

Date: April 1, 2025

To: Alan James Wilderland and Stephen Marcus Jason West in their capacities as the Sellers' Representatives, for and on behalf of the Sellers

By email: [PERSONAL INFORMATION REDACTED]

Copy to: bruno.bordignon@avid.legal

From: Tiny Ltd. and Spin Acquisition Limited

By email: [PERSONAL INFORMATION REDACTED]

Copy to:
Kristopher.miks@nortonrosefulbright.com
and eric.malya@nortonrosefulbright.com

PROJECT SPIN – SPA AMENDMENT LETTER

- 1 We refer to the agreement relating to the sale and purchase of shares in Serato Audio Research Limited between the Initial Sellers, the Company, Tiny Ltd., and Spin Acquisition Limited dated the date of this letter (the **SPA**).
- 2 Capitalised terms used by not defined herein have the meaning ascribed to such terms in the SPA, and the "Interpretation" section in clause 1.2 of the SPA will apply to this letter.
- 3 Pursuant to clause 21.6 of the SPA, Alan James Wilderland and Stephen Marcus Jason West (together, the **Sellers' Representatives**) are authorized to amend the SPA, for and on behalf of the Sellers.
- 4 The Parties hereby agree to amend the SPA as follows:
 - (a) The definition of "Completion Shares Value" in clause 1.1 of the SPA shall be deleted in its entirety and replaced with the following:

Completion Shares Value means an amount equal to US\$23,600,000.
 - (b) The definition of "W&I Contribution" in clause 1.1 of the SPA shall be deleted in its entirety and replaced with the following:

W&I Contribution means [CONFIDENTIAL BUSINESS INFORMATION REDACTED].
 - (c) The definition of "W&I Costs" in clause 1.1 of the SPA shall be deleted in its entirety and replaced with the following:

W&I Costs means, in aggregate, the premium, underwriting fees, due diligence costs, commissions and other costs and expenses of the W&I Insurer related to the purchase or placement of the W&I Policy and all applicable Taxes on such amounts, and any and all fees charged by the insurance intermediary acting for the Buyer in arranging the W&I Policy (if any) [CONFIDENTIAL BUSINESS INFORMATION REDACTED].
 - (d) The definition of "Transaction Expenses" in clause 1.1 of the SPA shall be deleted in its entirety and replaced with the following:

Transaction Expenses means the aggregate amount of (without double counting in all respects) (a) any fees, expenses, commissions or other amounts payable by the Company or any of its Subsidiaries (whether on behalf of the Company or any of its Subsidiaries or any Seller or any of their respective Related Parties) or that is subject to payment or reimbursement by the Company or any of its Subsidiaries in connection with

this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including the fees and expenses of any advisors, experts, brokers, finders, consultants, accountants, auditors, lawyers, investment bankers or other advisors, (b) any Change of Control Payments, (c) Completion Payroll Taxes, (d) fees and expenses of the Company associated with obtaining necessary or appropriate waivers, consents or approvals on behalf of the Company or any Seller in connection with the consummations of the Transaction, and (e) any fees and expenses payable to the Escrow Agent in its capacity as such pursuant to the Escrow Agreement; and (f) fees and expenses associated with obtaining the release and termination of any Encumbrances in connection with the consummation of the Transaction; provided, however, that any amounts payable under the New Employment Agreement shall not constitute a Transaction Expense.

- (e) The table in Part A of Schedule 1 of the SPA shall be deleted in its entirety and replaced with the table set out in the Schedule to this letter.
- 5 Save as varied by paragraph 3 of this letter, the SPA shall remain in full force and effect upon the terms and conditions set out therein.
- 6 This letter is governed by, and must be construed in accordance with, the laws of New Zealand. The Parties submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to all disputes arising out of or in connection with this letter.
- 7 This letter may be signed in any number of counterparts (including by DocuSign or scanned copies), all of which will together constitute one and the same instrument and a binding and enforceable agreement between the Parties.
- 8 Please confirm your agreement to the terms of this letter by signing in the space provided on the following page and returning a signed copy of this letter.

[Remainder of page intentionally left blank – signature pages follow]

Yours sincerely,

Signed for and on behalf of **Tiny Ltd.**
by:

/s/ Jordan Taub

Jordan Taub, Chief Executive Officer

April 1, 2025

Date Signed

Signed by **Alan James Wilderland** for
and on behalf of the **Sellers** in his
capacity as **Sellers’ Representative**:

/s/ Alan James Wilderland

Alan James Wilderland

April 1, 2025

Date signed

Signed for and on behalf of **Spin Acquisition Limited** by:

/s/ Michael McKenna

Michael McKenna, Director

April 1, 2025

Date Signed

Signed by **Stephen Marcus Jason West** for and on behalf of the **Sellers** in
his capacity as **Sellers’ Representative**:

/s/ Stephen Marcus Jason West

Stephen Marcus Jason West

April 1, 2025

Date signed

SCHEDULE

Part A

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
#	Seller	Ordinary Shares	Sale Shares	Relevant Proportion*	Completion Shares	Completion Shares Value	Addresses for notices
1	Alan James Wilderland	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
2	Gregory Noel Rathbun and Stephen Marcus Jason West as trustees of the Alan West Trust	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
3	Bruce Raymond Sheppard and Stephen Marcus Jason West as trustees of the Hoek Family Trust	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
4	Dianna Joan Birchfield West, Regal NZ Trustee Limited and Damon James Birchfield West as trustees of the Dee West Trust	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
5	Jeanne Merle Bertenshaw and Vulcan Trustee Co (2020) Limited as trustees of the Kimberley Trust	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
6	Peter David Arie Hoek	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
7	Serato Employee Trustee Limited	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
	TOTALS	1,015,250*	652,181*	100%	29,360,451	US\$23,600,000.00	

Agreement for Sale and Purchase of Shares in relation to Serato Audio Research Limited

The shareholders of Serato Audio Research
Limited

Spin Acquisition Limited

Tiny Ltd.

The following warning statement is included in respect of the Initial Sellers (other than Peter David Arie Hoek) on the basis that, in connection with this Agreement and the put and call option in the New Shareholders' Agreement, they will be offered equity securities in Tiny Ltd. in reliance on the exclusion in clause 3(3)(b) of Schedule 1 of the Financial Markets Conduct Act 2013.

Warning

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual rules do not apply to this offer because there is an exclusion for offers where the amount invested upfront by the investor (plus any other investments the investor has already made in the financial products) is \$750,000 or more. As a result of this exclusion, you may not receive a complete and balanced set of information. You will also have fewer other legal protections for this investment.

Investments of this kind are not suitable for retail investors.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.

CONTENTS

1 Definitions and Interpretation.....	4
2 Agreement for Sale and Purchase	29
3 Purchase Price	31
4 Conditions.....	39
5 Interim Period Matters.....	47
6 Completion	56
7 Warranties	60
8 Indemnification	61
9 Tax Indemnity	72
10 .. Acknowledgements, Warranties and Undertakings	76
11 .. W&I Insurance.....	83
12 .. Default on Completion	85
13 .. Material Contracts and Leases	86
14 .. Restraint.....	87
15 .. Confidential Information	89
16 .. Sellers' Representatives	90
17 .. Parent Guarantee	91
18 .. Release from the Sellers	93
19 .. Notices.....	94
20 .. Trustee Liability and Principals	95
21 .. General	96
Schedule 1 Sellers' Details & Completion Shares	108
Schedule 2 Group Structure.....	112
Schedule 3 Change of Control Contracts	115

Schedule 4 Warranties 116

Schedule 5 Adjustment Calculation 145

Schedule 6 Reference Statement..... 149

Schedule 7 Leased Properties 150

Schedule 8 Contingent Consideration..... 151

Schedule 9 W&I Binders..... 162

THIS AGREEMENT FOR SALE AND PURCHASE OF SHARES is dated 1 April 2025.

PARTIES

- 1 Alan James Wilderland
- 2 Gregory Noel Rathbun and Stephen Marcus Jason West as trustees of the Alan West Trust
- 3 Bruce Raymond Sheppard and Stephen Marcus Jason West as trustees of the Hoek Family Trust
- 4 Dianna Joan Birchfield West, Regal NZ Trustee Limited and Damon James Birchfield West as trustees of the Dee West Trust
- 5 Jeanne Merle Bertenshaw and Vulcan Trustee Co (2020) Limited as trustees of the Kimberley Trust
- 6 Peter David Arie Hoek

(Parties 1 to 6, collectively, the **Initial Sellers**)
- 7 Stephen Marcus Jason West, as Principal of Alan West Trust and the Hoek Family Trust
- 8 Damon James Birchfield West, as Principal of the Dee West Trust
- 9 Jeanne Merle Bertenshaw, as Principal of the Kimberley Trust

(Parties 7 to 9, collectively, the **Principals**)
- 10 Serato Audio Research Limited (NZCN 894999) (the **Company**)
- 11 Spin Acquisition Limited (the **Buyer**)
- 12 Tiny Ltd. (the **Buyer Parent**)

BACKGROUND

- A The Company is a New Zealand incorporated company having its registered office at Level 2, 8 Brown Street, Ponsonby, Auckland 1011, New Zealand.
- B The Initial Sellers have agreed to sell, and the Buyer has agreed to purchase, the Sale Shares identified in column 2 of the Reference Table as being held by the Initial Sellers (the **Initial Contracted Shares**) for the consideration and on the terms and conditions set out in this Agreement.
- C The Buyer has also agreed to purchase the Shares held by Serato Trustee for the same consideration and on the same terms and conditions as the Buyer's purchase of the Initial Contracted Shares.

D The Buyer Parent has agreed to guarantee the obligations of the Buyer under this Agreement.

AGREEMENT

1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Agreement, unless the context otherwise requires:

Accounting Standards means the New Zealand equivalents to International Financial Reporting Standards – Reduced Disclosure Regime (NZ IFRS RDR).

Accounts means the audited financial statements for the Company and each of its Subsidiaries (on a consolidated basis) for the 12-month period ended on the Last Accounting Date, a copy of which is contained in the Due Diligence Dataroom with document reference.

Acquired Percentage means the percentage calculated as the number of Sale Shares to be acquired by the Buyer at Completion divided by the total number of Shares on issue at Completion and, assuming all Share Options are exercised and the underlying Shares issued in accordance with the process contemplated in clause 5.7, such percentage being sixty-six percent (66.0%).

Adjustment Amount has the meaning given in clause 4.1 of Schedule 5.

Adjustment Date has the meaning given in clause 4.2 of Schedule 5

Adjustment Escrow Amount means [CONFIDENTIAL BUSINESS INFORMATION REDACTED].

Agreed Form means, in relation to a document, the form of that document which has been either:

- (a) signed as at the Agreement Date by the Sellers' Representatives and the Buyer; or
- (b) shared by email between the Buyer's Solicitor and the Sellers' Solicitor and confirmed to be the "Agreed Form" version of that document for the purposes of this Agreement, for identification purposes only,

in each case with such amendments as may be agreed in writing by the Sellers' Representatives and the Buyer.

Agreement means this agreement and includes any appendices, exhibits and/or schedules attached to it.

Agreement Date means the date of this Agreement.

AML Laws means all applicable Laws relating to the prevention and detection of money laundering.

Anti-Corruption Laws means all applicable Laws relating to the prevention of corruption or bribery.

Applicable Exchange Rate means the applicable exchange rate for the relevant day being calculated by reference to the mid-market historical rates table published at xe.com (or where not available, the exchange rate for that day published by the Reserve Bank of New Zealand (B1)).

Approved Hiring Plan means the approved hiring plan in respect of current vacant positions as at the Agreement Date and replacement of any vacancies that may arise from departures of employees that occur during the Interim Period, as set out in the Due Diligence Dataroom with document reference 1.2.5.4.

Assets means all of the Group's assets, property and rights of every kind, nature, character and description, whether real, incorporeal, personal or mixed, whether tangible or intangible, and wherever situated, that are owned and/or used, or held for use, in connection with the Business.

Authority means every minister, ministry, department, government authority, regional council, territorial authority or other statutory or regulatory authority, including any national, federal, state, commonwealth, province, territory, county, municipal, district, or local governmental, self-regulatory or quasi-governmental authority of any nature (including any governmental department, division, agency, bureau, office, branch, court, commission, tribunal, or other governmental instrumentality) or any political or other subdivision or part of any of the foregoing, having jurisdiction or authority to perform or exercise functions or powers.

Bank Debt means all indebtedness of the Group under any Third Party lending facilities, including such lending facilities that it holds with ASB Bank Limited, together with accrued interest, costs and fees up to and including Completion.

Basket has the meaning given in Section 8.5.

Beneficial Shareholder means the beneficiaries under the ESOP Trust Deed for whom Serato Trustee holds Shares as the registered holder as set out in Part B of Schedule 1 or for whom Serato Trustee will hold Shares upon the exercise of all or some of the Share Options by the ESOP Participants.

Break Fee has the meaning given in clause 4.11.1.

Business means the businesses carried on by the Group Companies as at the Agreement Date and during the 12-month period prior to the Agreement Date, of developing, selling and licensing DJ and music production subscription products, software and accessories.

Business Day means a day which is not a Saturday or Sunday or public holiday in Auckland, New Zealand and Toronto, Ontario, or any day in the period commencing with 23 December in any year and ending with 6 January in the following year.

Business IP means all (a) Intellectual Property Rights used in, held for use in, developed for, or necessary for the operation of the Business and (b) Company Owned IP.

Business Premises means the premises specified in the Leases.

Buyer Group means the Buyer and the Buyer Parent and includes, for the avoidance of doubt, each Group Company after Completion.

Buyer Indemnified Parties means Buyer, the Buyer Parent and each Group Company (after Completion) and each of their respective directors and officers, employees and shareholders (excluding the Sellers), and each a **Buyer Indemnified Party**.

Buyer's Solicitor means Norton Rose Fulbright Canada LLP.

Canadian Securities Laws means the *Securities Act* (British Columbia) together with all other applicable securities Laws, rules and regulations thereunder or under the securities Laws of any other province or territory of Canada and the rules of the TSX, as now in effect and as they may be promulgated or amended from time to time.

Cash means the aggregate amount of cash and cash equivalents held by the Group (whether on hand, or credited to an account with a banking, financial, lending or other similar institution or otherwise deemed to be treated in that way under Schedule 5), as at the Effective Time. For the avoidance of doubt, Cash shall exclude the amount of any outstanding checks, outstanding drafts, outstanding wire transfers and outstanding debit transactions written or made for the accounts of the Company or any of its Subsidiaries.

Change of Control Consent has the meaning given in clause 13.1.2.

Change of Control Contracts means the Contracts identified in Schedule 3.

Change of Control Payments means all change of control, bonus, termination, severance, retention or other similar payments that are payable by any Group Company to any person as a result of the transactions contemplated by this Agreement (but without regard to any action taken by Buyer and excluding any payment made in accordance with the New Employment Agreement).

Change of Control Provision means a contractual provision giving a counterparty to a Contract the right to terminate that Contract, or which provides for a breach or other defined consequences to occur, in the event that a "change of control", "deemed assignment" or similar event (however defined) occurs in respect of the relevant Group Company without the relevant counterparty's consent.

Claims means any lawful action, cause of action, suit, proceeding (including any arbitration proceeding), investigation, charge, demand, challenge, notice audit, inquiry or other proceeding.

Companies Act means the *Companies Act 1993 (NZ)*.

Company Owned IP means all of the (a) Intellectual Property Rights owned, or purported to be owned, by the Company or any of its Subsidiaries, (b) the Intellectual Property Rights detailed and identified as such in (i) the Due Diligence Dataroom with document reference numbers 1.2.6.12.1, 1.2.6.12.2 and 1.2.6.12.3; and (ii) the Q&A Responses in respect of the question numbered 66010282, and (c) all Intellectual Property Rights incorporated by the Company or any of its Subsidiaries in any Company Product (excluding Third Party Components and Open Source Software).

Company Product means the Software products, tools, or applications (a) that have been or are currently made available by a Group Company as part of the Business, and which are otherwise developed, produced, manufactured, marketed, sold, offered for sale, imported, exported, supplied, provided, promoted, licensed, distributed, supported, hosted, serviced, made available, maintained or otherwise commercialized by any Group Company in connection with the Business, (b) from which the Company or any of its Subsidiaries recognise any revenue (including revenue associated with maintenance or service agreements) or (c) that are currently used to provide services to, or produce products for, any Group Company's customers.

Company Systems means all of the following used by or for, or otherwise relied on by, the Group (whether owned by any of them or a Third Party): computers, computer systems, servers, hardware, Software, firmware, middleware, websites, Data, networks, servers, workstations, routers, hubs, switches, data communication equipment and lines, telecommunications equipment and lines, co-location facilities and equipment, and all other information technology equipment and related items of automated, computerized or Software systems, including any outsourced systems and processes (e.g., hosting locations) and all associated documentation, including any licenses, terms of use and policies. Company Systems shall include the Company Products.

Competing Transaction has the meaning given in clause 5.9.

Completion means consummation of the sale and purchase of the Sale Shares in accordance with this Agreement.

Completion Date means the date that is three (3) Business Days following the date on which all Conditions are satisfied or waived (if capable of waiver), except for the MAC Condition or any other Condition which, by its nature, can only be satisfied at Completion, or such other date as may be agreed in writing by the Sellers' Representatives and the Buyer (which if a request is made by either to accelerate such date, each agree to act reasonably).

Completion Cash Payment means an amount equal to:

- (a) the Acquired Percentage (expressed as a decimal) multiplied by the aggregate sum of:
 - (i) the Enterprise Value;
 - (ii) *plus* the amount of any excess in the Estimated Net Working Capital above the Target Net Working Capital or *less* the amount of any shortfall in the Estimated Net Working Capital below the Target Net Working Capital, as the case may be and as set out in the Completion Notice; and
 - (iii) *less* the Estimated Net Debt (if estimated External Indebtedness is greater than estimated Cash) or, if Estimated Net Debt is a negative amount (if estimated Cash is greater than the estimated External Indebtedness) then *plus* such absolute amount so that it is an addition to the Completion Cash Payment; and
- (b) *less* the Adjustment Escrow Amount; and
- (c) *less* the Retention Escrow Amount; and

(d) *less the Completion Shares Value.*

Completion Notice has the meaning given in clause 5.6.

Completion Payroll Taxes means the sum of the aggregate amount of the employer-paid portion of any employment, health and payroll Taxes that will arise from (a) any Change of Control Payments, (b) the vesting, termination or settlement of any Shares or securities convertible into Shares pursuant to this Agreement, or (c) any unpaid severance liabilities currently being paid or payable in respect of any employees or service providers who terminated employment or whose services to the Company or any of its Subsidiaries have ceased (as applicable) prior to the Completion.

Completion Share Price means, in respect of the Completion Shares, US\$0.8038023, subject to any adjustments to ensure the Initial Sellers are not unduly prejudiced by any Reorganisations in respect of the Buyer Parent undertaken between the Agreement Date and the date the relevant Completion Shares are issued.

Completion Shares means the 24,259,694 Tiny Shares to be issued to the Initial Sellers in accordance with clause 3.2.1(c) as determined by dividing the Completion Shares Value by the Completion Share Price (and rounded down to the nearest whole share).

Completion Shares Value means an amount equal to US\$19,500,000.

Completion Statement means the statement to be prepared to calculate:

- (a) the Net Working Capital and the Net Debt as at the Effective Time; and
- (b) the Adjustment Amount,

in accordance with Schedule 5.

Condition Date means 23 May 2025 or such other date as agreed to in writing by the Sellers' Representatives and the Buyer.

Conditions means the conditions precedent to Completion specified in clauses 4.1, 4.2 and 4.3 and **Condition** shall have a corresponding meaning.

Confidential Information means all information which is used in or otherwise relates to the business, technology, customers or financial or other affairs of a Party to this Agreement and the Group Companies including, without limitation, information relating to:

- (a) the terms of this Agreement (and the other related Transaction Documents), but not (for the avoidance of doubt) the existence of this Agreement (and the other related Transaction Documents) or the fact that it has been entered into;
- (b) the marketing of goods or services including, without limitation, customer names and lists and other details of customers, sales targets, sales statistics, market share statistics, prices, market research reports and surveys, and advertising or other promotional materials; or

- (c) future projects, business development or planning, commercial relationships and negotiations.

Consequential Loss means any special or indirect loss or damages which is a loss of goodwill, loss of business reputation, loss of future reputation or adverse publicity or damage to credit rating, but excluding:

- (a) Loss which is a direct loss of profits, direct loss of revenue or direct loss of production;
- (b) Loss arising naturally and in the usual course of things from the relevant facts or circumstances giving rise to the breach or loss which, at the Agreement Date, would have been reasonably foreseeable by the party who committed the breach; or
- (c) any diminution in the value of the Shares.

Constitution means the constitution of the Company as at the Agreement Date.

Contingent Consideration has the meaning given in clause 1 of Schedule 8.

Contingent Shares means the up to 5,000,000 Tiny Shares to be issued to the relevant Sellers in such number, and on such date, as prescribed in Schedule 8.

Contract or **Contracts** means all agreements, deeds, leases, contracts, licenses, obligations, undertakings, commitments or arrangements, whether written or oral, that is legally binding upon and/or to which a Group Company is a party (including all amendments, waivers or other changes thereto), other than the Leases.

Contractor means each person who supplies personal services to a Group Company as an independent contractor as opposed to as an employee.

Control means, in relation to an entity:

- (a) a person who determines a majority of the composition of the board of directors or governing body of the entity;
- (b) a person whom the board of directors or governing body of the entity is accustomed to acting in accordance with their instructions, directions or wishes; or
- (c) where the entity is a company, a person who holds or owns:
 - (i) the majority of the issued shares of the company; or
 - (ii) the majority of the issued shares of the ultimate holding company of the company,
- (d) where the entity is a trust, the person or persons who exercise control and direction over the assets and activities of the trust,

and **Controlling** and **Controlled** have corresponding meanings.

Customization has the meaning given in clause 13.5.

Data has the meaning set forth in the definition of "Intellectual Property Rights".

Data Security Requirements means the following, in each case to the extent relating to the conduct of the Business of the Group, any privacy, security or security breach notification requirements, any Company System, any Sensitive Information, or any matters relating to data privacy, protection, security or Processing: (a) all Privacy and Security Laws and other applicable Laws and any related data security breach notification requirements; (b) the Group's own respective internal and external past and present rules, policies, and procedures; (c) industry standards and codes of conduct to which any Group Company purports to comply with or be bound or otherwise applicable to the industries in which any of them operate, requirements of self-regulatory bodies, and the Payment Card Industry Data Security Standard; and (d) Contracts or other representations, obligations, or commitments (including security controls) to which the any Group Company is bound or has made or agreed to comply with.

Dataroom Index means the index of materials and documents (including written answers, and materials and documents attached to such answers, given by or on behalf of the Sellers to questions and requests for information made by or on behalf of the Buyer) of the Due Diligence Dataroom produced by Intralinks by 12.00 pm on the date that is three (3) Business Days prior to the Agreement Date which lists the contents of the Due Diligence Dataroom, in the Agreed Form.

Deed of Accession means the deed to be entered into by Serato Trustee on behalf of the Beneficial Shareholders by which Serato Trustee will become a Seller, in Agreed Form.

Deed of Termination the deed to be entered into by the Company and the Sellers, pursuant to which the Shareholders' Deed will be terminated with effect from Completion, in Agreed Form.

Default Rate means in respect of any day of the month, the 90-day bank bill buy rate published by the New Zealand Financial Markets Association (Inc) page BKBM (or any successor page displaying substantially the same information) at 11.00 am on the first Business Day of that month (or, if such rate is not available at that time, the rate that the party to whom the relevant default interest is payable reasonably determines to be the nearest practicable equivalent) plus 8 percentage points.

Determined Claim means, without detracting from clause 8.3 and clause 11.2 or any other limitation in this Agreement, any Claim for Loss made by a Buyer Indemnified Party under clause 8.1.1 and/or the Tax Indemnity that is payable by any Sellers and the Buyer and the relevant Sellers have agreed in writing is payable or that has been settled by binding dispute resolution proceedings or determined by a court of competent jurisdiction as being payable and the payment of which is not subject to any stay due to being subject to appeal.

Developments has the meaning given in clause 13.7.

Distribution in relation to a distribution by the Company to its shareholders has the meaning given to that term in the Companies Act.

Dividend has the meaning given to that term in the Companies Act.

Due Diligence Dataroom means the virtual data room established by or on behalf of the Sellers in relation to the Transaction and hosted by Intralinks under the folder heading "Project Spin" and comprising the actual copies of the documents and other information listed in the Dataroom Index.

Due Diligence Materials means:

- (a) the materials and documents contained in the Due Diligence Dataroom, including the Q&A Responses and written answers (and materials and documents attached to such answers) given by or on behalf of the Sellers to questions and requests for information made by or on behalf of the Buyer as at 12.00 pm on the date that is three Business Days before the Agreement Date and as listed in the Dataroom Index; and
- (b) if applicable, the written disclosure letter given by the Sellers' Representatives to the Buyer and countersigned by the Buyer before execution of this Agreement disclosing certain information pertaining to the Group under this Agreement and exceptions in relation to the Warranties, together with all specifically referenced documents (and documents within folders) of the Due Diligence Dataroom referenced in connection therewith (the **Disclosure Letter**).

Effective Time means 11:59 pm on the Completion Date.

Employee means an employee of a Group Company as at the Agreement Date.

Employee Benefit Agreement means each employment, consulting, bonus, incentive, deferred compensation, equity or equity-based compensation, change in control, retention, severance, termination, restrictive covenant or other compensatory Contract between the Company or any of its Subsidiaries, on the one hand, and any current or former employee, officer, director or individual service provider of the Company or any of its Subsidiaries, on the other hand, pursuant to which the Company or any of its Subsidiaries has any actual or contingent liability or obligation to provide compensation or benefits in consideration for past, present or future services.

Encumbrance means each of the following:

- (a) any mortgage, charge, encumbrance, lien, pledge, finance lease, sale (or lease) and lease-back, sale and repurchase, assignment by way of security, title retention arrangement or similar interest imposed by statute, or third party right, whether legal or equitable or other arrangement of any nature having similar economic effect to any of the foregoing; and
- (b) any present or future right or interest in personal property that is a security interest for the purposes of the PPSA.

Enterprise Value means US\$100,000,000.

Escrow Agent means Avid.legal Limited.

Escrow Agreement means an escrow agreement signed by the Buyer, the Sellers' Representatives and the Escrow Agent, in Agreed Form.

ESOP means the Company's employee share option plan pursuant to which Share Options have been granted to ESOP Participants and which has been fairly disclosed in the Due Diligence Dataroom with document reference 1.2.6.5.2.

ESOP Participant Deed of Indemnity has the meaning given in clause 5.7.2(b).

ESOP Participants means those who have been granted Share Options under the ESOP that have not been exercised those Share Options as at the Agreement Date, as listed in Part C of Schedule 1.

ESOP Trust Deed means the deed of trust between the Company and Serato Trustee in relation to the ESOP dated 26 January 2018, which has been disclosed in the Due Diligence Dataroom with document reference 1.2.6.10.1.

Estimated Net Debt means the Sellers' good faith estimate of the Net Debt as at the Effective Time which is to be prepared in accordance with Schedule 5 in the same manner as the Completion Statement and as set out in the Completion Notice.

Estimated Net Working Capital means the Sellers' good faith estimate of the Net Working Capital as at the Effective Time which is to be prepared in accordance with Schedule 5 in the same manner as the Completion Statement and as set out in the Completion Notice.

Ex-Im Laws means all Laws relating to export, re-export, transfer, and import controls, including those administered by New Zealand, Australia, Canada, the United States, or any other relevant Authority.

Expert means, in respect of the particular matter to be determined, a person to be agreed between the Sellers' Representatives and the Buyer or, if they cannot agree within five Business Days, an independent chartered accountant from an accountancy firm of international repute and with appropriate commercial experience appointed by the Arbitrators' and Mediators' Institute of New Zealand Incorporated on application by the Sellers' Representatives or the Buyer.

External Indebtedness means, an amount expressed as a positive amount calculated without double counting and as required by the Accounting Standards, any and all financial indebtedness of a Group Company to a person other than another Group Company as at the Effective Time, including:

- (a) any Transaction Expenses that remain unpaid as at the Effective Time (which, for the avoidance of doubt, shall exclude the Transaction Expenses to the extent repaid by the Buyer as a Settlement Amount in accordance with clause 3.2.2);
- (b) any obligations of a Group Company arising under any indebtedness for borrowed money (including all obligations for principal, interest, penalties, fees, expenses, breakage costs and bank overdrafts thereunder);
- (c) any Liability of a Group Company with respect to interest rate swaps, collars, caps and similar hedging obligations;

- (d) any off-balance sheet financing of a Group Company, including synthetic leases or project financing;
- (e) all obligations of a Group Company for the deferred and unpaid purchase price of property or service (other than trade payables and accrued expenses incurred in the ordinary course), including any earn-out obligations (including profit share arrangements in connection with prior acquisitions by the Company or any Subsidiary), (but excluding any deferred revenue obligations of a Group Company);
- (f) all defined benefit pension, multiemployer pension, post-retirement health and welfare benefit, any unpaid severance liabilities currently being paid or payable in respect of employees and service providers of such Group Company member, including with respect to the Company or any of its Subsidiaries, any employees or service providers who terminated employment or whose services to the Company or any of its Subsidiaries have ceased (as applicable) prior to the Completion and deferred compensation Liabilities of such Group Company;
- (g) any obligations of any person under conditional sale or other title retention agreements;
- (h) Dividends or other Distributions declared by the Company prior to Completion but not yet paid as at the Effective Time;
- (i) fees and costs incurred by a Group Company (including principal and any accrued interest) in connection with any repayment and/or termination of External Indebtedness of any Group Company, including without limitation, break funding or swap unwinding fees or costs;
- (j) money borrowed or raised pursuant to any debenture, bond, note or loan stock or other similar debt instrument or security;
- (k) the sale or negotiation of any negotiable debt instrument or security;
- (l) the total, aggregate amount owed by the Group Companies to the Sellers, or any Related Party of the Sellers, by way of shareholder loans, shareholder current accounts or other shareholder advances;
- (m) any payments to be paid in respect of any Intercompany Obligations;
- (n) the total aggregate amount owed by the Group Companies under of their bank facilities (including any loans, overdrafts and all interest);
- (o) any commitment by which a member of the Group assures a financial institution against loss (including contingent reimbursement obligations with respect to banker's acceptances or letters of credit);
- (p) any Long Service Recognition Bonuses that have not been paid prior to the Effective Time;

- (q) all accrued but unused vacation in excess of one hundred sixty (160) hours for each employee of the Company or any of its Subsidiaries, deferred statutory holidays, and accrued balances of banked time in lieu of overtime pay; and
- (r) all obligations of the type referred to in clauses (a) through (q) of any persons the payment of which any person is responsible or liable directly or indirectly as obligor, guarantor, surety or otherwise, any Liabilities arising out of any breach of the foregoing obligations, and all accrued interest, fees or other similar obligations with respect to any of the foregoing; and
- (s) any amount of corporate income tax liability of the Group for any taxation year or other Tax period ended on or prior to Completion, or any portion of taxation year or other Tax period up to and including the Effective Time, in each case which remain unpaid as of the Effective Time and provided that such amount shall be a negative number (reducing the External Indebtedness amount) if the Group has overpaid corporate income tax,

but excluding:

- (t) any provisioning for lease liability for future rent under the Leases or lease liabilities related to the adoption of NZ IFRS 16;
- (u) any Long Service Recognition Bonuses that have been paid prior to the Effective Time;
- (v) the Bank Debt to the extent it is repaid prior to the Effective Time;
- (w) the Settlement Amounts paid by the Buyer in accordance with clause 3.2.2; and
- (x) any Liability included in the Net Working Capital.

Finance Condition means the Condition set out in clause 4.2.4.

Fraud means fraud or dishonest concealment.

Fundamental Warranties means the Warranties set out in clauses 1.1 (*Right, Power, Authority and Action*), 1.2 (*Binding Agreements*), 2.4 (*Brokerage*) 2.1 (*Shares*), 3.1 (*Incorporation and Corporate Power*), 3.2(*Constitution*), 18.1 (*No Events*) and 18.2 (*Insolvency*), 19.6 (*Corporate Authorisations*) of Schedule 4.

Fundamental Warranty Claim means a Claim under this Agreement for a breach of any of the Fundamental Warranties, including a Claim made under clause 8.1.1(a)(ii).

Funding Agreement means [CONFIDENTIAL BUSINESS INFORMATION REDACTED].

Government Contract means each Funding Agreement and any Contract between the Company or any of its Subsidiaries and (a) any Authority sponsored entity (including, for purposes of this definition, Callaghan Innovation or any other Crown entity established under the *Callaghan Innovation Act 2012*, and NZTE), (b) any prime contractor to an Authority (in its capacity as such), and (c) any subcontractor (of any tier) in connection with or with respect to any Contract described in clause (a) or (b), and any modification thereof.

Group means the Company and each other Group Company, and where the context requires, any one or more of those companies.

Group Company means the Company and each of its Subsidiaries (but, in respect of Serato Trustee, only for any period prior to the transfer pursuant to clause 2.6).

GST means goods and services tax levied under the *Goods and Services Tax Act 1985* (or equivalent legislation in the relevant jurisdiction).

Historical Serato Financial Statements has the meaning given to that term in clause 5.3.3.

[CONFIDENTIAL BUSINESS INFORMATION REDACTED].

Information Security Program means a written information security program that complies with and provides “reasonable security” under Data Security Requirements that is at least as stringent as one or more relevant industry standards and that includes: (a) policies, procedures and controls regarding Personal Information and the Processing thereof; (b) clearly defined administrative, technical and physical safeguards to protect the security, confidentiality, availability and integrity of any Sensitive Information owned, controlled, maintained, held, or Processed by or on behalf of the Company or any of its Subsidiaries, including, as reasonably appropriate and consistent with standard industry practices, encryption, multi-factor authentication, anti-phishing practices, strategies against credential stuffing, software patching and updating protocols, access control, password hashing, secure hardware configuration, employee security training, risk assessment, boundary defence vulnerability scanning, and penetration testing; (c) disaster recovery, business continuity, incident response, and security plans, procedures and facilities; and (d) protections against Security Incidents and Malicious Code.

Inland Revenue means the Inland Revenue Department in New Zealand.

Intellectual Property Rights means any and all of the following in any jurisdiction throughout the world: (a) patents, patent applications and patent disclosures and improvements thereto together with all reissues, continuations, continuations-in-part, divisions, revisions, extensions, and re-examinations thereof, (b) Trademarks, (c) copyrights and works of authorship, moral rights and all applications, registrations and renewals in connection therewith, (d) Software (including Object Code and Source Code) and all rights therein or thereto, (e) data, databases, data repositories, data lakes and collections of data (collectively, **Data**), data classifications and data analysis, enrichment, measurement and management tools, (f) all rights of privacy and publicity, including rights to use of the names, likenesses, voices, signatures, and biographical information of real persons, (g) Trade Secrets, (h) usernames, keywords, tags, and other social media identifiers and accounts, for all Third Party social media sites, as well as all content uploaded or posted to such sites, (i) all other intellectual property or proprietary rights, (j) any other registrations and applications for registrations of any of the foregoing clauses (a) through (i), and (k) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

Interim Period means the period from the Agreement Date to Completion (both dates inclusive).

[CONFIDENTIAL BUSINESS INFORMATION REDACTED].

Last Accounting Date means 31 March 2024.

Law includes any statute, regulation, law (including common law), code, by-law, scheme, determination, ordinance, rule, order, assessment, award, act or other like provision, as amended from time to time, in any jurisdiction of any Authority.

Leases means the leases, tenancies and licences as described in Schedule 7.

Liability means any liability, commitment, debt, claim, demand, expense or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated and due or to become due).

Liquidity Event Notice has the meaning given in the ESOP.

Long Service Recognition Bonuses means any vested and unvested long term incentives or bonuses identified as such and that are declared by the Group to any Employee or Contractor prior to the Agreement Date (including any employment tax associated with such bonuses or other payments including superannuation contributions, payroll tax and workers compensation) for an amount up to [CONFIDENTIAL BUSINESS INFORMATION REDACTED].

Losses means, in respect of a person, all losses, Liabilities, damages, costs, Taxes and expenses, debts, obligations, and Claims against such person, including reasonable lawyers' fees, other reasonable professional and experts' fees and court or dispute resolution costs incurred by such person, and **Loss** has a corresponding meaning.

LSR Bonus Letters means the long service recognition bonus letters the Company has issued to certain Employees which provide for the payment of the Long Service Recognition Bonuses, as disclosed in Due Diligence Dataroom in the folder with the reference number 1.3.68.

MAC Condition means the Condition in clause 4.2.9.

Malicious Code means any (a) "back door", "drop dead device", "time bomb," "Trojan horse", "virus", "ransomware", or "worm" (as such terms are commonly understood in the software industry), or (b) other code designed or intended to have, or capable of performing, any of the following functions: (i) disrupting, disabling, harming, interfering with or otherwise impeding in any manner the operation of, or providing unauthorized access to, a Company System on which such code is stored or installed; or (ii) damaging or destroying any data or file without the user's consent.

Management Accounts means the management accounts of the Group for the period of each month from the Last Accounting Date to 31 December 2024 as disclosed in the Due Diligence Dataroom with document reference 1.2.3.5.1.

Material Adverse Change means any event, change, state of facts, development, or circumstance that, individually or in the aggregate:

- (a) will, or is reasonably likely to, prevent any Seller from consummating the transactions contemplated by this Agreement, but provided that such event, change, state of facts, development, or circumstance is not:
 - (i) within the reasonable control of such Seller;
 - (ii) arising from or in connection with an act or omission of the Buyer or Buyer Parent in breach of this Agreement; and
 - (iii) otherwise contemplated by the provisions of this Agreement, including the Conditions; or
- (b) has, or is reasonably likely to have, a material adverse effect on the business, assets, operations, future financial condition, assets, Liabilities, or value of the Business of the Group, when all events or circumstances are taken as a whole in the context of the Group,

but, in either case, shall expressly exclude any event, change, state of facts, development, or circumstance that directly or indirectly arises out of or is attributable to:

- (c) any action or failure to take any action required by this Agreement (including, for clarity, the satisfaction of any Condition), or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer;
- (d) subject to compliance with clause 21.1, the announcement, pendency or completion of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors or others having relationships with the Group;
- (e) changes in market interest rates, exchange rates, or share market performance;
- (f) general economic, financial, regulatory, legal or political conditions in any jurisdiction or internationally (including any acts of war, armed hostilities, military attack or terrorism, or the escalation or worsening thereof);
- (g) conditions generally affecting the industries in which the Group operates;
- (h) any natural or man-made disaster or pandemic or acts of God; and
- (i) any changes in applicable Laws or accounting rules (including NZ IFRS) or the enforcement, implementation or interpretation thereof;

but in the case of limbs (d) to (i), only to the extent that such event, state of facts, development or circumstance does not disproportionately impact the Group relative to other participants in the industries and geographic locations in which the Group participates.

Material Contract has the meaning given in Schedule 4.

Material Customer means the top 20 customers of the Group Companies (based on the approximate total revenues attributable to such customers) for the calendar year ended December 31, 2024 (as contained in the Due Diligence Dataroom with document reference 1.3.97.2).

Material Vendor means the top 20 vendors of the Group Companies (based on the approximate total expenditures attributable to such customers) for the calendar year ended December 31, 2024 (as contained in the Due Diligence Dataroom with document reference 1.3.97.1).

Net Completion Cash Payment has the meaning given in clause 3.2.1(a).

Net Debt means External Indebtedness at the Effective Time less Cash at the Effective Time, which is to be calculated in accordance with Schedule 5 in the same manner as the Reference Statement (including the limitation in clause 2.2.7 of Schedule 5).

Net Working Capital means, in relation to the Group, an amount equal to:

- (a) the total current assets of the Group as at the Effective Time (consisting of all trade and other receivables and inventories but excluding Cash); *less*
- (b) the total current liabilities of the Group as at the Effective Time (comprising provisions, accounts payables, accruals, GST payable and sales tax);

as determined in accordance with Schedule 5. For the avoidance of doubt, to the extent that any assets and liabilities are included in the Net Debt, such items shall be excluded from the Net Working Capital calculation.

New Employment Agreement has the meaning given in clause 4.2.7.

New Directors has the meaning given in clause 5.5.

New Shareholders' Agreement means the shareholders' agreement in relation to the Company, which is to take effect on and from Completion Date, in Agreed Form.

NZ IFRS means the New Zealand equivalents to International Reporting Standards Reduced Disclosure Regime issued by the New Zealand Accounting Standards Board.

NZTE means New Zealand Trade and Enterprise (including any related entity or body).

Object Code means one or more computer instructions in machine readable form (whether or not packaged in directly executable form), including any such instructions that are readable in a virtual machine, whether or not derived from Source Code, together with any partially compiled or intermediate code that may result from the compilation, assembly or interpretation of any Source Code. Object Code shall include firmware, compiled or interpreted programmable logic, libraries, objects, bytecode, machine code, middleware, object code and executable code.

Off-the-Shelf Software Licenses means non-exclusive licenses granted to the Company or any of its Subsidiaries in respect of commercially available, unmodified (save for configuring as part of implementation), prepackaged, off-the-shelf Third Party Software (other than Third Party Components) used by any Group Company solely for their own internal use with a replacement

cost or aggregate fee, royalty, or other consideration for any such Software or group of related Software licenses of no more than NZ\$10,000.

OIO means the New Zealand Overseas Investment Office.

OIO Application means the application submitted by the Buyer to the OIO in order to satisfy the OIO Condition.

OIO Condition means the Condition set out in clause 4.1.2.

Open Source Software means any Software that is licensed pursuant to: (a) any license that is, or is substantially similar to, a license now or in the future approved by the Open Source Initiative and listed at <http://www.opensource.org/licenses> (including all versions of the GNU General Public License (GPL), the GNU Lesser General Public License (LGPL), the GNU Affero GPL, the MIT license, the Eclipse Public License, the Common Public License, the CDDL, the Mozilla Public License (MPL), the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Server Side Public License (SSPL) and the Sun Industry Standards License (SISL)) or any license under which such Software or other materials are distributed or licensed as "free software," "open source software" or under materially similar terms or models; or (b) any Reciprocal License, in each case whether or not the Source Code is available or included in such license.

Order means any order, judgment, ruling, injunction, assessment, award, decree or writ of any Authority.

Parties means the parties to this Agreement and **Party** has a corresponding meaning, provided that references to Parties and Party shall only include the Company in relation to clause 5.7.

Payment Direction means a direction to the Escrow Agent given by the Buyer and the Sellers' Representatives to make a payment from the applicable escrow account in which the Retention Escrow Amount is held in the form required by the applicable Escrow Agreement.

Permitted Encumbrances means, in respect of the Assets but not the Shares, any:

- (a) lien arising by operation of Law in the ordinary course of business and securing an amount that is not overdue;
- (b) right of netting or set-off arising by operation of Law in favour of a bank in the ordinary course of business for the purpose of netting debit and credit balances;
- (c) purchase money security interest (as defined in the PPSA) or any reservation of title by suppliers in the ordinary course of business; or
- (d) the security granted by the Group Companies to ASB Bank Limited in respect of the Bank Debt.

Personal Information means any data or other information that (a) identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual, including any personally identifiable data (e.g., name, address, phone number, email address, financial account number, payment card data, government

issued identifier, health or medical information, account users names and passwords, cookies, IP addresses, and unique device identifiers), or (b) is otherwise protected by or subject to any Privacy and Security Law or defined as "personal information", "personal data", "personally identifiable information", "personal health information" or "protected health information" under applicable Law.

Policy Limit has the meaning given to that term in clause 8.3.1(b).

PPSA means the *Personal Property Securities Act 1999*.

PPSR means the New Zealand Personal Property Securities Register established under section 139 of the PPSA.

Principal has the meaning set out in the Recitals.

Privacy and Security Laws means all (a) applicable Laws concerning Processing, data protection, privacy, security or other similar Laws (including any security breach notification requirements), including the *Privacy Act 2020* and the code of practice issued under that act, *Personal Information Protection and Electronic Documents Act* (Canada), the *British Columbia Personal Information Protection Act*, the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the *Fair and Accurate Credit Transactions Act*, the *Privacy Act of 1974*, the *CAN-SPAM Act*, the *Telephone Consumer Protection Act*, the Telemarketing and Consumer Fraud and Abuse Prevention Act, *Children's Online Privacy Protection Act*, state Social Security number protection Laws, state data breach notification Laws, state consumer protection Laws, the *California Consumer Privacy Act*, (b) any Law that regulates the collection, use or disclosure of Personal Information, and (c) mandatory industry guidelines (whether statutory or non-statutory) or mandatory codes of practice issued by the relevant supervisory authority relating to data protection, privacy or security.

Process (or **Processing** or **Processed**) means any (a) operation or set of operations which is performed on Data or information or on sets of Data or information, or (b) the access, collection, use, processing, storage, sharing, distribution, transfer, disclosure, sorting, treatment, manipulation, performance of operations on, enhancement, aggregation, destruction, security or disposal of any Data (including Sensitive Information) or information or collections thereof, or set thereof, or any Company System.

Pro Forma Disclosure has the meaning given to that term in clause 5.3.2.

Proposal has the meaning given to that term in clause 5.9.

Purchase Price has the meaning given to that term in clause 3.1.

Q&A Responses means those responses by or on behalf of the Sellers to specific questions by the Buyer or on behalf of the Buyer using the Q&A functionality in the Intralinks platform of the Due Diligence Dataroom.

Reciprocal License means a license of an item of Software that requires or that conditions any rights granted in such license upon: (a) the disclosure, distribution or licensing of any other Software (other than such item of Software in its unmodified form); (b) a requirement that any

disclosure, distribution or licensing of any other Software (other than such item of Software in its unmodified form) be at no charge; (c) a requirement that any other licensee of the Software be permitted to modify, make derivative works of, or reverse-engineer any such other Software; (d) a requirement that such other Software be redistributable by other licensees; or (e) the grant of any patent rights (other than patent rights in such item of Software), including non-assertion or patent license obligations (other than patent obligations relating to the use of such item of Software).

Reference Statement has the meaning given in Schedule 5.

Reference Table means the table in Part A of Schedule 1.

Reference Materials has the meaning given to that term in clause 7.1.4.

Related Company in respect of a company means a related company of that company in terms of section 2(3) of the Companies Act (or any company that would be a related company in terms of section 2(3) if in that section the expression 'company' included a body corporate wherever incorporated).

Related Parties means:

- (a) in respect of a person that is a company or other body corporate, a Related Company of that person, and any person which Controls that person, is Controlled by that person, or is Controlled by the same person that Controls that person; and
- (b) in respect of a person that is a natural person, that person's parents, children, step children, de factor partner or civil union partner, or any trust, company or other entity Controlled by that person or any such members of that person's family.

Relevant Proportions means:

- (a) when used in the context of a Seller, the percentage as set out next to that Seller's name in column 4 of the Reference Table (which represents the percentage of Sale Shares held by that Seller as against the total number of Sale Shares); and
- (b) when used in the context of a Beneficial Shareholder, the percentage as set out next to that Beneficial Shareholder's name in column 3 of the table in Part B of Schedule 1 (which represents the percentage of Sale Shares beneficially held by that Beneficial Shareholder as against the total number of Sale Shares).

Relief includes:

- (a) any loss, allowance, deduction, repayment right or set off or other relief taken into account in computing any Tax Liability, or any grant conferred on any person; and
- (b) any rebate, credit or right to payment of Tax (whether or not including interest or penalties) available to that person.

Remaining Directors means Alan James Wilderland and Stephen Marcus Jason West.

Reorganisations means:

- (a) a share dividend, any consolidation, subdivision or cancellation of any share capital; and
- (b) any event analogous to those listed above where the entity does not receive or pay cash or property in respect of the issuance of securities.

Retention Claim means any Claim for indemnity by a Buyer Indemnified Party made pursuant to and subject to the limitations of, clause 8 or clause 9 (as applicable), and, if such conditions are satisfied:

- (a) a corresponding claim to the Claim has been made under the W&I Policy and the W&I Insurer has acknowledged in writing that such claim has eroded (in whole or in part) the excess, retention or deductible amount pursuant to the W&I Policy (the amount of such erosion being the **W&I Deductible**);
- (b) the quantum of the Retention Claim will be equal to the amount of the W&I Deductible; and
- (c) the aggregate amount of all Retention Claims must not exceed an amount equal to the Retention Escrow Amount.

Retention Escrow Amount means [CONFIDENTIAL BUSINESS INFORMATION REDACTED].

Retention Escrow Final Expiry Date means the date falling 24 months after the Completion Date.

Retention Escrow Initial Expiry Date means the date falling 12 months after the Completion Date.

Sale Shares means those Shares held by the Sellers as set out opposite each Seller's name in column 3 of the Reference Table, together with any additional shares issued as a consequence of the Share Options being exercised in accordance with clause 5.7 and **Sale Share** means any one of them.

Sanctions Laws means all Laws relating to economic or trade sanctions administered or enforced by New Zealand, Australia, Canada, the United States, or any other relevant Authority.

Security Incident means actions that result in a cyber or security incident relating to any system (including Company Systems) or any Sensitive Information (including any processed, stored, or transmitted thereby or contained therein), including an occurrence that actually or potentially jeopardizes the confidentiality, integrity, or availability of a system or any Sensitive Information. A Security Incident includes incidents of security breaches or intrusions, or denial of service, or any unauthorized Processing of any Company Systems or Sensitive Information, or any loss, distribution, compromise or unauthorized disclosure of any of the foregoing.

Seller Indemnified Parties means the Sellers and each of their respective Related Parties (excluding the Group as of and following Completion) and each of their respective directors and officers, employees and shareholders, and each a **Seller Indemnified Party**.

Sellers means:

- (a) each of the Initial Sellers; and
- (b) Serato Trustee, from the time a Deed of Accession validly executed by it is delivered to the Company or the Sellers' Solicitor in accordance with the terms of this Agreement.

Sellers' Nominated Account means the Sellers' Solicitor's trust account, details of which are to be provided to the Buyer no less than five (5) Business Days prior to the Completion Date.

Sellers' Representatives means Alan James Wilderland and Stephen Marcus Jason West, or such other individual appointed in accordance with clause 16.6.

Sellers' Solicitor means Avid.legal Limited.

Senior Leadership Team means [PERSONAL INFORMATION REDACTED].

Sensitive Information means, in any form or medium, any Trade Secrets (including of any customer) or any information covered by Law, including the Privacy and Security Laws.

Serato Historical Financial Data has the meaning given to that term in clause 5.3.2.

Serato Limited means Serato Limited, (NZCN 6220881).

Serato Payment Direction Deed has the meaning given in clause 2.6.1.

Serato Trustee means Serato Employee Trustee Limited (NZCN 6616813).

Serato USA LLC means Serato USA LLC, (Delaware: 5867560; California: 201607510582; New York: 5393078).

Settlement Amounts has the meaning given in clause 3.2.2.

Share Options means all of the options to acquire ordinary shares in the Company which have been granted under the ESOP (whether vested or unvested) and have not lapsed as listed in Part C of Schedule 1.

Shareholders' Deed means the shareholders' deed dated 11 June 2021 between the Company, the Initial Sellers and Serato Trustee (as contained in the Due Diligence Dataroom with document reference 1.2.1.1.3.6) and as subsequently amended by an amendment deed dated 18 March 2024 (as contained in the Due Diligence Dataroom with document reference 1.2.1.1.3.1).

Shares means all the ordinary shares in the Company in existence immediately before or on Completion, including the 1,015,250 fully paid and non-assessable ordinary shares in the capital of the Company on issue as at Agreement Date as held by the Sellers in the amounts and proportions set out in the Reference Table, together with any additional shares issued as a consequence of the Share Options being exercised in accordance with clause 5.7 and **Share** means any one of them.

SIHL means Serato International Holdings (NZ) Limited, (NZCN 5837809).

SILP means Serato Inc Limited Partnership, (NZBN 9429000041515).

SML means Serato Management Limited, (NZCN 2184449).

Software means software and computer programs, whether in Source Code, Object Code, or other form, and including (i) software implementations of algorithms, models, and methodologies, firmware, application programming interfaces, (ii) descriptions, schematics, specifications, flow charts and other work product used to design, plan, organize and develop any of the foregoing, and (iii) documentation, including user documentation, user manuals and training materials, files, and records relating to any of the foregoing.

Source Code means one or more statements in human readable form, including comments, definitions and annotations, which are generally formed and organized to the syntax of a computer or programmable logic programming language (including (i) such statements in batch or scripting languages, (ii) hardware definition languages such as VHDL and (iii) firmware code), together with any and all text, data and data structures, diagrams, graphs, charts, presentations, manuals, instructions, commands, schematics, flow-charts, procedures and other work product and information that describe the foregoing and any other source code.

[CONFIDENTIAL BUSINESS INFORMATION REDACTED].

[CONFIDENTIAL BUSINESS INFORMATION REDACTED].

[CONFIDENTIAL BUSINESS INFORMATION REDACTED].

Sponsor means any Authority, university, college, other educational institution, research center, nonprofit organization or private source.

Subsidiary of any person means another person, an amount of the voting securities, other voting ownership or voting partnership interest of which is sufficient to elect at least a majority of the board of directors or other governing body (or, if there are no such voting interests, fifty percent (50%) or more of the equity interest of which) is owned directly or indirectly by such first person, including in the case of the Company, Serato Limited, SIHL, SML, SILP and Serato USA LLC.

Target Net Working Capital means [CONFIDENTIAL BUSINESS INFORMATION REDACTED].

Tax and **Taxation** includes:

- (a) all forms of taxes, sales taxes, duties, charges, withholdings, deductions, rates, levies, social security contributions (including National Insurance Contributions), contributions under the *KiwiSaver Act 2006* or other governmental impositions of whatever nature and whether direct or indirect, by or under whatever act or statute imposed or levied or charged or required to be withheld (collectively and individually taxes), including (for the avoidance of doubt) income tax, withholding tax, fringe benefit tax, PAYE income payments, stamp duties, GST, VAT, gift duty, customs or excise duties, regional or local taxes, municipal taxes and accident compensation levies;

- (b) loss of Relief;
- (c) Research and Development Tax Incentive credits arising under subpart LY of the *Income Tax Act 2007*; and
- (d) all costs, charges, interest, penalties, and fines incidental or related to, or arising in connection, with the imposition or non or late or under payment of taxes.

Tax Authority means an Authority responsible for the collection of Tax, whether in New Zealand or elsewhere, and in particular (but without limitation) the Inland Revenue (or any overseas body with familiar function or powers).

Tax Claim means any Claim under the Tax Indemnity or any Claim for breach of a Tax Warranty.

Tax Demand includes any notice, demand, assessment, letter or other document issued, or action taken, by or on behalf of any Tax Authority or other person, whether issued or occurring before or after Completion, whereby a Group Company may be, or be sought to be, placed under any or any increased Liability to Tax or may be deprived or sought to be deprived of any Relief which might otherwise have been available in each case relating to any period or income arising prior to Completion.

Tax Indemnity means the indemnity given in relation to Taxation under clause 9.1.

Tax Law means any treaty, act, statute, legislation, regulation, order, ruling, rule or determination, imposing or administering a Tax or released by a Tax Authority, and includes the *Income Tax Act 2007* (or any previous versions of the *Income Tax Act 2007*) the *Tax Administration Act 1994*, the *Goods and Services Tax Act 1985* (or the equivalent for in the relevant jurisdiction).

Tax Return means any return, declaration, report, claim for refund, estimate, information report, return statement or filing relating to Taxes, including any schedule or attachment thereto and including any amendment thereof, including any return, declaration, report or other statement provided or required to be provided to any person for compliance with any Tax Law.

Tax Saving means a Tax saving in any past, current or future income year and includes:

- (a) where the amount of a loss, Liability, cost or expense suffered or incurred is wholly or partly deductible for income tax purposes, the reduction in Tax paid as a result of the deduction to which the relevant person receives; and
- (b) the amount of any relevant GST input tax credit or other deduction from output tax which the relevant person receives.

Tax Warranty means the Warranties set out in clause 8 of Schedule 4.

Tiny Shares means the fully paid and non-assessable Class A common shares without par value in the authorized share structure of Buyer Parent, which are listed for trading on the TSX.

Third Party means any person other than a party to this Agreement.

Third Party Components means, with respect to a Company Product, or Customization all of the following that are not exclusively owned by the Company or any of its Subsidiaries: (a) Software of a Third Party that is used in, incorporated into, combined with, linked with, distributed with, provided to any person as a service in connection with, provided via a network as a service or application in connection with, or made available with, such Company Product or Customization, including any Software of a Third Party that is referenced or required to be present or available (including available via another machine connected directly or through a network) in such Company Product or Customization for such Company Product or Customization to properly function in accordance with its specifications or Software from which any such Company Product or Customization inherits, links, or otherwise calls functionality (including libraries or other shared-source repositories), and (b) Intellectual Property Rights of a Third Party that are embodied in such Company Product or Customization.

Trademarks means, collectively, trademarks, service marks, brand names, certification marks, trade dress, trade names, product designations, logos, designs, Internet domain names, corporate names, and any other indicia of source or origin (including "look and feel"), together with all translations, adaptations, derivations, abbreviations, acronyms, and combinations thereof, all applications, registrations, and renewals in connection therewith, and all goodwill associated with each of the foregoing.

Trade Secrets means confidential or proprietary information or data for which actual or potential value derives from not being generally known, including all, (i) trade secrets and other confidential or sensitive information (including of Third Parties), Personal Information, Data, inventions (whether or not patentable or reduced to practice), ideas, know-how, processes, methods, techniques, research and development, Source Code, drawings, specifications, layouts, designs, formulae, algorithms, compositions, industrial models, architectures, plans, proposals, technical data, financial, business and marketing plans, and proposals, customer and supplier lists, and price and cost information.

Transaction means the transaction recorded in this Agreement.

Transaction Documents means, collectively, this Agreement and all other agreements, certificates and instruments contemplated by this Agreement.

Transaction Expenses means the aggregate amount of (without double counting in all respects) (a) any fees, expenses, commissions or other amounts payable by the Company or any of its Subsidiaries (whether on behalf of the Company or any of its Subsidiaries or any Seller or any of their respective Related Parties) or that is subject to payment or reimbursement by the Company or any of its Subsidiaries in connection with this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including the fees and expenses of any advisors, experts, brokers, finders, consultants, accountants, auditors, lawyers, investment bankers or other advisors, (b) any Change of Control Payments, (c) Completion Payroll Taxes, (d) fees and expenses of the Company associated with obtaining necessary or appropriate waivers, consents or approvals on behalf of the Company or any Seller in connection with the consummations of the Transaction, and (e) any fees and expenses payable to the Escrow Agent in its capacity as such pursuant to the Escrow Agreement; and (f) fees and expenses associated with obtaining the release and termination of any Encumbrances in connection with the consummation of the

Transaction; provided, however, that the Sellers' portion of the W&I Costs, and any amounts payable under the New Employment Agreement shall not constitute a Transaction Expense.

Trustee SPA means the agreement for the sale and purchase of shares whereby the Company transfers 100% of the share capital in Serato Trustee to the Sellers' Representatives for the aggregate sum of NZ\$1, in Agreed Form.

TSX means the TSX Venture Exchange or the Toronto Stock Exchange, as applicable.

Undetermined Claim means, at the relevant time, any Claim for Loss made by a Buyer Indemnified Party under clause 8.1.1 and/or the Tax Indemnity that has been validly raised under this Agreement against any Sellers and is not yet a Determined Claim or a Claim that has lapsed in accordance with clause 8.4.2.

W&I Contribution means an amount equal to [CONFIDENTIAL BUSINESS INFORMATION REDACTED] of the W&I Costs.

W&I Costs means, in aggregate, the premium, underwriting fees, due diligence costs, commissions and other costs and expenses of the W&I Insurer related to the purchase or placement of the W&I Policy and all applicable Taxes on such amounts, and any and all fees charged by the insurance intermediary acting for the Buyer in arranging the W&I Policy (if any) but capped to an amount of [CONFIDENTIAL BUSINESS INFORMATION REDACTED].

W&I Insurer means the insurer(s) under the W&I Policy.

W&I Policy means the policy of warranty and indemnity insurance issued to the Buyer by the W&I Insurer on the Agreement Date and in Agreed Form.

W&I Policy Limit means [CONFIDENTIAL BUSINESS INFORMATION REDACTED].

Warranties means the warranties set out in Schedule 4.

Warranty Claim means a Claim under this Agreement against the Sellers for a breach of a Warranty, including a Claim made under clause 8.1.1.

1.2 **Interpretation:** In this Agreement, unless the context otherwise requires:

1.2.1 a reference to "NZ\$", "NZD" or "NZ dollars" is a reference to New Zealand currency;

1.2.2 a reference to "\$", "USD", "US\$" or "US dollars" is a reference to the United States dollar, the currency of the United States of America;

1.2.3 expressions defined in the main body of this Agreement have the defined meaning in the whole of the Agreement, including the background;

1.2.4 section, clause and other headings are for convenience only and will not affect the interpretation of this Agreement;

- 1.2.5 a reference to a clause or a schedule is to a clause or schedule of this Agreement, and a reference in a schedule to a clause is a reference to a clause in that schedule;
- 1.2.6 singular will include plural and vice versa;
- 1.2.7 words denoting any gender include all genders;
- 1.2.8 where any term defined in this Agreement takes a different form for reasons of grammar, the different form has a corresponding meaning;
- 1.2.9 references to "**person**" or "**persons**" will include references to individuals, companies, corporations, partnerships, firms, joint ventures, associations, trusts, organisations, governmental and other regulatory bodies or authorities and other entities, in each case whether having separate legal personality or not;
- 1.2.10 reference to a Party will include that Party's executors, administrators, successors and permitted assigns;
- 1.2.11 reference to a statute or regulation will include all amendments and re-enactments thereof and any subordinate legislation made thereunder;
- 1.2.12 references to times of day or dates are to Auckland, New Zealand times and dates respectively unless specifically stated otherwise;
- 1.2.13 anything required by this Agreement to be done on a day which is not a Business Day may be done effectively on the next Business Day;
- 1.2.14 an obligation to do anything "promptly" does not mean to do it instantaneously as soon as the obligation arises, but means to carry out that obligation as quickly as can be reasonably done in the circumstances and without delay, and not deferring, postponing or putting the matter off to a later time or beyond the timeframe expressly permitted under this Agreement;
- 1.2.15 the term "including" means "including without limitation" and similar derivatives have a corresponding meaning;
- 1.2.16 references to the "**ordinary course of business**" or "**ordinary course**" (or any similar expression) means, when used in respect of a Group Company, if the relevant action of that Group Company:
- (a) is taken in the ordinary course of the normal, day-to-day operations of that Group Company;
 - (b) is consistent in nature, scope and magnitude with the past practices of that Group Company in the 12-month period prior to the Agreement Date; and
 - (c) does not require authorisation by the shareholders of that Group Company (or by any person or group of persons exercising similar authority) and does not require any other separate or special authorisation of any nature;

- 1.2.17 any obligation not to do anything will be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- 1.2.18 the terms written and in writing include any means of reproducing words, figures or symbols in a tangible and visible form;
- 1.2.19 no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it;
- 1.2.20 a reference to "**as far as the Sellers are aware**", "**to the Knowledge of the Sellers**" or similar phrase means, in relation to any Warranty qualified by knowledge, the actual knowledge of the Sellers as at the Agreement Date and will be deemed to include any facts or circumstances that the Sellers would have been aware had they made reasonable and due enquiry with the Senior Leadership Team as to the accuracy of that Warranty as at the time that Warranty is given (provided that, where that Warranty is expressed to be given at a certain date, the time the Warranty is given shall be limited to that date only);
- 1.2.21 where any Warranty is qualified by reference to materiality (including the phrase "**in all material respects**"), such reference shall, unless specified to the contrary, be construed as a reference to materiality in the context of the Group's Business taken as a whole;
- 1.2.22 a fact, matter or circumstance will be deemed to have been **fairly disclosed** to the Buyer if disclosed to the Buyer in the Due Diligence Materials with sufficient particularity and in such manner and in such detail as to enable a reasonable and experienced buyer to reasonably identify the existence, nature and scope of the matter concerned and to understand the relevance, importance and materiality of the fact, matter or circumstance (i) in the context of the Transaction, and (ii) to the value, operations and prospects of the Business (as applicable); and
- 1.2.23 notwithstanding anything in this Agreement to the contrary, any provision of this Agreement to be performed or observed by the Sellers binds the Sellers severally (not jointly and severally), including each Seller's obligation to sell and deliver their Sale Shares to the Buyer pursuant to clause 6.2 for which each Seller will only be liable to sell and deliver those Sale Shares held by that Seller.

2 AGREEMENT FOR SALE AND PURCHASE

- 2.1 **Agreement:** Each Seller agrees to sell, and the Buyer agrees to purchase, its respective Sale Shares for the consideration and on the terms and conditions set out in this Agreement.
- 2.2 **No Encumbrances:** On Completion, each Seller's Sale Shares will pass to the Buyer free of all Encumbrances.
- 2.3 **Entitlements with Shares:** On Completion, each Seller's Sale Shares will pass to the Buyer together with all rights, benefits and entitlements attached to them.
- 2.4 **Waivers:**

- 2.4.1 Each Seller unconditionally and irrevocably waives any restrictions (including any rights of pre-emption and rights of first refusal) on transfer or any other similar rights which may exist in relation to the Sale Shares under the Constitution, the Shareholders' Deed, the terms of issue of the Shares or otherwise.
- 2.4.2 Each Seller acknowledges and consents and agrees to the transfer of the Sale Shares to the Buyer for the purposes of clause 10.2 of the Shareholders' Deed.
- 2.5 **Sale of all the Sale Shares:** The Buyer shall have no obligation to complete the purchase of any of the Sale Shares unless the sale of all the Sale Shares is completed simultaneously in accordance with the terms of this Agreement.
- 2.6 **Serato Trustee:** The Parties acknowledge and agree that the legal title to the Sale Shares held by Serato Trustee is held by Serato Trustee as trustee for and on behalf of the Beneficial Shareholders pursuant to the terms of the ESOP Trust Deed and in that context:
- 2.6.1 the Initial Sellers will procure that the Company and the Serato Trustee will, prior to the Agreement Date, deliver an irrevocable written instrument signed by each Beneficial Shareholder which provides to the Company and the Buyer a deed in favour of Serato Trustee and the Buyer pursuant to which the Beneficial Shareholder:
- (a) unconditionally and irrevocably instructs Serato Trustee to sell to the Buyer the Sale Shares held by Serato Trustee for the Beneficial Shareholder (which, for the avoidance of doubt, includes any Shares in which the Beneficial Shareholder has any interest in at any point in time after the Agreement Date);
 - (b) provides Serato Trustee with irrevocable instructions in respect of the Beneficial Shareholder's nominated bank account details to which the Beneficial Shareholder's Relevant Proportion of the Purchase Price will be paid to; and
 - (c) agrees to indemnify Serato Trustee in respect of and pay to the Buyer:
 - (i) the amount for which Serato Trustee becomes liable in respect of a Fundamental Warranty Claim where it relates to the Sale Shares held by Serato Trustee for that Beneficial Shareholder; and
 - (ii) its Relevant Proportion of any indemnity claim by a Buyer Indemnified Party in accordance with clause 8 that Serato Trustee is liable to the Buyer for and on behalf of the Beneficial Shareholders under this Agreement (outside of clause 2.6.1(c)(i)) with such Relevant Proportion being calculated on the number of Sale Shares held by Serato Trustee for the Beneficial Shareholder as against all Sale Shares held by Serato Trustee,
- such deed being in Agreed Form (the **Serato Payment Direction Deed**), to be held by the Buyer and Initial Sellers in escrow, to be automatically released upon Completion;
- 2.6.2 concurrently with the execution of this Agreement, the Initial Sellers will procure that Serato Trustee will execute the Deed of Accession in respect of each Beneficial

Shareholders who has returned the Serato Payment Direction Deed and provide a copy to the Company and the Buyer; and

2.6.3 on or before Completion, the Company shall:

- (a) cause Serato Trustee to change its legal name to "Spin Employee Trustee Limited"; and
- (b) transfer all its shares in Serato Trustee to the Sellers' Representatives (jointly) in accordance with the Trustee SPA.

3 PURCHASE PRICE

3.1 **Purchase Price:** The purchase price for the Sale Shares is:

- 3.1.1 the Completion Cash Payment;
- 3.1.2 *plus* the Completion Shares Value;
- 3.1.3 *plus/minus* the Adjustment Amount (as applicable);
- 3.1.4 *plus* the Adjustment Escrow Amount;
- 3.1.5 *plus* the Retention Escrow Amount; and
- 3.1.6 *plus* the Contingent Consideration (if any),

and as may be otherwise be adjusted under any other provision of this Agreement, including Schedule 5 (the **Purchase Price**).

3.2 **Payment:** The Purchase Price will be satisfied in the following manner:

- 3.2.1 at Completion, subject to the Sellers discharging all of their obligations under clause 6.2, the Buyer shall:
 - (a) pay the Completion Cash Payment (less the Settlement Amounts and the W&I Contribution) (the **Net Completion Cash Payment**) to the Sellers' Nominated Account, provided that the Buyer is not liable for the allocation of such payment between each of the Sellers;
 - (b) pay the Adjustment Escrow Amount and the Retention Escrow Amount to the Escrow Agent in accordance with the terms of the Escrow Agreement; and
 - (c) procure that the Buyer Parent issue the Completion Shares to the Sellers in the proportions set out in column 5 of the Reference Table,

provided that, in respect of the Beneficial Shareholders, each Beneficial Shareholder will be paid their Relevant Proportion of the Purchase Price in cash only and the Completion Shares will be allocated amongst the Initial Sellers;

- 3.2.2 at Completion, the Buyer shall on behalf of the Company, pay the Transaction Expenses (including any Transaction Expenses that are to be paid by the Company to [CONFIDENTIAL BUSINESS INFORMATION REDACTED] in accordance with clause 5.14) to the persons entitled thereto pursuant to written instructions delivered by Sellers' Representatives to Buyer no later than three Business Days prior to the Completion Date to the extent such Settlement Amount are included in the Completion Notice (the **Settlement Amounts**),
- 3.2.3 on the Adjustment Date, the Buyer and the Sellers will procure the payment of (and procure the Escrow Agent (as applicable and at the relevant time) to pay) the Adjustment Amount to one or the other, by the application of the Adjustment Escrow Amount and the reimbursement or payment of any shortfall or surplus in accordance with clause 4.2 of Schedule 5;
- 3.2.4 in respect of the Retention Escrow Amount, the Buyer and the Sellers will procure the Escrow Agent (at the relevant time(s)) to pay such amount pursuant to clause 3.10; and
- 3.2.5 any amount of the Contingent Consideration shall be satisfied by the Buyer (as applicable):
- (a) paying the cash component of the Contingent Consideration to the Sellers' Nominated Account provided that the Buyer is not liable for the allocation of such payment between each of the Sellers; and
 - (b) procuring the Buyer Parent to issue the Contingent Shares to the relevant Sellers, at such time as prescribed in Schedule 8.
- 3.3 **Payments Free and Clear:** All payments to be made pursuant to this Agreement shall be made by way of irrevocable electronic transfer of cleared and immediately available funds:
- 3.3.1 free of any restriction or condition;
- 3.3.2 free of and (except to the extent required by Law) without any deduction or withholding on account of any Tax; and
- 3.3.3 without any deduction or withholding on account of any other amount, whether by way of setoff, counterclaim or otherwise unless expressly provided for in this Agreement.
- 3.4 **Right of Set-Off:**
- 3.4.1 Subject to clauses 3.4.2 and 3.4.3, if:
- (a) on the Adjustment Date any Adjustment Amount is payable by the Buyer to the Sellers in accordance with clause 4.2.1 of Schedule 5; and/or
 - (b) on the Contingent Consideration Payment Date any Contingent Consideration is payable in cash and/or issuable in the form of Contingent Shares (in each case under Schedule 8); and/or

(in each case, such amount being **Outstanding Consideration**),

and there is:

- (c) an unpaid Determined Claim, then the Buyer shall set off such Outstanding Consideration against that Determined Claim (which, to the extent of such set-off, constitutes a good discharge of the respective payment obligations), and any residual amount (comprising the surviving net obligation) shall be paid or issued (as applicable) by the party liable for such payment in accordance with the relevant provisions (including timing); and/or
- (d) an Undetermined Claim, then the Buyer may withhold a portion of the Outstanding Consideration equal to its reasonable estimate of the Undetermined Claim made in good faith, in which event:
 - (i) if the Undetermined Claim becomes a Determined Claim, the Buyer shall set off the withheld portion of the Outstanding Consideration against that Determined Claim (which, to the extent of such set-off, constitutes a good discharge of the respective payment obligations), and any residual amount shall be paid or issued (as applicable) by the party liable for such payment in accordance with the relevant provisions (including timing); or
 - (ii) if the Undetermined Claim is:
 - A. agreed in writing by the Buyer and the Sellers' Representatives to not be payable;
 - B. determined by a court of competent jurisdiction to not be payable; or
 - C. not agreed, not settled, or legal proceedings or good faith settlement negotiations have not been commenced within 12 months after the Contingent Consideration Payment Date,then the withheld portion of the Outstanding Consideration shall immediately become payable and/or issuable by the Buyer or the Buyer Parent (as applicable) upon the earliest to occur of the events in paragraphs A, B and C above.

3.4.2 Where a Determined Claim or Undetermined Claim only relates to one Seller or a group of particular Sellers (the **Defaulting Seller(s)**), rather than all Sellers generally in their Relevant Proportions, then the set off or withholding of the Outstanding Consideration contemplated in clause 3.4.1 shall only apply to the portion of the Outstanding Consideration that is payable to the Defaulting Seller(s).

3.4.3 Where a set-off is being made under this clause 3.4 in respect of the Contingent Consideration, at the election of the Sellers' Representatives, any set off or withholding will be applied either:

- (a) entirely against any Contingent Shares issuable as part of the Contingent Consideration; or
- (b) proportionately against any cash payable as part of the Contingent Consideration and against any Contingent Shares issuable as part of the Contingent Consideration, in the same ratio as the cash and share components bear to the total Contingent Consideration,

provided that if the Sellers elect clause 3.4.3(a) but the value of the Contingent Shares as part of the Contingent Consideration is less than the amount to be set off or withheld in accordance with clause 3.4, then the cash portion of the Contingent Consideration will apply to the residual portion.

3.5 **Distribution:** The Sellers will procure that the Sellers' Solicitor will distribute the cash portion of the Purchase Price as follows:

3.5.1 in respect of the Net Completion Cash Payment paid by the Buyer to the Sellers' Nominated Account in accordance with clause 3.2.1(a), each Seller will receive an amount equal to "X" where:

$$X = (A * B) - C$$

where:

A = an amount equal to the Net Completion Cash Payment plus the Completion Shares Value; and

B = that Seller's Relevant Proportion (expressed as a decimal); and

C = if the Seller is issued Completion Shares under clause 3.2.1(c), an amount equal to the Completion Shares Value received by that Seller as set out next to that Seller's name in column 6 of the Reference Table,

but subject to any rounding errors agreed by the Sellers' Representatives; and

3.5.2 in respect of:

- (a) any Adjustment Amount payable to the Sellers in accordance with this Agreement; or
- (b) the distribution of any portion of the Adjustment Escrow Amount or the Retention Escrow Amount to the Sellers in accordance with this Agreement and/or the Escrow Agreement,

to the Sellers in their Relevant Proportions; and

3.5.3 in respect of the Contingent Consideration, in the manner set out in clause 5 of Schedule 8,

or in such other manner agreed by the Sellers, and (for the avoidance of doubt) the Sellers acknowledge and agree that neither Buyer nor Buyer Parent shall have any responsibility, or have any Liability, in respect of the performance of the obligations pursuant to this clause 3.5 including, without limitation, overseeing how any such cash payments under this Agreement to the Sellers are applied and distributed.

3.6 **Lowest price:** For the purposes of the financial arrangements rules in the *Income Tax Act 2007*, the Parties agree that:

3.6.1 the Purchase Price is the lowest price they would have agreed for the sale and purchase of the Sale Shares, on the date this Agreement was entered into, if payment would have been required in full at the time the first right in the contracted property (being the Sale Shares) was transferred;

3.6.2 the Purchase Price is the value of the Sale Shares; and

3.6.3 they will compute their taxable income for the relevant period on the basis that the Purchase Price includes no capitalised interest and will file their tax returns accordingly.

3.7 **Finalisation of Purchase Price:** The Parties will comply with their respective obligations in Schedule 5 with respect to the preparation of the Completion Statement in order to calculate the Adjustment Amount.

3.8 **Contingent Consideration:** The Parties will comply with their respective obligations in Schedule 8.

3.9 **Default Interest:** If for any reason, other than the default of the corresponding counterparty, any Party fails to make any payment payable under this Agreement on the date it is due and in the manner specified in this Agreement, then that Party will pay interest at the Default Rate to the corresponding Party on the unpaid amount calculated on a daily basis from the due date until payment. This provision is without prejudice to any other rights or remedies available to a Party in relation to this Agreement.

3.10 **Retention Escrow:**

3.10.1 If the Buyer Indemnified Party makes a Retention Claim before the expiry of the Retention Escrow Final Expiry Date, such Buyer Indemnified Party must provide written notice to the Sellers' Representatives containing:

- (a) the full details of the relevant Claim, including particulars of the Claim made under the W&I Policy; and
- (b) evidence of acceptance of that claim by the W&I Insurer subject to the erosion (in whole or in part) of the retention pursuant to the W&I Policy,

(a **Retention Claim Notice**).

3.10.2 The Sellers and Buyer agree that upon the Buyer supplying a Retention Claim Notice, the Escrow Agent will pay from the Retention Escrow Amount held by the Escrow Agent the amount of the Retention Claim to the Buyer within 10 Business Days of being supplied by

the Buyer a copy of the Retention Claim Notice (along with confirmation that it has been served upon the Sellers' Representative).

- 3.10.3 The Parties will procure that the Escrow Agent pays from the Retention Escrow Amount held by the Escrow Agent, within 10 Business Days of the Retention Escrow Initial Expiry Date, an amount equal to (which will be deemed to be nil if such amount is a negative amount):

$$A - B - C$$

where:

A = [CONFIDENTIAL BUSINESS INFORMATION REDACTED] (being 50% of the Retention Escrow Amount paid at Completion);

B = the Retention Claims actually paid out to the Buyer prior to the Retention Escrow Initial Expiry Date; and

C = the Pending Retention Claims made as at the Retention Escrow Initial Expiry Date in accordance with clause 3.10.4.

- 3.10.4 If, upon expiry of the Retention Escrow Final Expiry Date:

- (a) there is an outstanding Retention Claim Notice that has been delivered; and/or
- (b) the Buyer has advised the Sellers' Representatives in writing that it has notified the W&I Insurer of a Claim which relates (in whole or in part) to the Retention Claim,

(each, a **Pending Retention Claim**), the Sellers and the Buyer agree that such remaining portion of the Retention Escrow Amount that exceeds the amount of the Pending Retention Claim (if any) shall be paid by the Escrow Agent to the Sellers in the manner contemplated in clause 3.10.3. The remaining portion, corresponding to the amount of the Pending Retention Claim, will remain in escrow pending:

- (c) resolution of that Pending Retention Claim; or
- (d) the W&I Insurer confirming in writing that such Pending Retention Claim has eroded (in whole or in part) the retention pursuant to the W&I Policy.

Once the Pending Retention Claim is resolved pursuant to (c) or (d) above, the Escrow Agent will pay (out of escrow) the amount of the Pending Retention Claim to the Buyer in the manner contemplated in clause 3.10.3 and shall then disburse the remaining Retention Escrow Amount (if any) to the Sellers in the manner contemplated in clause 3.4.

- 3.10.5 If, at the Retention Escrow Final Expiry Date, there are no Pending Retention Claims, the remaining portion of the Retention Escrow Amount (less any Retention Claims actually paid to the Buyer) shall be paid by the Escrow Agent to the Sellers in the manner contemplated in clause 3.4.

- 3.10.6 The Buyer's sole recourse in respect of any Retention Claim against the Sellers is a deduction from the Retention Escrow Amount held by the Escrow Agent in accordance with the Escrow Agreement.
- 3.10.7 The Sellers and Buyer agree that the provisions of this clause 3.10 are also expressed for the benefit of the Escrow Agent for the purposes of part 2 subpart 1 (contractual privity) of the *Contract and Commercial Law Act 2017* despite the Escrow Agent not being a party to this Agreement.
- 3.10.8 Despite the above, where at the time any portion of the Retention Escrow Amount is payable to the Sellers (the **Payable Escrow Amount**) and at such date (the **Retention Escrow Payment Date**) there is:
- (a) an unpaid Determined Claim which is for an amount equal to or less than the Payable Escrow Amount, then the Buyer and the Sellers' Representatives must issue the Escrow Agent with Payment Directions to:
 - (i) pay the Buyer from the Payable Escrow Amount an amount equal to the unpaid Determined Claim; and
 - (ii) after the payment contemplated in clause 3.10.8(a)(i) above, pay any residual portion of the Payable Escrow Amount (if any) to the Sellers,and such payment to the Buyer will constitute good discharge of the Sellers' payment obligation in respect of such unpaid Determined Claim;
 - (b) an unpaid Determined Claim which is for an amount greater than the Payable Escrow Amount, then then the Buyer and the Sellers' Representatives must issue the Escrow Agent with Payment Directions to pay the Buyer the Payable Escrow Amount in full, and such payment to the Buyer will constitute partial discharge of the Sellers' payment obligation in respect of such unpaid Determined Claim with the portion of the Determined Claim in excess of the Payable Escrow Amount remaining payable by the Sellers in accordance with the relevant provisions of this Agreement; and/or
 - (c) an Undetermined Claim, then the Buyer and the Sellers' Representatives must instruct the Escrow Agent to continue to hold an amount of the Payable Escrow Amount equal to the Buyer's reasonable estimate of the Undetermined Claim made in good faith (or the whole Payable Escrow Amount if the estimate of the Undetermined Claim is a greater amount) and:
 - (i) if such Undetermined Claim becomes a Determined Claim, then the withheld Payable Escrow Amount will be distributed by the Escrow Agent in the manner contemplated in clause 3.10.8(a) or clause 3.10.8(b) (as applicable); or
 - (ii) if the Undetermined Claim is:

- A. agreed in writing by the Buyer and the Sellers' Representatives to not be payable;
- B. determined by a court of competent jurisdiction to not be payable; or
- C. not agreed, not settled, or legal proceedings have not been commenced within 12 months after of the Retention Escrow Payment Date,

then the withheld Retention Escrow Amount shall become payable immediately (and the Buyer and the Sellers' Representatives must provide Payment Directions to the Escrow Agent accordingly).

3.11 **Completion Shares:**

3.11.1 **Lock-Up Period:** During the period specified this clause 3.11.1 (the **Lock-Up Period**), each Seller hereby agrees that it will not, without the prior written consent of the Buyer, (a) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any Completion Shares or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Completion Shares; or (b) enter into a transaction which would have the same effect, or enter into any swap, hedge, or other arrangement that transfers, in whole or in part, either the legal title or any of the economic consequences of ownership of the Completion Shares. In addition, each Seller agrees that, without the prior written consent of the Buyer, it will not, during the Lock-Up Period, make any demand for or exercise any right with respect to, the registration of any Completion Shares. The Lock-Up Period will commence on the Completion Date and continue for so long as the Tiny Shares remain listed on the TSX, and will end immediately upon the earlier of (i) the delisting of the Tiny Shares from the TSX; or (ii) as set out below:

- (a) as to fifty percent (50%) of the Completion Shares received by each Seller, on the first anniversary of the Completion Date;
- (b) as to twelve- and one-half percent (12.5%) of the Completion Shares received by each Seller, on the date falling 15 months after the Completion Date;
- (c) as to twelve- and one-half percent (12.5%) of the Completion Shares received by each Seller, on the date falling 18 months after the Completion Date;
- (d) as to twelve- and one-half percent (12.5%) of the Completion Shares received by each Seller, on the date falling 21 months after the Completion Date; and
- (e) as to the balance of the Completion Shares received by each Seller, on the second anniversary of the Completion Date.

In order to enforce the foregoing covenant, the Buyer Parent may impose legends to the certificates or DRS advices representing such Completion Shares or impose stop-transfer instructions with respect to the Completion Shares of each Seller (and permitted transferees and assignees thereof) until the end of such restricted period.

- 3.11.2 **Permitted Transfers.** Notwithstanding the foregoing, the Buyer Parent shall not unreasonably withhold its consent in respect of: (a) transfers by a Seller to Related Parties of the Seller, or any company, trust or other entity owned by or maintained for the benefit of the Seller, or (b) transfers occurring by operation of law or in connection with transactions arising as a result of the death of the Seller or (c) assignments or transfers of the Completion Shares as collateral assignment of rights of a Seller's secured lenders; provided, in each of (a), (b) and (c), that any such transferee shall first execute a lock-up agreement in a form acceptable to the Buyer Parent covering the remainder of the Lock-Up Period, or (d) transfers made by a Seller pursuant to a bona fide take-over bid made to all holders of voting securities of the Buyer Parent or similar acquisition, merger, plan of arrangement or similar transaction involving a change of control of the Buyer Parent, provided that in the event that the take-over or acquisition or merger transaction is not completed, any Completion Shares shall remain subject to the restrictions contained herein, or (e) transfers to any nominee or custodian where there is no change in beneficial ownership and transfers made for bona fide tax planning purposes including and where the Completion Shares are still subject to and governed by the foregoing restrictions.
- 3.11.3 **Treatment of Fractional Shares:** Any fractional entitlements arising on the determination of the Completion Shares under clause 3.2.1(c) are to be rounded down to the nearest whole Tiny Share.

4 CONDITIONS

- 4.1 **Mutual Completion Conditions:** The obligation of each Party hereto to consummate the transactions contemplated by this Agreement is subject to following conditions being satisfied or waived in accordance with this clause 4 at or prior to the Completion Date:
- 4.1.1 **Claims; Orders.** no Claim commenced by any appropriate Authority of competent jurisdiction shall be pending against any party seeking to restrain or prohibit the Transaction, and there shall be no Order of any nature of any Authority of competent jurisdiction or any Law that is in effect that restrains, prohibits or prevents the consummation of the Transaction or that has the effect of rendering it unlawful to consummate the Transaction;
- 4.1.2 **OIO Consent:** receipt by the Buyer in writing, and on terms acceptable to the Buyer (subject to clause 4.8), of all consents required under the *Overseas Investment Act 2005* and *Overseas Investment Regulations 2005* for the implementation of this Agreement; and
- 4.1.3 **TSX Consent:** the conditional approval of the TSX shall have been obtained to list the Completion Shares to be issued pursuant to the Transaction, from time to time, subject only to customary conditions to be satisfied in connection with the completion of the Transaction and/or following the completion of the Transaction.

4.2 **Completion Conditions to Obligations of Buyer:** The obligation of Buyer and Buyer Parent to consummate the transactions contemplated by this Agreement is subject to the following conditions being satisfied or waived in accordance with clause 4.7 at or prior to the Completion:

4.2.1 **Seller Warranties:** each of the Warranties contained in Schedule 4 of this Agreement that is:

- (a) (x) qualified as to materiality or Material Adverse Change, or (y) a Fundamental Warranty shall be true and correct in all respects at and as of the Completion as if made anew at such time (except to the extent any such Fundamental Warranty expressly relates to an earlier time or date (in which case it shall be true and correct in all respects as of such earlier time or date)); and
- (b) that is not a Warranty listed in (x) or (y) above, shall be true and correct in all material respects at and as of the Completion as if made anew at such time, (except to the extent any such representation and warranty expressly relates to an earlier time or date (in which case it shall be true and correct in all material respects as of such earlier time or date)) and provided:
 - (i) an exception set out in clause 7.6 does not apply; and
 - (ii) in each case, such breach would amount to a Material Adverse Change;

4.2.2 **Performance of Covenants:** each Seller and each Group Company shall have not breached in any material respect any covenants and agreements required to be performed by them hereunder prior to the Completion, provided that if such breach is capable of remedy within 14 days of being given notice to do so by the Buyer (or the Completion Date, if earlier), then the Buyer cannot terminate this Agreement due to non-satisfaction of the Condition in this clause 4.2.2 where the Seller or Group Company (as applicable) has remedied the relevant breach within such 14-day period and provided all costs of such remediation are borne by the Sellers to the extent not included in the calculation of Net Working Capital or Net Debt in the Completion Statement;

4.2.3 **Required Consents:** receipt by the relevant Group Company of consent from the relevant counterparty to the Change of Control Contracts identified with an asterisk "*" in Schedule 3 hereto on terms acceptable to the Buyer (acting reasonably) (collectively, the **Required Consents**);

4.2.4 **Finance:** the Buyer arranging sufficient financing to enable the Buyer to perform this Agreement on terms acceptable to the Buyer (acting reasonably);

4.2.5 **Serato Trustee:** the Buyer having received evidence satisfactory to it that Serato Trustee and each of the Initial Sellers have satisfied their respective obligations set out in clause 2.6 and Serato Trustee is authorised to sell all the Shares it holds to the Buyer on account of each Beneficial Shareholder having duly executed a Serato Payment Direction Deed without any further requirement to obtain approval or consent of such Beneficial Shareholders to the sale of their Shares to the Buyer;

- 4.2.6 **No Share Options on Issue:** the Buyer having received evidence satisfactory to it (acting reasonably) that:
- (a) a Liquidity Event Notice has been issued to each ESOP Participant; and
 - (b) each ESOP Participant has returned a duly executed ESOP Participant Deed of Indemnity to the Company; or
 - (c) in respect of any ESOP Participant that has not returned a duly executed ESOP Participant Deed of Indemnity to the Company, the board of the Company has resolved that the Share Options held by such ESOP Participants shall lapse without payment immediately upon Completion in accordance with rule 6.9 of the ESOP;
- 4.2.7 **Securities Laws:** the distribution of the Completion Shares pursuant to the Transaction shall be exempt from the prospectus and registration requirements of applicable securities Laws in the jurisdictions in which the Sellers are located;
- 4.2.8 **New Employment Agreement:** [PERSONAL INFORMATION REDACTED] signing a new individual employment agreement, in Agreed Form, with Serato Limited which are conditional upon, and take effect on and from, Completion (the **New Employment Agreement**); and
- 4.2.9 **No Material Adverse Change:** no Material Adverse Change occurring during the Interim Period.
- 4.3 **Completions Conditions to Obligations of Sellers:** The obligation of Sellers to consummate the transactions contemplated by this Agreement is subject to the following conditions being satisfied or waived in accordance with clause 4.7 at or prior to the Completion:
- 4.3.1 **Buyer Warranties:** each of the representations and warranties contained in this Agreement shall be true and correct in all respects at and as of the Completion as if made anew at such time (except to the extent any such representation and warranty expressly relates to an earlier time or date (in which case it shall be true and correct in all respects as of such earlier time or date)); and
 - 4.3.2 **Performance of Covenants.** the Buyer and Buyer Parent have not breached in in any material respect any covenants and agreements required to be performed by them hereunder prior to the Completion, provided that if such breach is capable of remedy within 14 days of being given notice to do so by the Sellers (or Completion, if earlier), then the Sellers cannot terminate this Agreement due to non-satisfaction of the Condition in this clause 4.3.2 where the Buyer or Buyer Parent (as applicable) has remedied the relevant breach within such 14-day period.

4.4 Endeavour to Satisfy Conditions:

4.4.1 The Sellers will procure that the Company uses all reasonable endeavours to procure the satisfaction of all the Conditions in clauses 4.1 and 4.2 (except for the Finance Condition) as expeditiously as possible and, in any event, no later than the Condition Date.

4.4.2 Without detracting from clause 4.8, the Buyer will use all reasonable endeavours to procure the satisfaction of the Conditions in clauses 4.1 and 4.3, and the Finance Condition, as expeditiously as possible and, in any event, no later than the Condition Date.

4.4.3 The Sellers and the Buyer will each from time to time:

- (a) co-operate with each other as necessary to satisfy the Conditions;
- (b) upon request from the other, provide such reasonable assistance to the other as is necessary to satisfy the Conditions;
- (c) keep the other informed as to progress in procuring satisfaction of its obligations under this clause 4.4; and
- (d) subject to clauses 4.5 and 4.8, not take any action or omit to take any action to deliberately subvert or undermine the fulfilment of the OIO Condition,

provided that these obligations does not limit any Party's discretion to determine whether or not a Condition has been satisfied (where applicable).

4.5 Limitation on Parties' Obligations: The obligations under this clause 4 do not require any Party to:

4.5.1 pay money, other than reasonable amounts paid in connection with obtaining Required Consents and amounts required to be paid under applicable Contracts, customary fees and charges (including charges of professional advisers and any OIO filing fees);

4.5.2 provide any other consideration or incur any Liability, actual or contingent, in order to satisfy the Conditions (but excluding, in respect of the Buyer, any lending, fees, cost, charges, or other liabilities incurred in respect of the finance obtained by the Buyer to satisfy the Finance Condition);

4.5.3 do or omit to do anything that constitutes or is likely to constitute a breach of Law; or

4.5.4 subject to clause 4.8, accept or agree to any condition imposed by a counterparty on its consent other than a condition that would have an immaterial effect on the Party bound by such condition.

4.6 Notification:

4.6.1 Each Party must promptly notify the other Parties in writing of the fulfilment of a Condition after that Party becomes aware of the fulfilment of the Condition. Any notification delivered in accordance with this clause 4.6 must be accompanied by

sufficient evidence to reasonably satisfy the other Parties of the fulfilment of the Condition, including a copy of any consent or other documentation.

- 4.6.2 Should it become known that a Condition has definitively become incapable of satisfaction, the Party with that knowledge shall promptly inform the other Parties in writing, and in any event within two Business Days of the relevant fact having become known.

4.7 **Waiver of Conditions:**

- 4.7.1 The Conditions in clause 4.2 have been inserted for the sole benefit of the Buyer and may accordingly only be waived by the Buyer giving written notice to the Sellers' Representatives. The Conditions in clause 4.3 have been inserted for the sole benefit of the Sellers and may accordingly only be waived by the Sellers giving written notice from the Sellers' Representatives to the Buyer.
- 4.7.2 If one or more of the Conditions in clauses 4.2.1, 4.2.2, 4.2.3, 4.2.5 and 4.2.6 have been waived by the Buyer, the fact that such Condition in clause 4.2.1 and 4.2.2 have not been satisfied, or in relation to Condition in clauses 4.2.3, 4.2.5 or 4.2.6 the fact that the evidence of which is required in order to satisfy either such Condition has not been obtained, shall not be considered as a breach of the Warranties and the Buyer cannot bring a Warranty Claim in respect of such matter.
- 4.7.3 The conditions in clause 4.1 have been included for the mutual benefit of the Buyer and the Sellers. The Buyer and the Sellers acknowledge that the any such mutual Condition cannot be waived.
- 4.7.4 Any waiver of a Condition in accordance with this clause 4.7 may not be retracted and the Condition which has been waived will be deemed to have been satisfied on the date of waiver.

4.8 **Specific Obligations relation to the OIO Condition:** Without prejudice to any obligations under clause 4.3:

- 4.8.1 The Buyer confirms that the OIO Application was submitted to the OIO prior to the Agreement Date, and the Buyer will:
- (a) pay the OIO filing fees when they are due;
 - (b) diligently progress the OIO Application in a timely fashion (including, to the extent within the Buyer's control, by responding to the OIO in a timely manner and, where applicable, in compliance with timeframes prescribed by the OIO in respect of all of its questions and other correspondences);
 - (c) not resile from or change (with a consequence that would be likely to be materially adverse to the prospects of satisfying the OIO Condition) any of the express written assurances or other express written commitments provided by the Buyer to the OIO in, or in connection with, the OIO Application;

- (d) other than on termination of this Agreement, not withdraw or procure the withdrawal of the OIO Application prior to the Condition Date;
 - (e) not withhold its approval to any terms or conditions or any consent or approval granted or to be granted for the purposes of the OIO Condition if the conditions imposed by the OIO are the then-current example conditions published by the OIO from time to time for the type of consent under the *Overseas Investment Act 2005* that the Buyer requires to complete the Transaction; and
 - (f) subject to, where relevant, the Sellers' compliance with clause 4.8.2, promptly provide to the OIO all notices, information and documents required from the Buyer by the OIO for the purposes of fulfilling the OIO Condition.
- 4.8.2 The Sellers confirm that a copy of the "vendor information form" was submitted to the OIO in relation to the Transaction prior to the Agreement Date.
- 4.8.3 With respect to satisfying the OIO Condition, the Sellers shall cooperate with the Buyer and shall provide such assistance as the Buyer may reasonably request in connection with satisfying the OIO Condition. In particular the Sellers shall, subject to appropriate confidentiality protections, furnish to the Buyer such necessary information and reasonable assistance as the Buyer may reasonably request in connection with the OIO Application process or satisfying the OIO Condition.
- 4.8.4 The Sellers shall not, with respect to the Group, enter into any transaction, investment, agreement, arrangement or joint venture or take any other action, the effect of which would reasonably be expected to make satisfying the OIO Condition materially more difficult or challenging, or reasonably be expected to materially delay the satisfaction of the OIO Condition.
- 4.8.5 Subject to applicable confidentiality restrictions or restrictions required by Law, the Sellers shall promptly send to the Buyer any requests, responses or other communication from the OIO in connection with the OIO Condition and the parties hereto shall act in good faith and reasonably cooperate to respond as promptly as practicable to any such request, responses or communications. The Buyer and the Sellers shall as promptly as practicable, provide any documents, instruments, information or confirmations that are reasonably required to permit the other party to comply with its obligations under this clause 4.8.
- 4.8.6 Subject to applicable confidentiality restrictions or restrictions required by Law, and subject to any rights of the Buyer under this clause 4.8, the Buyer and the Sellers' Representative (in the case of receipt by a Seller or member of the Group) will notify the other party promptly upon the receipt of (a) any investigation, comments, questions or other inquiry from any officials of any Authority in connection with any filings made pursuant to this clause 4.8 or otherwise and (b) any request by any officials of any Authority for amendments or supplements to any filings made pursuant to any applicable Laws of any Authority. Without limiting the generality of the foregoing, all analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals to be submitted or made by or on behalf of either party to or before any Authority or the staff or regulators of any Authority in connection with the Transaction

but, for the avoidance of doubt, not including any interactions between the Buyer or the Sellers' Representative with Authorities in the ordinary course of business or any disclosure that is not permitted by Law) shall be disclosed to the other party hereunder in advance of such filing, submission or attendance, it being the intent of the parties to consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. The Buyers and Representative shall advise the other of any substantive communication with any Authority in respect of any such filings, investigation, comments, questions or other inquiry and in good faith provide the other prior notice of the meeting and, to the extent permitted by such Authority and practical under the circumstances, the opportunity to attend and participate. The parties may, as they deem advisable, designate any competitively sensitive materials provided to the other under this clause 4.8 or any other clause of this Agreement as "outside counsel only". Such materials and the information contained therein shall be given only to outside counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, directors, or managers of the recipient without the advance written consent of the party providing such materials. The parties may, as they deem advisable, redact materials provided to the other under this clause 4.8 as necessary to comply with contractual arrangements, address reasonable attorney-client or other privilege or confidentiality concerns, and exclude any information relating to Group valuation.

4.8.7 The Sellers shall, with respect to the Group, submit any filings, applications, documents, proposals, notices, plans, responses to inquiries or other documents or materials intended for the OIO (the **Other OIO Filings** and each an **Other OIO Filing**) to the Buyer for review and comment prior to submitting same to the OIO. The Sellers will consider reasonable additions, deletions or changes to any Other OIO Filings suggested by the Buyer and shall not submit any Other OIO Filings to the OIO without the prior consent of the Buyer, such consent not to be unreasonably withheld, delayed or conditioned. The Buyer covenants and agrees to respond promptly to the Sellers in respect of the Buyer's review of the Other OIO Filings.

4.9 [CONFIDENTIAL BUSINESS INFORMATION REDACTED].

4.10 **Termination:**

4.10.1 If any Condition is incapable of being satisfied or is not satisfied or waived in accordance with clause 4.7 before 5.00pm on the Condition Date, then either the Sellers' Representatives or the Buyer may terminate this Agreement by notice in writing to the other.

4.10.2 If this Agreement is terminated under this clause 4.10:

- (a) except for clauses 4.10 and 4.11, and clauses 1, 15, 19, 20, and 21 this Agreement has no further effect;

- (b) subject to clause 4.11, no Party shall have any Claim against any other Party other than in relation to any breach of this Agreement occurring before termination; and
- (c) except for the Break Fee (if payable pursuant to clause 4.11), the Sellers must immediately return any money paid to them in respect of the Purchase Price by the Buyer.

4.11 **Break Fee:**

4.11.1 In the event that this Agreement is terminated by the Buyer or the Sellers' Representatives under clause 4.10.1 in circumstances where:

- (a) all Conditions (other than the Finance Condition, the approval of the TSX and the MAC Condition) have been satisfied (or, if satisfaction thereof is dependent upon Completion, are capable of being satisfied) or, where applicable, waived by the Condition Date;
- (b) no Material Adverse Change had occurred during the period between the Agreement Date and up to the time notice of termination is given under clause 4.10.1; and
- (c) at the time notice of termination is given, (i) none of the Warranties of the Sellers in this Agreement have become untrue or incorrect such that the condition set forth in clause 4.2.1 would not be satisfied (treating such time as if it were the Completion for purposes of applying this clause 4.11.1(c) and as if all transactions contemplated by this Agreement that are due to occur immediately prior to Completion will and have occurred), and (ii) there has been no breach on the part of the Group or Sellers of any of their respective covenants or agreements contained in this Agreement such that the condition set forth in clause 4.2.2 would not be satisfied (treating such time as if it were the Completion for purposes of applying this clause 4.11.1(c)), and, in any case, such untrue or inaccurate Warranty, or covenant breach (if curable or conditioned) has not been waived, cured or satisfied within 15 Business Days (or, provided such breach or condition is capable of being cured or satisfied, such greater period of time, not exceeding ninety (90) Business Days, as may reasonably be required to cure such breach or satisfy such condition provided such actions shall be diligently and faithfully prosecuted by the Sellers using commercially reasonable efforts) after delivery of notice thereof by the Buyer to the Group and the Sellers' Representatives;

then the Buyer must, within 10 Business Days after receipt of a written demand for payment from the Company, pay the Company the sum of US\$660,000 plus GST, if applicable (the **Break Fee**), in the manner contemplated in clause 3.3.

4.11.2 The Parties each acknowledge and agree that:

- (a) the Company and the Sellers have incurred, and will continue to incur, significant costs and expenses in pursuing the Transaction, including advisory fees, management and directors' time, out-of-pocket expenses, and the opportunity costs of pursuing this Transaction instead of alternative transactions or business opportunities (collectively, the **Costs**);
- (b) the Costs actually incurred are of such nature that they cannot accurately be ascertained;
- (c) the Break Fee is a genuine and reasonable estimate of the Costs that have or will be actually incurred by the Company and the Sellers pursuing the Transaction; and
- (d) the Company and the Sellers have negotiated the inclusion of this clause 4.11 in this Agreement and would not have entered into this Agreement without it.

4.11.3 The Buyer acknowledges that agreeing to pay the Break Fee under the circumstances described in clause 4.11.1 is reasonable and appropriate to secure the Sellers' and the Company's agreement to enter into this Agreement.

5 INTERIM PERIOD MATTERS

- 5.1 **Operations Pending Completion:** During the Interim Period, the Sellers shall procure that each Group Company shall, subject to clause 5.3, continue to (a) operate in the ordinary course of business, while seeking to preserve the value of its assets, goodwill and current business relationships and maintain its trading and financial position, and all in accordance with all applicable Laws, (b) maintain insurance reasonably comparable to that in effect on the Agreement Date, (c) maintain inventory and supplies at customary and adequate operating levels and replace any inoperable, worn out, damaged or obsolete assets with modern assets of at least comparable quality in a manner consistent with the ordinary course of Business, (d) maintain their books, accounts and records and the Accounts in a manner consistent with the ordinary course of Business, (e) make capital expenditures in the ordinary course of Business, and (f) maintain in full force and effect the existence of all Company Owned IP, in each case (a) to (f), in the ordinary course of Business.
- 5.2 **Restrictions Pending Completion:** Subject to clause 5.3, during the Interim Period, the Sellers shall procure that no Group Company shall or shall agree to directly or indirectly (whether conditionally or not):
 - 5.2.1 change its issued share capital in any way (including the creation of new shares, the redemption or repurchase of shares or the issuance of new shares or securities or rights to acquire new shares or securities of any member of the Group Company), or any rights attached to any of its shares, except for the issue of Shares following the exercise of any Share Options granted pursuant to the ESOP;
 - 5.2.2 change any existing or grant any new option or right to subscribe for any shares or other securities in any of the Group Companies;

- 5.2.3 declare, set aside, pay or make any Dividend or other Distribution in a way that is not otherwise accounted for in the calculation of the Net Working Capital and/or Net Debt in the Completion Statement;
- 5.2.4 amend or change its constitutional or governing documents;
- 5.2.5 change its accounting policies or cash management practices or cancel any material debts owed to it or material claims held by it;
- 5.2.6 pass any resolution of its shareholders or any class of its shareholders to do any of the things contemplated in this clause 5.2;
- 5.2.7 enter into any kind of insolvency process or any arrangement with its creditors generally;
- 5.2.8 adopt any resolution with respect to, or undertake, any merger, demerger, liquidation or dissolution or any other kind of business combination or reorganisation;
- 5.2.9 incorporate or organize any person, (b) acquire any rights, assets, or properties (other than in the ordinary course of business), or (c) acquire any equity interests or other securities of any person;
- 5.2.10 acquire or dispose (including by way of lease or license) of:
 - (a) any shares or any other interest in any person, company, business or partnership (except for the disposal of shares in Serato Trustee in accordance with the Trustee SPA);
 - (b) any real estate or interest in real estate;
 - (c) rights, assets, or properties (other than in the ordinary course of business); or
 - (d) any Business IP, except software licenses granted to end users (including subscription and perpetual licenses) and trade mark and software licences granted to the Group's hardware partners, in each case, in the ordinary course of business;
- 5.2.11 grant any interest in any real estate or vary the terms of, terminate or waive any rights under, any lease of real estate;
- 5.2.12 grant any interest in any Intellectual Property it owns except software licenses granted to end users (including subscription and perpetual licenses) and trade mark and software licences granted to the Group's hardware partners, in each case, in the ordinary course of business;
- 5.2.13 cancel or fail to renew any registration of any Business IP it owns;
- 5.2.14 sell, assign, transfer, lease, permit to lapse, license (except in the ordinary course) or otherwise Encumber any Company Owned IP, or take or fail to take any action that could

reasonably be expected to result in the loss, lapse or abandonment of any Group's Intellectual Property Rights or Confidential Information;

- 5.2.15 create any Encumbrance over any of its assets or undertaking (except Permitted Encumbrances);
- 5.2.16 waive any rights of any Group Company that are of material value;
- 5.2.17 enter into, amend or terminate any agreement or arrangement with any Seller or any Related Party;
- 5.2.18 waive any amounts owed to it by, or any rights it has against, any Seller or any Related Party;
- 5.2.19 terminate or amend (in a manner that is prejudicial to any Group Company member) any existing Material Contract or arrangement in respect of the Business (except where the counterpart is in default), or take any action, or omit to do anything, which would result in the termination of any Material Contract;
- 5.2.20 enter into, amend or terminate any Contract, or series of related Contracts which should reasonably be assessed together, where the aggregate payments by or revenues for the Group in any 12 month period would exceed [CONFIDENTIAL BUSINESS INFORMATION REDACTED] unless the Contract, or series of related Contracts, is on the Group's standard terms of trade or consistent with standard terms accepted previously by the Group in the ordinary course of business;
- 5.2.21 incur, authorize or commit to make any capital expenditure (or series of related capital expenditures) that exceeds [CONFIDENTIAL BUSINESS INFORMATION REDACTED] in the aggregate;
- 5.2.22 accelerate the collection of or discounted accounts receivable, delayed the payment of accounts payable or accrued expenses, delayed the purchase of supplies or delayed capital expenditures, repairs or maintenance (other than in the ordinary course of business)
- 5.2.23 make any loan or investment (including (a) any direct or indirect purchase or other acquisition by such person of any notes, obligations, instruments, stock, securities or ownership interests (including limited liability company interests, partnership interests and joint venture interests) of any other person, and (b) any capital contribution by such person to any other person) or grant any credit (except trade credit in the ordinary course of business); incur, increase or assume any indebtedness for borrowed money, give any guarantee or indemnity in relation to the obligations or Liabilities of any other person (except only for the benefit of another Group Company in the ordinary course of business);
- 5.2.24 cancel or fail to renew any of its insurance policies in the ordinary course or do or omit to do anything which would make any such policy void or voidable;

- 5.2.25 (a) announce any changes to or made or granted any increase or decrease to any bonus, salary, base wage, annual fee or other compensation payable or provided to any former or current officer, director, employee or other individual service provider of any Group Company member (other than wage increases in the ordinary course of business), (b) announce any changes to, or made or granted any increase to any benefits under, any existing Employee Benefit Plan (including any plan or arrangement that would be an Employee Benefit Plan if it was in effect on the date hereof), (c) amend, modify or terminate any existing Employee Benefit Plan (including any plan or arrangement that would be an Employee Benefit Plan if it was in effect on the date hereof) or commenced participation in, adopted, established, or entered into any new Employee Benefit Plan (including any plan or arrangement that would be an Employee Benefit Plan if it was in effect on the date hereof), (d) grant, pay or increase any severance, change in control, deferred compensation, retention, equity or equity based or other similar payment or benefit to any former or current officer, director, employee or other individual service provider of any Group Company, or (e) accelerate the time of payment, vesting or funding of any compensation or benefits, or provided for the payment of amounts not otherwise due, under any Employee Benefit Plan;
- 5.2.26 employ any new employees or change the basis of employment of any of the Group Companies' employees, other than:
- (a) new hires having an annual compensation of less than [CONFIDENTIAL BUSINESS INFORMATION REDACTED] in the ordinary course of business where such hires are made to fill a vacant position within the business; or
 - (b) new hires having an annual compensation of less than [CONFIDENTIAL BUSINESS INFORMATION REDACTED] to replace employees who resign during the Interim Period (provided that the terms and remuneration for those new hires are equivalent to those on which the departed employee was employed); or
 - (c) new hires contemplated in the Approved Hiring Plan;
- 5.2.27 except in the ordinary course of business, make any material changes to the terms and conditions of employment (including remuneration and benefits) of any of its Employees, including the implementation of any office closure, layoff of employees, reduction-in-force, furlough, salary or wage reduction, work schedule change, or any mass termination provisions under applicable Laws;
- 5.2.28 enter into, amend or terminate any collective agreements or other arrangements with any trade union, works council or other employees' representative body;
- 5.2.29 establish, participate in or contribute to any new pension scheme or grant any new retirement, death or disability benefit;
- 5.2.30 waive or release any non-competition, non-solicitation, nondisclosure, non-interference, non-disparagement, or other restrictive covenant obligation of any current or former employee or independent contractor;

- 5.2.31 settle or compromise any Claim (with any Authority or other third party) or pursuant to which any Group member will have any material obligation following the Agreement Date;
 - 5.2.32 (a) revoke or change any material election in respect of Taxes, (b) change any method or practice of income Tax accounting, (c) settle or compromise any material Liability for Taxes other than a Liability arising in the ordinary course of business, (d) enter into any closing Contract relating to any Tax, (e) agree to an extension or waiver of a statute of limitations period applicable to any Tax Demand or assessment (excluding extensions as a result of ordinary course extensions of time to file Tax Returns), (f) enter into any Tax sharing, Tax allocation, Tax indemnity or similar Contract (other than any commercial Contracts entered into in the ordinary course of business the principal purpose of which is unrelated to Taxes);
 - 5.2.33 terminate, amend, fail to renew or preserve or fail to maintain in full force and effect any permit or authorization granted by any Authority to a Group Company that is material and/or required to operate the Business;
 - 5.2.34 enter into any major transaction (as that term is defined in the Companies Act); or
 - 5.2.35 agree, whether orally or in writing, to do any of the foregoing.
- 5.3 **Permitted Actions:** Clauses 5.1 and 5.2 shall not restrict or prevent a Group Company from doing anything:
- 5.3.1 required by, or to give effect to, this Agreement;
 - 5.3.2 that is necessary for the Sellers or any Group Company to perform its statutory or existing contractual obligations as fairly disclosed in the Due Diligence Materials;
 - 5.3.3 that is reasonably necessary to respond to any act of God or other disaster;
 - 5.3.4 involving the declaration of any Long Service Recognition Bonuses;
 - 5.3.5 with the Buyer's prior written consent (not to be unreasonably withheld or delayed) and which will be deemed given if the Buyer does not respond within five (5) Business Days of the Seller's written request for consent together with supporting documents and details regarding such consent as reasonably required for the Buyer to make an informed decision) delivered in accordance with clause 19;
 - 5.3.6 that involves the replacing or rolling over of any Contracts in the ordinary course of business on materially the same terms or terms more favourable for the Group Company; or
 - 5.3.7 to comply with any applicable Law, regulation or governmental order (including orders relating to operating restrictions in direct response to any national health initiatives).
- 5.4 **Information and Access:** During the Interim Period, upon the Sellers' Representatives receiving reasonable prior notice from the Buyer, the Sellers will procure that the Group, and each Group member's respective officers, directors, managers, and employees, attorneys, accountants and

other agents (subject to confidentiality restrictions and attorney client privilege), provides the Buyer and its nominated representatives with reasonable access, on a temporary basis and under the supervision of the Sellers' Representatives (or their nominees) where required by the Sellers' Representatives, to the Business, to the records held by the Group and to the senior management of the Group, and subject to the sole discretion of the Sellers (acting reasonably), to the customers, suppliers, lessors, other contracting parties of the Group, during normal office hours to allow the Buyer to familiarise itself with the Business and/or to plan for the transition of ownership of the Company, provided that the Buyer must only coordinate and arrange such access in good faith with the Sellers' Representatives and not with any other employee of the Group or agent of the Sellers when exercising its rights pursuant to this clause. Such access must be carried out so that it does not disrupt the business activities of the Group.

5.5 **New Directors:** The Buyer will provide the Sellers' Representatives with the names of the persons it nominates as directors of each Group Company (the **New Directors**) at least five (5) Business Days before the Completion Date.

5.6 **Completion Notice:** The Sellers' Representatives must, at least three (3) Business Days before the Completion Date, provide the Buyer with a schedule setting out the Company's good faith estimate of:

5.6.1 the itemised Estimated Net Debt and the Estimated Net Working Capital as at the Effective Time (together with any reasonable supporting documentation required by the Buyer);

5.6.2 the Settlement Amounts to be paid by the Buyer on behalf of the Company in accordance with clause 3.2.2; and

5.6.3 the Completion Cash Payment required to be paid by the Buyer to the Sellers' Nominated Account on the Completion Date, provided that the Buyer is not liable for the allocation of such payment between each of the Sellers,

(the **Completion Notice**).

5.7 **Treatment of Share Options**

5.7.1 The Company currently operates the ESOP under which Share Options have been granted to the ESOP Participants. The Parties intend that the ESOP is terminated contemporaneously with Completion and all current entitlements under it either are exercised or lapse without Liability of the Company, in each case, in accordance with the terms of the ESOP, such that no options to acquire Shares remain in existence on and from Completion and that any Shares issued on such exercise are sold to the Buyer on the terms set out in this Agreement.

5.7.2 The Sellers will procure that the Company takes all necessary steps (including amending the ESOP, if required) to provide for the following:

- (a) effect a moratorium (if required) which will prohibit the exercise of any Share Option until the date that is five (5) Business Days prior to the Completion Date

and otherwise in accordance with a Liquidity Event Notice to be issued by the Company;

- (b) upon the issue of a Liquidity Event Notice, the Company can require any ESOP Participant who elects to exercise their Share Options to provide a deed in favour of Serato Trustee pursuant to which the ESOP Participant irrevocably and unconditionally:
 - (i) instructs Serato Trustee to sell its legal and beneficial interest in the Shares (which will be issued to Serato Trustee following the exercise of the Share Options) to the Buyer, effective as of Completion;
 - (ii) instructs Serato Trustee to:
 - (A) deduct from its Relevant Proportion of the Completion Cash Payment an amount equal to the exercise price payable for the Share Options which the ESOP Participant wishes to exercise; and
 - (B) pay such deducted amount to the Company;
 - (iii) instructs Serato Trustee to:
 - (A) deduct from its Relevant Proportion of the Completion Cash Payment an amount equal to the Company's estimate of the Tax payable by the ESOP Participant as a result of exercising its Share Options; and
 - (B) pay such deducted amount to the Company to remit to the Tax Authority of the ESOP Participant's behalf;
 - (iv) provides Serato Trustee with an instruction in respect of the ESOP Participant's nominated bank account details to which the ESOP Participant's share of the proceeds will be paid to; and
 - (v) provides an indemnity in favour of Serato Trustee and the Buyer pursuant to which the ESOP Participant agrees to pay to the Buyer:
 - (A) the amount of any Fundamental Warranty Claim for which Serato Trustee becomes liable where it relates to the Share held by Serato Trustee for the ESOP Participant; and
 - (B) the proportionate amount of any Claim that Serato Trustee is liable to the Buyer under this Agreement (outside of clause 5.7.2(b)(v)(A)) with such proportionate share being based on the number of Sale Shares held by Serato Trustee for the ESOP Participant as against all Sale Shares held by Serato Trustee,

such deed being in Agreed Form (the **ESOP Participant Deed of Indemnity**), and it being further acknowledged that none of the ESOP Participants shall be required to enter into a Deed of Accession.

- 5.7.3 Prior to the Company issuing a Liquidity Event Notice to the ESOP Participants in accordance with the ESOP, the Company will resolve that all unvested Share Options will become vested Share Option (subject to, and immediately prior to, Completion occurring).
- 5.7.4 To the extent that an ESOP Participant elects to exercise their Share Options so as to become a Beneficial Shareholder in the Company, then:
- (a) all Shares issued as a result of exercising the Share Options will be issued to the Serato Trustee, on behalf of the applicable ESOP Participant, and deemed to be Sale Shares, in full and complete satisfaction of any and all rights that the applicable ESOP Participant has in the Share Options;
 - (b) the Shares and Sale Shares attributed to Serato Trustee in Schedule 1 shall be increased by the same number of the corresponding Shares to be issued as a result of exercising the Share Options;
 - (c) the Parties agree that Schedule 1 will be updated to take account of the increase in Shares (and Sale Shares) resulting from the exercise of the Share Options;
 - (d) the definition of Shares and Sale Shares in this Agreement shall be adjusted to the new total number of Shares shown in the adjusted Schedule 1; and
 - (e) to the extent that any exercise price is paid for the exercise of the Share Option and received by the Company (even if received after the Effective Time), it shall be treated as Cash for the purposes of calculating Net Debt in accordance with Schedule 5.
- 5.8 **Liquidity Event Notice:** The Sellers must procure that the Company issues a Liquidity Event Notice, in a form acceptable to the buyer, acting reasonably, within 10 Business Days of the Agreement Date.
- 5.9 **Exclusivity:** From the Agreement Date through the earlier of the Completion Date and the termination of this Agreement in accordance with its terms, each Seller agrees that they shall not, and shall procure that no Group Company shall, whether directly or indirectly (including by permitting their respective shareholders, employees, officers, directors, Related Parties, advisors, agents or other representatives) to: (a) encourage, initiate, solicit, entertain, negotiate, facilitate, discuss, accept, approve, endorse or agree to, directly or indirectly, any proposal or offer (a **Proposal**) by a Third Party (other than Buyer or any other person Buyer designates) regarding (i) the sale or license of all or any material assets of the Company or any of its Subsidiaries (other than the sale of obsolete inventory or the licensing of the Company Products or its Trademarks in the ordinary course) or (ii) any sale of equity or equity equivalents in the capital of Group Company, merger, business combination, joint venture, consolidation, public offering, recapitalization, refinancing or other similar transaction involving a Group Company (the transactions referred to in clause (i) or (ii) above, each a **Competing Transaction**); (b) provide any

information regarding the Group (including this Agreement and any other materials containing Buyer's or its Representatives' proposal) to any person who has made or could reasonably be expected to make a Proposal regarding a Competing Transaction (other than to Buyer or its Representatives, or information provided by a Group Company to its customers in the ordinary course); or (c) enter into any Competing Transaction or any agreement, memorandum of understanding or letter of intent relating thereto. The Group and each Seller and each of their respective controlling persons, shareholders, employees, officers, directors, Related Parties, advisors, agents or other representatives shall immediately cease and cause to be terminated any previously undertaken or ongoing activities, discussions or negotiations with any other person with respect to any Competing Transaction (other than with Buyer or its Representatives). Each Seller shall (y) promptly (and in any event, within 24 hours) notify Buyer if it, or, to its knowledge, any Group Company or any Group Company's controlling persons, shareholders, employees, officers, directors, Related Parties, advisors, agents or other representatives receives after the Agreement Date, any Proposal regarding a Competing Transaction or any indications of interest or requests for information in respect of such Proposal, and (z) procure that the Company promptly (and in any event within two Business Days of the Agreement Date) requests in writing that all persons who have or could be reasonably expected to make a Proposal regarding a Competing Transaction and to whom non-public information concerning any Group Company has been distributed on or prior to the Agreement Date so to facilitate such party making a Proposal for a Competing Transaction destroy or return such information to such Group Company as soon as possible (and, if applicable under contractual arrangements between the Group Company and such persons, certify as to the destruction of such information) and immediately cause any Third Party (other than Buyer or its representatives and agents and any other person Buyer designates) to cease to have any access to the Due Diligence Dataroom or any similar data site.

- 5.10 **Affiliate Matters:** On or prior to the Completion Date, all intercompany accounts, all intercompany External Indebtedness agreements, and all other intercompany obligations (in each case) between any Seller, on the one hand, and any Group Company, on the other hand, and any other Related Party of the Sellers or the Group (each, an **Intercompany Seller Obligation**), shall be settled or otherwise eliminated or terminated, as applicable, and cancelled in full, effective as of the Completion, with no consideration or continuing Liability by any party (including by members of the Sellers or any of its respective Related Parties removing from the Group all Cash or funds from cash pools by means of dividends, distributions, the repayment of intercompany debt, increasing or decreasing of cash pool balances or paid-in capital or otherwise). All intercompany accounts, all intercompany External Indebtedness agreements and all other intercompany obligations between or among the Group Companies (other than such accounts or agreements created in the ordinary course in servicing third-party contracts with a term of 30 days or less) (each, a **Company Obligation**, and together with the **Intercompany Seller Obligations**, the **Intercompany Obligations**) shall be settled or otherwise eliminated or terminated, as applicable, and cancelled in full, effective as of the Completion, with no consideration or continuing Liability by any party.
- 5.11 **Notice of Untrue Representation:** Each Seller shall notify the Buyer, and the Buyer shall notify the Sellers' Representatives, promptly upon such party becoming aware that any representation or warranty made by it contained in this Agreement becoming incorrect during the Interim Period, and, for the purposes of this clause 5.11, unless the representation or warranty is otherwise specified as being given at a particular time, each representation and warranty shall be deemed to be given at and as of all times from the Agreement Date to the Completion Date and the

Warranties (other than the Fundamental Warranties) are deemed given subject to any fact, matter, circumstance, and disclosure or information fairly disclosed in the Due Diligence Materials, or expressly stated in this Agreement. Any such notice shall set out particulars of the untrue or incorrect representation or warranty and details of any actions being taken by the Sellers or the Buyer, as the case may be, to rectify the incorrectness. No such notice will relieve either Party of any right or remedy provided for in this Agreement.

- 5.12 **W&I Insurance:** The Parties acknowledge that, on or prior to the Agreement Date, the Buyer has obtained a conditional binder agreement for the W&I Policy in the form attached as Schedule 9 (the **W&I Binder**). The Buyer shall, in accordance with the terms and conditions of the W&I Binder, timely pay or cause to be paid, the W&I Costs.
- 5.13 **Procuring Cyber Insurance Policy:** The Company will promptly following the Agreement Date use commercially reasonable endeavours to procure on behalf of itself and its Subsidiaries insurance coverage on a "claims made" basis for cyber insurance for cyber liability coverage at a reasonable level agreed between the Sellers' Representative and the Buyer (both acting reasonably). The Buyer and Buyer Parent agree to use commercially reasonable endeavours to work with the Company to determine whether the Company (and its Subsidiaries) can leverage off and group policies available to the Buyer Parent in this context.
- 5.14 [CONFIDENTIAL BUSINESS INFORMATION REDACTED].

6 COMPLETION

- 6.1 **Time and Place of Completion:** Subject to the satisfaction or waiver of the Conditions in accordance with this Agreement, Completion shall take place prior to 4.00pm on the Completion Date remotely via the electronic exchange of documents and signatures and wiring of funds, or at any place agreed upon in writing between the Sellers' Representatives and the Buyer.
- 6.2 **Sellers' Obligations:** At Completion each Seller will deliver to the Buyer (in a form acceptable to the Buyer, acting reasonably):
- 6.2.1 **Bring Down Certificate:** a certificate, signed by the Sellers' Representatives on behalf of the Sellers and dated as of the Completion Date, certifying that the Conditions set forth in clause 4.2.1 and 4.2.9 have been satisfied and the Condition in clause 4.2.2 have been satisfied in all material respects, provided that (i) nothing in this certificate shall be construed as imposing or creating any liability on the Sellers or the Sellers' Representatives beyond that which is already contemplated under this Agreement, and (ii) the Sellers and Sellers' Representatives shall not be deemed to have made or given any representation or warranty other than those expressly set forth in this Agreement;
- 6.2.2 **Transfers:** executed transfers of the Seller's Sale Shares in registerable form and in favour of the Buyer as transferee;
- 6.2.3 **Share Certificates:** the share certificates for the Seller's Sale Shares, or if no share certificates have been issued in respect of the Seller's Sale Shares, a certificate to that effect signed by a director of the Company (one such certificate being satisfactory in respect of all the Sale Shares);

- 6.2.4 **Encumbrances on Sale Shares:** unconditional and irrevocable releases and discharges of any Encumbrances over or affecting any of the Seller's Sale Shares, or evidence satisfactory to the Buyer (acting reasonably) that those Sale Shares have been released and discharged as at the Completion Date from any Encumbrances;
- 6.2.5 **New Shareholders' Agreement:** if a Seller is one of the Sellers numbered 1 to 4 in the Reference Table, a copy of the New Shareholders' Agreement duly executed by the Seller;
- 6.2.6 **Corporate Resolutions:** certified copies of signed valid resolutions of (a) each Seller that is not an individual and the Company authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents contemplated hereby to which each is a party and the consummation of the Transaction, and (b) the board of directors of the Company and the shareholders approving the transfer of the Sale Shares and directing that the name of the Buyer be entered in the Company's share register as the holder of the Sale Shares once the duly executed transfers have been delivered to the Company and approving the transfer of the Sale Shares to the Buyer for the purposes of clause 10.1 of the Shareholders' Deed;
- 6.2.7 **Share Registers:** a copy of the Company's share register duly updated to record the completion of the Transaction;
- 6.2.8 **Resignations and Acknowledgements:**
- (a) a resignation in writing from each director of each Group Company designated by the Buyer (other than the Remaining Directors) (the **Resigning Directors**), effective from Completion in Agreed Form;
 - (b) an acknowledgement in writing from each Resigning Director to the effect that each Group Company (of which that director is a director) does not and will not owe that person any obligation or money, whether by way of fees, salary, expenses, compensation for loss of office or otherwise, and that person has no Claims or basis for a Claim of any nature against any Group Company (but, for the avoidance of doubt, such acknowledgement does not extend to normal accrued salaries and employee entitlements to the extent the director is an employee of a Group Company); and
 - (c) evidence of the passing by the board of directors of each Group Company of a valid resolution approving the acceptance of the resignations contemplated in clause 6.2.8(a);
- 6.2.9 **Resolutions Appointing New Directors:** a certified copy of a signed valid ordinary resolution of the shareholder of each Group Company other than the Company (or such other instrument of equivalent effect), dated on or before the Completion Date, appointing the relevant New Directors as directors of that Group Company, with effect from the later of Completion or the date on which the relevant Group Company receives a signed director consent certificate;

- 6.2.10 **Required Consents:** duly signed copies of all Required Consents received by the relevant Group Company in accordance with clause 13;
- 6.2.11 **Escrow Agreement:** a copy of the Escrow Agreement signed by the Sellers' Representatives and the Escrow Agent;
- 6.2.12 **Documents and Records:**
- (a) the constitution, the minute books of meetings of the directors and meetings of the shareholders (in each case also containing any written resolutions made), and all registers for each Group Company;
 - (b) all material documents of title, leases, licences and securities (whether negotiable or otherwise) of each Group Company held by the Sellers; and
 - (c) any accounting records and other books, documents and records relating to the affairs of each Group Company held by the Sellers,
- except to the extent that such documents or records are already in the possession, or under the control, of a Group Company;
- 6.2.13 **Termination of Intercompany Seller Obligations:** evidence of the termination of all Intercompany Seller Obligations with no Liability to the Company or any Subsidiary (in each case, in a form reasonably satisfactory to the Buyer);
- 6.2.14 **Serato Trustee Deliveries:** copies of the signed documents contemplated in clause 4.2.5 (as applicable) including without limitation, a duly signed copy of the Trustee SPA and a duly signed copy of a Serato Payment Direction Deed in respect of each Beneficial Shareholder; and
- 6.2.15 **Termination of Shareholders' Deed:** a copy of a Deed of Termination signed by each Seller and the Company.
- 6.3 **Buyer's Obligations:** At Completion, subject to the Sellers complying with clause 6.2, the Buyer will:
- 6.3.1 deliver to the Sellers:
- (a) a copy of the Escrow Agreement duly signed by the Buyer;
 - (b) a copy of the New Shareholders' Agreement duly signed by the Buyer and the Buyer Parent;
 - (c) evidence of the aggregate and final amount of the W&I Costs; and
 - (d) within the period allowed under the W&I Policy:

- (i) a copy of the W&I Binder signed by the W&I Insurer along with copies of the no-claims declarations which the Buyer must provide the W&I Insurer in accordance with the W&I Policy;
 - (ii) evidence of payment to the W&I Insurer or its broker of the W&I Costs;
 - (iii) subject to the prior receipt by the Buyer from the Sellers of a USB memory stick incorporating a full indexed copy of the Due Diligence Dataroom by no later than 10 Business Days after the Agreement Date, delivery to the W&I Insurer a USB memory stick incorporating a full indexed copy of the Due Diligence Dataroom;
- 6.3.2 pay the Completion Cash Payment and the Settlement Amounts, in each case, paid in accordance with clauses 3.2 and 3.3 (as applicable);
- 6.3.3 pay the Adjustment Escrow Amount and the Retention Escrow Amount to the Escrow Agent to be held in accordance with the Escrow Agreement;
- 6.3.4 [CONFIDENTIAL BUSINESS INFORMATION REDACTED];
- 6.3.5 deliver a copy of the conditional approval letter of the TSX authorizing the issuance of the Completion Shares to the Sellers' Representatives; and
- 6.3.6 deliver a signed treasury direction directing Computershare Trust Company of Canada, as registrar and transfer agent of the Buyer Parent, to issue and deliver share certificates or electronic book entries (DRS advices) in lieu of share certificates, representing the Completion Shares issued in the name of, and delivered to, the Sellers in the proportions set out in column 5 of the Reference Table.
- 6.4 **Simultaneous Actions:** All actions at Completion will be deemed to take place simultaneously, and no delivery or payment will be deemed to be made until all have been made (except to the extent that the obligation to perform any act, or deliver any item, has been waived by another Party).
- 6.5 **Effective Time:** Subject to Completion actually occurring, the sale and purchase of the Sale Shares shall be deemed to have occurred on the Effective Time.
- 6.6 **Appointment of New Directors:** In respect of the New Directors, copy of a shareholders' resolution of the Company pursuant to which the Sellers agree to appoint the relevant New Directors to the board of the Company on Completion and this Agreement shall serve, for the purposes of sections 122 and 153(2) of the Companies Act, as an irrevocable written resolution of such shareholders to the appointment, and if more than one, for each of the appointments for the New Directors.

7 WARRANTIES

7.1 Sellers' Warranties:

- 7.1.1 Each Seller severally warrants to the Buyer that, except as disclosed in the Disclosure Letter, each of the Fundamental Warranties (as they relate to that Seller and that Seller's Sale Shares) and the Tax Warranties are true and accurate as at the Agreement Date and Completion.
- 7.1.2 Each Seller severally warrants to the Buyer that, except as disclosed in the Due Diligence Materials, each of the Warranties (except for the Fundamental Warranties and Tax Warranties which are dealt with by clause 7.1.1) are true and accurate as at the Agreement Date and Completion.
- 7.1.3 Notwithstanding the foregoing, each Seller and the Buyer agree that where Warranties (other than Tax Warranties) are specifically qualified with reference to the Disclosure Letter or the Due Diligence Dataroom, they shall only be qualified to the extent that such qualification is fairly disclosed in the applicable Due Diligence Dataroom folder or document referenced therein.
- 7.1.4 For the purposes of clauses 7.1.3 and 7.6.1 it is agreed in respect of information in a folder or document(s) in the Due Diligence Dataroom that cross-references to another folder or document(s) in the Due Diligence Dataroom (**Reference Materials**), it shall be deemed to include the Reference Materials to the extent that the information is fairly disclosed.

7.2 **Warranties Independent:** Each Warranty is separate and independent, save as expressly provided.

7.3 **No Merger:** Each of the Warranties will remain in full force and effect on and after the Completion Date notwithstanding Completion.

7.4 Several Liability:

- 7.4.1 Notwithstanding any other provision of this Agreement, the Liability of each Seller under this Agreement (whether pursuant to a Warranty Claim, a Tax Claim or otherwise) shall be several and each Seller will be liable for only that Seller's Relevant Proportion of the Sellers' total aggregate liability.
- 7.4.2 The Fundamental Warranties (as they relate to that Seller and that Seller's Sale Shares) are given by each Seller only in relation to itself or the Shares owned by that Seller (as the case may be). Each Seller gives no representation or warranty in relation to any other Seller or the Shares held by any other Seller, and the Buyer will not make a Claim against a Seller in respect of such warranties given by any other Seller.
- 7.4.3 Without detracting from the foregoing, the Liability of each Seller for Claims relating to the Fraud of a Seller, will be limited to, and comprise all loss in respect of, Claims arising as a result of that Seller or any person acting on behalf of, or on the direction or instruction of, that Seller.

- 7.5 **Claims in Respect of Tax:** No Claim shall be made in respect of Tax under any Warranty other than in accordance with, and subject to the limitations contained in, the Tax Indemnity.
- 7.6 **Exceptions:** The Warranties (other than the Tax Warranties and the Fundamental Warranties) are given on the basis that they will take effect subject to:
- 7.6.1 any fact, matter, circumstance, disclosure or information fairly disclosed in the Due Diligence Materials, or expressly stated in this Agreement provided that where a Warranty is specifically qualified by reference to the Disclosure Letter or the Due Diligence Dataroom, they shall only be qualified to the extent that such qualification is fairly disclosed in the applicable Due Diligence Dataroom folder or document referenced therein;
 - 7.6.2 any matter recorded, as at the date two Business Days prior to the Agreement Date in a register or database held by the Registrar of Companies, the Intellectual Property Office of New Zealand, the High Court of New Zealand or on the PPSR, in each case which is capable of being searched without restriction by the public and by searching against the name of any Group Company on such date that is four (4) Business Days prior to the Agreement Date;
 - 7.6.3 any matter specifically provided for under the terms of this Agreement;
 - 7.6.4 anything done or omitted to be done at the written request, or with the written approval of the Buyer; and
 - 7.6.5 the qualification that the Sellers will not be liable to the Buyer for any Loss in respect of a breach of Warranty to the extent that the Buyer has made recovery in respect of the same Loss under the Tax Indemnity.
- 7.7 **Group Company's Loss is Buyer's Loss:** For the purpose of any Claim made by the Buyer Indemnified Party under this Agreement, Loss will be deemed to accrue to the Buyer Indemnified Party to the extent that that Loss is suffered or incurred by any Group Company. It will not be necessary for the Buyer Indemnified Party to establish Loss or damage to itself whether by way of diminution of the value of the Sale Shares or otherwise, and the amount of the Loss to the Buyer Indemnified Party will be deemed to be equal to the Loss suffered or incurred by any relevant Group Company multiplied by the Acquired Percentage (expressed as a decimal). However, in no event shall more than one Buyer Indemnified Party be entitled to recover for the same Loss, and the Sellers shall not be liable for any double recovery.

8 INDEMNIFICATION

- 8.1 **Indemnification in Favour of Buyer:**
- 8.1.1 Subject to the limitations, qualifications and exceptions contained in clause 7 and this clause 8, from and after Completion, the Sellers shall severally indemnify in their Relevant Proportions and save harmless the Buyer Indemnified Parties from and against any Losses suffered by, imposed upon or asserted against any Buyer Indemnified Party as a result of, in respect of, connected with, or arising out of, under, or pursuant to:

- (a) any inaccuracy in or breach of any:
 - (i) Warranty that is not a Fundamental Warranty or a Tax Warranty (a breach of a Tax Warranty, for the avoidance of doubt, is subject to indemnification under clause 9); and
 - (ii) Fundamental Warranty,

given in accordance with clause 7 and, in each case and for the avoidance of doubt, does not include any breach or misrepresentation of another Seller with respect to any such Warranty, and it being understood that, for purposes of determining the accuracy of any such Warranty and the Loss as a result of, in respect of or arising out of any breach or inaccuracy, all "material", "materiality", "in all material respects" and "Material Adverse Change", qualifications contained in such representations will be disregarded;
- (b) any breach of the covenants, conditions, obligations or agreements of such Seller or the Group member (with respect to covenants or agreements to be performed prior to the Completion) contained in this Agreement or any Transaction Document (but excluding the New Shareholders' Agreement):
 - (i) relating to the Interim Period; or
 - (ii) the period on and from Completion,

which, for greater certainty, will not include any breach or failure of any covenant, condition, obligation or agreement to be performed by any other Seller;
- (c) any Transaction Expenses, Intercompany Seller Obligations, or External Indebtedness to the extent not:
 - (i) included in the calculation of Net Working Capital or Net Debt in the Completion Statement; or
 - (ii) otherwise paid prior to Completion,

(such amount being the **Outstanding Indebtedness**) provided that:

 - (iii) if any Intercompany Seller Obligation is attributable solely to a specific Seller (or a group of Sellers), then the right to recover under this clause 8.1.1(c) in respect of that Intercompany Seller Obligation shall be limited to that Seller (or such group of Sellers) only;
 - (iv) in the event a group of Sellers is responsible for or has benefited from such Intercompany Seller Obligation, each Seller in that group shall be liable for the resulting claim only in proportion to the extent to which it has benefited from or is otherwise responsible for the Intercompany Seller Obligation; and

- (v) when calculating a Buyer Indemnified Party's Loss in respect of the Outstanding Indebtedness is to be multiplied by the Acquired Percentage (expressed as a decimal);
- (d) any Fraud committed by such Seller relating to or in connection with the Transaction or the Business (which for greater certainty will not include any Fraud committed by any other Seller);
- (e) any repayment or claw-back obligation under any funds advanced under the Funding Agreements prior to Completion and Taxes assessable thereon, except to the extent that a repayment obligation or Taxes assessable thereon arise in connection with a breach or event occurring after Completion (excluding, for certainty, Completion itself as such an event);
- (f) the Group's failure (if any) to pay holiday pay in accordance with the Holidays Act 2003 on any amounts paid by the Group to employees or directors or past employees or persons found to be properly categorised as employees, in respect of the period prior to Completion, provided that the Buyer Indemnified Party will not be entitled to make or pursue a Claim under the indemnity granted pursuant to this clause 8.1.1(f):
 - (i) [CONFIDENTIAL BUSINESS INFORMATION REDACTED]; and
 - (ii) [CONFIDENTIAL BUSINESS INFORMATION REDACTED];
- (g) [CONFIDENTIAL BUSINESS INFORMATION REDACTED]:
 - (i) [CONFIDENTIAL BUSINESS INFORMATION REDACTED]; and
 - (ii) [CONFIDENTIAL BUSINESS INFORMATION REDACTED]; and
 - (iii) [CONFIDENTIAL BUSINESS INFORMATION REDACTED]; and
- (h) any Claim by a Third Party against the Company or any of its Subsidiaries for infringement, misappropriation, dilution, violation, enforceability, use (including any assertion of misuse), ownership, scope, licensing or validity with respect to any Company Owned IP that arises from any facts or circumstances existing prior to the Effective Time, provided that:
 - (i) such Claim for Loss may only be made where the relevant Claim was excluded from coverage under the W&I Policy pursuant to an exception specified in the W&I Policy;
 - (ii) with respect to any Loss incurred by the Buyer Indemnified Parties which is not fully compensated under the W&I Policy:
 - (A) [CONFIDENTIAL BUSINESS INFORMATION REDACTED]; and
 - (B) [CONFIDENTIAL BUSINESS INFORMATION REDACTED]]; and

- (iii) in calculating Loss arising from any Claim under this clause 8.1.1(h), such Loss will be reduced to the extent that the subject of the Claim reduces the Tax Liability of any Group Company or any Buyer Indemnified Party, but only to the extent such reduction of Tax Liability is actually realized by the relevant Group Company or any Buyer Indemnified Party.

8.1.2 The indemnities set out in clause 8.1.1 shall be the sole and exclusive remedy of the Buyer Indemnified Parties for any Losses or liabilities relating to or arising out of the matters referred to in clause 8.1.1(a) to clause 8.1.1(h), absent Fraud of the Sellers (but without detracting from any remedies available to the Buyer pursuant to clause 12.2).

8.2 Indemnification in Favour of Sellers:

8.2.1 Buyer shall indemnify and save the Seller Indemnified Parties harmless of and from any Loss suffered by, imposed upon or asserted against the Seller Indemnified Parties as a result of, in respect of, connected with, or arising out of, under or pursuant to:

- (a) any failure of Buyer to perform or fulfil any of its covenants or agreements under this Agreement; and
- (b) any breach or inaccuracy of any representation or warranty given by Buyer contained in this Agreement, it being understood that, for purposes of determining the accuracy of any Warranty and the Losses a result of, in respect of or arising out of any breach or inaccuracy, all "material", "materiality", "in all material respects" and "Material Adverse Change", qualifications contained in such representations will be disregarded.

8.3 **Sources of Recovery:** Notwithstanding anything to the contrary contained in this Agreement, or any right or remedy available under any applicable Law:

8.3.1 with respect to Losses so owing by Sellers pursuant to clause 8.1.1(a)(i) and except to the extent provided in clause 8.1.1(h), those Losses so owing by the Sellers will be solely satisfied from the following sources in the following order:

- (a) first, after satisfaction of the Basket, if the Retention Escrow Amount has not been reduced to nil, Buyer shall seek recovery for such claim from the Retention Escrow Amount by making a Retention Claim until the Retention Escrow Amount has been exhausted; and
- (b) second, to the extent that the Retention Escrow Amount has been exhausted, from the coverage provided under the W&I Policy, up to the W&I Policy's coverage limit (the **Policy Limit**),

and except to the extent provided in clause 8.1.1(h), for the avoidance of doubt, if both the Retention Escrow Amount and the W&I Policy coverage under (a) and (b) above have been fully exhausted or otherwise do not provide coverage, the Buyer shall have no further recourse, and no right of recovery shall exist, against any Seller in respect of such Losses;

- 8.3.2 with respect to Losses so owing by Sellers or a particular Seller pursuant to clause 8.1.1(a)(ii) (as the case may be), from the following sources in the following order:
- (a) first, if the Retention Escrow Amount has not been reduced to nil, Buyer shall seek recovery for such claim from the Retention Escrow Amount until the Retention Escrow Amount has been exhausted;
 - (b) second, to the extent that the Retention Escrow Amount has been met, from the coverage provided under the W&I Policy, up to the Policy Limit; and
 - (c) third, to the extent that the Retention Escrow Amount has been exhausted and any portion of such Losses are not covered by under the W&I Policy, by direct recovery from the Sellers in their Relevant Proportions or the particular Seller (as the case may be and, in particular, without detracting from clause 7.4.2);
- 8.3.3 with respect to Losses so owing by Sellers pursuant to clauses 8.1.1(b) through 8.1.1(e), inclusive, and pursuant to the Tax Indemnity, from the following sources in the following order:
- (a) first, if the Retention Escrow Amount has not been reduced to nil, Buyer shall seek recovery for such claim from the Retention Escrow Amount by making a Retention Claim until the Retention Escrow Amount has been exhausted;
 - (b) second, to the extent that the Retention Escrow Amount has been exhausted, from the coverage provided under the W&I Policy, up to the Policy Limit; and
 - (c) third, to the extent that the Retention Escrow Amount has been exhausted and any portion of such Losses are not covered by under the W&I Policy, by direct recovery from the Sellers in their Relevant Proportions; and
- 8.3.4 in no event will any Seller Indemnified Party or Buyer Indemnified Party, as the case may be, be entitled to recover or make a claim for indemnification under this clause 8 for any amounts in respect of, and in no event will "Losses" for purposes of this clause 8 be deemed to include, (i) duplicative Losses or amounts of any kind, including any portion of proceeds actually recovered and received by any Buyer Indemnified Party under the W&I Policy, solely to the extent the underlying claim arose from the same event, fact or circumstance), or (ii) any amount of Losses (or portions thereof) to the extent such Loss is taken into account as a current liability in the calculation of the Net Working Capital or otherwise taken into account in the determination of the final Purchase Price as Net Debt or a Transaction Expense pursuant to the Completion Statement (it being understood that the sole purpose of this clause 8.3.4 is to avoid double-recovery of the same Loss and not to limit, relieve or extinguish any Party's indemnification obligations owed under this Agreement).

8.4 **Time Limits:**

- 8.4.1 Each Buyer Indemnified Party will not be entitled to make or pursue any Claim with respect to any Losses for which a Buyer Indemnified Party is entitled to indemnification

under clause 8.1.1 or under the Tax Indemnity unless the Buyer Indemnified Party gives the Sellers' Representatives written notice of such Claim:

- (a) for any Tax Claim within seven years after Completion;
- (b) for any Warranty Claim in respect of a Fundamental Warranty, within seven years after Completion;
- (c) for all other Warranty Claims (excluding Fundamental Warranty and Tax Claims), within 24 months after Completion;
- (d) for a Claim in respect of the indemnities provided under clause 8.1.1(b)(i) or clause 8.1.1(c), within 12 months after Completion;
- (e) for a Claim in respect of the indemnity provided under clause 8.1.1(g) within 24 months after Completion;
- (f) for a Claim in respect of the indemnity provided under clause 8.1.1(h), within 36 months after Completion; and
- (g) any Warranty or Tax Claim based on Fraud shall survive the Completion and continue in full force and effect without limitation of time.

8.4.2 In respect of a notice given by the Buyer pursuant to clause 8.4.1 in respect of a Claim other than a Tax Claim, the Sellers will have no liability for such Claim unless the Claim has been agreed, settled or legal proceedings in a court of competent jurisdiction of the Claim have been commenced by the Buyer with or against the Sellers within 18 months of the Claim being notified by the Buyer in accordance with clause 8.4.1 (provided such date will automatically extend for successive 3-month periods for so long as the Sellers and the Buyer remain in bona fide settlement negotiations as at that 18 month date).

8.4.3 Notwithstanding the foregoing, the survival periods specified in this clause 8.4 do not affect coverage under the W&I Policy with respect to which the time periods specified in the W&I Policy shall apply to Claims brought under the W&I Policy.

8.5 **Minimum Amounts:** The Buyer will not be entitled to make or pursue any Warranty Claim (other than a Fundamental Warranty Claim and a Tax Claim) unless the amount (excluding any legal or other professional costs incurred in respect of the Claim) of that Warranty Claim (each such threshold amount referred to herein as the **Basket**):

8.5.1 exceeds an amount equal to 0.1% of the Purchase Price in respect of any individual Warranty Claim or series of similar or related Warranty Claims, in which case any such Claim may be made for the whole amount and not only to the extent of the excess; and

8.5.2 when aggregated with all other Warranty Claims (if any) which satisfy clause 8.5.1, exceeds an amount equal to 1% of the Purchase Price, in which case any such Warranty Claim may be made for the whole amount and not only to the extent of the excess,

provided that, in each case, the limitations contained in this clause 8.5 shall not apply in the case of any Claim involving Fraud.

8.6 Total Liability:

8.6.1 Except Claims in relation to Fraud by that Seller, the Sellers' aggregate total Liability for Loss for:

(a) Fundamental Warranty Claims and Tax Claims shall not exceed the Purchase Price; and

(b) other Warranty Claims, shall not exceed fifty percent (50%) of the Purchase Price, in each case, (as may be adjusted pursuant to this Agreement).

8.6.2 In no event shall each Seller's aggregate total liability for any Claims arising out of or in connection with this Agreement (whether in tort, contract or otherwise) exceed an amount equal to:

(a) in relation to any and all Fundamental Warranty Claims and Tax Claims, that Seller's Relevant Proportion of the Purchase Price; and

(b) in relation to any and all other Warranty Claims (except Claims in relation to Fraud by that Seller), the dollar amount equal to fifty percent (50%) of the Seller's Relevant Proportion of the Purchase Price,

provided that in all cases, the maximum aggregate liability of each Seller for all Claims arising out of or in connection with this Agreement (except Claims in relation to Fraud by that Seller) shall not exceed an amount equal to that Seller's Relevant Proportion of the Purchase Price.

8.6.3 The Buyer's aggregate total Liability for any and all indemnifiable Claims for Loss in connection with breach of any representation or warranty of the Buyer under this Agreement shall not exceed the Purchase Price, as may be adjusted pursuant to this Agreement.

8.7 **Duty to Mitigate:** The Buyer shall take, and shall after Completion procure each Group Company to take, all reasonable steps to avoid or mitigate any Loss or Liability which might give rise to a Warranty Claim (other than a Tax Claim) provided that the Buyer shall be entitled to claim against the Sellers for all Losses reasonably incurred in connection with such mitigation.

8.8 **Recoveries from Third Parties:** If the Buyer (or any other member of the Buyer Group) is at any time entitled to recover or otherwise claim reimbursement from a third party (including an insurer or a Third Party hardware manufacture, but excluding the W&I Insurer) in respect of any matter or circumstance giving rise to a claim under this Agreement the following provisions shall apply:

8.8.1 the Buyer shall (or shall procure that the relevant member of the Buyer Group shall) take all necessary steps to enforce such recovery or seek such reimbursement from the relevant third party and shall do so before making such claim against the Sellers;

- 8.8.2 the liability of the Sellers in respect of such claim shall be reduced by the amount (if any) actually recovered from the relevant third party (less all reasonable costs, charges and expenses incurred by the Buyer or the relevant member of the Buyer Group in recovering that sum), or extinguished if the amount recovered (less all reasonable costs, charges and expenses incurred by the Buyer or the relevant member of the Buyer Group in recovering that sum) exceeds the amount of the relevant claim; and
- 8.8.3 if the Sellers make a payment to the Buyer in respect of such claim and the Buyer (or any member of the Buyer Group) recovers from a third party a sum which is referable to that claim, the Buyer shall promptly repay to the Seller the lower of:
- (a) the amount recovered from such third party (less all reasonable costs, charges and expenses incurred by the Buyer (or the relevant member of the Buyer Group) in recovering that sum); and
 - (b) the amount paid to the Buyer by the Seller in respect of the relevant claim.

If any amount is repaid to the Sellers in accordance with clause 8.8.3, the amount so repaid shall be deemed to have never been paid by the Sellers to the Buyer.

- 8.9 **Other Limitations:** The party (including, in the case of the Buyer, the Buyer Indemnified Parties, and in the case of the Sellers, the Seller Indemnified Parties) making a Claim under this clause 8 is referred to as the **Indemnified Party**, and the party against whom such claim is asserted under this clause 8 is referred to as the **Indemnifying Party**.

The Sellers shall not be liable for any Warranty Claim (other than a Tax Claim):

- 8.9.1 based on a contingent Liability unless and until the contingent Liability becomes an actual Liability and is due and payable, provided that this clause 8.9.1 will not prevent the Buyer in good faith notifying a Claim in respect of a contingent loss under clause 8.4;
- 8.9.2 if and to the extent that provision or a reserve was made for the matter giving rise to the Claim in the Accounts, the Management Accounts or the Completion Statement;
- 8.9.3 to the extent the relevant circumstance or amount has been or is made good without Loss, cost or Liability to the Buyer Indemnified Party;
- 8.9.4 to the extent the Loss claimed is or represents Consequential Loss arising from a breach of the Warranties;
- 8.9.5 to the extent arising out of any act or omission, or obligation entered into or made, by the Buyer Indemnified Party or the Group, after Completion (other than where a continuation of past practice);
- 8.9.6 to the extent that the relevant Loss arises from or is attributable to a change in, or change in implementation or interpretation of, accounting policies, or Law or regulation or governmental or local authority policy, taking effect after Completion; and

- 8.9.7 to the extent that the Loss which is the subject of the Claim reduces the Tax Liability of any Group Company or any Buyer Indemnified Party, to the extent such reduction of Tax Liability is actually realized by the relevant Group Company or any Buyer Indemnified Party.
- 8.10 **Direct Claims:** Without detracting from the time limits in clause 8.4, in the event an Indemnified Party intends to make a Claim for indemnity under this clause 8 against an Indemnifying Party that does not involve a Third Party Claim or a Tax Claim (a **Direct Claim**), the Indemnified Party agrees to give prompt notice in writing of such Claim to the Indemnifying Party within the relevant period described in clause 8.4. As promptly as is reasonably practicable after becoming aware of any Direct Claim that an Indemnified Party in good faith believes may result in a Loss under this clause 8, but in no event more than 90 days after first becoming aware of such Claim, the Indemnified Party shall notify the Indemnifying Party in writing of such claim (a **Claim Notice**), including the facts alleged to constitute the basis for such Claim, the amount or the estimated amount of Losses sought thereunder to the extent then known or reasonably ascertainable and any other material details pertaining thereto; provided, however, that the failure to timely give such Claim Notice as promptly as is reasonably practicable (but in no event more than 90 days after first becoming aware of the Claim to which the Claim Notice relates) shall not affect the rights of an Indemnified Party hereunder unless such failure has materially prejudiced the defenses or other rights available to the Indemnifying Party with respect to such Claim.
- 8.11 **Third Party Claims:**
- 8.11.1 If any Claim that is not a Direct Claim or a Tax Claim for which an Indemnifying Party may have Liability to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a Third Party (a **Third Party Claim**), such Indemnified Party shall deliver a Claim Notice to the Indemnifying Party in accordance with clause 8.10; provided, however, that the failure to timely give a Claim Notice as promptly as is reasonably practicable (but in no event more than 90 days after first becoming aware of the Claim to which the Claim Notice relates) shall not affect the rights of an Indemnified Party hereunder unless such failure has materially prejudiced the defenses or other rights available to the Indemnifying Party with respect to such Third Party Claim.
- 8.11.2 The Indemnifying Party shall have the right, exercisable by written notice to the Indemnified Party within 45 days of receipt of a Claim Notice, to assume and conduct the defense of such Third Party Claim with counsel selected by the Indemnifying Party. If the Indemnifying Party has assumed such defense, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by any Indemnified Party in connection with the defense of such Third Party Claim; provided, that such written notice must admit the Indemnifying Party's obligation to indemnify the Indemnified Party for the matters set forth in such Claim Notice. If the Sellers have assumed such defense as the Indemnifying Party, the Buyer will (at the Sellers' cost) in good faith use reasonable endeavours to cooperate and procure the Group to use reasonable endeavours to cooperate, with the Sellers in the avoidance, defence or compromise of such Third Party Claim.
- 8.11.3 If the Indemnifying Party does not assume the defense of any Third Party Claim, the Indemnified Party may continue to defend such Third Party Claim at the sole cost of the

Indemnifying Party (subject to the limitations set forth in this clause 8 and provided it is proven the Indemnifying Party is liable to indemnify the Indemnified Party for the Loss to which the Third Party Claim relates), and the Indemnifying Party may still participate in, but not control, the defense of such Third Party Claim at the Indemnifying Party's sole cost and expense.

- 8.11.4 Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume control of such defense (unless otherwise agreed to in writing by the Indemnified Party), if (a) the Claim for indemnification relates to or arises in connection with any criminal or quasi criminal proceeding, action, indictment, allegation or investigation; (b) the Claim seeks an injunction or equitable relief against the Indemnified Party; (c) the Indemnified Party reasonably believes that the Losses relating to such Claim would exceed the maximum amount that the Indemnified Party could then be entitled to recover under the applicable provisions of this clause 8; (d) the Third Party Claim does not seek solely monetary damages; (e) the Third Party Claim relates to or involves a Claim asserted directly or on behalf of a person that is a customer, supplier or employee of the Indemnified Party, or (f) the Indemnified Party is seeking recovery against the Indemnifying Party for Fraud.
- 8.11.5 The Indemnified Party will not consent to a settlement of, or the entry of any Order arising from, any such Third Party Claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably withheld or delayed). Except with the prior written consent of the Indemnified Party (such consent not to be unreasonably withheld or delayed), no Indemnifying Party, in the defense of any such claim, will consent to the entry of any Order or enter into any settlement that (a) provides for injunctive or other non-monetary relief affecting the Indemnified Party or (b) does not include, as an unconditional term thereof, the giving by each claimant or plaintiff to such Indemnified Party of a release from all liability with respect to such Third Party Claim. In any such Third Party Claim, the party responsible for the defense of such Claim shall, to the extent reasonably requested by the other party, keep such other party informed as to the status of such Third Party Claim, including all settlement negotiations and offers.
- 8.11.6 The party controlling the defense of any Third Party Claim shall promptly notify the other party of each settlement offer with respect to a Third Party Claim. Such other party shall promptly notify the party controlling the defense whether or not such other party is willing to accept the proposed settlement offer. If Sellers are the party controlling the defense of any Third Party Claim and are willing to accept any proposed settlement offer, but Buyer Indemnified Party refuses to accept such settlement offer, and if (a) such settlement offer requires only the payment of monetary damages and provides a complete release of all Indemnified Parties that are parties to such Third Party Claim with respect to the subject matter thereof and (b) the amount of such proposed settlement will not exceed the limitations contained in this clause 8, then the amount payable to the Indemnified Parties with respect to such Third Party Claim will be limited to the amount of such settlement offer, subject to the limitations contained in this clause 8. Sellers' Representatives, on behalf of Sellers, may nevertheless propose in writing a good faith, reasonable settlement offer that requires only the payment of monetary damages and provides a complete release of all Indemnified Parties who are parties to such Third Party Claim with respect to the subject matter thereof; provided, however, that the amount of

any such proposed settlement offer may not exceed the limitations contained in this clause 8. If Buyer Indemnified Party refuses to agree to or to make the proposed settlement offer to the claimant in the Third Party Claim, any amount payable to a Buyer Indemnified Party with respect to such Third Party Claim will be limited to the amount of such proposed settlement offer.

- 8.11.7 Where the Sellers are liable for the costs of the defence or are liable to the Buyer Indemnified Party to the full extent of the Claim, then any costs or other judgment proceeds in favour of the Buyer Indemnified Party, the Group or the Sellers (to the extent received by a Buyer Indemnified Party or a Group member on behalf of the Sellers) in relation to the Claim are immediately payable to the Sellers to the extent of the Sellers' aggregate Liability for those costs and in respect of that Claim. In all other circumstances, such costs or other proceeds may be retained by, and will be payable to, the Buyer Indemnified Party or the Group.
- 8.12 **No cancellation; damages:** Subject to clause 4.10 and clause 12, notwithstanding any statutory or common law or other rights of the Buyer (which are, to the extent permitted by Law, negated), no breach of any of the Warranties or other obligations of the Sellers under this Agreement shall entitle the Buyer to cancel this Agreement or to exercise any remedies conferred by Law (whether arising in tort (including negligence), in contract, statute, by operation of Law or otherwise) other than to sue for damages.
- 8.13 **W&I Policy:** Nothing in this clause 8 shall be deemed to limit any rights of the Buyer Indemnified Parties as against the W&I Insurer under the W&I Policy.
- 8.14 **Other Insurance Policies:** The amount to which any Indemnified Party is entitled hereunder shall be reduced by the amount of insurance proceeds (other than under the W&I Policy) actually received by the Indemnified Party in respect of such claim for indemnification, less any reasonable costs and expenses (including deductibles and co-insurance) incurred by the Indemnified Party in order to collect such insurance proceeds and less the net present value of any increases in premiums attributable to such amounts. If the Indemnified Party or any Related Party receives any such insurance proceeds subsequent to an indemnification payment by the Indemnifying Party, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made or expense incurred by such Indemnifying Party in connection with providing such indemnification payment up to the amount of the relevant insurance proceeds, less any out-of-pocket collection or out-of-pocket recovery costs and expenses (including deductibles and co-insurance) incurred by such person in order to collect insurance proceeds and less the net present value of any increases in premiums attributable to such Losses. Notwithstanding the foregoing, a Buyer Indemnified Party will not be required to reimburse amounts actually received from the W&I Insurer to the extent such Buyer Indemnified Party's total Losses exceed the limits available under the W&I Policy.
- 8.15 **Purchase Price Adjustment:** Any amounts paid under this clause 8 (including under the W&I Policy) shall be treated as an adjustment to the Purchase Price for all purposes, to the extent permitted under applicable Law.

9 TAX INDEMNITY

- 9.1 **Tax Indemnity:** Subject to any applicable limitations under this Agreement (including those specifically identified in clause 7 or clause 8 as relating to this Tax Indemnity or a Tax Claim), each Seller agrees to indemnify (in their Relevant Proportions) the Buyer and will pay to the Buyer (by way of adjustment to the Purchase Price) the Acquired Percentage of any amount of Tax for which a Group Company is or becomes liable (**Tax Liability**) to the extent that the Tax:
- 9.1.1 wholly or partly (in which case the Sellers' Liability will be limited to that part) relates to any period or part period ending on or prior to Completion; or
 - 9.1.2 arises from a breach of a Tax Warranty.
- 9.2 **Claim in respect of Tax:** The Buyer will not be entitled to make any Claim in respect of Tax, including for breach of a Tax Warranty, other than in accordance with the terms of, and subject to the limitations applicable to, the Tax Indemnity.
- 9.3 **Limitations:** The Sellers are not required to meet any Tax Claim under clause 9.1 in relation to a Tax Liability to the extent that:
- 9.3.1 the Tax Liability has been satisfied on or before Completion at no cost to the Buyer;
 - 9.3.2 there is a specific reserve or provision for the Tax Liability in the Completion Statement;
 - 9.3.3 the Tax would not have arisen, or Relief would not have been lost, but for:
 - (a) this Agreement to sell the Sale Shares;
 - (b) any change in the ownership (including by reference to direct or indirect voting interests or market value interests) in a Group Company after Completion other than one caused by the Sellers;
 - (c) the elimination of tax memorandum account balances of a Group Company as a result of the transfer of the Sale Shares under this Agreement; or
 - (d) the inability of a Group Company to carry forward tax credits or net losses as a result of the sale of the Sale Shares under this Agreement;
 - 9.3.4 the Tax would not have arisen, or would have been reduced or eliminated, but for the failure by a Group Company or the Buyer after Completion to make a Claim or election or to give any notice or consent, where the requirement to make or give such Claim, election, notice or consent was notified to the Buyer in writing by the Sellers' Representatives before the Completion Date (provided that the Buyer or the relevant Group Company is able to make such Claim or election, or to give such notice or consent by Law);
 - 9.3.5 an increased liability for Tax in one period ending prior to Completion is or will be directly offset by a reduced liability for Tax of the same type, and arising out of the same matter, in another period ending no later than six years of Completion;

- 9.3.6 the Tax Liability arises (or is increased) as a result of a voluntary change in accounting principles or any voluntary change in the treatment of any item for Tax purposes made by a Group Company after Completion;
- 9.3.7 any Relief available to a Group Company, in relation to a period ending on or before the Completion Date, is able to satisfy or offset that Tax Liability (except to the extent that it has been taken into account in the Completion Statement);
- 9.3.8 it arises from any change in Law (including any increase in the rates of Tax and the imposition of any new type of Tax) that comes into force after the Completion Date;
- 9.3.9 the liability for Tax has arisen from the disposal of assets after Completion, however this limitation shall not apply to the extent (and only to that extent) that the Tax arises from a breach of a Tax Warranty;
- 9.3.10 a Group Company makes, will make, or has made a Tax Saving in relation to the matters giving rise to the Claim under the Tax Indemnity in a period after Completion but ending within the time to make a Tax Claim;
- 9.3.11 the Tax relates to an amount of income or an asset that was not taken into account in the Completion Statement and the income or value of the asset exceeds the Tax payable in respect of that income or asset;
- 9.3.12 the Group Company amends any Tax return filed prior to Completion by the Group Company with any Tax Authority (unless the amendment is required by Law or the Sellers consent to the amendment, which can not to be unreasonably withheld or delayed);
- 9.3.13 the Tax Liability is increased by a Group Company or the Buyer, without the written consent of the Sellers' Representatives (such consent not to be unreasonably withheld or delayed), making a payment (except to the extent required by Law) or admission of Liability in respect of the Tax Liability; or
- 9.3.14 the Tax results from or relates to the change (on or after the Completion Date) of the tax balance date of a Group Company.

9.4 **Indemnity for Net Position:**

- 9.4.1 The Sellers' aggregate Liability under the Tax Indemnity (of which the Sellers will be severally liable in their Relevant Proportions for such aggregate amount) is limited to the net, overall Liability for Tax incurred by the Group after taking into account any reduction in Tax increase in Relief or Tax Saving in a period after Completion but ending within the time to make a Tax Claim, whether arising from any Tax Claim or not, and which arises in the circumstances referred to in clause 9.1 (other than any imputation credits or similar credits arising as a direct result of the payment of Tax which is the subject of a Claim under the Tax Indemnity).
- 9.4.2 If, during the period during which the Buyer is entitled to make any Claim under the Tax Indemnity, a Group Company has actual reductions in its Liability for Tax or actual

increases in Relief as a result of Tax overpaid prior to Completion and such Tax is refunded after Completion or over provided for Tax in the Completion Statement, the Buyer shall take any such reductions or increases into account in determining the net Liability of the Sellers.

9.4.3 If the Sellers have paid any amounts under the Tax Indemnity and, by the end of the Tax Indemnity Claims period the Group has had refunds or reductions or increases in Relief in a period after Completion, or obtained Tax Savings in a period after Completion, which have not previously been taken into account in this clause 9.4, the Buyer will repay the Sellers an amount equal to the lesser of:

- (a) the aggregate of such reductions in Tax Liability and/or increases in Relief in a period after Completion or Tax Savings actually obtained in a period after Completion; and
- (b) the total amounts paid by the Sellers under the Tax Indemnity.

9.5 **Timing of Payment:** Any payment the Sellers are required to make under the Tax Indemnity (**Indemnity Payment**):

9.5.1 shall be paid in cleared funds to the Buyer five (5) Business Days prior to the day on which the Tax in respect of which that Indemnity Payment is required to be made is due for payment;

9.5.2 where the amount of tax is payable immediately, the Indemnity Payment must be made promptly following demand being made by the Buyer and in any event no later than two Business Days following the date of such demand; or

9.5.3 immediately in the case of a loss of Relief which is solely attributable to the tax losses of a Group Company for any period or part period ending on or prior to Completion.

9.6 **Dispute of Tax Claim:** Upon the Buyer becoming aware of a Tax Demand or of circumstances that it knows is likely to give rise to a Tax Claim, the Buyer will:

9.6.1 notify the Sellers as soon as is reasonably possible;

9.6.2 ensure that the Group gives such information and assistance as the Sellers may reasonably require in respect of the Tax Demand;

9.6.3 allow the Sellers and their professional advisors in the name of the Group Company to take any steps to avoid, resist, appeal, compromise or settle the Tax Demand or to minimise the prospect of the Sellers being required to make any payment under the Tax Indemnity and to minimise the amount of any such Tax Demand; and

9.6.4 pending the Sellers taking control of the Tax Demand under clause 9.6.3, ensure that the Group takes all reasonable steps to avoid and resist the Tax Demand.

Where the Sellers have exercised their rights under clause 9.6.3, the Sellers:

- 9.6.5 will at all times prior to (and to the extent reasonably practical, within a reasonable period of time prior to) taking any action, act in consultation with the Buyer in relation to the conduct and progress of the dispute of the Tax Demand, keep the Buyer fully informed of any progress and allow the Buyer a reasonable period of time prior to the relevant date to review and comment on material documents to be issued by a Group Company in the conduct of any dispute and provide the Buyer with copies of all relevant documents. The Sellers, following such consultation, will take into account all reasonable concerns and issues raised by the Buyer in all actions that are taken by the Sellers following consultation; and
- 9.6.6 will not do anything, or make any admissions or statements, that damage the business or commercial reputation of the Buyer or a Group Company.

The Sellers shall meet all of their own expenses incurred in relation to the procedures contemplated in this clause 9.6 and promptly reimburse the Buyer for any reasonable out of pocket costs and expenses (including reasonable accounting and legal fees and reasonable disbursements) properly incurred by the Group Company in complying with this clause 9.6 (including, for the avoidance of doubt, all costs incurred by the Group in negotiating or resisting a Tax Demand) on receipt of copies of the relevant invoices or other such evidence of incurrence of reasonable out of pocket costs or expenses by the Group.

9.7 **Tax Returns:**

- 9.7.1 **Filing:** The Sellers will prepare, sign and file Tax returns and Tax computations for the Group Companies for all Tax periods ending on or prior to the Completion Date (**Pre-Completion Returns**), to the extent that those Pre-Completion Returns have not been prepared before the Completion Date. The Pre-Completion Returns must be filed in time to comply with the Group Company's obligations under Tax Law. The Sellers will allow the Group Company and the Buyer a reasonable period of time to review a copy of the draft Pre-Completion Returns prior to the Sellers filing the returns.
- 9.7.2 **Access:** Where a Pre-Completion Return has not been filed prior to the Completion Date, the Sellers may request that the relevant Group Company prepare or assist with the preparation of that Pre-Completion Return. The Buyer must procure that a Group Company gives access to its books, accounts, records and personnel as is reasonable to enable the Pre-Completion Return to be prepared. If a Group Company is required to prepare documentation relating to the Pre-Completion Return, the Buyer must procure that copies of all documentation (including relevant correspondence and submissions) will be shown in advance to, and agreed with, the Sellers.
- 9.7.3 **Straddle Returns:**
- (a) The Buyer must procure that each Group Company, in relation to the Tax returns for the income year or other period in which Completion occurs that are not required by Law to be furnished on or prior to Completion Date (**Straddle Returns**), discloses to the Sellers and uses reasonable endeavours to agree with the Sellers any variations in the information in those Straddle Returns that would

give rise to any change in the Tax Liability from that shown in the Completion Statement.

- (b) Where there is any disagreement between the Buyer and the Sellers' Representatives as to the form and content of the Straddle Returns the Sellers will determine the form and content of the Straddle Returns for the period up to and including Completion, provided always that the Sellers shall not be permitted to take any action or position which is contrary to Law or that would otherwise create, defer or otherwise increase a liability for Tax in any period following Completion.
- (c) The Buyer will determine the form and content of the Straddle Returns for the period after Completion. The Buyer will allow the Sellers' Representatives a reasonable period of time to review a copy of the draft Straddle Returns prior to the Buyer filing any Straddle Return, and (acting reasonably) will take into account the Sellers' Representatives comments on the form and content of the draft Straddle Returns.
- (d) The Parties shall meet all of their own expenses incurred in relation to procedures contemplated by this clause 9.7.3.

9.7.4 **Buyer's rights preserved:** The Buyer's compliance with obligations under this clause 9.7 shall in no way prejudice or prevent the Buyer from bringing any Tax Claim under clause 9.1.

10 ACKNOWLEDGEMENTS, WARRANTIES AND UNDERTAKINGS

10.1 **Buyer Relies on Own Judgement:** The Buyer acknowledges and agrees that, except for the Warranties and the Tax Indemnity and the other provisions of this Agreement:

10.1.1 it has entered into this Agreement in reliance solely on its own judgement and not in reliance on any representations of the Sellers, the Sellers' Representatives or any other person;

10.1.2 all other representations or warranties of the Sellers and the Sellers' Representatives in relation to the sale of the Sale Shares (excluding for the avoidance of doubt to the extent set out in this Agreement or any Transaction Document), whether express or implied, are hereby expressly excluded to the maximum extent permitted by Law; and

except as set out in this Agreement and the Transaction Documents, none of the Sellers nor any Group Company nor their respective advisers, employees, directors/officers or agents have made or make any representation or have given or give any warranty (express or implied) as to the accuracy, content, completeness, value or otherwise of, nor have or accept any liability in respect of, any information (written, oral or otherwise) directly or indirectly provided or made available to or used by the Buyer in connection with the Transaction.

10.2 **Acknowledgements:** The parties acknowledge and agree that, subject to clause 4.10, neither the Sellers nor the Buyer have a right to terminate this Agreement after Completion as a result of any

matter, information or circumstance, including for misrepresentation, repudiation, anticipatory breach or breach of or in respect of any matter giving rise to or the subject of a Claim arising out of or in connection with this Agreement (whether arising in tort (including negligence), in contract, statute, by operation of Law or otherwise), and sections 35 to 49 of the *Contract and Commercial Law Act 2017* shall not apply to this Agreement.

- 10.3 **Warranties by the Buyer Warrantors:** Each of the Buyer and the Buyer Parent (each a **Buyer Warrantor**) warrants and represents to the Sellers that each of the warranties set out in clause 10.4 (in respect of itself only) is true and accurate at the Agreement Date and on Completion.

10.4 **General Warranties:**

- 10.4.1 Each Buyer Warrantor is validly incorporated, organised and subsisting in accordance with the laws of:

- (a) New Zealand, in respect of the Buyer; and
- (b) Canada, in respect of the Buyer Parent;

- 10.4.2 The Buyer Parent is qualified, licensed or registered to carry on business in the jurisdictions in which it operates, and the Buyer Parent is conducting its business in compliance with all applicable Laws, in all material respects. The Buyer Parent has good and marketable title to, and legal and beneficial ownership of, its properties and assets (whether immovable, movable, real, personal or mixed and whether tangible or intangible) that it purports to own including all the properties and assets reflected as being owned by the Buyer Parent in its financial books and records.

- 10.4.3 There are no material actions, suits or proceedings, at law or in equity, by any person (including a Buyer Warrantor), nor any arbitration, administrative or other proceeding by or before (or to the knowledge of the Buyer Warrantor any investigation by) any Authority, current or pending, or, to the knowledge of the Buyer Warrantor, threatened against the Buyer Warrantor business or any of the Buyer Warrantor assets that would have a material adverse effect.

- 10.4.4 Each Buyer Warrantor has not gone into liquidation or passed any resolution for winding up, no petition for winding up has been presented against it, and no receiver, liquidator and manager or other controller or external administrator of the undertaking or assets (of any part thereof) of the Buyer Warrantor have been appointed or, so far as the Buyer Warrantor is aware, is threatened or expected to be appointed.

- 10.4.5 As of the Agreement Date, each Buyer Warrantor has obtained all necessary authorisations or conditional approvals for the execution and delivery of this Agreement, and as of the Completion and subject to the receipt of approval of the OIO and TSX, has obtained all necessary authorisations or conditional approvals for the performance of their obligations under this Agreement (including with respect to the issuance of the Completion Shares) in accordance with its terms.

- 10.4.6 Each Buyer Warrantor has full corporate power and lawful authority, without any further consent of any other person (other than approval of the OIO and TSX), to execute and deliver this Agreement and to perform or cause to be performed its respective obligations under this Agreement. Subject to the receipt of the approval of the OIO and TSX, the execution, delivery and performance by each Buyer Warrantor of this Agreement do not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance) result in a breach or a violation of, conflict with, or cause the termination or revocation of, any order, permit, approval, consent, waiver, licence or other authorization issued to or held by the Buyer Warrantor or necessary to the ownership of its assets or the operation of its business.
- 10.4.7 Each Buyer Warrantor will not contravene any law or its constating documents (or similar constituent documents) by entering into or performing its obligations under this Agreement.
- 10.4.8 This Agreement is valid and binding on the Buyer Warrantor in accordance with its terms.
- 10.4.9 The execution, delivery and performance by the Buyer Warrantor of this Agreement and the consummation of the transactions contemplated hereby and thereby, do not (or would not with the giving of notice, the passage of time or the happening of any other event or circumstance) result in a material breach or a material violation of, or materially conflict with, any of its material contracts.
- 10.4.10 The financial statements publicly filed by the Buyer Parent have been prepared in accordance with International Financial Reporting Standards consistently applied throughout the periods referred to therein and present fairly in all material respects, the financial position of the Buyer Parent on a consolidated basis as at such dates, and the results of operation and changes in financial position of the Buyer Parent on a consolidated basis for the periods then ended.
- 10.4.11 The Buyer Parent is a reporting issuer not in default (or the equivalent) under Canadian Securities Laws in each of the provinces of Canada, and the Tiny Shares are listed for trading on the TSX. No order ceasing or suspending trading in any securities nor prohibiting the sale of any securities of the Buyer Parent has been issued by any Authority or is outstanding against the Buyer Parent and, to the knowledge of the Buyer Parent, no investigation or proceeding for such purposes are pending or threatened. To the knowledge of the Buyer Parent it is not, and will not be at the time of Completion, in default under any of its obligations as a reporting issuer with securities regulatory authorities or the TSX.
- 10.5 **Completion Shares and Contingent Shares Warranties by Buyer Parent:**
- 10.5.1 The Buyer Parent warrants to the Sellers that all of the Completion Shares and Contingent Shares will, as of the date of their issuance:
- (a) be validly authorised and issued, fully paid and non-assessable shares in the capital of the Buyer Parent, in accordance with applicable Laws;

- (b) rank equally with all existing Tiny Shares in the Buyer Parent for all distributions, rights and other benefits in accordance with the Buyer Parent's constating documents; and
- (c) subject to the satisfaction of the Conditions set out in clauses 4.1.3, and provided further that the warranties of the Sellers with respect to the Completion Shares and Contingent Shares are true and correct in all respects as of the issuance date:
 - (i) be issued in compliance with applicable Canadian Securities Laws;
 - (ii) be exempt from the prospectus requirements under applicable Canadian Securities Laws, and no prospectus is required nor are any other documents required to be filed, proceedings taken, or approvals, permits, consents, orders, or authorizations of any regulatory authorities obtained under Canadian Securities Laws to permit the issue and delivery of the Completion Shares and Contingent Shares by the Buyer Parent, it being noted that within 10 days after the date of the issuance of such securities, the Buyer Parent may be required to file a report on Form 45-106F1 prepared and executed in accordance with National Instrument 45-106 – Prospectus Exemptions of the Canadian Securities Administrators, accompanied by the prescribed fees, if any, with respect to some or all of the issuances of securities contemplated under this Agreement;
 - (iii) other than the legend specified in Section 10.6.3 and Section 10.7.2, there will (on the basis of Laws applicable as at the Agreement Date) be no Canadian Securities Law requirements which would prevent those Contingent Shares being able to be freely traded on the TSX; and
 - (iv) issued and delivered to the relevant Sellers free and clear of all Encumbrances, other than the Lock-Up Period restrictions and the legend specified in Section 10.6.4 and Section 10.7.4.

10.5.2 The Buyer Parent represents and warrants to the Sellers that at Completion (a) the Completion Shares will rank equally with the common shares to be issued by Buyer Parent in connection with the equity financing to be conducted by the Buyer Parent during the Interim Period (the **Capital Raise**), and (b) the Completion Share Price will be no greater than the per-share issue price of the common shares issued by the Buyer Parent in the Capital Raise.

10.6 **Completion Share Warranties by Sellers:** Each Initial Seller (other than Peter David Arie Hoek, Jeanne Merle Bertenshaw and Vulcan Trustee Co (2020) Limited):

10.6.1 warrants that it does not own any Tiny Shares as at the Agreement Date and the time immediately prior to Completion;

10.6.2 warrants that they are resident in New Zealand;

- 10.6.3 agrees, by virtue of entering into this Agreement, that they unconditionally and irrevocably give to the Buyer and the Buyer Parent the following acknowledgement (and will if so required by the Buyer and/or Buyer Parent, give such acknowledgement in a separate document as a deliverable on Completion:

I confirm that I understand that—

- the usual legal rules that require information to be given to investors for offers of financial products do not apply if the amount invested upfront by me (plus any other investments I have already made in those financial products) is \$750,000 or more; and
- I may not receive a complete and balanced set of information about this investment; and
- I have fewer legal protections for this investment; and
- this investment is not suitable for retail investors; and
- I have been advised to ask questions, read all documents carefully, and seek independent financial advice.

As a result of the foregoing, the relevant Initial Seller confirms that they are entitled to (i) receive their Completion Shares pursuant to exemptions from any prospectus, registration or similar requirements under the laws New Zealand; (ii) the receipt of the Completion Shares by them under this Agreement does not contravene any of the applicable securities Laws in New Zealand and the offer and issuance of the Completion Shares to them does not result in: (A) any obligation of the Buyer or the Buyer Parent to prepare and file a prospectus, an offering memorandum or similar document; (B) any obligation of the Buyer or the Buyer Parent to make any filings with or seek any approvals of any kind from any regulatory body in such jurisdiction or any other ongoing reporting requirements with respect to such purchase or otherwise; or (C) any registration or other obligation on the part of the Buyer or the Buyer Parent under the applicable securities laws in New Zealand.

- 10.6.4 acknowledges that the offer of the Completion Shares was made to them in reliance on the exclusion in clause 3(3)(b) of Schedule 1 of the FMCA; and
- 10.6.5 acknowledges and agrees that the (a) the Completion Shares will be subject to resale restrictions under applicable Canadian Securities Laws for a period of four (4) months and a day after the date of their issuance; and (b) for purposes of complying with applicable Canadian Securities Laws, including National Instrument 45-102 – *Resale of Securities* (**NI 45-102**), upon the original issuance thereof, and until such time as the same is no longer required under requirements of applicable Canadian Securities Laws, including NI 45-102, the certificates representing the Completion Shares shall bear the following legends:

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS FOUR MONTHS AND A DAY AFTER [INSERT THE DISTRIBUTION DATE].

10.6.6 understands and acknowledges that: (a) no securities commission or similar regulatory authority has reviewed or passed on the merits of the Completion Shares; (b) there is no government or other insurance covering the Completion Shares; (c) there are risks associated with the purchase of the Completion Shares; (d) there are restrictions in accordance with applicable securities legislation on the ability to resell the Completion Shares and it is the responsibility of the Seller to find out what those restrictions are and to comply with them before selling the Completion Shares; and (e) in addition to the Lock-Up Period legend, any certificate representing any of the Completion Shares will be endorsed with a legend stating that such securities will be subject to restrictions on resale in accordance with applicable securities legislation; and

10.6.7 has, in connection with the Seller's decision to receive Completion Shares as consideration for the sale of the Sale Shares as contemplated by this Agreement, not relied upon any representations, warranties or other information (whether oral or written) other than (a) all documents publicly filed under the profile of the Buyer Parent on SEDAR+ at www.sedarplus.com, by or on behalf of the Buyer Parent, as of the Completion Date, and (b) otherwise as set forth in the warranties of the Buyer and Buyer Parent contained in this Agreement, and the Sellers, with respect to all matters relating to this Transaction, have not relied upon or consulted counsel to the Buyer.

10.7 **Contingent Shares Warranties by Sellers:** Each Initial Seller:

10.7.1 to the extent that they are resident in New Zealand, by virtue of entering into this Agreement, unconditionally and irrevocably gives to the Buyer and the Buyer Parent the following acknowledgement in connection with receipt of the Contingent Shares (and will if so required by the Buyer and/or Buyer Parent, give such acknowledgement in a separate document as a deliverable in exchange for the Contingent Shares):

I confirm that I understand that—

- the usual legal rules that require information to be given to investors for offers of financial products do not apply if the amount invested upfront by me (plus any other investments I have already made in those financial products) is \$750,000 or more; and
- I may not receive a complete and balanced set of information about this investment; and
- I have fewer legal protections for this investment; and
- this investment is not suitable for retail investors; and
- I have been advised to ask questions, read all documents carefully, and seek independent financial advice.

10.7.2 to the extent that they are not resident of New Zealand, warrants that at the time of receipt of the Contingent Shares: (a) it is resident in a country other than New Zealand, Canada and the United States and is not resident in or otherwise subject to applicable securities Laws of any province or territory of Canada; (b) is knowledgeable of and acting in compliance with, securities legislation having application or jurisdiction over the Seller

and the issuance of Completion Shares to the Seller; (c) is receiving the Completion Shares pursuant to exemptions from any prospectus, registration or similar requirements under the laws of the jurisdiction in which the Seller is located and is permitted to purchase the securities; (d) the receipt of the Completion Shares under this Agreement does not contravene any of the applicable securities Laws in the jurisdiction in which the Seller is located or any other securities Laws to which the Seller is otherwise subject and does not result in: (i) any obligation of the Buyer or the Buyer Parent to prepare and file a prospectus, an offering memorandum or similar document; (ii) any obligation of the Buyer or the Buyer Parent to make any filings with or seek any approvals of any kind from any regulatory body in such jurisdiction or any other ongoing reporting requirements with respect to such purchase or otherwise; (iii) any registration or other obligation on the part of the Buyer or the Buyer Parent under the applicable securities Laws in the international jurisdiction; and (iv) the Completion Shares are being acquired for investment purposes only and not with a view to resale and distribution;

- 10.7.3 to the extent that they are resident in New Zealand, acknowledges that the offer of the Contingent Shares was made to them in reliance on the exclusion in clause 3(3)(b) of Schedule 1 of the FMCA; and
- 10.7.4 acknowledges and agrees that the (a) the Contingent Shares will be subject to resale restrictions under applicable Canadian Securities Laws for a period of four (4) months and a day after the date of their issuance; and (b) for purposes of complying with applicable Canadian Securities Laws, including NI 45-102, upon the original issuance thereof, and until such time as the same is no longer required under requirements of applicable Canadian Securities Laws, including NI 45-102, the certificates representing the Contingent Shares shall bear the following legends:

UNLESS PERMITTED UNDER SECURITIES LEGISLATION, THE HOLDER OF THIS SECURITY MUST NOT TRADE THE SECURITY BEFORE THE DATE THAT IS FOUR MONTHS AND A DAY AFTER [INSERT THE DISTRIBUTION DATE].

- 10.7.5 understands and acknowledges that: (a) no securities commission or similar regulatory authority has reviewed or passed on the merits of the Contingent Shares; (b) there is no government or other insurance covering the Contingent Shares; (c) there are risks associated with the purchase of the Contingent Shares; (d) there are restrictions in accordance with applicable securities legislation on the ability to resell the Contingent Shares and it is the responsibility of the Seller to find out what those restrictions are and to comply with them before selling the Contingent Shares; and (e) any certificate representing any of the Contingent Shares will be endorsed with a legend stating that such securities will be subject to restrictions on resale in accordance with applicable securities legislation; and
- 10.7.6 has, in connection with the Seller's decision to receive Contingent Shares as consideration for the sale of the Sale Shares as contemplated by this Agreement, not relied upon any representations, warranties or other information (whether oral or written) other than (a) all documents publicly filed under the profile of the Buyer Parent on SEDAR+ at www.sedarplus.com, by or on behalf of the Buyer Parent, as of the Completion Date, and (b) otherwise as set forth in the warranties of the Buyer and Buyer Parent contained

herein, and the Sellers, with respect to all matters relating to this Transaction, have not relied upon or consulted counsel to the Buyer.

- 10.8 **Presence in New Zealand:** The Buyer and the Buyer Parent will use commercially reasonable endeavours to procure that the Group maintains, at all times until the third anniversary of the Completion Date, a material presence in New Zealand in respect of the Group's research and development activities and operations.
- 10.9 **Long Service Recognition Bonuses:** The Buyer covenants with the Sellers that:
- 10.9.1 to the extent not already paid prior to Completion, and disregarding that the Long Service Recognition Bonuses are expressed as being discretionary in the LSR Bonus Letters, the Buyer will procure that the Group pays the Long Service Recognition Bonuses following Completion in accordance with the terms of the LSR Bonus Letters which specify the payment amount, timing of the payment and the conditions the payee must satisfy in order to be entitled to the payment; and
 - 10.9.2 to the extent any Long Service Recognition Bonus is not paid by the Group within 13 months of Completion (the **Due Date**), including as a result of a payee not satisfying the conditions relating to the Long Service Recognition Bonus (the **Unpaid Bonus Amount**), the Buyer must pay the Unpaid Bonus Amount to the Sellers' Representatives within 10 Business Days of the Due Date.

11 W&I INSURANCE

- 11.1 **Buy-Side W&I Insurance:** Notwithstanding anything to the contrary in this Agreement:
- 11.1.1 the Buyer warrants and undertakes to the Sellers that the Buyer has, at the Agreement Date, insured the Warranties and the Tax Indemnity up to the amount of the W&I Policy Limit in accordance with the W&I Policy; and
 - 11.1.2 the Buyer acknowledges that the Sellers have entered into this Agreement in reliance on the warranty and undertaking in clause 11.1.1.
- 11.2 **Claim Limitations:** The Buyer agrees that, notwithstanding anything to the contrary in this Agreement (except to the extent provided in clause 8.1.1(h)) and regardless of whether or not the W&I Policy is issued, it will not be entitled to make, will not make, and waives any right it may have to make, any Warranty Claim against the Sellers other than:
- 11.2.1 a Fundamental Warranty Claim, or in respect of the Tax Indemnity; or
 - 11.2.2 in respect of a Claim against the Sellers relating to the Fraud of the Sellers (or the Fraud of one of more of the Sellers' directors, trustees or officers) and to the extent insurance coverage is reduced or avoided as a consequence of such Fraud (but, for the avoidance of doubt, the Liability (if any) of the Sellers in relation to such Claim shall remain governed by the other provisions of this Agreement)); or
 - 11.2.3 to the extent provided in clause 8.1.1(h).

The Sellers may plead this clause as a bar to any Claim made contrary to it.

11.3 **No Subrogation:** The Buyer must ensure that at all times the W&I Policy includes terms to the following effect:

11.3.1 an express acknowledgement by the W&I Insurer that it underwrites the W&I Policy on the basis of the limitation of liability regime contained in this Agreement, but on the basis that the limitations in clause 11.2 are to be ignored in the determination of whether or not the W&I Policy responds to the relevant Claim and in the measurement of the covered loss;

11.3.2 an express waiver of the W&I Insurers' rights of subrogation or contribution or rights acquired by assignment (or any similar rights) against any Seller, except in the case of Fraud of a Seller in which case any assertion of such rights must be made only against that Seller on a several (and not joint and several) basis and whether the commission of such Fraud has been accepted in writing by that Seller or is finally determined by a final, non-appealable judgment of a court of competent jurisdiction, and then only to the extent and in respect of those rights of recovery relating directly to the Fraud of that Seller only, provided that for the avoidance of doubt nothing in this clause 11.3.2 precludes any action (by way of submission to the relevant courts or otherwise) to determine whether such Fraud has occurred; and

11.3.3 an acknowledgement by the W&I Insurer (including in the W&I Policy) that each Seller is entitled to directly enforce the waiver referred to in clause 11.3.2 against the W&I Insurer pursuant to Subpart 1 of Part 2 of the *Contract and Commercial Law Act 2017*.

11.4 **No Amendment:** The Buyer must not, without the prior written consent of the Sellers' Representative:

11.4.1 agree to any amendment, variation or waiver of the W&I Policy (or do anything which has a similar effect);

11.4.2 novate or otherwise assign its rights under the W&I Policy (or do anything which has similar effect) or do anything which causes any right under the W&I Policy to not have full force and effect; or

11.4.3 do anything which causes any rights under the W&I Policy to not have full force and effect, provided that this clause does not prevent the Buyer from complying with its obligations under the W&I Policy.

12 DEFAULT ON COMPLETION

- 12.1 **Notice of Sellers' Default:** If the Sellers (for reasons other than the default of the Buyer) default in the performance of any of their obligations under clause 6.2, then the Buyer may in respect of a default which is:
- 12.1.1 capable of remedy, after giving the Sellers' Representatives notice of such default and requiring the Sellers to remedy the default within five (5) Business Days, and if the default has not been remedied within that period; or
 - 12.1.2 not capable of remedy, immediately,
- exercise all or any of the remedies set out in clause 12.2.
- 12.2 **Buyer's Remedies:** Without further notice and without prejudice to any other rights or remedies available to the Buyer at Law or in equity, the Buyer may, where its rights become exercisable under this clause 12.2:
- 12.2.1 sue the Sellers for specific performance, including payment in full of any amount due plus interest at the Default Rate from the date payment was due under this Agreement; or
 - 12.2.2 terminate this Agreement, sue the Sellers for damages and require the Sellers to cause any part of the Purchase Price already paid by the Buyer to be refunded to the Buyer in full, without any set-off, withholding or other deduction.
- 12.3 **Notice of Buyer Default:** If the Buyer (for reasons other than the default of a Seller) is in default in the performance of any of its obligations under clause 6.3 at Completion, then the Sellers' Representatives, by notice in writing, may notify the Buyer of the default and require the Buyer to remedy the default within (five) 5 Business Days of receipt of the notice. If the Buyer fails to remedy the default within five (5) Business Days of receipt of the Sellers' Representatives' notice, the Sellers may exercise all or any of the remedies set out in clause 12.4.
- 12.4 **Sellers' Remedies:** Without further notice and without prejudice to any other rights or remedies available to the Sellers at law or in equity, the Sellers may, where their rights become exercisable under this clause 12.4:
- 12.4.1 sue the Buyer for specific performance, including payment in full of the Purchase Price plus interest at the Default Rate from the date payment was due under this Agreement; or
 - 12.4.2 terminate this Agreement, sue the Buyer for damages, and require the Buyer to return to the Sellers' Representatives all documents delivered to the Buyer under clause 6, in which case the Sellers shall cause any part of the Purchase Price already paid by the Buyer to be refunded to the Buyer in full, without any set-off, withholding or other deduction.

13 MATERIAL CONTRACTS AND LEASES

13.1 **Acknowledgements Regarding Change of Control Provisions:** The Parties acknowledge and agree that:

13.1.1 any of the Material Contracts or Leases may contain Change of Control Provisions;

13.1.2 where a Material Contract or Lease contains a Change of Control Provision, the:

- (a) consent of the counterparty to that Contract or Lease to the change of Control of the relevant Group Company as a result of the sale of the Sale Shares under this Agreement; or
- (b) waiver, from the counterparty to that Contract or Lease, of any termination or cancellation right which will arise or otherwise become enforceable as a result of the change of Control of the relevant Group Company as a result of the sale of the Sale Shares under this Agreement,

(in each case, but specifically excluding Required Consents, a **Change of Control Consent**) may be required; and

13.1.3 where that Change of Control Consent is not obtained by the requisite time, the relevant counterparty may be entitled, as from Completion, to Claim default under or to terminate the relevant Contract or Lease.

13.2 **Change of Control Consent:** Subject to clause 13.3, but without limiting the Sellers' obligations in clause 4.3:

13.2.1 the Sellers will, as soon as reasonably practicable after the Agreement Date, and will procure that each Group Company will, use reasonable endeavours to obtain each other required Change of Control Consent (including approaching the relevant counterparties or lessors within 20 Business Days after the Agreement Date to request such Change of Control Consents); and

13.2.2 the Buyer must cooperate with and use reasonable endeavours to assist the Sellers and the relevant Group Companies to obtain each required Change of Control Consent.

13.3 **No obligation to Pay Money:** Nothing in this clause 13 will require the Buyer, Sellers or any Group Company to, in connection with any Change of Control Consent that is not a Required Consent:

13.3.1 pay any money or provide any other valuable consideration to or for the benefit of any person, other than:

- (a) in the case of the Buyer, to provide a replacement guarantee on the same or substantially the same terms, or similar security that is no more onerous than such replacement guarantee, that a lessor is entitled to require under the terms of a Lease or as otherwise contemplated in clause 4.3;

- (b) in the case of a Group Company, where required pursuant to an obligation under a Material Contract or Lease to reimburse the reasonable out-of-pocket costs of any third parties and/or the lessor's reasonable costs of considering a request for consent under a Material Contract or Lease; or
 - (c) in the case of a Group Company, if required to remedy any subsisting breach of a Lease where that breach is preventing the relevant lessor from granting a Change of Control Consent; or
- 13.3.2 otherwise take action which would, or might reasonably be expected to, impact adversely on or otherwise be contrary to the interests of the Buyer or Group Company, as the case may be.
- 13.4 **Completion to Proceed:** Without limiting the Condition in clause 4.2.3, which must be satisfied or waived, the Buyer must not delay or fail to complete the sale and purchase of the Sale Shares on the terms of this Agreement if all or any required Change of Control Consents (other than Required Consents) have not been obtained on or before the Completion Date. The Buyer agrees that it shall not be entitled to make any Claim (including in respect of the Warranties) in respect of any such required Change of Control Consent (other than Required Consents) not being obtained on or before the Completion Date, including in respect of any corresponding breach of the relevant Contract or Lease for failing to do so (except in the case of a breach by the Sellers of their obligations under clauses 4 and 13.2), and the Purchase Price shall not be reduced as a consequence.

14 RESTRAINT

- 14.1 **Restraints:** As further consideration for the Buyer entering into this Agreement and for the protection of goodwill of the Group, each Seller (without detracting from clause 20, other than an Independent Trustee) and Principal, in their personal capacity and in their capacity as a trustee, severally for itself agrees for the benefit of the Buyer and, as separate undertaking with each Group Company, that for the Specified Period it will not, and will ensure that none of its Related Parties will (without first obtaining the written consent of the Buyer) either directly or indirectly:
 - 14.1.1 carry on, engage in or be concerned or involved with a Specified Business within the Specified Area, whether on its own account or as a partner, agent, employee, shareholder, joint venture, financier, director, employee, contractor or consultant of, or equity participant with, any other person;
 - 14.1.2 induce or endeavour to induce any customer (who was at any time during the one-year period before Completion) to cease doing business with or reduce its level of business with a Group Company; or
 - 14.1.3 employ or solicit the services of, or offer employment to, any employee or contractor of a Group Company other than where that person responds to a bona fide public advertisement for a vacant position with any Seller, Principal or any of their Related Parties (provided that the advertisement is not targeted specifically at the person concerned).

- 14.2 **Exceptions:** Nothing in clause 14.1 prevents a Seller or Principal (or any of their Related Parties) from:
- 14.2.1 directly or indirectly holding up to a 3% interest in any entity provided such holding is only a passive portfolio holding for investment purposes (where the Seller, Principal or their Related Party does not exercise an active role in the operational direction or management of the relevant company), even if that company carries on a business which competes with the Business;
 - 14.2.2 directly or indirectly holding (in aggregate) up to a 10% interest in any managed or collective investment fund or scheme or in any private capital fund or private equity fund (in any legal form) (**Managed Fund**), provided that none of the relevant Seller, Principal, or a Related Party of that Seller or Principal, has management control of that Managed Fund;
 - 14.2.3 if applicable, performing his or her employment duties to the relevant Group Company or the Buyer (of the Buyer's Related Parties) post-Completion; or
 - 14.2.4 placing an advertisement of a position available to the public generally and the recruitment of a person through an employment agency, provided that neither the Seller nor its Related Party encourages or advises such agency to approach any employee or contractor of a Group Company.
- 14.3 **Restraints Independent:** Each undertaking contained in clause 14.1 must be read and construed independently of the other undertakings contained in that clause so that if one or more is held to be invalid or otherwise unenforceable as an unreasonable restraint of trade or for any other reason whatsoever then:
- 14.3.1 the relevant undertaking shall be deemed modified to the minimum extent necessary to make them valid and enforceable; and
 - 14.3.2 the remaining undertakings are to be valid and will remain in full force and effect to the extent that they are not held to be so invalid or unenforceable.
- 14.4 **Reasonable Undertakings:** Each of the Sellers and Principals acknowledges that:
- 14.4.1 the value of the Sale Shares upon which the Purchase Price has been set and accepted by the Buyer is dependent upon the Sellers giving the undertakings contained in clause 14.1;
 - 14.4.2 the undertakings contained in clause 14.1 are fair and reasonable in all the circumstances; and
 - 14.4.3 the undertakings contained in clause 14.1 have been given for the protection of the goodwill of the Group.
- 14.5 **Severable Liability:** For the avoidance of doubt, this clause 14 binds each Seller and Principal severally and no Seller or Principal will be liable for any breach of this clause 14 by another Seller or Principal.

15 CONFIDENTIAL INFORMATION

15.1 **Confidentiality:** Subject to clause 15.2:

15.1.1 each Seller and Principal undertakes to the Buyer; and

15.1.2 the Buyer undertakes to the Sellers, from the Agreement Date until the Completion Date, that it shall:

15.1.3 not use or disclose to any person Confidential Information (other than its own) it has or acquires; and

15.1.4 ensure that each entity that the party Controls complies with clause 15.1.3.

15.2 **Exclusions:** Clause 15.1 does not apply to any use or disclosure of Confidential Information:

15.2.1 if such disclosure is necessary to obtain the benefits of, or fulfil obligations under, this Agreement;

15.2.2 to the extent that it is generally known to the public not as a result of a breach of any duty of confidentiality;

15.2.3 to or by a Related Party of that Party, provided that such Related Party has agreed in writing to comply with that Party's confidentiality obligations under this Agreement and that Party will be and remain liable for all acts and omissions of their Related Parties concerning any Confidential Information disclosed to them;

15.2.4 to the extent that it is required to be disclosed by Law or by an Authority, whether or not the requirement has the force of Law provided that the disclosure shall so far as is practicable be made after consultation with the other Party and after taking into account the other Party's reasonable requirements as to its timing, content and manner of making or despatch; or

15.2.5 to or by a professional adviser for the purpose of advising in connection with this Agreement provided that such disclosure is essential for these purposes and is on the basis that clause 15.1 applies to the disclosure by the adviser.

15.3 **Access to Historical Materials:** In the event that it becomes necessary for a Seller or Principal (or any of its Related Parties) to obtain access to or copies of any materials or documents of the Group relating to periods prior to Completion for the purpose of complying with any statutory, accounting or other regulatory obligations, the Buyer will (or will procure that each Group Company on request will) provide such materials or documents as that Seller reasonably requires, subject to the Sellers meeting all reasonable out-of-pocket costs incurred by the Buyer in complying with this clause 15.3. Subject to any other agreement between the Sellers and the Buyer (and other than to the extent requested in order to respond to a legal Claim), all materials and documents provided under this clause 15.3 will be treated and held as confidential by the relevant Seller or Principal.

16 SELLERS' REPRESENTATIVES

- 16.1 **Role:** For the purpose of facilitating the exchange of information, and expediting communications and the conclusion of agreements amongst the Sellers when exercising their rights under this Agreement, the Sellers and the Principals hereby appoint the Sellers' Representatives to be their representatives in respect of receiving all documents, and exercising all discretions, powers and rights granted to the Sellers under this Agreement.
- 16.2 **Information Sharing:** Without detracting from the obligations of the Sellers under clause 15, the Buyer acknowledges and agrees that each Sellers' Representative may share any information that they becomes aware of in their role as Sellers' Representative with the Sellers.
- 16.3 **Authority:** The Sellers' Representatives, acting together, may do, in the name of the Sellers and on their behalf, anything they jointly consider necessary or expedient when:
- 16.3.1 agreeing to timelines under this Agreement and each document entered into pursuant to this Agreement (including entering into, as an agent of each Seller, any Transaction Documents and the Transaction);
 - 16.3.2 exercising or waiving discretions, powers and rights granted to the Sellers under this Agreement;
 - 16.3.3 providing documentation to the Buyer or the Buyer's representatives, agents or advisors in accordance with the terms of this Agreement; and
 - 16.3.4 doing any other act or thing for and on behalf of the Sellers in respect of this Agreement,
- provided that, when acting as the Sellers' Representatives, the Sellers' Representatives expressly state that they are acting in that capacity.
- 16.4 **Validity:** The Sellers declare that all acts and things done by the Sellers' Representatives in exercising their powers in accordance with this clause will be as good and valid as if they had been done by the Sellers collectively, and the Sellers agree to ratify and confirm whatever the Sellers' Representatives do in exercising its powers under this clause.
- 16.5 **Effect:** Where the persons appointed to be the Sellers' Representatives expressly state that they are acting in their capacity as the Sellers' Representatives:
- 16.5.1 they will be deemed to be acting in that capacity;
 - 16.5.2 their actions will bind the Sellers; and
 - 16.5.3 the Buyer will not be obliged to make any further inquiries as to the authority under which the Sellers' Representatives are acting.
- 16.6 **Change:** At any time the Sellers may, by providing five (5) Business Days prior written notice to the Buyer and the Sellers' Representatives, revoke the appointment of one or both of the Sellers' Representatives or substitute the person who acts in the capacity of the Sellers' Representatives

with another person (provided no more than two people will be appointed as the Sellers' Representatives).

- 16.7 **Obligations unaffected:** Nothing in this clause 16 affects the obligations or liabilities of the Sellers under this Agreement.
- 16.8 **Protection:** The Sellers' Representatives will not be liable to the Sellers for any act done or omitted hereunder as the Sellers' Representatives while acting in good faith in that capacity. The Sellers severally indemnify the Sellers' Representatives in their Relevant Proportions and hold the Sellers' Representatives harmless against all Loss or expense incurred arising out of or in connection with the acceptance or administration of their duties hereunder, including the reasonable fees and expenses of any legal counsel retained by the Sellers' Representatives, in each case as such Loss or expense is suffered or incurred; provided, that in the event that any such indemnified Loss or expense is finally adjudicated to have been primarily caused by the bad faith or wilful misconduct of the Sellers' Representatives, the Sellers' Representatives will reimburse the Sellers the amount of such indemnified Loss or expense attributable to such bad faith or wilful misconduct.
- 16.9 **Benefit:** The rights and covenants given by the Sellers to the Sellers' Representatives in this clause 16 are for the benefit of the Sellers' Representatives for the purposes of Subpart 1 of Part 2 (contractual privity) of the *Contract and Commercial Law Act 2017* despite not being a party to this Agreement.

17 PARENT GUARANTEE

17.1 Parent Guarantee

17.1.1 The Buyer Parent unconditionally and irrevocably guarantees (the **Guarantee**) to the Sellers on demand, the due and punctual performance of:

- (a) all the Buyer's payment obligations under this Agreement; and
- (b) all the Buyer's obligations under clause 3, clause 4, clause 6, clause 12, clause 15, Schedule 5 and Schedule 8,

and promises to pay on demand each sum (together with any interest accruing on such amount in accordance with the terms of this Agreement) which the Buyer is liable to pay under this Agreement as if it was the principal obligor.

17.1.2 The Buyer Parent's obligations under this clause 17 shall be in addition to any obligations the Buyer may have under any other agreement or security in relation to this Agreement or the obligations of the Buyer under this Agreement. The Sellers may enforce their rights against the Buyer Parent without first having recourse to any other such agreement or security or exercising any rights or remedies against the Buyer.

- 17.2 **Extent of Guarantee and Indemnity:** The liability of the Buyer Parent under this clause 17 is not affected by anything that, but for this clause 17, might operate to release or exonerate the Buyer

Parent in whole or in part from its obligations, including any of the following, whether with or without the consent of the Buyer Parent:

- 17.2.1 the grant to the Buyer, the Buyer Parent or any other person of any time, waiver or other indulgence, or the discharge or release (save as a result of its performance of its obligations under this Agreement) of the Buyer, the Buyer Parent or any other person from any liability or obligation;
 - 17.2.2 any transaction or arrangement that may take place between the Sellers, the Buyer, the Buyer Parent or any other person;
 - 17.2.3 the Sellers exercising or refraining from exercising their rights under any security or any other rights, powers or remedies against the Buyer, the Buyer Parent or any other person;
 - 17.2.4 any variation, amendment, novation, supplement, extension, restatement (however fundamental and whether or not more onerous) of any terms of this Agreement or the obligations of the Buyer under this Agreement;
 - 17.2.5 any insolvency or similar proceedings relating to the Buyer or any change of Control of the Buyer or any other matter affecting the obligations of the Buyer (other than this Guarantee) under this Agreement;
 - 17.2.6 the amendment, replacement, extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part and either with or without consideration, of any security now or in the future held by the Sellers from the Buyer, the Buyer Parent or any other person or by the taking of or failure to take any security;
 - 17.2.7 any reasonable delay by the Sellers to give notice to the Buyer or the Buyer Parent after the Sellers become aware (or reasonably ought to have become aware) of any default by the Buyer or any other person under this Agreement;
 - 17.2.8 any legal limitation or other circumstances related to the Buyer, the Buyer Parent or any other person; and
 - 17.2.9 any other matter which, but for this clause 17, would reduce, vitiate or affect the obligations of the Buyer Parent under this Guarantee.
- 17.3 **Principal and Independent Obligation:** This clause 17 is a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation and extends to cover this Agreement as amended, varied, supplemented, renewed or replaced.
- 17.4 **Preservation of Rights:** The Buyer Parent agrees that:
- 17.4.1 if any payment received by the Sellers from the Buyer in relation to the payment obligations of the Buyer under this Agreement is avoided or set aside on the subsequent insolvency, liquidation or similar proceedings of the Buyer, any amount received by the Sellers and subsequently repaid, shall not discharge or diminish the liability of the Buyer

Parent for the payment obligations of the Buyer under this Agreement and this clause 17 shall apply as if such payment had at all times remained owing by the Buyer; and

17.4.2 after a demand has been made by the Sellers under this Guarantee and until the amount demanded has been paid in full, the Sellers may take such action as they think fit against the Buyer to recover all sums due and payable to them under this Agreement, without affecting the obligations of the Buyer Parent under this Guarantee.

17.5 **Continuing Guarantee and Indemnity:** The Guarantee is a continuing obligation of the Buyer Parent, despite Completion, and remains in full force and effect for so long as the Buyer has any payment liability or obligation owing to the Sellers under this Agreement and until all of those payment liabilities or obligations have been fully irrevocably and unconditionally discharged.

17.6 **Currency:** The Buyer Parent must pay all moneys that it becomes liable to pay under this clause 17 in the currency in which they are payable under this Agreement and free of any commissions and expenses relating to foreign currency conversion or any other charges or expenses.

18 RELEASE FROM THE SELLERS

18.1 **Release:** The Sellers in their capacity as shareholders of the Company, on their own and on behalf of their respective Related Parties, successors and assigns (herein referred to collectively as the **Releasor**, which term includes any one or more of them) hereby irrevocably and unconditionally release and forever discharge:

18.1.1 the Group Companies and their respective successors, assigns and predecessors; and

18.1.2 their respective present and former officers, directors, agents and employees and their respective predecessors, successors, personal representatives and assigns,

of and from all Losses that the Releasor ever had, now has or can, shall or may hereafter have for or by reason of or in any way arising out of the Releasor's status as a shareholder of the Company existing up to the Effective Time.

18.2 **Exceptions:** Nothing contained in clause 18.1 shall operate to release:

18.2.1 the Buyer or the Group Companies from any of their respective obligations under this Agreement; or

18.2.2 any undisputed amount owing to the Sellers as at Completion as remuneration or reimbursement of unpaid expenses in connection with their appointment by or services rendered to the Group Companies.

18.3 **No Assignment:** The Releasor hereby represents, warrants and covenants that it has not assigned and will not assign to any other person any of the Claims released pursuant to clause 18.1.

19 NOTICES

19.1 **Details:** Any notice given pursuant to this Agreement will be deemed to be validly given if:

19.1.1 personally delivered; or

19.1.2 sent by email,

to the address, or email address of the Party set out below or to such other address, or email address as the Party to be notified may designate by written notice given to all the other Parties.

Buyer

Attention: [PERSONAL INFORMATION REDACTED]

Email: [PERSONAL INFORMATION REDACTED]

Address: [PERSONAL INFORMATION REDACTED]

Copy to: Kristopher Miks (kristopher.miks@nortonrosefulbright.com) and
Eric Malysa (eric.malysa@nortonrosefulbright.com)

Buyer Parent

Attention: [PERSONAL INFORMATION REDACTED]

Email: [PERSONAL INFORMATION REDACTED]

Address: [PERSONAL INFORMATION REDACTED]

Copy to: Kristopher Miks (kristopher.miks@nortonrosefulbright.com) and
Eric Malysa (eric.malysa@nortonrosefulbright.com)

Sellers

As set out in alongside each Seller's name in column 7 of the Reference Table

Copy to: Bruno Bordinon (bruno.bordinon@avid.legal)

Sellers' Representatives

Email: [PERSONAL INFORMATION REDACTED]

Address: [PERSONAL INFORMATION REDACTED]

Copy to: Bruno Bordinon (bruno.bordinon@avid.legal)

19.2 **Delivery:** Any notice given pursuant to this Agreement will be deemed to be validly delivered:

19.2.1 in the case of delivery, when received; and

19.2.2 in the case of electronic transmission by email, at the time specified in the email transmission which was not returned as undeliverable or as containing any error.

- 19.3 **Out of Hours:** If the delivery or transmission of any notice given under this Agreement is on a day which is not a Business Day, or occurs after 5.00 p.m. in the recipient's location on any Business Day, the notice will be deemed to be received on the next following day which is a Business Day.

20 TRUSTEE LIABILITY AND PRINCIPALS

- 20.1 **Independent Trustee:** This clause 20 applies if any of the signatories for a Party are trustees of a trust and who have no right to, or interest in, any of the assets of the trust except in his, her, or its capacity as trustee of that trust (each such person being an **Independent Trustee**). The Independent Trustees are Gregory Noel Rathbun, Bruce Raymond Sheppard, Regal NZ Trustee Limited, Vulcan Trustee Co (2020) Limited and Serato Trustee.
- 20.2 **Liability:** The Liability of each Independent Trustee under or in connection with this Agreement (including Liability for breach of a duty, including any duty of care) will not be an unlimited personal Liability and is limited to the assets for the time being of the relevant trust (including proceeds of realisation or reinvestment of any of those assets) which are in that Independent Trustee's hands as trustee in the proper course of the administration of that trust. Those assets will not include any capital or income of the relevant trust which has been transferred or paid to or appropriated or applied to the benefit of any person in accordance with the deed establishing the trust.
- 20.3 **Breach of Trust:** If due to a breach of trust as a direct consequence of dishonesty by the Independent Trustee, any Party claiming under or in connection with this Agreement is unable to recover from the assets for the time being of that trust all or any moneys properly payable to that Party, then that Party may seek to recover those moneys from the personal assets of that Independent Trustee provided that in doing so, that Party may only recover the amount (if any) by which the value of the relevant trust assets has been diminished due to the breach of trust.
- 20.4 **Principal Exclusion:** Notwithstanding anything to the contrary in this clause 20 or any other provision of this Agreement, any individual named as a Principal of an Initial Seller that is a trust, and signing this Agreement in such capacity, shall remain bound in their personal capacity to the obligations of a Principal under this Agreement.
- 20.5 **Covenants of the Principals:** Each Principal of an Initial Seller that is a trust (a) covenants and agrees with the other parties to cause the Seller of which it is Principal to perform its obligations under, and otherwise act in accordance with, the terms of this Agreement, (b) acknowledges and agrees that it is jointly and severally liable with the Seller of which it is Principal for all representations, warranties, covenants, indemnities and agreements of such Seller under this Agreement. Each Principal hereby indemnifies the Buyer and Buyer Parent against any loss, damage or expense incurred by them as a result of the failure of the Seller of which it is Principal to comply with this Agreement. The covenants, obligations and indemnities of each Principal are absolute, unconditional, present and continuing and are in no way conditional or contingent upon any event or circumstance, action or omission which might in any way discharge a guarantor or surety.

21 GENERAL

- 21.1 **Announcements:** Except as may be required by Law (or the rules of a recognised stock exchange, including the TSX), no Party may make any announcement or disclosure as to the existence, pendency, Completion, subject matter or any of the terms of this Agreement except in such form and manner, and at such time, as the Seller's Representative and Buyer agree. If a Party is required by Law to make an announcement or disclosure as to the subject matter or any of the terms of this Agreement, that Party shall first give notice of the requirement to the other Parties, shall consult with the other Parties and shall endeavour to agree with the other Parties on the form of disclosure or announcement to be made.
- 21.2 **Time of the Essence:** Without detracting from clause 12, time is of the essence in relation to the Parties' respective obligations under clause 3.2 and clause 6 and no extension of time for the making of any payment or doing of any acts required by those clauses will be deemed to be a waiver, or modification, of or affect the application to this clause 21.2.
- 21.3 **Entire Agreement:** This Agreement, the Transaction Documents and all other agreements contemplated by this Agreement (including the New Shareholders' Agreement) constitute the entire understanding between the Parties concerning the Transaction and supersede and extinguish all earlier negotiations, understandings and agreements, whether oral or written, between the Parties relating to the Transaction.
- 21.4 **Costs:** Except as otherwise provided in this Agreement, each Party will pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Agreement.
- 21.5 **Assignment and Buyer Nominee:** No Party will assign or transfer, or purport to assign or transfer, any of their rights or obligations under this Agreement without the prior written consent of the other Party (such consent shall not be unreasonably or arbitrarily withheld or delayed). In addition, the Buyer may only transfer its rights and/or obligations under this Agreement to a nominee of the Buyer with the prior written approval of the Sellers.
- 21.6 **Waiver or Amendment:** No waiver, amendment or other modification of this Agreement shall be effective unless in writing and signed by or on behalf of each Party to be bound such waiver, amendment or other modification (noting the Sellers' Representatives may sign on behalf of the Sellers). For the purposes of section 15 of the *Contract and Commercial Law Act 2017*, no agreement of any person who is not a Party to this Agreement is required for any amendment approved under this clause 21.6.
- 21.7 **Further Acts:** The Parties agree to execute all such documents and do all such acts or things as may reasonably be required in order to give effect to the terms of this Agreement.
- 21.8 **Delay:** Any failure by a Party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by that Party to any other Party will not be construed as a waiver of the first Party's rights under this Agreement.

- 21.9 **Severance:** If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, this Agreement will remain otherwise in full force apart from such provision which will be deemed deleted.
- 21.10 **Governing Law:** This Agreement will be governed by, and construed in accordance with the Laws of New Zealand. The Parties irrevocably submit to the non-exclusive jurisdiction of the Courts of New Zealand with respect to any legal action, suit or proceeding or any other matter arising out of or in connection with this Agreement.
- 21.11 **Counterparts and Execution:** This Agreement may be executed in counterparts, each of which may be executed electronically (including in PDF) or in handwriting and will be deemed an original whether kept in electronic or paper form, and all of which taken together constitute one and the same document. Each Party consents to the signing of this Agreement by electronic means. The Parties agree to be bound by this Agreement signed in this way.

[Remainder of page intentionally left blank – signature pages follow]

SIGNATURES

INITIAL SELLERS:

SIGNED by **Alan James Wilderland:**

/s/ Alan James Wilderland

Acknowledgements

I confirm that I understand that:

- *the usual legal rules that require information to be given to investors for offers of financial products do not apply if the amount invested upfront by me (plus any other investments I have already made in those financial products) is \$750,000 or more; and*
- *I may not receive a complete and balanced set of information about this investment; and*
- *I have fewer legal protections for this investment; and*
- *this investment is not suitable for retail investors; and*

I have been advised to ask questions, read all documents carefully, and seek independent financial advice.

SIGNED by **Gregory Noel Rathbun** as
trustee of the Alan West Trust:

/s/ Gregory Noel Rathbun

Acknowledgements

I confirm that I understand that:

- *the usual legal rules that require information to be given to investors for offers of financial products do not apply if the amount invested upfront by me (plus any other investments I have already made in those financial products) is \$750,000 or more; and*
- *I may not receive a complete and balanced set of information about this investment; and*
- *I have fewer legal protections for this investment; and*
- *this investment is not suitable for retail investors; and*

I have been advised to ask questions, read all documents carefully, and seek independent financial advice.

SIGNED by **Stephen Marcus Jason West**
as trustee of the Alan West Trust:

/s/ Stephen Marcus Jason West

Acknowledgements

I confirm that I understand that:

- *the usual legal rules that require information to be given to investors for offers of financial products do not apply if the amount invested upfront by me (plus any other investments I have already made in those financial products) is \$750,000 or more; and*
- *I may not receive a complete and balanced set of information about this investment; and*
- *I have fewer legal protections for this investment; and*
- *this investment is not suitable for retail investors; and*

I have been advised to ask questions, read all documents carefully, and seek independent financial advice.

SIGNED by **Bruce Raymond Sheppard**
as trustee of the Hoek Family Trust:

/s/ Bruce Raymond Sheppard

Acknowledgements

I confirm that I understand that:

- *the usual legal rules that require information to be given to investors for offers of financial products do not apply if the amount invested upfront by me (plus any other investments I have already made in those financial products) is \$750,000 or more; and*
- *I may not receive a complete and balanced set of information about this investment; and*
- *I have fewer legal protections for this investment; and*
- *this investment is not suitable for retail investors; and*

I have been advised to ask questions, read all documents carefully, and seek independent financial advice.

SIGNED by **Stephen Marcus Jason West**
as trustee of the Hoek Family Trust:

/s/ Stephen Marcus Jason West

Acknowledgements

I confirm that I understand that:

- *the usual legal rules that require information to be given to investors for offers of financial products do not apply if the amount invested upfront by me (plus any other investments I have already made in those financial products) is \$750,000 or more; and*
- *I may not receive a complete and balanced set of information about this investment; and*
- *I have fewer legal protections for this investment; and*
- *this investment is not suitable for retail investors; and*

I have been advised to ask questions, read all documents carefully, and seek independent financial advice.

SIGNED by **Dianna Joan Birchfield**
West as trustee of the Dee West Trust:

/s/ Dianna Joan Birchfield West

SIGNED by **Regal NZ Trustee Limited** as
trustee of the Dee West Trust:

/s/ Regal NZ Trustee Limited

SIGNED by **Damon James Birchfield**
West as trustee of the Dee West Trust:

/s/ Damon James Birchfield West

Acknowledgements

I confirm that I understand that:

- *the usual legal rules that require information to be given to investors for offers of financial products do not apply if the amount invested upfront by me (plus any other investments I have already made in those financial products) is \$750,000 or more; and*
- *I may not receive a complete and balanced set of information about this investment; and*
- *I have fewer legal protections for this investment; and*
- *this investment is not suitable for retail investors; and*

I have been advised to ask questions, read all documents carefully, and seek independent financial advice.

SIGNED by **Peter David Arie Hoek:**

/s/ Peter David Arie Hoek

SIGNED by **Jeanne Merle Bertenshaw**
as trustee of the Kimberley Trust:

/s/ Jeanne Merle Bertenshaw

SIGNED for and on behalf of **Vulcan
Trustee Co (2020) Limited** as
trustee of the Kimberley Trust by:

/s/ Michael Andrew Robertson
Director

/s/ Mark Christian Hopkinson
Director

Michael Andrew Robertson
Print Name

Mark Christian Hopkinson
Print Name

PRINCIPALS:

SIGNED by **Stephen Marcus Jason West**
as Principal of the Alan West Trust and
Hoek Family Trust:

/s/ Stephen Marcus Jason West

SIGNED by **Jeanne Merle Bertenshaw**
as Principal of the Kimberley Trust:

/s/ Jeanne Merle Bertenshaw

SIGNED by **Damon James Birchfield**
West as Principal of the Dee West Trust:

/s/ Damon James Birchfield West

BUYER:

SIGNED for and on behalf of **SPIN
ACQUISITION LIMITED** by:

/s/ Jordan Taub

Director

/s/ Michael McKenna

Director

Jordan Taub

Print Name

Michael McKenna

Print Name

BUYER PARENT:

SIGNED for and on behalf of **TINY
LTD.** by:

/s/ Jordan Taub

Chief Executive Officer

Jordan Taub

Print Name

SCHEDULE 1 SELLERS' DETAILS & COMPLETION SHARES

General

- 1 To the extent that the address and/or email address of a Seller or a Beneficial Shareholder as set out in column 7 of the table in Part A or column 4 of the table in Part B below is inaccurate, the Seller or the Beneficial Shareholder (or the Sellers' Representatives on their behalf) will notify the Buyer of their accurate address as soon as practicable following the Agreement Date and prior to Completion.
- 2 The number of Shares on issue is dependent upon vesting and subsequent exercise of the Share Options issued under the ESOP which may in turn impact the proportions set out in column 4 and column 3 of the tables in Part A and Part B below respectively. As such, if Share Options are exercised pursuant to the ESOP (and the resultant shares issued to Serato Trustee) the tables in Part A and Part B below will be updated accordingly to record the Share issue and the change in the proportions set out in those tables.
- 3 The Sellers' Representatives shall submit an updated version of the tables in this Schedule 1, reflecting any updates in respect of the matters described in paragraphs 1 to 2 above, together with the Completion Notice.

Part A

	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
#	Seller	Ordinary Shares	Sale Shares	Relevant Proportion*	Completion Shares	Completion Shares Value	Addresses for notices
1	Alan James Wilderland	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
2	Gregory Noel Rathbun and Stephen Marcus Jason West as trustees of the Alan West Trust	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
3	Bruce Raymond Sheppard and Stephen Marcus Jason West as trustees of the Hoek Family Trust	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
4	Dianna Joan Birchfield West, Regal NZ Trustee Limited and Damon James Birchfield West as trustees of the Dee West Trust	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
5	Jeanne Merle Bertenshaw and Vulcan Trustee Co (2020) Limited as trustees of the Kimberley Trust	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
6	Peter David Arie Hoek	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
7	Serato Employee Trustee Limited	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[CONFIDENTIAL BUSINESS INFORMATION REDACTED]	[PERSONAL INFORMATION REDACTED]
	TOTALS	1,015,250*	652,181*	100%	24,259,694	US\$19,500,000	

* subject to adjustment as set out in clause 5.7.4

Part B: Beneficial Shareholders (in respect of whom legal title is held by Serato Employee Trustee Limited)

[CONFIDENTIAL BUSINESS INFORMATION AND PERSONAL INFORMATION REDACTED]

Part C: ESOP Participants and the number of Share Options held

[CONFIDENTIAL BUSINESS INFORMATION AND PERSONAL INFORMATION REDACTED]

SCHEDULE 2 GROUP STRUCTURE

Company name	Serato Audio Research Limited
Registered number	894999
Type of company	Limited liability company
Jurisdiction of incorporation	New Zealand
Date of incorporation	18 February 1998
Registered address	Level 2, 8 Brown Street, Ponsonby, Auckland 1011, New Zealand
Share capital	1,015,250 ordinary shares
Shareholder(s)	See the Reference Table
Directors	Terry Allen David Paul Grey Michael Charles John O'Donnell Stephen Marcus Jason West Alan James Wilderland

Company name	Serato Limited
Registered number	6220881
Type of company	Limited liability company
Jurisdiction of incorporation	New Zealand
Date of incorporation	9 February 2017
Registered address	Level 2, 8 Brown Street, Ponsonby, Auckland 1011, New Zealand
Share capital	1,000 ordinary shares
Shareholder(s)	Serato Audio Research Limited
Directors	Stephen Marcus Jason West Alan James Wilderland

Company name	Serato International Holdings (NZ) Limited
Registered number	5837809
Type of company	Limited liability company
Jurisdiction of incorporation	New Zealand
Date of incorporation	6 November 2015
Registered address	Level 2, 8 Brown Street, Ponsonby, Auckland 1011, New Zealand

Share capital	100 ordinary shares
Shareholder(s)	Serato Limited
Directors	Stephen Marcus Jason West Alan James Wilderland

Company name	Serato Management Limited
Registered number	2184449
Type of company	Limited liability company
Jurisdiction of incorporation	New Zealand
Date of incorporation	25 November 2008
Registered address	Level 2, 8 Brown Street, Ponsonby, Auckland 1011, New Zealand
Share capital	100 ordinary shares
Shareholder(s)	Serato Limited
Directors	Stephen Marcus Jason West Alan James Wilderland

Limited Partnership name	Serato Inc Limited Partnership
Registered number	2226546
Type of entity	Limited partnership (NZ)
Jurisdiction of incorporation	New Zealand
Date of incorporation	01 April 2009
Registered address	Level 2, 8 Brown Street, Ponsonby, Auckland 1011, New Zealand
General partner	Serato Management Limited
Limited partner	Serato Limited

Company name	Serato USA, LLC
Registered number	5867560
Type of company	Limited liability company
Jurisdiction of incorporation	Delaware, USA
Date of incorporation	02 November 2015
Registered address	8 The Green, Suite A, Dover, DE 19901, United States of America
Share capital	
Shareholder(s)	Serato International Holdings (NZ) Limited

Directors	
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Company name	Serato Employee Trustee Limited
Registered number	6616813
Type of company	Limited liability company
Jurisdiction of incorporation	New Zealand
Date of incorporation	25 January 2018
Registered address	Level 2, 8 Brown Street, Ponsonby, Auckland 1011, New Zealand
Share capital	100 ordinary shares
Shareholder(s)	Serato Limited
Directors	Stephen Marcus Jason West Alan James Wilderland

SCHEDULE 3 CHANGE OF CONTROL CONTRACTS

[CONFIDENTIAL BUSINESS INFORMATION REDACTED]

SCHEDULE 4 WARRANTIES

1 CAPACITY AND AUTHORITY

1.1 Right, Power, Authority and Action:

- 1.1.1 Each Seller and each Group Company has the right, power and authority, and has taken all action necessary, to execute, deliver and exercise its rights, and perform its obligations, under this Agreement, the Transaction Documents, as applicable, and each other document to be executed by each Seller or any Group Company at or before Completion.
- 1.1.2 Other than the OIO Application, no filing with or notice to, and no permit, authorization, registration, consent or approval of, any governmental authority is required on the part of any Seller or any Group Company in connection with the transactions contemplated by this Agreement or the Transaction Documents to which the Sellers or any Group Company are party.
- 1.1.3 The execution, delivery and performance by the Sellers of this Agreement and the Transaction Documents will not:
 - (a) conflict with, contravene, result in a breach of, constitute a default under, or infringe any instrument to which the Sellers or any Group Company are a party or by which the Sellers or any Group Company are bound (including the constitution or other constituent document of any such Seller or Group Company);
 - (b) conflict with, contravene or result in a breach of any order, judgment or decree of any court or Authority to which the Sellers or any Group Company are a party or by which the Sellers or any Group Company are bound;
 - (c) result in the creation of any Encumbrance on the assets or undertaking of any Group Company;
 - (d) other than Contracts requiring Change of Control Consents or Required Consents, give any Third Party the right to modify, cancel, terminate, suspend, revoke or accelerate or increase any obligation under any Contract to which any Group Company is party; or
 - (e) result in any violation of Law.
- 1.1.4 No Seller:
 - (a) (in the case of a Seller that is a company) is insolvent within the meaning of section 239C of the Companies Act;
 - (b) has stopped paying its debts as and when they fall due; or
 - (c) (in the case of a Seller that is a company) is subject to voluntary administration under Part 15A of the Companies Act.
- 1.1.5 No:

- (a) meeting has been convened, petition presented or order made for the liquidation, winding up, statutory management, administration or similar procedure of any Seller;
- (b) receiver, manager, statutory official, liquidator, administrator or officer of the court has been appointed in relation to all or any material part of the undertaking or assets of any Seller; or
- (c) mortgagee or chargee has exercised or attempted or indicated an intention to exercise its rights under any security of which a Seller is the mortgagor or chargor.

1.1.6 **Trustees:** Where a Seller enters into this Agreement as a trustee of a trust:

- (a) the trust has been validly created and is in existence and no action has been taken and no action has been proposed to terminate the trust;
- (b) the Seller has been validly appointed as the trustee of the trust and no action has been taken and no action has been proposed to remove a Seller as trustee of the trust;
- (c) the Seller has exercised all of its duties, powers and discretions as trustee in accordance with the terms of the trust deed constituting the trust (**Trust Deed**) and is not, and so far as the Seller is aware, no allegation has been made that it is, in default or in breach of its obligations under the Trust Deed;
- (d) the Seller has the power under the Trust Deed to execute and to perform the Seller's obligations under this Agreement and each Transaction Document to which it is party and has taken all necessary action under the Trust Deed to authorise such execution and the performance of such obligations;
- (e) the execution of this Agreement and each Transaction Document to which it is party by each trustee of the trust and the performance of its obligations under this Agreement and the applicable Transaction Document does not and will not conflict with or constitute a default under the Trust Deed;
- (f) all trustees of the trust are party to this Agreement; and
- (g) the Seller has a right, including after any set-off, to be fully indemnified out of assets of the trust in respect of obligations incurred by it under this Agreement and the Transaction Documents and the assets of the trust are sufficient to satisfy that right of indemnity and all other obligations in respect of which the Seller has a right to be indemnified out of the assets of the trust.

1.2 **Binding Agreements:** Each Seller's obligations under this Agreement and each Transaction Document executed by the Seller at or before Completion are, or when the relevant document is executed will be, duly and validly executed and delivered by such Seller and constitutes a valid and legally binding obligation of such Seller, enforceable against such Seller in accordance with their respective terms.

2 **SHARES AND SUBSIDIARIES**

2.1 **Shares:**

- 2.1.1 Each Seller (other than a Seller who is a trustee of a trust) is the legal and beneficial owner of, and has good and valid title to, the Sale Shares set out alongside its name in column 3 of the Reference Table and will on Completion be entitled to sell and transfer the ownership in such Sale Shares to the Buyer free from all Encumbrances and on the terms set out in this Agreement.
- 2.1.2 Each Seller who is a trustee of a trust is the legal owner of the Sale Shares set out alongside its name in column 3 of the Reference Table and will on Completion be entitled to sell and transfer the ownership in such Sale Shares to the Buyer free from all Encumbrances and on the terms set out in this Agreement. The Shares comprise the whole of the Company's allotted and issued share capital. The Shares have been duly issued and allotted, are fully paid or credited as fully paid and no money is owing in respect of any of them.
- 2.1.3 Except for the Shares and the Options listed in Part C, no Group Company has any outstanding debt securities or equity securities.
- 2.1.4 There is no Encumbrance, and there is no agreement, arrangement or obligation to create or give an Encumbrance, in relation to the Seller's Sale Shares and no person has claimed to be entitled to any such Encumbrance.
- 2.1.5 There is no Claim pending or, to the knowledge of the Sellers, threatened against or affecting any Seller in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with the transactions contemplated by this Agreement and the other Transaction Documents.
- 2.1.6 Other than this Agreement and the New Shareholders' Agreement, as at Completion there is no agreement, arrangement or obligation requiring the creation, allotment, issue, transfer, redemption or repayment of, or the grant to a person of the right (conditional or not) to require the allotment, issue, transfer, redemption or repayment of, a share in the capital of any Group Company (including, without limitation, an option or right of pre-emption or conversion).

2.2 **Group Companies:** The corporate structure of the Group Companies is as set out in Schedule 2. Each of the Group Companies is validly incorporated and existing under the Laws of its jurisdiction of incorporation. Other than as set out in Schedule 2:

- 2.2.1 no Group Company holds or is beneficially entitled to any shares or other equity securities (or securities convertible into shares or other equity securities) in any other entity, or is party to any other arrangement, the effect of which is to render any person, other than a Group Company, in substance or effect a Subsidiary of a Group Company; and
- 2.2.2 no other person holds legal title to any shares in any Group Company.

2.3 **No merger:** No Group Company has an interest in, and has not agreed to acquire an interest in or merge or consolidate with, a corporate body or any other person.

- 2.4 **Brokerage.** Other than [CONFIDENTIAL BUSINESS INFORMATION REDACTED], no broker, finder or investment banker is entitled to any brokerage commissions, finders' fees or similar compensation in connection with the Transaction based on any arrangement or other Contract to which the Company or any of its Subsidiaries is a party or to which the Company or any of its Subsidiaries is subject for which the Company or any of its Subsidiaries or Buyer could become obligated after the Completion.

3 **GENERAL CORPORATE**

3.1 **Incorporation and corporate power:**

- 3.1.1 Each Group Company is duly incorporated, exists and is in good standing under the Law of its place of incorporation.
- 3.1.2 Each Group Company has power, is qualified, and is licensed, to own its assets and to carry on its business as it is now conducted on Completion.
- 3.1.3 The Due Diligence Dataroom with document reference 1.3.97.2 contains a list of each material jurisdiction in which each Group Company carries on its business (with materiality based on the revenue originating from those jurisdictions).

3.2 **Constitution and Governing Documents:**

- 3.2.1 The Sellers have made available true, complete and correct copies of the minute books of each Group Company, including the certificate of incorporation, articles, constitutions, bylaws, shareholder agreements, voting agreements, resolutions (or other comparable organizational and/or governance documents) of each Group Company, each as amended and in effect as of the date hereof (provided the Sellers have only provided board and shareholder resolutions (or comparable documents) that date back no more than three (3) years prior to the Agreement Date).
- 3.2.2 The constitution (or equivalent document) of each Group Company contained in the Due Diligence Materials is the present constitution of the Group Company and is accurate and complete in all respects.
- 3.2.3 The business and affairs of each Group Company have been conducted in accordance with its constitution (or equivalent document).

4 **INFORMATION**

- 4.1 **Due Diligence Information:** The information contained in the Due Diligence Materials was at the time and in the context it was given to the Buyer and is at the Agreement Date, true, complete and accurate in all respects.
- 4.2 **No Material Circumstances Omitted:** There are no material circumstances or information relating to the Group and/or the Business that have not been fairly disclosed in the Due Diligence Materials which, if fairly disclosed, would reasonably be expected to lead a reasonable and industry purchaser to materially alter its assessment, as at the Agreement Date, of the financial or operational condition, business, assets, value or profitability of the Group and the Business.

5 **ACCOUNTS**

5.1 **Disclosed:** A complete copy of the Accounts is contained in the Due Diligence Materials.

5.2 **True and fair:** The Accounts:

5.2.1 comply with applicable Accounting Standards;

5.2.2 were special purpose financial statements prepared on a tax value basis unless otherwise stated in the specific accounting policies set out in those Accounts;

5.2.3 present fairly the financial position of the relevant Group Company as at the Last Accounting Date, and its financial performance and its cash flows for the financial year ended on the Last Accounting Date; and

5.2.4 are complete and accurate.

5.3 **Management Accounts:**

5.3.1 The Management Accounts:

(a) give an accurate view of the financial position and performance of the relevant Group Company of the period covered by the Management Accounts, in each case in conformity with Accounting Standards, after taking into account the purposes for which they were prepared; and

(b) were prepared on a basis consistent with the preparation of the other sets of management accounts of the Group Companies contained in the Due Diligence Materials.

5.3.2 The financial data in the columns entitled "Serato Audio Research Ltd." in the pro forma condensed consolidated statement of financial position and in the pro forma condensed consolidated statement of operations, in each case provided to the Sellers in connection herewith, present fairly the consolidated financial position of the Company as at September 30, 2024, and the consolidated results of operations of the Company for the nine months ended September 30, 2024, in each case in conformity with the Accounting Standards.

5.4 **Internal Controls:** The Group Companies have established and adhered to a system of internal accounting controls that are designed to provide reasonable assurance regarding the reliability of financial reporting. There has never been (a) any significant deficiency or significant weakness in any system of internal accounting controls used by any Group Company, (b) any Fraud or other wrongdoing that involves any of the management or other employees of any Group Company who have a role in the preparation of financial statements or the internal accounting controls used by the Group Companies or (c) any claim or allegation regarding any of the foregoing. Since January 1, 2024, there has been no change in any of the accounting (and Tax accounting) policies, practices or procedures of the Group Companies.

5.5 **Undisclosed Liabilities:** No Group Company has any Liability that would be required to be disclosed, reflected or reserved against in the Accounts (or notes thereto) in accordance with applicable Accounting Standards, except for (a) Liabilities set forth on the Accounts (or notes thereto), (b) Liabilities that have arisen after the Last Accounting Date in the ordinary course and are not, individually or in the aggregate, material in amount, none of which is a Liability

resulting from noncompliance with any applicable Law or licenses, breach of contract, breach of warranty, tort, infringement, misappropriation, dilution or Claim or (c) Liabilities that are not material to the Group Companies (taken as a whole). No Group Company is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract or Lease relating to any transaction or relationship between or among any Group Company, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose person, on the other hand, or any off-balance sheet arrangement.

- 5.6 **Customers and Vendors:** The Due Diligence Materials contain (a) a list of each Material Customer, showing the approximate total sales to each such customer during the applicable period and the percentage of the total sales of the Group Companies represented by such sales and (b) the Material Vendors, showing the approximate total spend by the Company from each such supplier or vendor during the applicable period and the percentage of total spend of the Group Companies represented by such spend.
- 5.7 **No Customer Deposits:** No Company Group holds customer deposits and all pre-paid income for annual subscriptions of the Group are recorded in the Management Accounts as 'deferred revenue obligations'.

6 **CHANGES SINCE THE LAST ACCOUNTING DATE**

- 6.1 **No material change:** Since the Last Accounting Date:

- 6.1.1 the Group's business has been operated in the ordinary course;
- 6.1.2 each Group Company has paid its creditors within the times agreed with them and in particular, without limiting the foregoing, no debt payable by any Group Company has been outstanding for more than 120 days from the date of invoice;
- 6.1.3 each Group Company has received payment in full of all receivables owing to the Group Company shown in the Accounts (subject to any provision for bad and doubtful debts made in the Accounts made in accordance with the applicable Accounting Standards), and has not released any debts in whole or in part and has not written off debts other than in the ordinary course and in any event of an amount in aggregate exceeding NZ\$100,000;
- 6.1.4 no Group Company has declared, paid or made a Dividend or distribution except as provided in the Accounts, otherwise fairly disclosed in the Due Diligence Dataroom document reference numbers 1.3.62.12, 1.3.62.13, 1.3.62.15, 1.3.62.16, and 1.3.62.17, in the manner permitted by clause 5.2.3, or otherwise approved by the Buyer pursuant to clause 5.3;
- 6.1.5 there has occurred no result, occurrence, fact, change, event or effect that has had, or would reasonably be expected to have, a Material Adverse Change; and
- 6.1.6 the Company and its Subsidiaries have conducted their businesses in the ordinary course.

- 6.2 **Capital Commitments:** Except as fairly disclosed in the Accounts or the Management Accounts, no Group Company had any commitments on capital account outstanding at the Last Accounting Date. Since the Last Accounting Date, no Group Company has entered into nor agreed to enter into any capital commitments.

7 **RECORDS**

Each Group Company holds, and has maintained, all financial and books of account which it is bound by Law to keep or to hold, and those records are complete and accurate.

8 **TAX**

8.1 **General:**

- 8.1.1 Each Group Company is and has at all times been resident only in its country of incorporation for all Tax purposes and is not liable to pay Tax chargeable under the Laws of any jurisdiction other than its country of incorporation.
- 8.1.2 Each Group Company has paid all Tax which it has become liable to pay and has not claimed a Tax credit that it is not entitled to, and is not, and has not in the seven years ending on Completion been, liable to pay a penalty, surcharge, or fine in connection with Tax.
- 8.1.3 Without prejudice to clause 8.1.2 above, each Group Company has collected, deducted or withheld all Tax which it has been obliged by Law to collect, deduct or withhold and has properly accounted to the relevant Tax Authority for all amounts of Tax so collected, deducted or withheld.
- 8.1.4 Each Group Company has within applicable time limits made all returns, provided all information and maintained all records in relation to Tax as it is required to make, provide or maintain and has fully complied on a timely basis with all notices served on it and any other requirements lawfully made of it by any Tax Authority.
- 8.1.5 Each Group Company has properly operated the PAYE or equivalent employee withholding system and has complied with each reporting obligation in connection with benefits provided for the employees of the Group Company.
- 8.1.6 No Group Company is involved in any dispute, audit or investigation in relation to Tax with any Tax Authority and to the Sellers' knowledge, no such dispute, audit or investigation is pending.
- 8.1.7 No Group Company has requested or been granted any extension or waiver of the statute limitation period applicable to any of its Tax or Taxes returns for which the period for assessment or collection (after giving effect to such extension or waiver) has not yet expired.
- 8.1.8 No Group Company has entered into a binding ruling or an advance pricing arrangement with a Tax Authority (or similar arrangement) that will apply with effect after Completion.
- 8.1.9 Each Group Company has claimed the correct depreciation loss for Tax purposes in relation to all depreciable property owned by such Group Company, and the adjusted tax values and cost prices of such depreciable property are as stated in the relevant tax fixed asset register for each Group Company.
- 8.1.10 No Group Company has entered into or been a party to any transaction which will cause any anti-avoidance provisions of any Tax Law to apply or which will allow a Tax Authority, acting reasonably, to apply any such anti-avoidance provisions.

- 8.1.11 No Group Company is, and so far as the Sellers are aware there are no circumstances whereby any Group Company will or may become, liable to pay any Tax or any amount in respect of any Tax which is primarily or jointly chargeable to any other person.
- 8.1.12 All Contracts and other arrangements between each Group Company and associated persons, as that term is defined in section YA 1 of the *Income Tax Act 2007* (or equivalent for its jurisdiction), are entered into at arm's length and on terms and conditions no less favourable than those applicable to comparable transactions between independent third parties acting at arm's length.
- 8.1.13 To the extent that a Group Company is required or elects to maintain an imputation credit account, that account:
- (a) has been correctly maintained as required by the applicable tax legislation;
 - (b) will not have a debit balance at Completion or at 31 March in any year that preceded the Completion Date; and
 - (c) no Group Company is liable for any payment of Tax as a result of a previous debit balance in any imputation credit account.
- 8.1.14 Each Group Company has kept and preserved those records which it has been required to keep in all material respects and preserve for the purposes of the Tax Law or any relevant Law.
- 8.1.15 All of each Group Company's liabilities for Tax in respect of the period from the Last Accounting Date to the Completion Date relates to income, profits or gains earned, received or arising in the ordinary course of the Group Company's normal trading activities.
- 8.1.16 No income would arise if any capital asset of a Group Company was treated as having been sold, disposed of or distributed on Completion, other than depreciation recovery income in terms of section CG 1 and subpart EE of the *Income Tax Act 2007*.
- 8.1.17 Except as expressly disclosed in the report contained in the Due Diligence Dataroom document reference 1.2.3.15.1, no Group Company is, or has ever been, a member of a consolidated, affiliated, combined, unitary or similar group for income tax purposes, or a member of an imputation group, or a member of a GST group.
- 8.1.18 With respect to fringe benefits, each Group Company has complied with all the requirements of the *Income Tax Act 2007* or the *Tax Administration Act 1994* (or equivalent for its jurisdiction) and, in particular, has maintained and kept complete, correct and up to date records and other necessary documents and all fringe benefit Tax amounts due and payable prior to and up to the Completion Date have been paid.
- 8.1.19 Each Group Company has not been a company to which the interest apportionment rules in subpart FE of the *Income Tax Act 2007* apply (or equivalent for its jurisdiction).
- 8.1.20 The value of any Research and Development Tax Incentive credits receivable for the Group in relation to eligible research and development expenditure incurred by the Group before Completion and treated as Cash for the purposes of the Net Debt calculation is correct.

- 8.1.21 No Group Company has participated in or been the promoter of a “reportable transaction” for US federal income tax purposes (or equivalent transaction for its jurisdiction).
- 8.1.22 Serato USA LLC is and always has been classified as an association taxable as a corporation for US federal income tax purposes.

8.2 **GST:** For the purposes of GST:

- 8.2.1 each Group Company has complied (whether as part of a group for GST purposes or otherwise) with all of the requirements of the applicable Tax Law;
- 8.2.2 all GST for which any Group Company was liable to account in respect of any supply upon which GST should have been charged made on or before the day before Completion:
 - (a) has been paid, within the relevant legislative timeframe; or
 - (b) has been retained in full by, and is available to, the Group pending payment to the relevant Tax Authority by the applicable due date;
- 8.2.3 any change of use adjustment required to be made by a Group Company has been accounted for within the legislative timeframe, or provided for in the Management Accounts in order to be accounted for to the Commissioner of Inland Revenue by the applicable due date; and
- 8.2.4 no GST input tax credit has been incorrectly claimed by any Group Company.

9 **ASSETS**

- 9.1 **Ownership:** Each asset included in the Accounts or acquired by a Group Company since the Last Accounting Date (other than assets disposed of or which are the subject matter of operating or finance or capital leases):
 - 9.1.1 is legally and beneficially owned solely by a Group Company free from any Encumbrance excluding Permitted Encumbrances;
 - 9.1.2 where capable of possession, is in the possession or under the control of a Group Company; and
 - 9.1.3 in the case of a tangible asset, is free from material defects, has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to reasonable wear and tear) and is suitable for the purposes for which it is presently used.
- 9.2 **Adequacy of Assets:** The Group owns or has rights to all the assets as are necessary and sufficient for the effective operation of the Business substantially in the same manner as was undertaken prior to Completion.
- 9.3 **Plant and equipment:** All of the plant and equipment comprising the Assets is free from material defects, has been maintained in accordance with normal industry practice, is in good operating condition, in reasonable repair, and good working order (except for fair wear and tear and having regard to its age and use).

- 9.4 **Hire purchase and leased assets:** Except as fairly disclosed in the Due Diligence Dataroom with document reference numbers 1.3.78.1 and 1.2.3.6.9, no Group Company is party to, or liable under, an operating or finance lease, or hire purchase agreement.

10 MATERIAL CONTRACTS

- 10.1 **Disclosed:** All Material Contracts have been fairly disclosed in the Due Diligence Dataroom in the folders with reference numbers 1.2.1.1.3, 1.2.4.1, 1.2.3.6, 1.2.5.1, 1.2.6.1, 1.2.6.3, 1.2.6.4, 1.2.6.5, 1.2.6.6, 1.2.6.8, 1.2.6.9.1, 1.2.6.9.2, 1.2.6.10, 1.2.6.11, 1.2.7, 1.3.9, 1.3.11, 1.3.16, 1.3.19, 1.3.20, 1.3.24, 1.3.25, 1.3.28, 1.3.30, 1.3.31, 1.3.32, 1.3.44, 1.3.47, 1.3.48, 1.3.49, 1.3.51, 1.3.52, 1.3.53, 1.3.54, 1.3.55, 1.3.56, 1.3.57, 1.3.58, 1.3.64, 1.3.67, 1.3.68, 1.3.70, 1.3.71, 1.3.75, 1.3.78, 1.3.79, 1.3.83, 1.3.87, 1.3.88, 1.3.90, 1.3.91, 1.3.92, 1.3.93 and 1.3.97.4 (including all sub-folders within such numbered folders, and any further sub-folders within those sub-folders, recursively), or Q&A Responses, including the following Contracts to which the Company or any of its Subsidiaries is a party or by which any of them or their respective properties or assets is bound by as of the date hereof (collectively, the **Material Contracts** and each a **Material Contract**):

- 10.1.1 any Contract providing for (a) payment by any person to the Company or any of its Subsidiaries in excess of [CONFIDENTIAL BUSINESS INFORMATION REDACTED] annually on account of products or services rendered by the Company or any of its Subsidiaries or (b) the purchase of products or services by the Company or any of its Subsidiaries from any person in excess of [CONFIDENTIAL BUSINESS INFORMATION REDACTED] annually;
- 10.1.2 any Contract that involves non-cancellable commitments to make capital expenditures in excess of [CONFIDENTIAL BUSINESS INFORMATION REDACTED] annually;
- 10.1.3 any Contract establishing any teaming, joint ventures, associate alliance, strategic alliance, market collaboration, partnership, sharing of profit arrangement, minority equity investments or similar arrangement;
- 10.1.4 any Contract for the employment or service of any officer, individual employee, director, individual service provider or other person providing for (a) fixed or variable compensation in the aggregate in excess of [CONFIDENTIAL BUSINESS INFORMATION REDACTED] annually or (b) the payment of any severance, retention, change in control or similar payments or (c) commission based arrangements;
- 10.1.5 any Contract or indenture under which the Company or any of its Subsidiaries has (a) created, incurred, assumed or guaranteed (or may create, incur, assume or guarantee) External Indebtedness, (b) mortgaged, pledged or otherwise placed or granted a Encumbrance (other than a Permitted Encumbrance) on its properties or assets to secure such External Indebtedness or (c) extended credit to any person (including any loan or advance);
- 10.1.6 any Contract under which the Company or any of its Subsidiaries is a (a) lessee of or holds or operates any personal property, owned by any other person, except for any lease of personal property under which the aggregate annual rental payments do not exceed [CONFIDENTIAL BUSINESS INFORMATION REDACTED] or (b) lessor of or permits any other person (other than the Company and its Subsidiaries) to hold or operate any personal property owned or controlled by it;

- 10.1.7 any collective bargaining agreement or any other Contract with any labour union, works council, trade association or other agreement or Contract with any employee organization;
- 10.1.8 any (a) license, royalty, indemnification, covenant not to sue, escrow, co-existence, concurrent use, consent to use or other Contract relating to any Intellectual Property Rights (including any Contracts relating to the licensing of Intellectual Property Rights by the Company or any of its Subsidiaries to a Third Party or by a Third Party to the Company or any of its Subsidiaries) and (b) other Contracts affecting the Company's or any of its Subsidiaries' ability to own, enforce, use, license or disclose any Intellectual Property Rights or providing for the development or, acquisition of any Intellectual Property Rights (including any Data) (clauses (a) and (b), collectively, **IP Agreements**), provided, that Off-the-Shelf Software Licenses shall not be required to be fairly disclosed in the Due Diligence Dataroom;
- 10.1.9 any agent, sales representative, referral, marketing or distribution agreement or any other agreement that requires payment by or to the Company or referral fees, commissions or other monetary or non-monetary compensation in respect of a referral;
- 10.1.10 any Contract that limits the ability of the Company or any of its Related Parties to engage in any line of business or that contains a covenant not to compete applicable to the Company or any of its Related Parties;
- 10.1.11 any Contract that contains "most favored nations" pricing terms or grants to any customer, supplier or vendor any right of first offer or right of first refusal or exclusivity or any similar requirement;
- 10.1.12 any Contract that contains any "non-solicitation", "no hire" or similar provisions which restrict the Company or any of its Related Parties from soliciting, hiring, engaging, retaining or employing any other person's current or former employees;
- 10.1.13 any Contract with a person located outside of the Specified Area or any Contract requiring work to be performed by the Company or any of its Subsidiaries outside of the Specified Area;
- 10.1.14 any settlement, conciliation or similar agreement entered into in the past five (5) years or under which there are continuing obligations (other than confidentiality and non-disparagement obligations relating to the settlement of historic employment disputes) or Liabilities on the part of the Company or any of its Subsidiaries which have not been discharged by the Agreement Date;
- 10.1.15 any Contract for the disposition of any portion of the assets or business of the Company or any of its Subsidiaries (other than sales of products in the ordinary course) or for the acquisition by the Company or any of its Subsidiaries of the assets or business of any other person (other than purchases of inventory or components in the ordinary course);
- 10.1.16 any Contract wherein or whereby the Company or any of its Subsidiaries has agreed to, or assumed, any obligation or duty to indemnify, reimburse, hold harmless, guarantee, or otherwise assume or incur any obligation or Liability and such obligation or duty is uncapped or otherwise not limited (including by reference to standard of conduct) or provides a right of rescission;

- 10.1.17 any Contract containing any provision or covenant that binds or purports to bind "affiliates" of the Company or any of its Subsidiaries (other than Subsidiaries of the Company) or any of their respective assets or that would otherwise bind or purport to bind Buyer or any of its Related Parties, or any of its or their assets, after the Completion;
- 10.1.18 any Contract between or among the Company or any of its Subsidiaries, on the one hand, and any of the Sellers or their respective Related Parties (other than the Company or any of its Subsidiaries), on the other hand, or any Contract between the Company or any of its Subsidiaries, on the one hand, and any current officer, director, manager or employee of the Company or any of its Subsidiaries (other than employment and employment-related contracts made in the ordinary course), on the other hand;
- 10.1.19 any Contract pursuant to which the Company or any of its Subsidiaries subcontracts work to a Third Party in connection with its business;
- 10.1.20 any Contract with a Material Customer or Material Vendor;
- 10.1.21 any Contract pursuant to which any person (other than employees of the Company or its Subsidiaries) has authored, created, conceived, developed or reduced to practice any Intellectual Property Rights or Company Products for, on behalf of or under the direction or supervision of the Company or any of its Subsidiaries;
- 10.1.22 any Government Contract; and
- 10.1.23 any commitment or arrangement to enter into any of the foregoing.
- 10.2 **Valid and Binding:** Each of the Material Contracts are valid, binding and enforceable against the relevant Group Company and against each counterparty in relation to the Business in accordance with its terms.
- 10.3 **No Joint Ventures, etc:** No Group Company is:
 - 10.3.1 a member of a joint venture, consortium, partnership or association; or
 - 10.3.2 a party to a distributorship, agency, or franchise agreement or arrangement (other than in the ordinary course of business).
- 10.4 **Material Commitments:** No Group Company is party to any agreement that restricts or prevents it from carrying on the Business.
- 10.5 **No Waivers:** Except as otherwise fairly disclosed in Q&A Responses, no Group Company has agreed to waive any of its rights under any Material Contract that it is party to.
- 10.6 **No Breaches:** there are no:
 - 10.6.1 facts or circumstances which have resulted in or, as far as the Sellers are aware are likely to result in, a breach or default of any Material Contract; and
 - 10.6.2 current or, as far as the Sellers are aware, threatened disputes or Claims in respect to any Material Contract notified to the relevant Group Company in writing.

- 10.7 **Defective Services and Products:** No Group Company has supplied or otherwise provided or sold services or products in connection with the Business that are defective or deficient or involve negligence in the delivery or provision of any such services or products.
- 10.8 **No Notices:** No Group Company has received written notice of breach, dispute, suspension, termination, avoidance or repudiation of any Material Contract.
- 10.9 **Status of Material Contracts:** Outside of termination for convenience (where it exists), there is no fact or circumstance which will result in, or which could reasonably be expected (with or without the effluxion of time, the giving of notice or satisfaction of any condition) to result in:
- 10.9.1 the termination of any Material Contract;
 - 10.9.2 any Claim by or against a Group Company pursuant to a Material Contract;
 - 10.9.3 any material payment obligation crystallising under a Material Contract; or
 - 10.9.4 any reduction in the demand for services under a Material Contract.
- 10.10 **Related Party Contracts:** No Group Company is party to any contract or arrangement:
- 10.10.1 with any Seller or any Related Party of, or person related to, or associated with, a Seller; or
 - 10.10.2 for the benefit of a Seller or any such person,
- which has not been fairly disclosed to the Buyer before the Agreement Date.
- 10.11 **Standard Terms of Trade:** The Sellers have fairly disclosed in the Due Diligence Dataroom document reference numbers 1.3.19.1, 1.3.19.2, 1.3.19.3 and 1.3.19.4 their standard terms of trade or terms of supply used in the Business and such terms are representative of the contracts actually used in the conduct of the Business.
- 10.12 **Third Party Consents:** There execution, delivery and performance by the Sellers of this Agreement and the Transaction Documents will not, other than Change of Control Contracts, give any Third Party the right to modify, cancel, terminate, suspend, revoke or accelerate or increase any obligation under any Contract to which any Group Company is party.
- 11 **LEASES**
- 11.1 **Disclosed:** Complete copies of all Leases have been included in the Due Diligence Materials.
- 11.2 **No other leases:** No Group Company is party to any leases or other occupation arrangements for premises, and has no other interests in real property, other than the Leases.
- 11.3 **Validity:** Each Lease is valid and binding on the relevant Group Company and enforceable in accordance with its terms.
- 11.4 **Rent:** The relevant Group Company has paid all rent, rates and other amounts presently payable in respect to each Lease.
- 11.5 **Use:** The relevant Group Company is using the Business Premises in accordance with its relevant Lease's terms and, as far as the Sellers are aware, any operative or proposed regional or district plan and any applicable resource consents and other applicable statutory, local body

and regulatory or other mandatory legal requirements, and in particular (and without limitation) all building works undertaken by a Group Company at any Business Premises have obtained valid code compliance certificates.

- 11.6 **No Notices:** No Group Company has received notice of breach, dispute, suspension, termination, avoidance or repudiation of a Lease and no written notices, orders, requisitions or applications have been served on a Group Company.
- 11.7 **No Breaches:** No Group Company and, to the knowledge of the Sellers, no counterparty to any Lease, is in breach of any material obligations under the Leases.
- 11.8 **No Subleases:** The Group has exclusive occupation and right of quiet enjoyment of the Business Premises and no Group Company has agreed to assign, sublet, or part possession or surrender a Lease or Business Premises.
- 11.9 **Potential Termination of Leases:** There are no circumstances which would now or with the passage of time entitle any landlord, licensor or other person to terminate any Lease or licence, or circumstances that would otherwise restrict or terminate the Group Company's continued possession or occupation of any Business Premises.
- 11.10 **Real Property:** No Group Company owns any real property.

12 INFORMATION TECHNOLOGY AND PRIVACY

- 12.1 **No Viruses, etc:** To the knowledge of the Sellers, the Company Systems in relation to the Business are free from viruses, or other hardware or software intended or designed to permit unauthorised access or use of the Company Systems or disable, damage, erase, disrupt or impair the normal operation of the information technology.
- 12.2 **No Third Party Access:** To the knowledge of the Sellers, none of the Company Systems have been used or accessed by any Third Party in a way not authorised by a Group Company.
- 12.3 **Back-up Systems and Maintenance Agreements:** All prudent back up system(s) and support and maintenance agreements are in place in respect of the Company Systems and data stored in or otherwise processed by the Company Systems. The Group has in place business continuity and disaster recovery plans that are designed to minimise and mitigate the occurrence, duration and effect of any unscheduled unavailability of the Company Systems.
- 12.4 **No Unauthorised Access/Use:** Other than as fairly disclosed in the Due Diligence Dataroom folder reference number 1.2.4.6 or as applicable, Q&A Responses, as far as the Sellers are aware, there have not been any instances of:
 - 12.4.1 loss or temporary or permanent loss of access to;
 - 12.4.2 access, use, modification or disclosure without the authority of the Group; or
 - 12.4.3 any other misuse,of any personal information held by, or on behalf of, the Group or any unresolved claims relating to privacy or data security breaches.
- 12.5 **Complaints:** No Group Company has received any written notices or any communications (and as far as the Sellers are aware, any other form of notice or communication) from any person:

12.5.1 alleging non-compliance with any data protection Laws; or

12.5.2 complaining about the Group Company's use of personal information,

and, so far as the Sellers are aware, there are no circumstances likely to give rise to any such notices or communications.

12.6 **Right to Use and Sufficiency:** The Company Systems:

12.6.1 are owned by or licensed, leased or supplied under an enforceable written agreement with a Group Company;

12.6.2 are not shared with or used by or on behalf of or accessible by any other person other than a customer of a Group Company for whom the relevant Group Company provides hosting services as part of an 'as a service' offering; and

12.6.3 comprise all of the assets, systems, hardware and software required to operate the information technology function of the Group in the manner it has operated in the previous two years prior to Completion.

12.7 **No Actions Required Prior to Completion:** No action will be necessary prior to Completion to enable any Group Company to use any Company Systems currently used by it to the same extent and in the same manner as it has been used prior to the Completion Date.

12.8 **Software Licences:** In respect of all Software used or stored or resident in the Group:

12.8.1 the terms of the relevant Software licences have been complied with in all material respects;

12.8.2 the Group currently, and during last three years, has obtained sufficient licences for all users of licensed Software and all licence fees are fully paid up-to-date; and

12.8.3 no written notices (and as far as the Sellers are aware, any other notices) of any breach of termination have been served on any Group Company in respect of any such licence.

12.9 **Data Protection and Privacy; Cybersecurity:**

12.9.1 The Company and its Subsidiaries are in compliance with all Laws relating to any of its Data Security Requirements. The Company and its Subsidiaries maintain commercially reasonable policies, procedures, rules and controls, including administrative, technical and physical safeguards, regarding data Processing, privacy, protection and security that comply with all Data Security Requirements. The Company and its Subsidiaries and the conduct of their business are in material compliance with, and at all times have been in material compliance with, all Data Security Requirements. [CONFIDENTIAL BUSINESS INFORMATION REDACTED]. There is not, and there has not been, (a) any Claim pending, threatened in writing or, to the Knowledge of the Sellers, threatened orally by or against the Company or any of its Subsidiaries or (b) any Claim (including any complaint or enforcement notice) sent or received in writing or, to the Knowledge of the Sellers, orally by the Company or any of its Subsidiaries, in each case of clauses (a) and (b), with respect to any Sensitive Information, Personal Information, Data Security Requirement, Security Incident, or Processing, or any indemnification in connection with any of the foregoing. Neither the Company nor any of its Subsidiaries

has been required to notify any person or Authority of any Security Incident. The transactions contemplated by this Agreement do not and will not violate or breach any Data Security Requirement. Except as fairly disclosed in the Due Diligence Dataroom with document reference numbers 1.2.4.12.1 and 1.3.34.2 or as applicable, Q&A Responses, the Company and its Subsidiaries utilize multi-factor authentication for all methods of remote access to Company Systems, email access, and active directory access, and all remote access Software and personal computers and workstations included in the Systems have up to date patches for all Software thereon and utilize anti-virus and full disk encryption. The Company and its Subsidiaries maintain commercially reasonable back-up and recovery procedures which enables it to continue its operations in the event of significant damage or interruption to Company Systems or Data

- 12.9.2 The Company and its Subsidiaries (a) engage and have engaged in Processing (and cause Third Parties to engage in Processing) only with respect to such Third Party and customer Data as they are authorized to so engage (or to cause such Processing, as applicable) by Law and contract, and (b) have implemented reasonable safeguards to prevent unauthorized access to, use or disclosure of such Data. The Company, its Subsidiaries, and such Third Parties have, with respect to all such Third Party Data that is subjected to any Processing directly or indirectly in connection with the respective businesses of the Company or any of its Subsidiaries or any Company System, all rights necessary to conduct the operation of such businesses as currently conducted. Neither the Company nor any of its Subsidiaries has received in writing or, to the Knowledge of the Sellers, orally, any communication from any person from whom it acquires, purchases, is provided, or engages in any other business relationship with respect to, any such Data to the effect that, and neither the Company nor any of its Subsidiaries has any reason to believe that, any such person will stop or decrease the rate of, or materially alter the terms of, the business it conducts with (or the Data it provides for) the Company or any such Subsidiary. To the Knowledge of the Sellers, there are no suppliers of Data that are subjected to any Processing in connection with any such business or Company System with respect to which practical alternative sources of supply are not generally available.
- 12.9.3 Except as fairly disclosed in the Due Diligence Dataroom with document reference number 1.3.34.2 or as applicable, Q&A Responses, each of the Company and its Subsidiaries has deployed encryption for storage and transmission of Sensitive Information with respect to all Company Systems, which encryption is consistent with accepted industry standards. To the Knowledge of the Sellers, the Company and its Subsidiaries have resolved or remediated any material issues or vulnerabilities regarding data privacy, data security, and administrative, physical, and technical safeguards, including with respect to Company Systems. Sensitive Information or Personal Information is Processed by and on behalf of the Company and its Subsidiaries in an encrypted manner and Personal Information is not maintained by or on behalf of the Company or any of its Subsidiaries for longer than is reasonably necessary or justified. All Third Parties that Process any Sensitive Information on behalf of the Company or any of its Subsidiaries have contractually provided guarantees, warranties or covenants in relation to such Processing, confidentiality, and security measures and have agreed to comply with such obligations in a manner that is substantially equivalent to and at least as stringent as the Information Security Program, and that is sufficient for the Company's and its Subsidiaries' compliance with all Data Security Requirements and applicable Law.

- 12.9.4 The Company has established an Information Security Program, and there have been no material violations of said Information Security Program since 1 January 1 2021. The Company and its Subsidiaries have remediated all critical and high risks which have been identified (or are in the process of remediating any high risks which have been recently identified, as fairly disclosed in the Q&A Responses [CONFIDENTIAL BUSINESS INFORMATION REDACTED]).
- 12.9.5 All Sensitive Information contained in the Company Systems or otherwise Processed by or on behalf of the Company or any of its Subsidiaries will continue to be available for Processing by and on behalf of the Company and its Subsidiaries following the Completion on terms and conditions identical to those under which such Sensitive Information was available for Processing by and on behalf of the Company its Subsidiaries immediately prior to the Completion, without payment of any additional amounts or consideration.
- 12.9.6 Each of the Company and its Subsidiaries has (a) used commercially reasonable efforts to promptly remedy any deficiencies and vulnerabilities with deficiencies and vulnerabilities identified in its respective Information Security Programs, and (b) provided training with respect to compliance with all Data Security Requirements to its staff, and such staff have been trained so that they understand what is required of them in relation to the relevant Sensitive Information and Personal Information Processing activities to meet the Data Security Requirements and applicable Law.
- 12.9.7 All intra-group and extra-group exports of Personal Information by Company and its Subsidiaries outside the jurisdiction in which the Personal Information was collected comply with Data Security Requirements and applicable Law.
- 12.9.8 All necessary notices and consents pertaining to the Personal Information held by the Company and its Subsidiaries have been given and obtained, and such notices and consents comply with the requirements of the Data Security Requirements and applicable Law.
- 12.9.9 The Company's and its Subsidiaries' marketing activities are and have been prior to Completion compliant with Data Security Requirements and other applicable Law, including anti-spam legislation, except as fairly disclosed in the Due Diligence Dataroom with document reference numbers 1.2.4.11.3, 1.2.4.11.4, 1.3.33.1, 1.3.33.2, 1.3.33.3, 1.3.40.1, and 1.3.97.5.
- 12.9.10 All requests from relevant person(s) in respect of their statutory rights (e.g., access, deletion, portability and rectification) pertaining to their Personal Information held by the Company and its Subsidiaries have been complied with in accordance with the Data Security Requirements and applicable Law.

13 **INTELLECTUAL PROPERTY**

- 13.1 The Sellers have fairly disclosed in the Due Diligence Dataroom with document reference numbers 1.2.6.12.1, 1.2.6.12.2 and 1.2.6.12.3 and the Q&A Responses in respect of the question numbered 66010282: (a) all issued, registered or applied for Intellectual Property Rights that are owned by or filed in the name of the Company or any of its Subsidiaries, specifying as to each item, as applicable: (i) the nature of the item, including the title of the item, (ii) the owner(s) of the item, (iii) the jurisdictions in which the item is issued or registered or in which an application for issuance or registration has been filed, and (iv) the issuance, registration or application numbers and dates; and (b) a description of all material unregistered Intellectual

Property Rights owned by the Company or any of its Subsidiaries (provided that, with respect to Trade Secrets, only a high level, non-confidential description must be listed). The Company Owned IP is subsisting, valid, and enforceable. All necessary registration, maintenance and renewal fees due within 30 days after Completion in connection with the Intellectual Property Rights fairly disclosed in the Due Diligence Materials have been paid and all necessary documents and certificates due within 30 days after Completion in connection with the foregoing have been filed with the relevant Intellectual Property Rights authorities in the Specified Area or foreign jurisdictions, as the case may be, for the purposes of perfecting, prosecuting and maintaining the foregoing. No loss or expiration of any Company Owned IP is threatened, pending or reasonably foreseeable.

- 13.2 (a) The Company or one of its Subsidiaries exclusively owns and possesses all right, title and interest in and to the Company Owned IP, and (b) the Company and its Subsidiaries have sufficient rights pursuant to a valid and enforceable IP Agreement to all other Business IP, in each case of clauses (a) and (b), free and clear of all Liens, other than Permitted Encumbrances.
- 13.3 Other than as fairly disclosed in the Due Diligence Dataroom folder reference number 1.3.32 and in the in the Due Diligence Dataroom with document reference numbers 1.2.6.13.7 and 1.3.52.1 or as applicable, Q&A Responses, there is not, and there has not been (a) any Claim pending, threatened in writing, or to the Knowledge of the Sellers, threatened orally by or against the Company or any of its Subsidiaries or (b) Claim (including unsolicited offers, demands, or requests to license or cease and desist letters) sent or received in writing or, to the Knowledge of the Sellers, orally, by the Company or any of its Subsidiaries, in each case of clauses (a) and (b), with respect to any Intellectual Property Right (including any infringement, misappropriation, dilution, violation, enforceability, use (including any assertion of misuse), ownership, scope, licensing, or validity thereof) or indemnification in connection therewith.
- 13.4 No Company Owned IP is bound by, any (i) Contract restricting or otherwise limiting the use, validity, enforceability, scope, licensing or ownership thereof or any right, title or interest of the Company or any of its Subsidiaries with respect thereto, or (ii) Order.
- 13.5 None of the Company or any of its Subsidiaries, nor the conduct of any of their respective businesses, or any Company Product (including any development, manufacture, reproduction, performance, display, marketing, distribution, importation, offer for sale, sale, license or use thereof) infringes, misappropriates, dilutes or otherwise violates, or has infringed, misappropriated, diluted or otherwise violated, any Intellectual Property Rights of any person.
- 13.6 To the Knowledge of the Sellers, no person has infringed, misappropriated, diluted or otherwise violated any of the Company Owned IP. Where the Company or any of its Subsidiaries (or any person on behalf of the Company or any of its Subsidiaries) has authored, conceived, created, reduced to practice, or developed any Intellectual Property Rights for a customer (**Customization**) and either ownership of such Customization does not vest in the Company or any of its Subsidiaries or the Company and its Subsidiaries are not fully licensed to (including to use) such Customization without restriction, such Customization was developed to meet that customer's specific requirements. No such Customization: (a) has been provided to any other licensees or customers of the Company or any of its Subsidiaries or (b) is necessary for the ongoing operation of the business of the Company or of any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has licensed, disclosed, distributed, transferred, assigned, or otherwise made available to any of its or their respective customers any Customization constituting Software that is governed by a Reciprocal License without the express prior written consent of such customer.

- 13.7 Each contractor of the Company or any of its Subsidiaries that has participated in any Development has assigned the Intellectual Property Rights created by virtue of that Development to a Group Company.
- 13.8 Each person who has participated in the authorship, conception, creation, reduction to practice, or development of any Intellectual Property Rights or Company Products for, on behalf of or under the direction of the Company or any of its Subsidiaries or any Company Owned IP (collectively, **Developments**) has executed and delivered to the Company a valid and enforceable written Contract providing for (a) the confidentiality, non-disclosure, and non-use by such person of all Trade Secrets of the Company or any of its Subsidiaries, (b) the assignment by such person (by way of a present grant of assignment) to the Company or any of its Subsidiaries of all right, title and interest in and to such Intellectual Property Rights and Company Products or otherwise arising out of such person's employment by, engagement by, or Contract with the Company or any of its Subsidiaries, and (c) the waiver by such person of all moral rights in all Developments and in all Intellectual Property Rights set forth in clause (b). To the Knowledge of the Sellers, no person is in breach of any such Contract.
- 13.9 The Company and its Subsidiaries have taken all reasonable steps under the circumstances to protect, preserve and maintain the Company Owned IP and any other Trade Secrets used by any of them. No such Trade Secrets have been disclosed or authorized to be disclosed to any person, other than in the ordinary course pursuant to a written confidentiality agreement. Each person that has had or currently has access to any Trade Secrets owned or used by the Company or any of its Subsidiaries (including any part of any Source Code constituting Company Owned IP) is subject to written obligations regarding the confidentiality, non-disclosure, and non-use of such Trade Secrets. To the Knowledge of the Sellers, no person is in breach of any such obligation.
- 13.10 The Company Systems are sufficient in all material respects for their immediate and currently-anticipated future needs of the Company and its Subsidiaries. There have been no failures, breakdowns or continued substandard performance of any Company Systems in the three years prior to the Agreement Date which have caused the substantial disruption or interruption in or to the use of the Company Systems or the operation of the business of the Company or any of its Subsidiaries. The Company and its Subsidiaries have taken all reasonable precautions (including through the use of encryption and password protection) to (a) protect the confidentiality, integrity and security of the Company Systems and all information stored or contained therein or transmitted thereby from any theft, corruption, loss or unauthorized use, access, disclosure, interruption or modification by any person and (b) ensure that all Company Systems are (i) fully functional and operate and run in a reasonable and efficient business manner in all material respects, and (ii) free from any Malicious Code or material bugs. The Company and its Subsidiaries have implemented, maintained and tested adequate and commercially reasonable disaster recovery procedures and facilities for the business and all data material to the business of the Company or any of its Subsidiaries has been regularly backed-up in an encrypted manner, tested and deemed to be viable for restoration purposes. The Company has used commercially reasonable efforts to implement security patches and upgrades that are generally available for the Company Systems and promptly implement critical security patches.
- 13.11 The Sellers have fairly disclosed in the Due Diligence Dataroom with folder reference numbers 1.2.4.1 and 1.3.97.3 a list of all (a) Company Products and versions thereof, and (b) Third Party Components, in each case identifying (i) the Company Product associated with such Third Party Component (with it being acknowledged that a Third Party Component may be recorded as forming part of the Company's Source Code for its "core" modules with such core modules being used by a variety of the Company Products), (ii) the Contract granting the Company or

any of its Subsidiaries rights in and to such Third Party Component (including the name of the applicable Contract for each such Third Party Component that constitutes Open Source Software) and (iii) whether any modification has been made thereto. With respect to any Third Party Component that constitutes Open Source Software, the Company and its Subsidiaries are and have been in material compliance with all applicable licenses with respect thereto. No Software that is a Third Party Component or that is otherwise licensed, disclosed, distributed, or otherwise made available to the Company or any of its Subsidiaries is governed by a Reciprocal License. The Company or one of its Subsidiaries is in possession of the Source Code and Object Code for all (x) Company Products and (y) other Software that is reasonably necessary for the use, maintenance, enhancement, development or other exploitation of such Company Products as currently used in, or currently under development for, the businesses of the Company or any of its Subsidiaries. No person other than the Company or one of its Subsidiaries is in possession of, or has been granted any license or other right with respect to, any Source Code constituting Company Owned IP. Except as fairly disclosed in the Due Diligence Dataroom with document reference numbers 1.2.4.1.11, 1.2.4.3.2 and 1.2.4.3.3, no such Source Code has been disclosed, licensed, released, distributed, escrowed or made available to or for any person and no person has been granted any rights thereto or agreed to disclose, license, release, deliver, or otherwise grant any right thereto under any circumstance. No event has occurred, and no circumstance or condition exists, that (whether with or without the passage of time, the giving of notice or both) will, or would reasonably be expected to, result in a requirement that any such Source Code be disclosed, licensed, released, distributed, escrowed or made available to or for, or any other grant of any right be made with respect thereto, any Third Party by the Company or any of its Subsidiaries.

- 13.12 The transactions contemplated by this Agreement shall not impair any right, title or interest of the Company or any of its Subsidiaries in or to any Business IP or Company Systems, and immediately subsequent to the Completion, the Business IP and Company Systems will be owned by, licensed to, or available for use by, the Company and its Subsidiaries on terms and conditions identical to those under which the Company and its Subsidiaries owned, licensed, or used, the Business IP and Company Systems immediately prior to the Completion, without the payment of any additional amounts or consideration. All Company Owned IP is, and immediately following the Completion, will be, fully transferable, alienable, and licensable by the Company and its Subsidiaries.
- 13.13 No Developments were (in whole or in part) authored, created, conceived, developed, or reduced to practice by or on behalf of, or with any personnel, grants, funds, facilities, Intellectual Property Rights or other resources of a Sponsor, and no person who was involved in, or who contributed to, the authorship, creation, conception, development, or reduction to practice of any Development was employed by, under contract to, or performed services for any Sponsor during a period of time during which such person was also performing services either for the Company or any of its Subsidiaries related to the Development. No Sponsor has any Claim or right in or to any Development.
- 13.14 There are no restrictions on the use, release, sale, disclosure, communication or modification by the Company or any of its Subsidiaries of the Company Owned IP. To the extent the use of Company Owned IP is restricted in any way under a Government Contract, the Company or its applicable Subsidiary has complied, and has included in each of their respective Contracts with its subcontractors, as applicable, a requirement to comply, in all material respects with such restrictions under such Government Contract.

14 **FINANCE**

- 14.1 **External Indebtedness:** As at 31 December 2024, no Group Company has any External Indebtedness other than as set forth in the Management Accounts and/or the Due Diligence Dataroom with folder reference number 1.2.3.16 or that which is otherwise identified in the Completion Statement.
- 14.2 **Loans by Group Companies:** No Group Company has lent any money that has not been repaid to it by the relevant due date. No Group Company owns the benefit of any debts (whether present or future), except for debts that have accrued to it in the ordinary course.
- 14.3 **Guarantees and Indemnities:** There is no subsisting guarantee or indemnity given by any Group Company as security for the obligations of a third party, or given by a third party for the accommodation of any Group Company (but this does not extend to any guarantees or indemnities given by one Group Company for and on behalf of another Group Company).
- 14.4 **Benefit of Security Interests:** Any Encumbrance held by any Group Company (including a guarantee and indemnity) that is part of the assets of the Group Company is valid and enforceable by the Group Company against the provider of that security in accordance with the terms of the relevant document.
- 14.5 **Grants:** The Due Diligence Materials contains full and accurate details of all incentives, grants, subsidies, allowances, loans, credits, Tax deferrals, payments, guarantees or other financial assistance or aid from any Authority that any Group Company has applied for or received in the last three years (**Grants**). No notice has been given by any Authority in relation to their Grant asserting any breach of the terms and conditions of any Grant and as far as the Sellers as aware:
- 14.5.1 there has been no actual or alleged breach by any Group Company of any terms or conditions of any Grant; and
- 14.5.2 no Group Company is under any obligation (whether contingent or otherwise) to repay any Grant (in whole or in part).
- 14.6 **Bank Accounts:** The Due Diligence Materials contain a true, complete and correct list of all b (a) all banks or other financial institutions with which any Group Company has an account or maintains a lock box or safe deposit box, showing the type of each such account, lock box and safe deposit box and (b) the names of the persons authorized as signatories thereon or to act or deal in connection therewith.
- 15 **INSURANCE**
- 15.1 **Disclosed:** A complete list of all insurance policies held by or maintained on behalf of the Group (the **Insurance Policies**) has been included in the Due Diligence Materials.
- 15.2 **Premiums:** All premiums which are due under the Insurance Policies have been paid, and the Group Companies are in compliance with the terms of the Insurance Policies.
- 15.3 **Validity:** Each of the Insurance Policies is in full force and effect, valid, and is enforceable against the relevant insurer in accordance with its terms, and the Seller and the relevant Group Company have not done anything or omitted to do anything which might:
- 15.3.1 result in an increase in the premium payable in respect of any of the Insurance Policies;

- 15.3.2 make any of the Insurance Policies void or voidable;
- 15.3.3 entitle any of the insurers under any of the Insurance Policies to refuse a Claim in relation to particular claims in whole or in part;
- 15.3.4 result in an increase in the premium payable under any of the Insurance Policies; or
- 15.3.5 prejudice the ability to effect insurance, on the same or better terms, in the future.
- 15.4 **Claims:** No Claim is outstanding under any past or present policy of any Group Company and no circumstances are known to the Sellers that have arisen and could lead to a Claim being made.
- 15.5 **Denial:** No Group Company has ever been denied insurance coverage.
- 16 **EMPLOYEES AND CONTRACTORS**
- 16.1 **Disclosed:** The Due Diligence Materials contain:
 - 16.1.1 the name and position of each Employee (whether in active service or not) and the employing Group Company, together with the standard contract of employment and any material exceptions;
 - 16.1.2 the date of commencement of each Employee's employment with the Group Company, and the remuneration and other benefits paid to or conferred on each Employee including any bonus, contingent or deferred compensation, commission, accrued overtime, accrued vacation and paid time off, and estimated or target annual incentive compensation of each such Employee;
 - 16.1.3 the jurisdiction in which each Employee is located;
 - 16.1.4 a list of all (a) benefit plans, medical, dental, life insurance, equity or equity-based compensation, stock option, stock purchase, employee stock ownership, bonus or other incentive compensation, employment, consulting, profit sharing, disability, fringe benefit, salary continuation, severance, termination, indemnity, change in control, retention, retirement, pension, deferred compensation, vacation, sick pay or paid time off plan, program, arrangement or policy, and each other material benefit or compensation plan, policy, agreement (including employment and consulting agreements), program or arrangement, whether oral or written, funded or unfunded, terminated or ongoing, (i) that any Group Company maintains, sponsors, contributes to or is required to contribute to, (ii) for the benefit of any current or former employee, officer, director or individual service provider of the Group Companies, or (iii) under or with respect to which the Company or any of its Subsidiaries has any current or potential Liability, other than any Employee Benefit Agreement (each, an **Employee Benefit Plan** and collectively, the **Employee Benefit Plans**) and (b) Employee Benefit Agreement; and
 - 16.1.5 and the material terms for each Contractor or similar, as at the Agreement Date.
- 16.2 **Employee Benefits Plans:**
 - 16.2.1 Each Employee Benefit Plan (and each related trust, insurance Contract or fund) and each Employee Benefit Agreement has been established, maintained, funded, registered, communicated, invested and administered in all material respects in

accordance with its terms, the terms of any applicable collective bargaining agreement (if applicable) and in all material respects in compliance with all applicable Laws and fiduciary duties.

- 16.2.2 With respect to each Employee Benefit Plan and each Employee Benefit Agreement, all contributions, distributions, reimbursements and payments (including all employer contributions, employee salary reduction contributions, and premium payments) that are due have been made within the time periods prescribed by the terms of each Employee Benefit Plan, each Employee Benefit Agreement, and applicable Laws, and all contributions, distributions, reimbursements or payments for any period ending on or before Completion that are not yet due have been made or properly accrued. No Employee Benefit Plan or Employee Benefit Agreement has any unfunded Liability not accurately reflected on the Accounts.
- 16.2.3 All required reports and descriptions have been timely filed and distributed in all material respects in accordance with the applicable requirements of applicable Laws.
- 16.2.4 The Group Companies have correctly classified those individuals performing services for the Group Companies as common law employees, leased employees, exempt or non-exempt employees, independent contractors, dependent contractors, or agents of the Group Companies, and the Group Companies have no Liability for improper classification of any such individual, including for unpaid overtime or by reason of an individual who performs or performed services for any Group Company in any capacity being improperly excluded from participating in an Employee Benefit Plan.
- 16.2.5 The consummation of the transactions contemplated by this Agreement, alone, or in combination with any other event, shall not (a) entitle any current or former employee or other individual service provider of any Group Company (or the beneficiaries of such individuals) to any severance, change in control, transaction bonus, retention, or other similar payment under any Employee Benefit Plan, any Employee Benefit Agreement or otherwise or (b) accelerate the time of payment, funding or vesting of any payment or benefit due to any employee or other individual service provider (or their beneficiaries), (c) or increase the amount of compensation or benefits due to any such employee or other individual service provider (or their beneficiaries), or (d) otherwise give rise to any obligation to fund or any Liability under any Employee Benefit Plan or any Employee Benefit Agreement or otherwise.
- 16.2.6 Only current or former Employees, consultants or Contractors or former employees, consultants or contractors (or any spouses, dependents, survivors or beneficiaries of any such employees, consultants or contractors or former employees, consultants or contractors) participate in the Employee Benefit Plans (other than any equity based compensation plans retained by the Group Companies) and no entity other than the Group Companies is a participating employer under any Employee Benefit Plan. All Employee Benefit Plans are sponsored by the Group Companies.
- 16.2.7 No insurance policy or any other agreement affecting any Employee Benefit Plan requires or permits a retroactive increase in contributions, premiums or other payments due thereunder. The level of reserves under each Employee Benefit Plan which provides group benefits and contemplates the holding of such reserves is reasonable and sufficient to provide for all incurred but unreported claims.
- 16.2.8 All Employee data necessary to administer each Employee Benefit Plan in accordance with its terms and conditions and all applicable Laws is in possession of the Group

Companies and such data is complete, correct, and in a form, which is sufficient for the proper administration of each Employee Benefit Plan.

16.3 **No Collective Agreements:**

16.3.1 There are no collective agreements which apply to Employees, and no other relationship with any labour union, work council, trade association, or other employee, and no bargaining for any collective agreements or any of the foregoing relationships has been initiated.

16.3.2 No Group Company has (a) experienced any strikes, work stoppages, walkouts or other material labour disputes and no such dispute is pending or threatened; (b) committed any material unfair labour practice; (c) has experienced any union organizational or decertification activities and no such activities are currently underway or threatened by, on behalf or against any labour union, works council, trade association, or other employee organization with respect to employees of any Group Company, to organize certify, or establish any labour union or employee association or to apply any existing collective agreement to the employees of the Group Company; (d) been subject to any material pending or threatened employment related Claim in any forum, relating to an alleged violation or breach by any Group Company or any of their respective officers or directors of any Law, regulation or Contract, and neither the Group Companies, nor any of their respective employees, officers, directors, or agents have committed any act or omission giving rise to material Liability for any violation or breach identified herein.

16.4 **Payments:** Each Group Company has paid all undisputed amounts (including, as applicable, remuneration, allowances, benefits, superannuation contributions, and contributions to Employees' KiwiSaver) due and payable to each Employee and Contractor up the last date before Completion on which Employees and Contractors are ordinarily paid amounts due and payable to them.

16.5 **Compliance:** Each Group Company has:

16.5.1 complied with its obligations under:

- (a) any employment agreements in respect of its Employees;
- (b) any contracts for services in respect of its Contractors;
- (c) the *Holidays Act 2003*; and
- (d) all applicable Laws and industrial instruments relating to labour and employment matters, including those relating to wages, hours of work, overtime, vacation, equal opportunity, pay equity, accessibility, fair labour standards, employment and labour standards, human rights, non-discrimination, workers compensation, collective bargaining, labour organizing, occupational health and safety and workplace safety, immigration, administrative/reporting obligations, registrations, redundancies and workforce reductions, employee, contractors, and worker classification, and the payment and withholding of employment benefits, pension, employment insurance, social security and other payroll Taxes; and

- 16.5.2 for the purposes of the Holidays Act 2003, properly characterized and recorded accurately in the books and records of the applicable Group Company all non-discretionary bonus payments;
 - 16.5.3 properly maintained wage and time records and copies of its employment agreements and other records detailing the length of service, accumulated benefits and entitlements and other relevant conditions of employment of each of its Employees; and
 - 16.5.4 fully and timely paid and recorded accurately in the books and records of the applicable Group Companies all wages, salaries, wage premiums, bonuses, commissions, overtime pay, vacation time, vacation pay, leave of absence pay, and fees and other compensation due and payable to its Employees and Contractors.
- 16.6 **Transaction Payments:** The Due Diligence Materials contain a list of:
- 16.6.1 all payments to any employees or contractors of the Group Companies owing or arising at, prior to or following Completion from or as a result of the consummation of the transactions contemplated by this Agreement, including any payments for incentive securities or similar rights, any severance or bonus plan or payment and any exit bonus or change in control payments, or any similar payment, including the amount of each such payment; and
 - 16.6.2 any binding commitments to any directors, officers, employees, former employees, or contractors with respect to compensation, benefits, promotion, retention, termination, notice or pay in lieu of notice, severance, policies, change in control, other terms and conditions of employment or similar matters in connection with the transactions contemplated by this Agreement.
- 16.7 **No Disputes:**
- 16.7.1 There is no existing industrial dispute involving any Employee and there is no threatened or pending industrial dispute involving Employees or a Group Company.
 - 16.7.2 There is no existing dispute involving any Contractor and there is no threatened or pending dispute involving any Contractor.
- 16.8 **No Notices:** No Group Company has received notice of any Claim from an Employee (or previous employee), Contractor (or previous contractor), or employment relations Authority that has not been resolved.
- 16.9 **No Investigations:** There are no notices of any existing investigation or prosecution and, so far the Sellers are aware, there is no threatened or pending investigation or prosecution of a Group Company or statutory notice or litigation under workplace Laws, occupational health and safety Laws or anti-discrimination or equal opportunity legislation relating to any Employee or previous employee which relates to the period in which such employee was employed by a Group Company.
- 16.10 **No Judgment or Award:** No Group Company is:
- 16.10.1 subject to or in breach of any order, judgment or award given or made by the employment relations Authority, employment court, or other similar Authority; or

- 16.10.2 a party to any undertaking or assurance given to the employment relations Authority, employment court or other similar Authority.
- 16.11 **No Settlement Payments:** There are no payments currently being made or negotiated due by a Group Company in connection with the redundancy of any former employee or contractor of that Group Company.
- 16.12 **Superannuation:**
- 16.12.1 Other than as required to comply with the *KiwiSaver Act 2006* or any other mandatory employer superannuation contributions under applicable laws in the jurisdictions where its Employees are located, no Group Company is under any legal Liability to pay any pension, retirement, death or disability or other similar payment to any of the Employees, their families or dependants and no such pension or payment is now being or has been paid voluntarily.
- 16.12.2 Each Group Company has at all times complied with its obligations under the *KiwiSaver Act 2006*.
- 16.12.3 There are no outstanding or unpaid contributions or KiwiSaver scheme contributions due to any superannuation scheme, including the KiwiSaver scheme, from any Group Company.
- 16.12.4 There are no outstanding or unpaid KiwiSaver scheme contributions or penalties due from any Group Company to the Inland Revenue.
- 16.13 **Accident Compensation:** Each Group Company has complied with its obligations under the *Accident Compensation Act 2001* and any related or repealed legislation, and any regulations made under such legislation.
- 16.14 **Authorization:** All employees of the Group Companies are authorized to work in the jurisdiction(s) in which they provide services on behalf of the applicable Group Company.
- 16.15 **Termination:** Except as fairly disclosed in the Due Diligence Dataroom with document reference number 1.2.5.5, as at the Agreement Date, no officer of any Group Company and no Employees or Contractors have informed any Group Company of any plan to terminate employment with or services for any Group Company, and as far as the Sellers are aware, no such person or persons has any current plans to terminate employment with or services for the Group Companies within the twelve (12) month period following Completion.
- 16.16 **Harassment:** (a) There have not been (i) any allegations or formal or informal complaints made to or filed with any Group Company related to harassment, sexual harassment or sexual misconduct, (ii) any other Claims initiated, filed or threatened, against any Group related to harassment, sexual harassment or sexual misconduct, (iii) to the Knowledge of the Sellers, any relationships between any employees of any Group Company that have created an actual or perceived personal conflict (situation where a supervisory employee makes, influences or provides input into an employment-related decision that affects another employee with whom the supervisory employee has a personal or family relationship), or (iv) any other allegations, formal or informal complaints or any other Claims initiated, filed or threatened against any person other than a Group Company related to harassment, sexual harassment, sexual misconduct or personal conflict, in each case by or against any current or former director, officer, senior level management employee or personal conflict of any Group Company, (b) no Group Company has entered into any settlement agreement related to allegations of

harassment, sexual harassment, sexual misconduct or personal conflict by any current or former director, officer, employee or individual service provider and (c) there have not been any private settlement agreements related to allegations of harassment, sexual harassment, sexual misconduct or personal conflict by or against any current or former director, officer, senior level management employee or personal conflict to which any Group Company is not a party. To the extent allegations of harassment, sexual harassment, sexual misconduct or personal conflict have been made to any Group Company, the Company and its Subsidiaries have promptly, thoroughly and impartially investigated all such allegations and, where it was determined that such allegation had potential merit, the Group Companies have taken prompt and appropriate action and the Group Companies do not reasonably expect any material Liability related to such allegations.

- 16.17 **Penalties:** No outstanding assessments, penalties, fines, liens, charges, surcharges, or other amounts due or owing pursuant to any workers' compensation Laws and no Group Company has been assessed or reassessed in any material respect under such Laws during the past four (4) years and no audit of the Company or any of its Subsidiaries is currently being performed pursuant to any applicable workers' compensation Laws. To the Knowledge of the Sellers, there are no Claims or potential Claims regarding workplace or occupational illnesses or injuries.
- 16.18 **No Breach:** No employee, consultant or contractor with whom any Group Company has contracted, is in violation of any term of any employment contract, contract of engagement, services agreement, proprietary information agreement or any other agreement relating to the right of that individual to be employed, engaged or retained by any Group Company, as applicable, and to the Knowledge of the Sellers, the continued employment or engagement by any Group Company of their current employees, consultants and contractors will not result in any such violation. No Group Company has received any notice alleging that any such violation has occurred.
- 16.19 **Term of Agreements:** All of the Employees are employed for an indefinite term, and all Contractors are engaged or retained for fixed terms.

17 **HEALTH, ENVIRONMENT, WORKPLACE AND SUBSTANCES MATTERS**

- 17.1 **Compliance with Laws etc:** Each Group Company is in compliance with all Laws, codes of practice, circulars, guidance notices and similar requirements concerning all of the following:
- 17.1.1 the protection of human health and safety (including the *Health and Safety at Work Act 2015*);
 - 17.1.2 the conditions of the work place;
 - 17.1.3 employees' terms and conditions of employment; and
 - 17.1.4 the prevention of discrimination.

No Group Company has received any notice of any actual or alleged breach of any health and safety Law and there are no circumstances which are likely to give rise to any such breach.

18 **INSOLVENCY**

- 18.1 **No Events:** No Group Company has had, at any time in the last two years:

- 18.1.1 a liquidator or provisional liquidator appointed;
 - 18.1.2 a receiver, receiver and manager, statutory manager or similar officer appointed;
 - 18.1.3 an administrator appointed, whether under Part 15A of the Companies Act or otherwise;
 - 18.1.4 an application made for the appointment of an administrator, liquidator or provisional liquidator, over all or part of its business, assets or revenues and neither the Group Company nor its directors have passed a resolution for any such appointment;
 - 18.1.5 entered into any compromise, arrangement or moratorium affecting the rights of its creditors;
 - 18.1.6 an application made for the winding up of the Group Company, or
 - 18.1.7 suffered any event analogous in nature under the Laws of any relevant jurisdiction and no Claim to cause or bring about any of the above events in respect of a Group Company has been made or taken by any person.
- 18.2 **Solvency:** Each Group Company, as at the Agreement Date:
- 18.2.1 is able to pay its debts as and when they fall due; and
 - 18.2.2 is not insolvent or presumed to be insolvent under any Law.
- 19 **LITIGATION AND COMPLIANCE WITH LAW**
- 19.1 **No proceedings:** No Group Company is involved in a civil, criminal, arbitration, administrative or other proceeding.
- 19.2 **No known threats:** As far as the Sellers are aware, no civil, criminal, arbitration, administrative or other proceeding which will or is reasonably likely to have a material adverse effect on the business of the Group is pending or threatened by or against a Group Company.
- 19.3 **No known circumstances:** No fact or circumstance exists which might give rise to a civil, criminal, arbitration, administrative or other proceeding involving a Group Company which will or is reasonably likely to have a material adverse effect on the business of the Group.
- 19.4 **No Judgment or Award:** No Group Company is:
- 19.4.1 subject to or in breach of any current order, judgment, award or decision given or handed down in any proceeding; or
 - 19.4.2 a party to any undertaking or assurance given in any proceeding.
- 19.5 **Compliance with Laws:** Group Company is in material compliance with any Law, statutory provision, order, by-law or regulation binding or applicable to it in relation to its formation, the use of any assets, or the carrying on of its business. No written notices have been received by and no Claims have been made against any Group Company alleging a material violation of any Law.

- 19.6 **Corporate Authorisations:** Each Group Company has obtained all shareholder and board resolutions required by applicable Law in order to enter into and consummate the transactions contemplated by this Agreement.
- 19.7 **Licenses:** Each Group Company holds all material licenses required for the conduct of its business and the ownership and operation of its assets. No material license is pending or, to the knowledge of the Sellers, threatened or reasonably foreseeable (including as a result of the Transaction) other than expiration in accordance with the terms thereof.
- 19.8 **Certain Business Practices:**
- 19.8.1 No Group Company, nor any of their respective directors, officers or employees, nor, to the knowledge of the Sellers, any agent or other person acting on behalf of any Group Company, is currently, or has been: (a) a Sanctioned Person, (b) organized, resident or located in a Sanctioned Country, (c) directly or indirectly operating in, conducting business with, or otherwise engaging in any dealings with any Sanctioned Person or in any Sanctioned Country, to the extent such activities violate applicable Sanctions Laws or Ex-Im Laws, (d) engaging in any export, re-export, transfer or provision of any goods, Software, technology, data or service without, or exceeding the scope of, any required or applicable licenses or authorizations under all applicable Ex-Im Laws or (e) otherwise in violation of any applicable Sanctions Laws, Ex-Im Laws, AML Laws, Anti-Corruption Laws or anti-boycott Laws administered by any Authority.
- 19.8.2 No Group Company, nor any of their respective directors, officers or employees, nor, to the knowledge of the Sellers, any agent or other person acting on behalf of any Group Company, is currently, or has been: offered, paid, promised to pay, or authorized payment of any money, or offered, given, promised to give, or authorized giving of anything of value to (a) any representative of an Authority (a **Government Official**) for purposes of influencing any act or decision of such Government Official in its or his or her official capacity, inducing such Government Official to do or omit to do any act in violation of its or his or her lawful duty, or securing any improper advantage, or inducing such Government Official to use its or his or her influence with a foreign Authority to affect or influence any act or decision of such Authority, in each case, in order to assist any Group Company in obtaining or retaining business for or with, or directing business to any person; (b) any person, while knowing that all or a portion of such money or thing of value would or will be offered, given, or promised, directly or indirectly, to any Government Official for any prohibited purpose described in clause (a); or (c) any other individual or entity in violation of applicable Anti-Corruption Laws.
- 19.8.3 The Group Companies have implemented and maintained in effect written policies, procedures, and internal controls, and internal accounting control systems, that are reasonably designed to prevent, detect and deter violations of applicable Sanctions Laws, Ex-Im Laws, AML Laws, Anti-Corruption Laws and anti-boycott Laws.

SCHEDULE 5 ADJUSTMENT CALCULATION

1 PREPARATION OF COMPLETION STATEMENT

The Buyer will, in consultation with the Sellers' Representatives, prepare the Completion Statement as soon as practical after Completion, in accordance with this Schedule 5, so that the Net Working Capital and Net Debt of the Group as at the Effective Time, and any Adjustment Amount, can be determined.

2 BASIS OF PREPARATION AND POLICIES

2.1 **Basis of Preparation:** The Buyer must ensure that the Completion Statement is prepared:

- 2.1.1 with line items consistent with those in the Reference Statement (outlined in Schedule 6);
- 2.1.2 subject to the specific accounting policies set out in clause 2.2 of this Schedule 5;
- 2.1.3 on a basis consistent with the accounting principles, policies and procedures used to prepare the Accounts and in line with past practice where an item is not covered by the specific accounting policies referred to in clause 2.1.2, and clause 2.1.2 will prevail in the event of any inconsistency; and
- 2.1.4 in accordance with special purpose financial statements prepared on a tax value basis where an item is not covered by clause 2.1.3, and clause 2.1.3 will prevail in the event of any inconsistency.

For reference purpose only and without any binding effect, the Completion Statement will be prepared on the items as illustrated as the reference statement (as outlined in Schedule 5) **(Reference Statement)**.

2.2 **Specific Accounting Policies:** The following specific accounting policies will be used in the preparation of the Completion Statement:

- 2.2.1 The Completion Statement will be prepared as at the Effective Time.
- 2.2.2 The Completion Statement must be prepared without regard to any events that occur after Completion (it being acknowledged that any amounts payable after Completion but relating to the period on or prior to Completion will be included).
- 2.2.3 The principles contained in Schedule 5 must be interpreted to avoid double counting any item within the Completion Statement or otherwise provided for elsewhere within this Agreement.
- 2.2.4 The value of any cash exercise price paid to and received by the Group in connection with the exercise of any options granted under the ESOP shall be treated as Cash for the purposes of the Net Debt calculation.
- 2.2.5 For the purposes of calculating the Tax asset/Liability, Completion will be treated as the end of a Tax accounting period.
- 2.2.6 The calculation of Net Working Capital and Net Debt shall be prepared in NZD. Assets and liabilities in the Completion Statement denominated in a currency other than NZD

shall be converted into NZD at the Applicable Exchange Rate on the Completion Date. Following the calculation of the Adjustment Amount in NZD, the Adjustment Amount will be converted to USD at the Applicable Exchange Rate at the Completion Date.

2.2.7 [CONFIDENTIAL BUSINESS INFORMATION REDACTED]

2.2.8 For the avoidance of doubt there shall be no revision or reappraisal of the method of calculation of balances in relation to any changes in NZ IFRS since the date of the Accounts.

2.2.9 To the extent that there is a tax benefit which arises post-Completion on any External Indebtedness items, for the purposes of the Completion Statement, these will be calculated at the tax effective rate. To the extent there are tax deductible expenses treated as Net Debt where the income tax deduction for the expense arises after the Effective Time, the anticipated tax relief will be deducted from the Net Debt amount. Where GST is recoverable in a tax period after the calculation time, the GST exclusive amount will be included in Net Debt provided the GST amount is not included elsewhere in the Completion Statement.

2.2.10 The value of any Research and Development Tax Incentive credits arising under subpart LY of the *Income Tax Act 2007* for the Group in relation to eligible research and development expenditure incurred by the Group before Completion shall be treated as Cash for the purposes of the Net Debt calculation. For the purposes of calculating these credits, Completion will be treated as the end of a Tax accounting period.

3 DELIVERY AND REVIEW

3.1 **Draft:** The Buyer will deliver the draft Completion Statement to the Sellers' Representatives no later than 75 calendar days after Completion.

3.2 **Supporting information:** The Buyer must ensure that the Sellers' Representatives are promptly given all information and assistance reasonably requested by the Sellers' Representatives to review the draft Completion Statement.

3.3 **Notice following review:** Within 30 Business Days of the receipt of the draft Completion Statement, the Sellers' Representatives must give the Buyer written notice:

3.3.1 if the Sellers' Representatives accept the draft Completion Statement as delivered to the Sellers' Representatives, in which case it will be deemed to be the Completion Statement and used as the basis for any adjustment to the Purchase Price in accordance with clause 4; or

3.3.2 objecting to the contents of the draft Completion Statement, specifying the basis of the objection and providing reasonable supporting calculations, documents and evidence in support of such objection (and, if the Buyer does not comply with clause 3.2, such objection may be on the basis that the Sellers' Representatives are unable to accept certain calculations due to the lack of information or assistance requested under clause 3.2 or because the necessary information or assistance was not provided in a timely manner before the response deadline).

- 3.4 **Deemed acceptance:** If the Sellers' Representatives have not given a notice of objection in accordance with clause 3.3.2 within the specified timeframe, the Sellers will be deemed to have given a written notice in accordance with clause 3.3.1 at the end of that period.
- 3.5 **Dispute:** If, within a period of 20 Business Days from the giving of a notice under clause 3.3.2, the Sellers' Representatives and the Buyer cannot agree on the contents of the Completion Statement, then the Buyer or the Sellers' Representatives may refer the matters in dispute to an Expert, with a request that the Expert make a decision in respect of the disputed matters (and any consequential adjustments) within 20 Business Days from the date of the reference.
- 3.6 **Submissions:** Each Party will be entitled to make written submissions to the Expert, and must ensure that all correspondence with the Expert is copied to the other Party. The Parties shall take all reasonable steps to procure that the Expert provides them with a draft of his, her or its decision for discussion and comment prior to the final decision being given.
- 3.7 **Decision binding:** The decision of the Expert will, in the absence of Fraud or manifest error, be conclusive and binding on the Parties.
- 3.8 **Determination:** Once the decision of the Expert is made, the draft Completion Statement (incorporating any adjustments determined by the Expert) will constitute the Completion Statement for the purposes of this Agreement (including calculating any adjustment payable in accordance with clause 4).
- 3.9 **Costs:** The Buyer and the Sellers (and Sellers' Representatives) will each be responsible for their own costs in connection with the preparation and review of the draft Completion Statement. The fees and expenses of the Expert will be shared between the Sellers (as to 50%) and the Buyer (as to 50%).

4 **ADJUSTMENT AMOUNT AND PAYMENT**

- 4.1 **Adjustment Amount:** Subject to clause 2, the Purchase Price will be adjusted as follows:

4.1.1 to the extent that the Net Working Capital in the Completion Statement is:

- (a) greater than the Estimated Net Working Capital, then the Buyer will pay to the Sellers an amount equal to the excess, multiplied by the Acquired Percentage (expressed as a decimal); and
- (b) less than the Estimated Net Working Capital, then the Sellers will refund to the Buyer an amount equal to the shortfall, multiplied by the Acquired Percentage (expressed as a decimal); and

4.1.2 to the extent that the Net Debt in the Completion Statement is:

- (a) greater than the Estimated Net Debt (i.e., is more positive or less negative), then the Sellers will refund to the Buyer an amount equal to the excess, multiplied by the Acquired Percentage (expressed as a decimal); and
- (b) less than the Estimated Net Debt (i.e., is more negative or less positive), then the Buyer will pay to the Sellers an amount equal to the shortfall, multiplied by the Acquired Percentage (expressed as a decimal),

and, once the amounts payable under this clause 4.1 have been set-off to the extent that both the Sellers and the Buyer owe an amount to the other, the Purchase Price will be adjusted by

such final net payment accordingly (the **Adjustment Amount**) and paid in accordance with clause 4.2. For the avoidance of doubt it is acknowledged that if the Net Debt in the Completion Statement is a negative number (due to Cash exceeding the External Indebtedness at the Effective Time) then this will result in a positive adjustment to the Purchase Price to the extent the Net Debt in the Completion Statement is less than the Estimated Net Debt.

4.2 **Payment:** If the Adjustment Amount as set out in the agreed or determined Completion Statement is:

4.2.1 payable by the Buyer then:

- (a) the Escrow Agent will pay an amount equal to 100% of the Adjustment Escrow Amount to the Sellers' Nominated Account; and
- (b) the Buyer shall pay to the Sellers an amount equal to the Adjustment Amount to the Sellers' Nominated Account;

4.2.2 payable by the Sellers, and the Adjustment Amount is equal to or exceeds the Adjustment Escrow Amount, then:

- (a) the Escrow Agent will pay an amount equal to 100% of the Adjustment Escrow Amount to the Buyer; and
- (b) the Sellers shall pay to the Buyer an amount equal to the amount by which the Adjustment Amount exceeds the Adjustment Escrow Amount,

4.2.3 payable by the Sellers, and the Adjustment Amount is less than the Adjustment Escrow Amount, then:

- (a) the Escrow Agent will pay from the Adjustment Escrow Amount an amount equal to the Adjustment Amount to the Buyer; and
- (b) the Escrow Agent will pay the balance (if any) of the Adjustment Escrow Amount to the Sellers' Nominated Account,

in each case, within five Business Days following the date on which the Completion Statement is agreed or determined in accordance with this Schedule 5 (Adjustment Calculation) (the **Adjustment Date**).

4.2.4 For the avoidance of doubt, all payments made under this clause 4.2 shall constitute an adjustment to the Purchase Price.

SCHEDULE 6 REFERENCE STATEMENT

Part A: Form of Reference Statement

[CONFIDENTIAL BUSINESS INFORMATION REDACTED]

Part B: GL Account Mapping

[CONFIDENTIAL BUSINESS INFORMATION REDACTED]

SCHEDULE 7 LEASED PROPERTIES

[CONFIDENTIAL BUSINESS INFORMATION REDACTED]

SCHEDULE 8 CONTINGENT CONSIDERATION

1 ADDITIONAL DEFINITIONS

In this Schedule 8, capitalised terms have the same meaning as capitalised terms defined in the Agreement, unless otherwise defined below:

Adjusted EBITDA means the EBITDA for the Group (on a consolidated basis) as calculated in the manner specified in this Schedule 8.

Agreed Contingent Consideration Statement means the Draft Contingent Consideration Statement in the form agreed or determined pursuant to clause 3.

Agreed Revenue Statement means the Draft Revenue Statement in the form agreed or determined pursuant to clause 2.

Applicable Exchange Rate means:

- (a) in the context of clause 4.2.3(c) and the Mid-Month Rate, the applicable exchange rate for the relevant day being calculated by reference to the mid-market historical rates tables published at xe.com (or such replacement website where no longer available); or
- (b) in the context of clause 4.2.3(d), the weighted average exchange rate applied by the Group for USD to NZD revenue currency conversions for each month over the course of the Relevant Period (calculated in a manner consistent with the example shown in Part A of the Appendix to this Schedule 8).

Applicable Share Price means the greater of: (i) the maximum allowable discount under the policies of the TSX; and (ii) the volume weighted average trading price of the Tiny Shares over the 30 trading days (the **Trading Window**) immediately preceding the public announcement is made in respect of the Contingent Consideration, with the volume weighted average trading price being calculated, in each case, by dividing the total value of Tiny Shares traded during the Trading Window on the TSX by the total volume of Tiny Shares traded during the Trading Window on the TSX (but subject to any adjustments to the Applicable Share Price to ensure the Sellers are not unduly prejudiced by any Reorganisations in respect of the Buyer Parent undertaken between the first day of the Trading Window and the Contingent Consideration Payment Date).

Contingent Consideration means, subject to clause 6.2.3 of this Schedule 8, an amount (which, if a negative number, will be deemed to be zero) calculated as:

$$(A - B) \times C \times 7$$

where:

A = the greater of (a) the Adjusted EBITDA for the Relevant Period, and (b) an [CONFIDENTIAL BUSINESS INFORMATION REDACTED]

B = the EBITDA Hurdle; and

C = the Acquired Percentage (expressed as a decimal).

Contingent Consideration Payment Date means the later of:

- (c) 10 Business Days after the Agreed Contingent Consideration Statement is agreed or finally determined (as the case may be); and
- (d) 90 days after the end of the Relevant Period,

or such other date agreed by the Buyer and the Sellers' Representative in writing.

Draft Contingent Consideration Statement means the Buyer's good faith calculation of the Relevant Period Revenue, EBITDA, the Adjusted EBITDA and, consequently based on the foregoing, the proposed value of the Contingent Consideration, prepared in a manner consistent with the illustrative calculation shown in Part B of the Appendix to this Schedule 8.

Draft Revenue Statement means the statement setting out:

- (a) the Reference Revenue; and
- (b) a breakdown of the Reference Revenue.

EBITDA means the Group's earnings before interest, taxes, depreciation, and amortization for the Relevant Period and, for the avoidance of doubt, the earnings will be calculated before any deductions for the following items (as they relate to the Relevant Period):

- (a) any interest income or costs, and other finance costs of a Group Company;
- (b) any corporate tax payable by a Group Company;
- (c) any depreciation of property, plant, equipment and other physical assets of a Group Company;
- (d) any amortization of intangible and lease assets of a Group Company; and
- (e) any interest on lease liabilities and amortisation of right of use assets required under NZ IFRS 16.

EBITDA Hurdle means [CONFIDENTIAL BUSINESS INFORMATION REDACTED].

Liquidity Event means any one of the following occurring during the Relevant Period:

- (a) a sale of all or substantially all of the assets of the Company, taken together (but not to a transferee Affiliated or Controlled by any member of the Buyer Group, however if that transferee then transfers ownership of such assets to a Third Party outside of the Buyer Group, such transfer will be deemed to be a Liquidity Event);
- (b) a sale of a majority of the shares in the Company to a Third Party (but not to a transferee who is a Related Party or Controlled by any member of the Buyer Group, however if that transferee then subsequently transfers ownership of such shares to a Third Party outside of the Buyer Group, such transfer will be deemed to be a Liquidity Event); or
- (c) a change in Control of the Company to a Third Party (but not in the case where the person acquiring Control is a Related Party or Controlled by any member of the Buyer

Group, however if Control is transferred to a Third Party outside of the Buyer Group, such transfer will be deemed to be a Liquidity Event); or

- (d) an initial public offering on a recognised stock exchange of all of the shares of the Company or any other member of a Group Company.

Mid-Month Rate means the Applicable Exchange Rate for the relevant currency conversion as of the 15th day of a calendar month.

Reference Period means the 12-month period prior to and ending on the Effective Time.

Reference Revenue means the total revenue of the Group during the Reference Period as calculated in the manner specified in clause 4.1.

Relevant Period means the 12-month period commencing on the one-year anniversary of the Completion Date and ending on the two-year anniversary of the Completion Date.

Relevant Period Revenue means the total revenue of the Group during the Relevant Period as calculated in the manner specified in clause 4.1.

Specific Policies has the meaning given in clause 4.2.

Target Revenue means an amount equal to:

[CONFIDENTIAL BUSINESS INFORMATION REDACTED]

2 REVENUE STATEMENT

- 2.1 **Preparation of Draft:** Within 30 Business Days of Completion, the Buyer will cause the Company in consultation with the Sellers' Representatives to:

- 2.1.1 prepare the Draft Revenue Statement; and

- 2.1.2 submit the Draft Revenue Statement to the Sellers' Representatives,

with the Draft Revenue Statement being prepared in a manner consistent with the sample statement set out in the Appendix of this Schedule and otherwise consistent with the principles set out in clause 4.1.

- 2.2 **Supporting information:** The Buyer must ensure that the Sellers' Representatives (and their professional advisers) are promptly provided with all information, documentation, explanations, and assistance reasonably requested to review and consider the Draft Revenue Statement. The Buyer must also ensure that the Sellers' Representatives and their professional advisers are granted prompt and reasonable access to the Group's management team during normal business hours, as well as any relevant personnel, systems, and records, to facilitate a review of the Draft Revenue Statement, such information to be shared on confidentiality terms acceptable to Buyer.

- 2.3 **Notice following review:** The Sellers must procure that the Sellers' Representatives, within 20 Business Days of receiving the Draft Revenue Statement (and all reasonably necessary working papers and supporting information), give the Buyer:
- 2.3.1 notice that the Sellers accept the Draft Revenue Statement as delivered to the Sellers' Representatives, in which case it will be deemed to be the Agreed Revenue Statement; or
 - 2.3.2 notice of objection to the contents of the Draft Revenue Statement, specifying the basis of the objection (and, if the Buyer does not comply with clause 2.2, such objection may be on the basis that the Sellers' Representatives are unable to accept certain calculations due to the lack of information or assistance requested under clause 2.2 or because the necessary information or assistance was not provided in a timely manner before the response deadline).
- 2.4 **Deemed acceptance:** If the Sellers' Representatives have not given a notice of objection to a Draft Revenue Statement in the timeframe required in clause 2.3, the Sellers' Representatives will be deemed to have given a written notice accepting that Draft Revenue Statement in accordance with clause 2.3.1 at the end of that period.
- 2.5 **Dispute:** If within a period of 20 Business Days from the giving of a notice under clause 2.3.2, the Sellers' Representatives and the Buyer cannot agree on the contents of the Draft Revenue Statement then the matter in dispute will be determined in accordance with the procedure set out in clauses 3.6 to 3.8 of this Schedule, as if references therein to "Draft Contingent Consideration Statement" were references to the "Draft Revenue Statement" (and the Draft Revenue Statement agreed or determined in accordance with such dispute resolution procedure will be the Agreed Revenue Statement).

3 **PREPARATION OF DRAFT CONTINGENT CONSIDERATION STATEMENT**

- 3.1 **Preparation of Draft:** As soon as practical after the end of the Relevant Period and, in any case, no later than 40 Business Days after the end of the Relevant Period, the Buyer will cause the Company in consultation with the Sellers' Representatives to:
- 3.1.1 prepare the Draft Contingent Consideration Statement; and
 - 3.1.2 submit the Draft Contingent Consideration Statement to the Sellers' Representatives, so that the Contingent Consideration (if any) can be determined.
- 3.2 **Supporting Information:**
- 3.2.1 The Buyer must ensure that the Sellers' Representatives (and their professional advisers) are promptly provided with all information, documentation, explanations, and assistance reasonably requested to review and consider the Draft Contingent Consideration Statement, including:
 - (a) the audited financial statement of the Group for the financial year then ended; and
 - (b) the audited financial statement of the Group for the 2027 financial year then ended (**FY27 Audited Accounts**),

and Buyer must procure that such audited financial statements are prepared in accordance with the Accounting Standards and ensure that the FY27 Audited Accounts are finalised and delivered as promptly as practicable after 31 March 2027.

- 3.2.2 If the FY27 Audited Accounts are not finalised at the time the Draft Contingent Consideration Statement is delivered (but not yet finally determined as the Agreed Contingent Consideration Statement), the Buyer must:
- (a) promptly provide a draft of such financial statements, along with detailed commentary on what remains outstanding for their finalisation (including specific concerns raised by the auditors and a timeline for resolution); and
 - (b) promptly provide a copy of the FY27 Audited Accounts once completed.
- 3.2.3 The Buyer must also ensure that the Sellers' Representatives and their professional advisers are granted prompt and reasonable access to the Group's management team during normal business hours, as well as any relevant personnel, systems, and records, to facilitate a review of the Draft Contingent Consideration Statement, such information to be shared on confidentiality terms acceptable to Buyer.
- 3.3 **Notice Following Review:** Within 30 Business Days of the receipt of the Draft Contingent Consideration Statement (and all reasonably necessary working papers and supporting information), the Sellers' Representatives must give the Buyer written notice confirming that they either:
- 3.3.1 accept the Draft Contingent Consideration Statement as delivered to the Sellers' Representatives, in which case it will be deemed to be the Agreed Contingent Consideration Statement and used as the basis for calculation of the Contingent Consideration; or
 - 3.3.2 object to the contents of the Draft Contingent Consideration Statement, specifying the basis of the objection (and, if the Buyer does not comply with clause 3.2, such objection may be on the basis that the Sellers' Representatives are unable to accept certain calculations due to the lack of information or assistance requested under clause 3.2 or because the necessary information or assistance was not provided in a timely manner before the response deadline).
- 3.4 **Deemed Acceptance:** If the Sellers' Representatives have not given a notice of objection to a Draft Contingent Consideration Statement in the timeframe required in clause 3.3, the Sellers' Representatives will be deemed to have given a written notice accepting that Draft Contingent Consideration Statement in accordance with clause 3.3.1 at the end of that period.
- 3.5 **Dispute:** If the Sellers' Representatives give notice under clause 3.3.2, the Sellers' Representatives and the Buyer will endeavour to resolve the difference, failure or dispute by discussion between them. If, within a period of 10 Business Days from the giving of a notice under clause 3.3.2, the Sellers' Representatives and the Buyer cannot agree on the contents of the Draft Contingent Consideration Statement, then the Buyer or the Sellers' Representatives may refer the matters in dispute to an Expert, with a request that the Expert make a decision in respect of the disputed matters (and any consequential adjustments) within 30 Business Days from the date of the reference.

- 3.6 **Expert Determination:** The Expert determination process will be as set out in this clause 3.6. The Buyer and the Sellers' Representatives will give directions to the Expert consistent with this clause 3.6:
- 3.6.1 the Sellers' Representatives and the Buyer shall direct the Expert to deliver a decision, and its reasons for that decision, within 30 Business Days of referral to the Expert (subject to any extension they agree);
 - 3.6.2 the only matters to be addressed by the Expert shall be the matters in respect of the Draft Contingent Consideration Statement which have not been resolved between the Sellers' Representatives and the Buyer prior to the appointment of the Expert (**Disputed Matters**) and which alterations (if any) should be made to the Draft Contingent Consideration Statement as a result of the Expert's determination of the Disputed Matters;
 - 3.6.3 the Sellers' Representatives and the Buyer must ensure that the Expert, in making its determination of the Disputed Matters, applies the principles set out in clause 4 and the procedures set out in this clause 3.6;
 - 3.6.4 the Expert:
 - (a) must be provided with a written notice from each of the Sellers' Representatives and the Buyer setting out the value for each item claimed in respect of each Disputed Matter;
 - (b) must give the Sellers' Representatives and the Buyer a reasonable opportunity to make written submissions to the Expert;
 - (c) must be given the opportunity to ask specific written questions of either or both the Sellers' Representatives or the Buyer to clarify the Expert's understanding of any of the submissions made by either party; and
 - (d) will require copies of any submission, response, document or other communication from or to the Expert to or from either the Buyer or the Sellers' Representatives to be submitted to the other simultaneously or as soon as received, as the case may be;
 - 3.6.5 the Expert must not assign a value to any Disputed Matter greater than the greatest value claimed for such item or less than the smallest value claimed for such item by either the Sellers' Representatives or the Buyer in their submissions;
 - 3.6.6 the Expert's determination must be in writing and set out in reasonable detail how it arrived at its determination; and
 - 3.6.7 the Buyer must procure that all records of the Buyer Group as may be reasonably requested by the Expert for purposes of settling any Disputed Matter are promptly made available upon the request of the Expert, on confidentiality terms acceptable to Buyer.
- 3.7 **Decision Binding:** The decision of the Expert will, in the absence of Fraud or manifest error, be conclusive and binding on the Parties. Once the decision of the Expert is made, the Draft Contingent Consideration Statement (incorporating any adjustments determined by the

Expert) will constitute the Agreed Contingent Consideration Statement for purposes of this Agreement (including calculating the Contingent Consideration).

- 3.8 **Costs:** The Buyer and the Sellers (and Sellers' Representative) will each be responsible for their own costs in connection with the preparation and review of the Draft Contingent Consideration Statement and any agreement or determination in respect of the Agreed Contingent Consideration Statement. The fees and expenses of the Expert will be shared between the Sellers (as to 50%) and the Buyer (as to 50%).

4 **BASIS OF PREPARATION**

- 4.1 **Calculation Principles:** The Reference Revenue, Relevant Period Revenue, EBITDA and Adjusted EBITDA shall be prepared on the following basis, and in the order of priority shown below:

- 4.1.1 applying the specific accounting principles, bases, conventions, rules and estimation techniques set out in clause 4.2 (**Endeavour to satisfy Conditions**);
- 4.1.2 to the extent not provided for by the Specific Policies, applying the same accounting standards, principles, policies and practices (with consistent classifications, judgements, valuation and estimation techniques) that were used in the preparation of the Accounts; and
- 4.1.3 to the extent not provided for by the Specific Policies or the matters referred to in clause 4.1.2, in accordance with the Accounting Standards together with all other generally accepted accounting principles, policies and practices applied in New Zealand as in force for the Relevant Period.

- 4.2 **Specific Policies:** In addition to any other express provisions set out in this Schedule 8, the EBITDA will be subject to the following Specific Policies (but without double-counting or double-elimination) to derive the Adjusted EBITDA (the **Specific Policies**):

- 4.2.1 the following items (as applicable) will be **added back**:
 - (a) unrealized foreign exchange losses and associated unrealized transaction costs;
 - (b) losses on asset disposals;
 - (c) amounts of new or additional costs not previously incurred by the Group, and which are directly and specifically attributable to the Buyer's majority ownership of the Group or the Group forming part of the Buyer Group including, new or increased corporate governance costs (including directors' fees, but excluding fees paid to directors who are promoted to become one from direct hire of the Company without any interference or unappointed by the Buyer Group), financial and ESG reporting compliance costs (including reporting obligations required of a TSX-listed entity), management fees, general overhead expenses or other intercompany charges excluding, for clarity, direct costs or expenses incurred by Tiny, its director nominees and/or Related Parties (without mark-up), and otherwise directly attributable to the Group in connection with the audit of the Company;

- (d) any incremental costs incurred by the Company as a result of unapproved modification to the existing incentive scheme including employee share ownership plan;
- (e) separately identifiable one off or exceptional costs directly attributable to activities outside of trading in the ordinary course that are in excess of US\$50,000;
- (f) all unreflected costs directly related to the acquisition (such as transaction expenses of either party) incurred by the Completion Date that are recorded in this Agreement;
- (g) the value of any Research and Development Tax Incentive credits arising under subpart LY of the *Income Tax Act 2007* attributable to eligible research and development expenditure incurred by the Group during the Relevant Period (and for the purposes of calculating these credits, the end of the Relevant Period will be treated as the end of a Tax accounting period), not exceeding an aggregate amount equal to NZ\$400,000; and
- (h) any fees and expenses or other one-off costs associated with any restructuring of a Group Company or the Buyer Group as a result of the transaction contemplated by this Agreement;

4.2.2 the following items will be **subtracted**:

- (a) unrealised foreign exchange gains;
- (b) any gains on asset disposals; and
- (c) actual lease rent paid in cash which is attributable to the Relevant Period.

4.2.3 **adjust** (as applicable) as follows:

- (a) to ensure any development costs of the Company are expensed as incurred;
- (b) to remove the effects (positive or negative) when considered on an aggregate basis (after factoring items including revenues, gains, expenses or losses, as applicable) attributable to or arising out of a Group Company's evaluation, pursuit, consummation, and integration of, any business acquisitions occurring after Completion;
- (c) so that any foreign-exchange conversions are calculated consistent with past practice of a Group Company in the 24 months prior to Completion, and more particularly:
 - (i) for the period of 1 April to 14 April (both inclusive) each year, foreign-exchange conversions will be based on the rate used for the Applicable Exchange Rate as of 31 March prior;
 - (ii) subject to sub-clause (i) above, for the months of April to February (both inclusive), foreign exchange conversions will be based on for transactions:

- (A) in the first half of the month (day 1 to 14, inclusive) using Applicable Exchange Rate based on the Mid-Month Rate for the month prior; and
- (B) in the second half of the month (on and from the 15th day to the end of month) using the Applicable Exchange Rate based on the Mid-Month Rate of the month in question; and
- (iii) for the month of March, the same approach to foreign exchange conversions as is set out in sub-clause (ii) above will be taken, save for any transactions occurring on 31 March and year end balances (the **Month-End Conversions**), for which the Applicable Exchange Rate as of 31 March will apply to such Month-End Conversions; and
- (d) convert the Adjusted EBITDA from NZD to USD by applying the Applicable Exchange Rate to the Adjusted EBITDA for each month during the Relevant Period and aggregating the converted monthly amounts to determine the total Adjusted EBITDA in USD for the Relevant Period.

5 PAYMENT OF CONTINGENT CONSIDERATION

5.1 **Payment:** Provided that the Relevant Period Revenue (as recorded in the Agreed Contingent Consideration Statement) is equal to or exceeds the Target Revenue, the Contingent Consideration (if any) (as calculated in accordance with the Agreed Contingent Consideration Statement) will be paid by the Buyer to the Sellers on the Contingent Consideration Payment Date in accordance with clause 5.2.

5.2 **Manner of Payment:** If clause 5.1 applies, the Contingent Consideration will be paid as follows on the Contingent Consideration Payment Date:

5.2.1 the first US\$15,000,000 of the Contingent Consideration will be paid to all the Sellers in cash, in their Relevant Proportions; and

5.2.2 any portion of the Contingent Consideration exceeding US\$15,000,000 will be paid as follows:

- (a) in respect of the Beneficial Shareholders, each Beneficial Shareholder will be paid their Relevant Proportion of the Contingent Consideration in cash only;
- (b) in respect of all the other Sellers (but excluding Serato Trustee), each Seller will be paid their Relevant Proportion of a proportion of cash and Tiny Shares (calculated on the basis that the Tiny Shares are to be issued at the Applicable Share Price (such shares being the **Contingent Shares**) to be determined by Tiny (acting reasonably) and with reasonable consultation with the Sellers),
- (c) provided that:
 - (i) the Buyer Parent shall have the right, in its sole discretion, to pay any portion of the Contingent Consideration to the Sellers in cash;
 - (ii) in no event shall the Buyer Parent issue in excess of 5,000,000 Tiny Shares as Contingent Shares in settlement of the Contingent Consideration;

- (iii) if the Tiny Shares are not quoted on the TSX as at the Contingent Consideration Payment Date, the Contingent Consideration will be paid solely in cash; and
- (iv) if Buyer Parent determines, in its sole discretion, that the issue of the Contingent Shares to such a Seller would breach any applicable Law, including the FMCA, the Contingent Consideration payable to such Seller will be paid solely in cash.

5.3 **Deliverables:** The Sellers shall use reasonable commercial endeavours to provide all materials that may be reasonably requested by the Buyer Parent in connection with the Contingent Shares. If any Contingent Shares are to be issued under clause 5.2.2(b), the Buyer Parent on the Contingent Consideration Payment Date will:

5.3.1 deliver to the Sellers' Representatives confirmation that the Contingent Shares are approved for listing on the TSX; and

5.3.2 deliver a signed treasury direction directing Computershare Trust Company of Canada, as registrar and transfer agent of the Buyer Parent, to issue and deliver share certificates or electronic book entries (DRS advices) in lieu of share certificates, representing the Contingent Shares issued in the name of, and delivered to, the Sellers in accordance with Schedule 8.

5.4 **Rounding:** Any fractional entitlements arising on the determination of the Contingent Shares under clause 5.2.2(b) are to be rounded down to the nearest whole Tiny Share.

5.5 **Cash Payments:** The portion of the Contingent Consideration to be paid in cash under clauses 5.2.1 and 5.2.2(a) shall be paid to the Sellers' Nominated Account in accordance with clause 3.3 and the Buyer is not liable for the allocation of such payment between each of the Sellers and/or Beneficial Shareholders.

6 SELLER PROTECTIONS

6.1 **Undertaking:** The Buyer undertakes to the Sellers that it will, during the Relevant Period, act in good faith and, using all reasonable endeavours, support the growth of and operate and manage each Group Company with a view of maximising the Adjusted EBITDA for the Relevant Period.

6.2 [CONFIDENTIAL BUSINESS INFORMATION REDACTED]:

6.3 **Exemptions:** If the Buyer:

6.3.1 wishes to take, or omit to take, any action, and that act or omission would constitute a breach of clause 6; and

6.3.2 the reason for that proposed act or omission is a legitimately held view by the Buyer that that act or omission would be beneficial to the Company or the Group,

then the Sellers' Representatives will consider the proposed act or omission in good faith and acting reasonably (at the sole discretion of the Sellers' Representatives) shall, if it considers appropriate, waive (specifically or generally) the requirement for the Buyer to comply with the relevant part of clause 6 (which waiver may be the subject of any reasonable conditions imposed by the Sellers' Representatives) within 10 working days from the request.

APPENDIX TO Schedule 8

Part A: Illustrative Adjusted EBITDA calculation

[CONFIDENTIAL BUSINESS INFORMATION REDACTED]

Part B: Illustrative calculation of Contingent Consideration (Post-Y2)

[CONFIDENTIAL BUSINESS INFORMATION REDACTED]

Part C: Illustrative calculation of Contingent Consideration (Pre-Y2)

[CONFIDENTIAL BUSINESS INFORMATION REDACTED]

SCHEDULE 9 W&I BINDERS

[CONFIDENTIAL BUSINESS INFORMATION REDACTED]