number: 837288181

**Realisable Assets** means all assets of the Deed Companies, with the exception of the Excluded Assets, which will be available to be realised by the Deed Administrators to form the Pool A Fund, Pool C Fund and Pool D Fund (as applicable).

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

**Related Party** means a Related Body Corporate or Related Entity (as those terms are defined in the Corporations Act) of a Deed Company.

**Second Meeting** has the meaning given to that term in Recital B.

**Section 439C Resolution** has the meaning given to that term in Recital B.

**Security** means a mortgage, charge, pledge, lien, security interest, title retention, preferential right, trust arrangement, contractual right of set-off and any other encumbrance, security agreement or arrangement in favour of any person, including any Security Interest (as that term is defined in section 12 of the PPSA).

**Small Creditor** means a Creditor with a total Claim not exceeding \$25,000 (inclusive of GST).

**SRG Assignment Consent** means the consent of the Proponent and the relevant finance parties under the CBA Facility Agreement to assign their interests in the SRG DOCA Distribution to the Deed Fund.

**SRG DOCA Distribution** means any entitlement of the relevant finance parties under the CBA Facility Agreement and the Proponent to receive a distribution under the deed of company arrangement entered into by, among others, SRG Global Infrastructure Pty Ltd (formerly WBHO Infrastructure Pty Ltd).

**Superannuation Contribution** has the meaning given to that term in section 556(2) of the Corporations Act.

**Superannuation Guarantee Charge** has the meaning given to that term in the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**Termination** means the termination of this Deed pursuant to clause 10.

**Termination Amount** means \$8,500,000.

**Trust Account** means the following AUD bank account operated by the Deed Administrators:

Account name: Probuilt Constructions (Aust) Pty Ltd DOCA Trust

BSB: 014-002

Account number: 838464677



**Unsecured Creditor** means an unsecured Creditor who is not:

- (a) a Small Creditor;
- (b) an Insurance Bond Creditor;
- (c) a Related Party; or
- (d) if they are a Small Creditor, has not submitted a proof of debt in respect of the Pool B Fund.

## 1.2 Interpretation

In this Deed:

- (a) headings and the table of contents are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "**includes**" in any form is not a word of limitation; and
- (k) a reference to "**AUD**" or "**\$**" is a reference to Australian currency.

## 1.3 Inconsistency

- (a) If there is any inconsistency between the provisions of this Deed and the Corporations Act, the Regulations, the Insolvency Practice Schedule, or the Insolvency Practice Rules, this Deed prevails to the extent permitted by law.

- (b) If there is any inconsistency between this Deed and the constitution of the Deed Companies or any other obligations binding on the Deed Companies, then this Deed prevails to the extent of that inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency.

## 1.4 Business Days

Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, that act, matter or thing will be done on the immediately succeeding Business Day.

## 1.5 Bar to claims

Subject to section 444D of the Corporations Act, this Deed may be pleaded and tendered by:

- (a) the Deed Companies or the Deed Administrators against any person having or asserting a Claim released, discharged and extinguished by clause 15.3; and
- (b) the recipient of any release or covenant contained in this Deed,

as an absolute bar and defence to any legal proceeding brought or made at any time in respect of a claim, release or covenant as the case may be.

## 1.6 Prescribed Provisions

- (a) Subject to clause 1.6(b), the Prescribed Provisions are deemed to be incorporated in and form part of this Deed, save that to the extent of any inconsistency between the terms of this Deed and the Prescribed Provisions, the terms of this Deed will prevail.
- (b) Clause 3 (*Termination of deed where arrangement fails*) and clause 11 (*Committee of inspection*) of the Prescribed Provisions are excluded in their entirety from the terms of this Deed.

## 1.7 Required provisions

To the extent that the Corporations Act requires any provision to be included in this Deed which is not expressly included in this Deed, such provision will be deemed to be included in this Deed.

## 1.8 Deed components

This Deed includes any Schedule.

---

# 2. Operation of this Deed

## 2.1 Commencement Date

This Deed will commence and take effect on the Commencement Date.

## 2.2 Interim effect

To the extent that a person would be bound by this Deed if it had already been executed, the person must not, at any time after the Section 439C Resolution is passed but before this Deed is executed, do anything inconsistent with the terms of this Deed, except with the leave of the Court.

## 2.3 Termination

This Deed continues until it is terminated in accordance with this Deed.

---

## 3. Objective and effect

### 3.1 Objectives

- (a) The purpose and objective of the arrangements set out in this Deed, amongst other matters, are to provide:
  - (i) a better return than liquidation for all Creditors;
  - (ii) a quicker return for Employee Creditors than liquidation;
  - (iii) a quicker return for Small Creditors than liquidation; and
  - (iv) continued access and ongoing support available to the Deed Administrators in respect of the BLU System.

### 3.2 Effect of the Deed on Officers of the Deed Companies

- (a) The Directors of the Deed Companies will remain in office throughout the Deed Period unless they resign or are removed by the Deed Administrators in accordance with this Deed.
- (b) During the Deed Period, unless authorised in writing by the Deed Administrators, the Directors and Officers of the Deed Companies cannot perform or exercise, and must not purport to perform or exercise, a right, function or power as a Director or Officer of the Deed Companies.
- (c) For the avoidance of doubt, the Directors of the Deed Companies will not pass a resolution to place the Deed Companies into voluntary administration or take any step to wind up the Deed Companies except with the written approval of the Deed Administrators.
- (d) While they remain Directors of the Deed Companies, the Directors of the Deed Companies will not be relieved of their statutory duties as Directors of the Deed Companies and for the avoidance of doubt, the Deed Administrators will not be responsible for such statutory obligations during the Deed Period.
- (e) During the Deed Period, the Directors of the Deed Companies must:
  - (i) co-operate with and assist the Deed Administrators in the performance by the Deed Administrators of their obligations under this Deed;
  - (ii) carry out and perform such operations, functions, powers and other matters as may be delegated to them by the Deed Administrators; and
  - (iii) perform their obligations pursuant to the Deed.

### 3.3 Effect of this Deed on Members

- (a) Until this Deed Terminates, any Member, and any Creditor holding any Security over any shares in the Deed Companies must not without the prior written consent of the Deed Administrators deal with, or attempt to deal with any shares in the Deed Companies or exercise shareholder rights over any shares in the Deed Companies in a way that is contrary to this Deed or the purpose of the Deed.

- (b) The Deed Administrators must not, and must not allow:
  - (i) the shares in the Deed Companies to be transferred; or
  - (ii) further shares of any class to be issued in the Deed Companies.

---

## **4. Conditions Precedent**

### **4.1 Conditions**

The following Conditions must be satisfied by the CP Satisfaction Date:

- (a) execution of this Deed by each Party;
- (b) the provision of the Finance Party and Proponent Consent; and
- (c) the provision of the SRG Assignment Consent.

### **4.2 Obligation to satisfy Conditions and transparency**

- (a) To the extent that it is within the relevant Party's control, that Party must use reasonable endeavours to ensure that the Conditions are satisfied as soon as possible and prior to the CP Satisfaction Date.
- (b) On and from the Commencement Date, the Parties must respond promptly to all reasonable requests for information from any other Party in relation to the status and expected timing for satisfaction of the Conditions.

### **4.3 Waiver of Conditions**

The Conditions in clauses 4.1 may only be waived or amended in writing by all of the Parties.

### **4.4 Consequence of non-satisfaction of the Conditions**

- (a) In the event:
  - (i) one or more of the Conditions is not satisfied, or waived or amended in accordance with clause 4.3, by the CP Satisfaction Date; or
  - (ii) the Deed Administrators and the Proponent are of the opinion that one or more of the Conditions are incapable of being satisfied by the CP Satisfaction Date,

then:

  - (iii) the Parties will cease to be bound by this Deed on and from the CP Satisfaction Date and will have no liability under it; and
  - (iv) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Deed Companies.

### **4.5 Non-execution**

If this Deed is not executed in accordance with clause 4.1(a) on or prior to the expiration of 15 Business Days (or such further period as the Court allows) after the Section 439C Resolution is passed, then this Deed will terminate automatically.

---

## **5. Pooling**

### **5.1 Pooling**

- (a) Upon satisfaction of the Conditions, for the purposes of this Deed:
  - (i) the Assets of the Pooled Companies and any other amounts received by the Pooled Companies during the Deed Period will be pooled;
  - (ii) the Pooled Companies will be treated as a single company (namely, as if the Pooled Companies were Probuild); and
  - (iii) a Creditor of a Pooled Company will be treated as a Creditor of the Pooled Companies as a whole.

### **5.2 Intercompany loan balances**

- (a) Immediately upon pooling taking place in accordance with clause 5.1 of this Deed:
  - (i) each debt payable by a Pooled Company to any Pooled Company is satisfied or extinguished; and
  - (ii) each Claim that a Pooled Company has against any Pooled Company, including a Claim against the Proponent is satisfied or extinguished.

### **5.3 Books and records**

The books and records of each Deed Company transfers to Probuild upon pooling.

---

## **6. Deed Fund**

### **6.1 Establishment of Deed Fund**

- (a) On payment of the Initial Contribution Amount the following funds are established, which together constitute the Deed Fund:
  - (i) Pool A Fund;
  - (ii) Pool B Fund;
  - (iii) Pool C Fund; and
  - (iv) Pool D Fund.
- (b) The Deed Fund will comprise funds to discharge the following:
  - (i) Administrators' Liabilities;
  - (ii) Deed Administrators' Liabilities; and
  - (iii) Admitted Claims.
- (c) The Excluded Assets are excluded from the Deed Fund.
- (d) The money in the Deed Fund from time to time is held by the Deed Administrators on trust for the benefit of those so entitled and will be distributed in accordance with this Deed.

## 6.2 Accounts

The Deed Administrators may establish any interest bearing accounts controlled by the Deed Administrators and held with an "authorised deposit taking institution" (as that term is defined in the *Banking Act 1959* (Cth)) that they consider appropriate.

## 6.3 Monies held by Deed Administrators

The Deed Administrators are entitled to use the Deed Fund to make distributions in accordance with clause 8.

---

## 7. Cash Contribution

### 7.1 Contribution Amount

The Proponent must pay or procure the payment of the Initial Contribution Amount to the Trust Account operated by the Deed Administrators within 4 Business Days of the Commencement Date.

### 7.2 Caulfield Contingent Payment

- (a) The Proponent agrees to transfer the Caulfield Contingent Amount to the Trust Account to be applied to the Pool A Fund on the satisfaction of the following conditions:
  - (i) practical completion of the project known as "Caulfield Village Precinct 2 North" (**Caulfield Village Project**);
  - (ii) entry into a deed of release by the Administrators or Deed Administrators (as relevant) releasing BPG Caulfield Village Pty Limited in respect of all claims in connection with the Caulfield Village Project;
  - (iii) return of bank guarantees (reference numbers G666422 and G666423) by BPG Caulfield Village Pty Limited in connection with the Caulfield Village Project totalling \$9,559,881 in return for a settlement payment by the Proponent of not more than \$5,700,000; and
  - (iv) BPG Caulfield Village Pty Limited to replace cash security deposits held by Glen Eira City Council in the amount of \$300,000 and Department of Transport in the amount of \$400,000 and procure the return of these deposits to the Administrators or Deed Administrators.
- (b) Subject to clause 7.2(a), the Proponent must pay or procure the payment of the Caulfield Contingent Amount to the Trust Account operated by the Deed Administrators within 5 Business Days of the Caulfield Satisfaction Date.

### 7.3 Application of Initial Contribution Amount

- (a) On the date that is 10 weeks from the Commencement Date, the Deed Administrators will apply the Initial Contribution Amount strictly in accordance with this Deed as follows:
  - (i) \$6,580,000 to the Pool A Fund to form part of the Pool A Fund Amount; and
  - (ii) \$2,500,000 to the Pool B Fund to form the Pool B Fund Amount.

- (b) The Deed Administrators acknowledge that the Initial Contribution Amount includes the Operating Expenditure Amount and is only payable upon receipt of an invoice from the Deed Administrators or Administrators (as applicable).

#### **7.4 Transfer of Caulfield Contingent Amount**

Subject to satisfaction of the Caulfield Conditions, the Deed Administrators will apply the Caulfield Contingent Amount strictly in accordance with this Deed to the Pool A Fund to form part of the Pool A Fund Amount.

#### **7.5 Certificate of Satisfaction**

- (a) Within 3 Business Days of receiving payment in full of the Initial Contribution Amount in accordance with clause 7.1, the Deed Administrators shall provide the Proponent with a certificate in writing stating all non-contingent financial obligations of the Proponent under this Deed have been satisfied.
- (b) Within 3 Business Days of receiving payment in full of the Caulfield Contingent Amount (subject to satisfaction of the Caulfield Conditions) in accordance with clause 7.2, the Deed Administrators shall provide the Proponent with a certificate in writing stating all financial obligations of the Proponent under the Deed have been satisfied.

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### **8. Distribution of Deed Fund**

#### **8.1 Pool A Fund**

- (a) Subject to clause 8.4, on or after the date that is 10 weeks from the Commencement Date, the Deed Administrators must pay or procure the payment of the Pool A Fund as follows:
  - (i) first, in payment of the Administrators' Liabilities (to the extent not already paid in full);
  - (ii) second, in payment of each Admitted Employee Creditor in full;
  - (iii) third, once the distributions in 8.1(a)(i) and 8.1(a)(ii) have been made in full, from the Proceeds of the Realisable Assets, to the Pool D Fund in an amount that is equal to the ATO GST Priority Amount plus the ATO Income Tax Liability Amount; and
  - (iv) fourth, to the extent that the payments made in accordance with clause 8.1(a)(i), 8.1(a)(ii) and 8.1(a)(iii) are less than the total value of the Pool A Fund, any excess funds will be made available to the Pool C Fund.

#### **8.2 Pool B Fund**

- (a) Within 45 Business Days of Admitted Employee Creditors having been paid in full in accordance with clause 8.1(a)(ii), the Deed Administrators must distribute or procure the distribution of the Pool B Fund as follows:
  - (i) first, in payment of each Admitted Small Creditor on a pro-rata basis; and
  - (ii) second, to the Pool A Fund to the extent that:
    - A. Admitted Small Creditors have been paid in full; and
    - B. any residual funds remain in the Pool B Fund.

### 8.3 Pool C Fund and Pool D Fund

- (a) Subject to clause 8.4, the Deed Administrators must distribute or procure the distribution of the Pool C Fund and Pool D Fund, including by way of interim distributions, as follows:
  - (i) In respect of the Pool C Fund:
    - A. first, in payment of the Deed Administrators' Liabilities; and
    - B. second, in payment of each Admitted Unsecured Creditor and Insurance Bond Creditor on a pro rata basis.
  - (ii) In respect of the Pool D Fund:
    - A. first, in payment of an Admitted Claim of the Australian Taxation Office in respect of GST liabilities up to the ATO GST Priority Amount; and
    - B. second, in payment of an Admitted Claim of the Australian Taxation Office in respect of income liabilities up to the ATO Income Tax Liability Amount.
- (b) The Deed Administrators must not make any distributions from the Pool C Fund and the Pool D Fund until the Pool B Fund has been distributed in full in accordance with clause 8.2.

### 8.4 Administrators' Liabilities and Deed Administrators' Liabilities

Notwithstanding any other term of this Deed, the Deed Administrators may draw:

- (a) the Administrators' Liabilities from Pool A at any time on or after the Commencement Date; and
- (b) the Deed Administrators' Liabilities, but only in relation to third party costs and liabilities, not related to remuneration, from Pool A or Pool C from time to time.

### 8.5 Insured Claims

Subject to the terms of this Deed, section 562 of the Corporations Act is to be incorporated into this Deed as if references to a liquidator were references to the Deed Administrators and with any other amendments as necessary in the context of this Deed.

### 8.6 Manner of distribution

Subject to the other provisions of this Deed:

- (a) distributions may be paid by the Deed Administrators from the Deed Fund in a manner (including by way of interim distribution) and at the time determined by the Deed Administrators in their absolute discretion;
- (b) the Deed Administrators may declare and pay distributions from different Pools at different times;
- (c) the Deed Administrators need not pay a distribution to an Admitted Creditor if the amount due to them in respect of the distribution would be less than \$25.00; and
- (d) the Deed Administrators may pay distributions to Admitted Creditors by electronic funds transfer.



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## 9. CBA Bank Guarantees

### 9.1 Guarantee Recovery Payment

- (a) The Parties acknowledge that as at the Commencement Date, the Proponent has made payments to CBA equal to the value of the Called Guarantees.
- (b) The Deed Administrators agree to pay to the Proponent any CBA Guarantee Recovered Funds by way of the Guarantee Recovery Payment immediately on receipt of any CBA Guarantee Recovered Funds.

### 9.2 Assignment of Claims

- (a) The Deed Administrators agree to assign, transfer or otherwise convey the rights and interests of the Deed Companies in respect of the CBA Bank Guarantees, including any Called Guarantees to the Proponent on the Proponent's request.

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## 10. Termination of the Deed

### 10.1 Termination on effectuation of Deed

The Deed will Terminate immediately on Effectuation, unless terminated earlier in accordance with this Deed.

### 10.2 Termination on failure of Deed

This Deed automatically Terminates upon the happening of any one of the following events:

- (a) the Court makes an order terminating this Deed under section 445D of the Corporations Act;
- (b) by a resolution of the Creditors passed at a meeting convened pursuant to Division 75-10 of the Insolvency Practice Schedule; or
- (c) the creditors of the Deed Companies pass a resolution terminating this Deed in accordance with sections 445C(b) of the Corporations Act, in the event that any of the Conditions are not satisfied (or waived or amended in accordance with clause 4.3) on or before the CP Satisfaction Date in accordance with clause 4.4.

### 10.3 Notice of Effectuation of Deed

Upon Termination in accordance with clause 10.1, the Deed Administrators or one of them must immediately certify, in writing that the terms of this Deed have been fulfilled and, as soon as practicable, must lodge with ASIC a notice substantially in the following form in respect of the Deed Companies:

‘We, [***name of administrators***] of [***address***] as administrators of the deed of company arrangement executed on [***date***], CERTIFY that the deed has been wholly effectuated in respect to [***name of Deed Companies***].’

and the execution of the notice terminates this Deed and all Claims of Creditors of the Deed Companies will be extinguished, discharged and released if not extinguished or released earlier under the Deed.

### 10.4 Effect of Termination

In accordance with section 445H of the Corporations Act, the Termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.

## 10.5 Severance

If any part of this Deed is or becomes illegal, ineffective, invalid or unenforceable, that part will be severed from this Deed and that severance will not affect the effectiveness, validity or enforceability of the remaining part of this Deed.

## 10.6 Consequences of Termination of the Deed for non-performance

Upon Termination of the Deed under clause 10.2, unless the Deed Administrators and the Proponent consider it appropriate to convene a further meeting of Creditors pursuant to Division 75-10 of the Insolvency Practice Schedule to consider a variation of the Deed:

- (a) the Deed Companies will be taken to have passed special resolutions under section 491 of the Corporations Act that each the Deed Companies be voluntarily wound up and that the Deed Administrators be the Deed Companies' liquidators; and
- (b) the Deed Companies will be wound up.

## 10.7 Survival of clauses

Despite any other provision of this Deed, clauses 1 (*Definitions and interpretation*), 10 (*Termination of the Deed*), 13 (*Remuneration and indemnity*), 15 (*Moratorium and release*), 16 (*Tax*), 17 (*Notices*) and 18 (*General*) survive the Termination of this Deed.

## 10.8 Termination Amount Payable on Termination

- (a) Notwithstanding clause 10.7, if this Deed is Terminated or terminates for whatever reason prior to the Deed Administrators having completed (or substantially completed as agreed and determined by the Proponent acting reasonably) distribution of the Pool B Fund, the Deed Administrators must promptly pay into the Proponent Bank Account the Termination Amount.
- (b) For the avoidance of doubt, the Termination Amount will not be payable by the Deed Administrators to the Proponent if this Deed is Terminated or terminates for whatever reason following the distribution of the Pool B Fund.

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## 11. Deed Administrators' appointment

### 11.1 Appointment

On the Commencement Date, the Deed Administrators are appointed joint and several administrators of the Deed.

### 11.2 Acceptance of appointment

The Deed Administrators:

- (a) accept the appointment as administrators of the Deed; and
- (b) agree to act as administrators of the Deed during the Deed Period or until the Deed Administrators retire or are removed from office in accordance with the Deed or the Corporations Act.

### 11.3 Deed Administrators are agents

In exercising the powers conferred by the Deed and carrying out the duties arising under the Deed, the Deed Administrators will act as agent for and on behalf of the Deed Companies.

## 11.4 Joint and several

The rights, powers and privileges of the Deed Administrators may be exercised by them jointly and severally.

## 11.5 Deed Administrators' resignation

Any Deed Administrator may resign at any time by giving not less than 28 days' prior written notice to each of the Parties unless that resignation would result in there being no remaining Deed Administrator in which event the Deed Administrator must:

- (a) convene meetings of Creditors of the Deed Companies in accordance with clause 12.3 for the purpose of nominating a replacement deed administrator;
- (b) assign to a replacement deed administrator nominated by the Creditors the Deed Administrators' rights, title and benefit under this Deed subject to any accrued rights, indemnities or liens the Deed Administrators may have as at the date of the assignment; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 11.5(b).

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## 12. Powers of the Deed Administrators

### 12.1 Powers

- (a) For the purposes of administering this Deed, the Deed Administrators shall have all of the powers set out in this Deed, in the Prescribed Provisions and as otherwise provided to deed administrators by the Act, Regulations or generally at law or in equity.
- (b) The powers of the Deed Administrators shall include:
  - (i) the power to remove from office a Director or company secretary in accordance with the terms of this Deed;
  - (ii) to convene and hold meetings of Creditors in accordance with clause 12.3;
  - (iii) to adjudicate Claims in accordance with this Deed;
  - (iv) to insure property of the Deed Companies;
  - (v) to repair, renew or enlarge property of the Deed Companies;
  - (vi) to administer the assets available for the payments of Claims or Creditors in accordance with the provisions of this Deed;
  - (vii) to bring, prosecute and defend in the name and on behalf of the Deed Companies or in the name of the Deed Administrator any actions, suits or proceedings (subject to obtaining the prior written consent of the Proponent, unless such action, suit or proceeding has been commenced by or involves a claim against the Proponent);
  - (viii) to refer to arbitration any question affecting the Deed Companies (subject to obtaining the prior written consent of the Proponent, unless such question directly relates to the rights or obligations of the Proponent);

- (ix) to make payments to any Secured Creditor of the Deed Companies and any person who is the owner or lessor of property possessed used or occupied by Deed Companies in accordance with this Deed;
  - (x) to make interim or other distributions of the Proceeds of the realisation of the assets available for the payment of Claims of Creditors in accordance with this Deed;
  - (xi) to permit any person authorised by the Deed Administrator to operate any account in the name of the Deed Companies;
  - (xii) to do all acts and execute in the name and on behalf of the Deed Companies all deeds, receipts and other documents, using the Deed Companies' common or official seal when necessary subject to and in accordance with the provisions of this Deed;
  - (xiii) subject to the *Bankruptcy Act 1966*, to prove in the bankruptcy of any contributory or debtor of the Deed Companies or under any deed executed under that act;
  - (xiv) subject to the Corporations Act, to prove in the winding up of any contributory or debtor of the Deed Companies or under any scheme of arrangement entered into, or deed of company arrangement executed, under the Corporations Act;
  - (xv) to defend an application for the winding up of the Deed Companies;
  - (xvi) subject to the terms of this Deed, to compromise any debts or claims brought by or against the Deed Companies on such terms as the Deed Administrator thinks fit and to take security for the discharge of any debt forming part of the property of the Deed Companies;
  - (xvii) to do anything that is incidental to exercising a power set out in this clause 12.1;
  - (xviii) the power to access, control and retain custody of the books and records of the Deed Companies for the purposes of administering this Deed; and
  - (xix) to do anything else that is necessary or convenient for the purpose of administering this Deed.
- (c) Where a right, power, privilege, authority or discretion is conferred on the Deed Administrators (whether by this Deed, the Corporations Act or otherwise), the Deed Administrators may exercise that right, power, privilege, authority or discretion in such manner as they, in their absolute discretion, consider fit.

## 12.2 Solicitors, advisers and consultants

- (a) The Deed Administrators may engage the services of their partners, employees, directors, officers, contractors, advisers, delegates, solicitors and consultants to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed and the Deed Companies will pay such Deed Administrators' Liabilities, including costs of any solicitors and consultants engaged by the Deed Administrators up to the maximum amount of the Deed Administrators' Liabilities.
- (b) The Deed Administrators may delegate their powers under this clause 12 including by way of appointing agents and authorising such agents to act on behalf of the Deed Administrators or the Deed Companies.

### 12.3 Creditors' meetings

The Deed Administrators may convene a meeting or meetings of Creditors at any time, and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of Part 3 of the Insolvency Practices Rules applies, with such modifications as are necessary, to meetings of Creditors held under this Deed as if references to the 'external administrator' or chairperson, as the case may be, were references to the Deed Administrators.

### 12.4 Reporting

- (a) Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators will advise all Creditors of the date of the Termination of this Deed and may, in their absolute discretion, otherwise report to Creditors during the Deed Period at such times as the Deed Administrators consider appropriate and on matters which the Deed Administrators consider ought to be brought to the attention of Creditors.
- (b) The Deed Administrators are required to report generally on a collective basis the status of realisations of the Deed Companies' assets (including all funds and recoveries under its control) to Creditors from time to time.

### 12.5 Books and records

- (a) The Administrators and Deed Administrators must provide or procure that the Proponent be provided with access to any financial or other records of the Deed Companies and any other information as requested by the Proponent from time to time, including any records or information being held by third parties.
- (b) On the Commencement Date, the Proponent agrees to provide access to the BLU System to the Deed Administrators and the Deed Administrators' staff to the extent required for the Deed Administrators to fulfil their obligations under this Deed, subject to the conditions set out in clause 12.5(c) below.
- (c) The Proponent will provide access to the BLU System as contemplated by clause 12.5(b):
  - (i) by granting one user licence to the Deed Administrators for the operation and control of the BLU System on the basis that the ongoing use will be subject to the Deed Administrators and their staff complying with all security requirements as specified by the Proponent from time to time during the Deed Period; and
  - (ii) until the earlier of:
    - A. the date this Deed Terminates; and
    - B. 24 months after the Commencement Date.
- (d) For the avoidance of doubt:
  - (i) access to the BLU System as contemplated by clause 12.5(b) and 12.5(c) is only being granted to the Deed Companies; and
  - (ii) the Proponent may revoke the Deed Administrators and the Deed Administrators' staff's access to the BLU System in the event the Deed Administrators or their staff fail to comply with the conditions set out in clause 12.5(b) of this Deed.

## 12.6 Proponent's reporting obligations

The Proponent is required to prepare any financial or other reporting it requires in respect of the Deed Companies to the extent necessary to comply with its own reporting obligations.

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## 13. Remuneration and indemnity

### 13.1 Remuneration

- (a) The Deed Administrators, their partners and employees will be remunerated by the Deed Companies in respect of the Deed Administrators' Liabilities at the hourly rates charged from time to time by the firm of which the Deed Administrators are partners or employees as set out in the report to Creditors issued with their notice of the meeting of Creditors.
- (b) The Deed Administrators' may draw the Deed Administrators' Liabilities from the Deed Fund in accordance with the terms of this Deed.
- (c) The Deed Administrators are entitled to be reimbursed from the Deed Fund in respect of all Deed Administrators' Liabilities in accordance with the terms of this Deed.
- (d) Subject to clause 8.3(a)(i) and 8.4(b), the Deed Administrators may draw the Deed Administrators' Liabilities at the end of each month.

### 13.2 No personal liability

Subject to the Corporations Act and to the extent permitted by law, the Deed Administrators will not be personally liable for:

- (a) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Deed Administrators in administering this Deed or exercising their duties and obligations under this Deed;
- (b) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Deed Companies; or
- (c) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities suffered or sustained or incurred by any directors, officers or Creditors of the Deed Companies.

### 13.3 Indemnity

- (a) The Deed Administrators and Administrators (whether or not they are still acting in either capacity and whether or not the Deed remains on foot) are entitled to be indemnified out of the assets of the Deed Companies up to the maximum amount of the Deed Administrators' Liabilities (in the case of the Deed Administrators) and the maximum amount of the Administrators' Liabilities (in the case of the Administrators) for:
  - (i) as to the Deed Administrators in their capacities as Deed Administrators:
    - A. the Deed Administrators' right to remuneration and reimbursement under the Deed and otherwise at law and in equity; and

- B. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, in connection with or incidental to any debts incurred by the Deed Companies, the Deed Administrators or the Deed Administrators' partners or employees in the course of the administration of this Deed; and
  - C. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Deed Administrators or the Deed Administrators' partners or employees, arising out of, or in connection with or incidental to the Deed Administrators' administration of this Deed;
- (ii) as to the Deed Administrators in their former capacities as Administrators of the Deed Companies:
- A. the Administrators' right of remuneration and reimbursement as voluntary administrators of the Deed Companies pursuant to Part 5.3A of the Corporations Act; and
  - B. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, or in connection with or incidental to any debts incurred by the Deed Companies, the Administrators or the Administrators' partners or employees in the course of the administration of the Deed Companies; and
  - C. all actions, demands, suits, proceedings, debts, claims, losses, damages or other liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) against the Administrators or the Administrators' partners or employees, arising out of, or in connection with or incidental to the Administrators' administration of the Deed Companies.
- (b) The Deed Administrators are not entitled to an indemnity out of the assets of the Deed Companies against any claims arising out of any fraudulent or negligent act or omission by the Deed Administrators or the Deed Administrators' partners or employees.

### 13.4 Indemnity not to be affected or prejudiced

The indemnities under clause 13.3 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Administrators or Deed Administrators and extends to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Deed Administrators, the approval or execution of the Deed or otherwise;
- (b) affect or prejudice all or any rights that the Deed Administrators may have against the Deed Companies or any person to be indemnified against the Costs, charges, expenses and liabilities incurred by the Deed Administrators by or incidental to the exercise or performance of any of the powers or authorities conferred on the Deed Administrators by this Deed or otherwise; or

- (c) be affected by the removal of the Deed Administrators and the appointment of a replacement deed administrator or the termination of this Deed for any reason.

### **13.5 Satisfaction of Claims**

The Deed Administrators are entitled to exercise the Deed Administrators' right of indemnity conferred by clause 13.3(a) whether or not the Administrators have paid or satisfied the Claims.

### **13.6 Deed Administrators' lien**

Until this Deed Terminates, the Deed Administrators are entitled to exercise a lien on all property and assets of the Deed Companies to secure the Administrators' right of indemnity under clause 13.3(a) of this Deed and otherwise at law and equity.

### **13.7 Insufficient funds**

The Deed Administrators are not obliged to take any action under this Deed in the event there are insufficient funds to pay the Administrators' Liabilities or Deed Administrators' Liabilities.

### **13.8 Priority**

The Deed Administrators' right of indemnity under clause 13.3 and their lien under clause 13.6 have priority over the Claims of Creditors to the extent set out in this Deed.

### **13.9 Statutory liability and indemnity**

Nothing in this Deed will affect or limit the operation of Subdivision B of Division 9 of Part 5.3A of the Corporations Act, which is to apply with all necessary modifications to the Administrators' voluntary administration of the Deed Companies and Deed Administrators' subsequent administration of this Deed.

### **13.10 Deed Administrators' Liabilities if pooling does not occur**

If this Deed Terminates prior to pooling occurring in accordance with clause 5.1, the Deed Administrators' right of indemnity under clause 13.3 and lien under clause 13.6 with respect to the Deed Administrators' Liabilities will attach to and be recoverable from the assets and property of the respective Deed Companies in proportion to their estimated realisable value as at the Commencement Date.

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## **14. Making of claims by Creditors**

### **14.1 Proofs of debt**

Creditors who have submitted a proof of debt to the Administrators before the Commencement Date are taken to have submitted a final proof of debt in respect of their Claims with the Deed Administrators on the basis of that proof of debt.

### **14.2 Request notice to Creditors**

- (a) To the extent that clause 14.1 does not adequately address the Claims to be paid under this Deed, or in the Deed Administrators' discretion, the Deed Administrators may ask the Creditors to formally submit a proof of debt for their Claims within 14 days of such request. Any such request notice to Creditors will comply with Regulation 5.6.48 of the Regulations, with such modifications as the Deed Administrators may deem necessary, including:
- (i) references to the 'liquidator' to be read as references to the Deed Administrators; and



- (ii) references to a 'creditor' to be read as references to a Creditor.
- (b) For the purposes of this clause 14.2 and Regulation 5.6.39 of the Regulations, the Deed Administrators may fix different times for lodgement of proofs of debt for Creditors.

### 14.3 Determination

- (a) The Deed Administrators will determine (including by adjudicating on those formal proofs of the Claims that have been submitted in accordance with paragraph 14.1 and 14.2) the amount required to satisfy the relevant Creditor's entitlement to receive a distribution from the Deed Fund in accordance with this Deed.
- (b) Subject to any appeal rights under the Corporations Act, any determination by the Deed Administrators in accordance with clause 14.3 is final and binding.

### 14.4 Adjudication of Claims

Regulations 5.6.53 to 5.6.56 of the Regulations will apply to the adjudication of Claims with such modifications as the Deed Administrators may deem necessary, including:

- (a) references to the 'liquidator' to be read as references to the Deed Administrators; and
- (b) references to a 'creditor' to be read as references to a Creditor.

### 14.5 Admitted Employee Creditors

In accordance with section 444DA of the Corporations Act, the Deed Administrators are to apply the Deed Fund so that an Admitted Employee Creditor will be entitled to a priority at least equal to what they would have been entitled if the Deed Fund were applied in accordance with sections 556, 560 and 561 of the Corporations Act.

### 14.6 Claims against two or more Deed Companies

If a Creditor is a Creditor of two or more Deed Companies in respect of Claims that arise from a common underlying obligation or in connection with the same underlying transaction (for example, where one Deed Company is a guarantor, indemnifier or co-obligor of an obligation or debt owing by another Deed Company) that Creditor is only entitled to receive a distribution under this Deed for one of those Claims, and where they are for different amounts, for the largest Claim.

### 14.7 Intragroup Claims

The Deed Administrators agree:

- (a) they will not pursue any Intragroup Claims of any kind other than those expressly dealt with under the terms of this Deed; and
- (b) immediately upon and with effect from the date that the Pool B Fund is distributed and the Termination Amount is no longer payable by the Deed Administrators to the Proponent in accordance with clause 10.8, all such Intragroup Claims are otherwise extinguished and released.

For the avoidance of doubt, this clause 14.7 includes any Claims against the Proponent.

### 14.8 Unclaimed moneys

If the Deed Administrators have under their control any assets being distributed that have remained unclaimed for more than 6 months after the day when the amount payable to an

Admitted Creditor became payable or transferable, the Deed Administrators may pay or transfer those assets to ASIC to be dealt with under Part 9.7 of the Corporations Act or any other relevant statutory authority, and the Deed Administrators will cease to be under any further obligation or liability in respect of them.

#### **14.9 Costs**

Any costs or expenses incurred by a Creditor in seeking to prove a Claim will be borne by the respective Creditor and will not form part of the Creditor's Claim.

#### **14.10 Interest**

Interest shall not accrue, and shall not be payable, in respect of any Claims of any Creditor.

#### **14.11 Abandonment of Claims**

A Creditor will be deemed to have abandoned its Claim if, before the payment of a final dividend from the relevant Pool, the Creditor:

- (a) fails to submit a formal proof of debt or claim in respect of its Claim; or
- (b) having submitted a formal proof of debt or claim in respect of its Claim which is rejected, that Creditor fails to appeal to the Court against the rejection, within the time allowed for such an appeal under the Regulations as if the proof were rejected in the liquidation of the Deed Companies.

#### **14.12 Conversion of foreign currency**

Conversion of foreign currency debts into Australian currency shall be converted in accordance with the "general rate sheet of historical foreign exchange rates provided by the Reserve Bank of Australia on the Relevant Date."

#### **14.13 The whole of a Superannuation Contribution debt**

- (a) In accordance with sections 444DB(1) and 444DB(2) of the Corporations Act, the Deed Administrators must determine that the whole of a Claim by way of a Superannuation Contribution is not admissible to proof against a Deed Company if:
  - (i) a Claim by way of Superannuation Guarantee Charge:
    - A. has been paid; or
    - B. is, or is to be, admissible to proof against that Deed Company; and
  - (ii) the Deed Administrators are satisfied that that Superannuation Guarantee Charge is attributable to the whole of the first mentioned Claim.
- (b) If the Deed Administrators determine, under clause 14.13(a), that the whole of the first mentioned Claim is not admissible to proof against the Deed Company, the whole of the Claim is extinguished.

#### **14.14 Part of a Superannuation Contribution debt**

- (a) In accordance with sections 444DB(3) and 444DB(4) of the Corporations Act, the Deed Administrators must determine that a particular part of a Claim by way of a Superannuation Contribution is not admissible to proof against a Deed Company if:
  - (i) a Claim by way of Superannuation Guarantee Charge:

- A. has been paid; or
- B. is, or is to be, admissible to proof against that Deed Company; and
- (ii) the Deed Administrators are satisfied that the Superannuation Guarantee Charge is attributable to that part of the first-mentioned Claim.
- (b) If the Deed Administrators determine, under clause 14.14(a), that a part of the first mentioned Claim is not admissible to proof against the Deed Company, that part of the Claim is extinguished.

## **15. Moratorium and release**

### **15.1 Binding effect**

Without limiting sections 444D and 444G of the Corporations Act this Deed binds:

- (a) each Creditor in relation to Claims arising on or before the Appointment Date; and
- (b) each Member and Officer of the Deed Companies.

### **15.2 Moratorium**

- (a) While this Deed remains in force, no Creditor, in relation to that Creditor's Claim, or Officer or Member, may:
  - (i) make or concur in an application for an order to wind up the Deed Companies;
  - (ii) proceed with such an application made before this Deed became binding on such person;
  - (iii) begin, revive or continue or take any further steps in any action, suit, mediation or proceeding against the Deed Companies or in relation to any of its property;
  - (iv) begin, revive or continue or take any further steps in respect of any Enforcement Process in relation to the Deed Companies' property;
  - (v) commence, continue or take any additional step in any arbitration against the Deed Companies or to which the Deed Companies are a party;
  - (vi) exercise any right of set-off or defence, cross-claim or cross action to which that Creditor would not have been entitled had the Deed Companies been wound up on the Appointment Date;
  - (vii) take any action whatsoever to seek to recover any part of its Claim from the Deed Companies; or
  - (viii) otherwise enforce any right it may have or acquire against the Deed Companies,

except, in the case only of clauses 15.2(a)(iii) and 15.2(a)(iv), with the consent in writing of the Deed Administrators or the leave of a Court and in accordance with such terms (if any) as a Court imposes.

- (b) For the purposes of this clause 15.2, "**property**" includes property used or occupied by, or in the possession of, the Deed Companies except if the Administrators have issued a notice under section 443B of the Corporations Act in relation to that property.
- (c) A person who is an Officer or a Member of a Deed Company shall not, during the term of the Deed Period exercise any rights it has or may have as an Officer or a Member (as applicable) of that Deed Company.

### **15.3 Release and discharge of Claims**

- (a) Creditors must accept their entitlements under the Deed Fund (if any) in full satisfaction and complete release and discharge of all Claims which they have, or claim to have, against the Deed Companies on or before the Appointment Date.
- (b) Notwithstanding any other provision of this Deed except for clause 15.2, this Deed does not affect any rights of recourse Creditors may have in respect of bank guarantees, insurance bonds, other sureties and insurers.
- (c) Each Creditor must, if required by the Deed Companies or the Deed Administrators, execute any document that the Deed Companies or a Deed Administrator may require from time to time to give effect to the releases in clause 15.3(d).
- (d) Immediately upon and with effect from the Final Distribution Date, the Claims of all Creditors will be fully released and extinguished.

### **15.4 Execution of all necessary documents**

Each Creditor must, if required by the Deed Administrators, execute and deliver to the Deed Administrators such form of acknowledgement or release of any Claim as reflects the release and discharge of that Claim pursuant to clause 15.3.

### **15.5 Bar to Creditors' Claims**

Subject to section 444D of the Corporations Act, this Deed may be pleaded by the Deed Companies or the Deed Administrators against any Creditor as an absolute bar and defence to any Claim to the extent that the Deed Companies' liability has been released and discharged in relation to that Claim pursuant to clause 15.3.

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## **16. Tax**

### **16.1 Interpretation**

The Parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 16 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16;
- (c) unless otherwise expressly stated, all consideration to be provided under any other provision of this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 16;

- (d) a reference to the GST payable by an entity or the input tax credit entitlements of an entity will include a reference to the GST payable or input tax credit entitlements of the representative member of any GST group to which that entity may belong;
- (e) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts; and
- (f) if any value added tax, goods and services tax or other similar tax is payable pursuant to a law of another jurisdiction on any supply made under or in connection with this Deed, then the provisions of this clause 16 apply as if references to a word or expression defined in the GST Act were to the corresponding concepts in the law of that other jurisdiction.

## **16.2 Reimbursements and similar payments**

Any reimbursement or similar payment required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates plus an amount calculated in accordance with clause 16.3 where applicable.

## **16.3 GST payable**

If GST is payable in relation to a supply made by a party (**Supplier**) under or in connection with this Deed then the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the amount of GST payable in relation to the supply at the same time as the other consideration is to be provided for that supply.

## **16.4 Tax invoice**

The Supplier must issue a valid tax invoice to the Recipient for any taxable supply it makes under this Agreement, except where the Recipient is required to issue the tax invoice.

## **16.5 Variation to GST payable**

If the GST payable in relation to a supply made under or in connection with this Deed varies from the additional amount paid by the Recipient under clause 16.3 then the Supplier must promptly issue an adjustment notice to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 16.3.

## **16.6 Taxation obligations**

The Deed Administrators must ensure that the Deed Companies meet all of their taxation obligations as and when they fall due throughout the Deed Period.

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# **17. Notices**

## **17.1 How to give notices**

- (a) Any notice to a party under the provisions of this Deed is valid and effective if delivered personally, by courier or e-mail, to or, if given by registered mail, postage prepaid, addressed to, the details for that party specified in clause 17.3 and is deemed to have been given on the date of delivery personally or by courier or e-mail if so delivered prior to 5:00 pm (Sydney time) and otherwise on the next calendar day, or on the fifth Business Day after such letter has been mailed, as the case may be.

- (b) Any notice provided for in this Deed may be waived in writing by the party entitled to receive such notice, either before or after the event.
- (c) A notice in connection with this Deed must be:
  - (i) in writing in English; and
  - (ii) signed by the party or its agent.
- (d) Where two or more persons comprise a party, notice to or by one is effective notice to and by all.

## 17.2 Change of details

- (a) A party may at any time change its contact details by notice to each other party.
- (b) If details are so changed, this clause applies as if those changed details were set out in the 'Parties' section of this Deed.

## 17.3 Notice details

### Administrators

Name: Salvatore Algeri, Jason Tracy, Matthew Donnelly and David Orr in their capacities as joint and several voluntary administrators of the Deed Companies

Address: C/- Deloitte Financial Advisory Pty Ltd,  
477 Collins Street,  
Melbourne VIC 3000

Email: saalgeri@deloitte.com.au

For the attention of: Salvatore Algeri

### Deed Companies

Name: The companies as listed in Schedule 1

Address: C/- Deloitte Financial Advisory Pty Ltd,  
477 Collins Street,  
Melbourne VIC 3000

Email: saalgeri@deloitte.com.au

For the attention of: Salvatore Algeri

### Proponent

Name: WBHO Construction (Pty) Ltd

Address: 53 Andries Street, Wynberg Sandton 2090, South Africa

Email: Charles-henwood@wbho.co.za

For the attention of: Charles Henwood

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## 18. General

### 18.1 Variation

- (a) Subject to the provisions of the Corporations Act, this Deed may only be varied:
  - (i) by a resolution passed at a meeting of the Creditors convened in accordance with Division 75-10 of the Insolvency Practice Schedule, but only if the variation is not materially different from a proposed variation set out in a notice of meeting; and

(ii) with written agreement of the Parties.

(b) Nothing in any variation of this Deed shall limit the operation of sections 445D and 445E of the Corporations Act.

## **18.2 Assignment**

Rights arising out of or under this Deed are not assignable by a party, except if the assignor is required to make the assignment pursuant to clause 11.5(b) or makes the assignment with the prior written consent of the other parties.

## **18.3 Further assurances**

Each party and each person bound by this Deed must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

## **18.4 Governing law and jurisdiction**

This Deed is governed by the law in force in Victoria and the Parties submit to the non-exclusive jurisdiction of the Courts of Victoria and any Court which may hear appeals from those Courts.

## **18.5 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

## **18.6 Counterparts**

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one and the same instrument.
- (c) A party may execute this Deed by signing any counterpart.
- (d) Without limitation, the Parties agree that their communication of an offer or acceptance of this Deed, including exchanging counterparts, may be by any electronic method that evidences each Parties' execution of this Deed.

## **18.7 Creditor's power of attorney**

Each Creditor irrevocably appoints each of the Deed Administrators jointly and severally as its attorney to execute any document to give effect to the releases in clause 15.

## **18.8 Joint Parties**

If two or more parties are included within the same defined term in this Deed:

- (a) liability of those parties under this Deed is a joint liability of all of them and a several liability of each of them;
- (b) a right given to those parties under this deed is a right given severally to each of them; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

**18.9 Costs**

- (a) Each party must pay its own costs of negotiating, preparing and executing this Deed.
- (b) The Administrators' costs of and incidental to the preparation and execution of this Deed are taken to be costs, charges and expenses incurred by the Deed Administrators in connection with or incidental to the administration of this Deed,

**18.10 Acknowledgement**

The Parties acknowledge that the terms set out in this Deed are subject to the obligations the Administrators and Deed Administrators have to Creditors under law and statute.

**18.11 Accumulative rights**

The rights, power and remedies provided by this Deed are accumulative and do not exclude any rights, powers, authorities, discretions or remedies provided by law.

**18.12 Entire agreement**

This Deed contains everything that the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party before this Deed was executed.

**18.13 Further cooperation**

Each party must do anything (including executing a document) another party reasonably requires in writing to give full effect to this Deed.

**18.14 Relationship of the parties**

This Deed does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties.



EXECUTED as a deed.

### The Deed Companies

SIGNED, SEALED AND DELIVERED for  
and on behalf of WBHO Australia Pty Ltd )  
(Administrators Appointed) ACN 095 983 )  
681; WBHO Construction Australia Pty )  
Ltd (Administrators Appointed) ACN 149 )  
901 931; Northcoast Holdings Pty Ltd )  
(Administrators Appointed) ACN 009 296 )  
780; Probuild Constructions (Aust) Pty )  
Ltd (Administrators Appointed) ACN 095 )  
250 945; Probuild Civil Pty Ltd (formerly )  
Probuild Civil (QLD) Pty Ltd )  
(Administrators Appointed) ACN 010 870 )  
587; PCA (QLD) Pty Ltd (Administrators )  
Appointed) (formerly Probuild )  
Constructions (QLD) Pty Ltd ACN 141 )  
148 245; Probuild Constructions (NSW) )  
Pty Ltd (Administrators Appointed) ACN )  
165 675 874; Probuild Constructions )  
(VIC) Pty Ltd (Administrators Appointed) )  
ACN 165 675 865; Probuild )  
Constructions (WA) Pty Ltd )  
(Administrators Appointed) ACN 165 676 )  
095; Probuild Constructions (QLD) Pty )  
Ltd (Administrators Appointed) ACN 166 )  
966 034; ACN 098 866 794 Pty Ltd )  
(Administrators Appointed) (formerly )  
Probuild Constructions (NSW) Pty Ltd )  
ACN 098 866 794; Contexx Holdings Pty )  
Ltd (Administrators Appointed) ACN 144 )  
707 022; Contexx Pty Ltd (Administrators )  
Appointed) ACN 147 249 796; Prodev )  
Murphy Pty Ltd (Administrators )  
Appointed) ACN 120 758 803; Prodev )  
Investments 4 Pty Ltd (Administrators )  
Appointed) ACN 629 246 653 and Monaco )  
Hickey Pty Ltd (Administrators )  
Appointed) ACN 144 945 611 by its one of )  
its joint and several voluntary )  
administrators: )  
)

.....  
Signature of Administrator

.....  
Name of Administrator (block letters)

.....  
Signature of witness

.....  
Name of witness (block letters)

By signing this document the witness states  
that they witnessed the signature of the  
signatory over audio visual link in  
accordance with s12 of the *Electronic  
Transactions (Victoria) Act 2000* (Vic).

**Deed Administrators**

**SIGNED, SEALED AND DELIVERED** )  
 by **SALVATORE ALGERI** in his )  
 capacity as joint and several voluntary )  
 administrator of the Deed Companies in )  
 the presence of: )  
 )  
 )

..... )  
 Signature of witness )

..... )  
 Name of witness (block letters) )  
 )

By signing this document the witness )  
 states that they witnessed the signature )  
 of the signatory over audio visual link in )  
 accordance with s12 of the *Electronic* )  
*Transactions (Victoria) Act 2000* (Vic). )

.....  
 Signature of SALVATORE ALGERI

**SIGNED, SEALED AND DELIVERED** )  
 by **JASON TRACY** in his capacity as )  
 joint and several voluntary )  
 administrator of the Deed Companies in )  
 the presence of: )  
 )  
 )

..... )  
 Signature of witness )

..... )  
 Name of witness (block letters) )  
 )

By signing this document the witness )  
 states that they witnessed the signature )  
 of the signatory over audio visual link in )  
 accordance with s12 of the *Electronic* )  
*Transactions (Victoria) Act 2000* (Vic). )

.....  
 Signature of JASON TRACY

SIGNED, SEALED AND DELIVERED )  
by DAVID ORR in his capacity as joint )  
and several voluntary administrator of )  
the Deed Companies in the presence )  
of: )

..... )  
Signature of witness )

..... )  
Name of witness (block letters) )

By signing this document the witness )  
states that they witnessed the signature )  
of the signatory over audio visual link in )  
accordance with s12 of the *Electronic* )  
*Transactions (Victoria) Act 2000 (Vic).* )

..... )  
Signature of DAVID ORR )

SIGNED, SEALED AND DELIVERED )  
by MATTHEW DONNELLY in his )  
capacity as joint and several voluntary )  
administrator of the Deed Companies in )  
the presence of: )

..... )  
Signature of witness )


..... )  
Name of witness (block letters) )

By signing this document the witness )  
states that they witnessed the signature )  
of the signatory over audio visual link in )  
accordance with s12 of the *Electronic* )  
*Transactions (Victoria) Act 2000 (Vic).* )

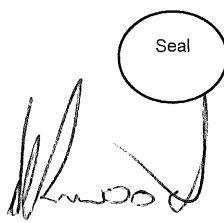
..... )  
Signature of MATTHEW DONNELLY )

Proponent

SIGNED, SEALED AND DELIVERED )  
by WBHO CONSTRUCTION (PTY) )  
LTD in the presence of: )

 )  
..... )  
Signature of witness )

D MBIKA )  
..... )  
Name of witness (block letters) )

 )  
..... )  
Signature of authorised signatory )

C.V. NEWWOOD )  
..... )  
Name of authorised signatory )

**Schedule 1 - Deed Companies**

1. WBHO Australia Pty Ltd (Administrators Appointed) ACN 095 983 681
2. WBHO Construction Australia Pty Ltd (Administrators Appointed) ACN 149 901 931
3. Northcoast Holdings Pty Ltd (Administrators Appointed) ACN 009 296 780
4. Probuild Constructions (Aust) Pty Ltd (Administrators Appointed) ACN 095 250 945
5. Probuild Civil Pty Ltd (formerly Probuild Civil (QLD) Pty Ltd (Administrators Appointed) ACN 010 870 587
6. PCA (QLD) Pty Ltd (Administrators Appointed) (formerly Probuild Constructions (QLD) Pty Ltd) ACN 141 148 245
7. Probuild Constructions (NSW) Pty Ltd (Administrators Appointed) ACN 165 675 874
8. Probuild Constructions (VIC) Pty Ltd (Administrators Appointed) ACN 165 675 865
9. Probuild Constructions (WA) Pty Ltd (Administrators Appointed) ACN 165 676 095
10. Probuild Constructions (QLD) Pty Ltd (Administrators Appointed) ACN 166 966 034
11. ACN 098 866 794 Pty Ltd (Administrators Appointed) (formerly Probuild Constructions (NSW) Pty Ltd) ACN 098 866 794
12. Contexx Holdings Pty Ltd (Administrators Appointed) ACN 144 707 022
13. Contexx Pty Ltd (Administrators Appointed) ACN 147 249 796
14. Prodev Murphy Pty Ltd (Administrators Appointed) ACN 120 758 803
15. Prodev Investments 4 Pty Ltd (Administrators Appointed) ACN 629 246 653
16. Monaco Hickey Pty Ltd (Administrators Appointed) ACN 144 945 611