

**Lodged via
ASX Online**

Our ref: 21-41067616

1 October 2024

Market Announcements Office
ASX Limited
Exchange Centre
20 Bridge Street
SYDNEY NSW 2000

Dear Sirs/Madams

**Off-market takeover bid by Beam Dental Bidco Pty Ltd for Pacific Smiles Group Limited
(ASX: PSQ)**

We act for Beam Dental Bidco Pty Ltd (ACN 676 303 254) ("**Bidco**").

We refer to the bidder's statement lodged by Bidco on 17 September 2024 relating to its off-market takeover bid for all of the ordinary shares in Pacific Smiles Group Limited ACN 103 087 449 (ASX: PSQ) ("**Pacific Smiles**") ("**Original Bidder's Statement**").

We enclose in accordance with section 633A(2)(c) of the *Corporations Act 2001* (as inserted by *ASIC Corporations (Replacement Bidder's and Target's Statements) Instrument 2023/688* (**Instrument 2023/688**)) a copy of the replacement bidder's statement dated 1 October 2024 ("**Replacement Bidder's Statement**") which is marked-up to show all changes from the Original Bidder's Statement.

As required by Instrument 2023/688, we will separately lodge via ASX Online a clean (unmarked) version of the Replacement Bidder's Statement dated 1 October 2024.

Copies of the Replacement Bidder's Statement (in clean and marked-up to the Original Bidder's Statement) were sent to the Australian Securities and Investments Commission and Pacific Smiles today.

If you have any queries or require any additional information in relation to this letter, please do not hesitate to contact us.

21-41067616

Yours sincerely



David Clee

Partner
Clifford Chance



Nicole Backhouse

Counsel
Clifford Chance



Bidder's Statement

ACCEPT

the Offer to purchase all of your ordinary shares in

Pacific Smiles Group Limited ACN 103 087 449

for

**All Cash Consideration, All Scrip Consideration or
Mixed Consideration**

by Beam Dental Bidco Pty Ltd ACN 676 303 254

The Offer is dated ~~1~~ [1 October 2024](#) and expires at 7:00pm (Sydney, Australia time) on ~~1~~ [1 November 2024](#), unless extended or withdrawn

This is an important document and requires your immediate attention.

If you are in any doubt about how to deal with this document, you should contact your Broker, financial adviser or legal adviser immediately.

If you have any questions in relation to this Bidder's Statement, you should call the Bidco Offer Information Line on 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia) from Monday to Friday between ~~9~~ [8:03](#)am and 7:00pm (Sydney time).

Financial Adviser



Legal Adviser

**C L I F F O R D
C H A N C E**

Important notices

Nature of this document

This [document is a replacement](#) Bidder's Statement ~~is~~ issued by Beam Dental Bidco Pty Ltd ACN 676 303 254 ("**Bidco**") to Pacific Smiles Group Limited ACN 103 087 449 ("**Pacific Smiles**") under Part 6.5 of the Corporations Act [as modified by ASIC Corporations \(Replacement Bidder's and Target's Statement\) Instrument 2023/688](#).

This [replacement](#) Bidder's Statement is dated ~~17 September~~ [1 October](#) 2024 and includes in Section 12 an Offer dated ~~17~~ [1](#) [October](#) 2024 to acquire Your Pacific Smiles Shares and also sets out certain disclosures required by the Corporations Act.

ASIC and ASX disclaimer

[This replacement Bidder's Statement replaces the original Bidder's Statement lodged with ASIC on 17 September 2024. References to "as at the date of this Bidder's Statement" continue to mean 17 September 2024, being the date of the original Bidder's Statement unless explicitly stated otherwise.](#)

~~A copy of t~~ [This replacement](#) Bidder's Statement was lodged with the Australian Securities and Investments Commission ("**ASIC**") on ~~17 September~~ [1 October](#) 2024. Neither ASIC nor any of its officers takes any responsibility for the content of this [replacement](#) Bidder's Statement.

References in this Bidder's Statement to websites, including to Genesis Capital's website (genesiscapital.com.au), to Pacific Smiles' website (pacificsmilesdental.com.au) or to ASX's website (www.asx.com.au), are for your reference only. Information contained in or otherwise accessible from those websites does not form part of this Bidder's Statement.

No account of your personal circumstances

This Bidder's Statement does not take into account your individual objectives, financial situation or particular needs. Accordingly, before making a decision whether or not to accept the Offer, you may wish to consult with your financial, legal or other professional adviser.

Disclaimer as to Pacific Smiles information

The information on Pacific Smiles Shares, Pacific Smiles and its business contained in this Bidder's Statement has been prepared by Bidco using information included in public documents filed by Pacific Smiles or published by Pacific

Smiles on its website. None of the information in this Bidder's Statement relating to Pacific Smiles has been commented on or verified by Pacific Smiles or independently verified by Bidco for the purposes of this Bidder's Statement.

Accordingly, Bidco, subject to the Corporations Act, makes no representation or warranty, express or implied, as to the accuracy or completeness of such information.

The information on Pacific Smiles in this Bidder's Statement should not be considered comprehensive. In addition, the Corporations Act requires the directors of Pacific Smiles to provide a Target's Statement to Pacific Smiles Shareholders in response to this Bidder's Statement, setting out certain material information concerning Pacific Smiles.

Disclaimer as to forward looking statements

This Bidder's Statement contains forward looking statements, including statements of current intention, statements of opinion and predictions as to possible future events. Forward looking statements are not based on historical facts, but are based on, among other things, Bidco's assumptions, expectations, estimates, objectives, plans and intentions as at the date of this Bidder's Statement.

These forward looking statements are subject to risks, uncertainties and assumptions which could cause actual results or events to differ materially from the expectations described in such forward looking statements. While Bidco believes that the expectations reflected in the forward looking statements in this document are reasonable, no assurance can be given that such expectations will prove to be correct. Other matters as yet not known to Bidco or not currently considered material by Bidco, may cause actual results or events to be materially different from those expressed, implied or projected in any forward looking statements. Any forward looking statement contained in this document is qualified by this cautionary statement.

Except as required by applicable law, Bidco does not undertake to update or revise these forward looking statements, whether as a result of new information, future events or otherwise.

Pacific Smiles Shareholders outside Australia

~~This~~ [The](#) distribution of this Bidder's Statement in jurisdictions outside Australia may be

restricted by law, and persons who come into possession of it should seek advice on and observe any such restrictions. Any failure to comply with such restrictions may constitute a violation of applicable securities [laws](#).

This Bidder's Statement complies with Australian disclosure requirements and these disclosure requirements may differ to those in other countries.

This Bidder's Statement and the Offer do not in any way constitute an offer in any place which, or to any person to whom, it would not be lawful to make such an offer.

No action has been taken to register or qualify Bidco or Holdco to otherwise permit a public offering of Holdco Shares outside Australia. In particular, Holdco Shares have not been, and will not be, registered under the US Securities Act of 1933 or the securities laws of any US state or other jurisdiction, and may not be offered or sold in the United States, except in a transaction exempt from, or not subject to, the registration requirements of the US Securities Act of 1993 and applicable US state securities laws.

Taxation

If you are not an Australian resident taxpayer or are liable for tax outside Australia, you should seek specific tax advice in relation to the Australian and overseas tax consequences of accepting the Offer.

Privacy

Bidco has collected your information from the Pacific Smiles Register for the purpose of making this Offer and, if accepted, administering a record of your Acceptance for your holding of Shares and paying or issuing any Offer Consideration to you. The Corporations Act requires the name and address of securityholders to be held in a public register. Your information, including your email address and your communication preferences, may be disclosed on a confidential basis to Bidco's affiliates, related bodies corporate, advisers, agents and external service providers, and may be required to be disclosed to regulators such as ASIC. The registered address of Bidco is Level 9, 309 Kent Street, Sydney, NSW, 2000.

Charts, diagrams and rounding

Any diagrams, charts, maps, graphs and tables appearing in this Bidder's Statement are illustrative only and may not be drawn to scale.

Unless otherwise stated, all data contained in diagrams, charts, maps, graphs and tables is based on information available at the date of this Bidder's Statement. A number of amounts, percentages, prices, estimations and other figures in this Bidder's Statement are subject to the effect of rounding. Accordingly, actual numbers may differ from those set out in this Bidder's Statement.

Financial amounts

All financial amounts in this Bidder's Statement are expressed in Australian currency unless otherwise stated.

Defined terms

A number of defined terms are used in this Bidder's Statement. Unless the contrary intention appears, the context requires otherwise, or words are defined in Section 13, words and phrases in this Bidder's Statement have the same meaning and interpretation as in the Corporations Act.

Updating of information

Information contained in this Bidder's Statement is subject to change from time to time. Please refer to the ASX announcements platform for any updates concerning the Offer at www.asx.com.au.

Offer Information Line

For information regarding Your Pacific Smiles Shares, the Offer or how to accept the Offer please read this Bidder's Statement. If you still need assistance, please contact the Bidco Offer Information Line on:

For calls made within Australia: 1300 101 297

For calls made from outside Australia: +61 2 9068 1929

Key dates

Announcement Date 17 September 2024

Date of ~~this~~the original Bidder's Statement 17 September 2024

Date of this Bidder's Statement 1 October 2024

Date of Offer and date Offer opens ~~1~~1 October 2024

Offer closes (unless extended or withdrawn in accordance with the Corporations Act) ~~1~~1 November 2024, 7.00pm (Sydney time)

Security registrar, address for return of Acceptance Forms, and website for lodgement of Acceptances online

Share registrar for Offer and address for return of Acceptance Forms Automic Group
GPO Box 5193
Sydney NSW 2001

Website for lodgement of Acceptances online <https://investor.automic.com.au/#/signup>

Bidco Offer Information Line

If, after reading this Bidder's Statement, you have further questions about the Offer, you can call the Bidco Offer Information Line, Monday to Friday between ~~9:03~~9:03am and 7:00pm (Sydney time).

Phone

1300 101 297 (within Australia)
+61 2 9068 1929 (outside Australia)

Contents

1	Letter to Pacific Smiles Shareholders	6
2	Summary of the Offer	9
3	Why you should accept the Offer	20 22
4	Information on Genesis Capital and the Bidder Group	24 26
5	Information on Pacific Smiles	58 64
6	Information on Pacific Smiles' securities	62 69
7	Sources of Consideration	65 73
8	Bidco's intentions in relation to Pacific Smiles	74 82
9	Risks in relation to the Offer	79 88
10	Tax considerations	94 104
11	Other material information	99 109
12	The terms and conditions of the Offer	104 115
13	Definitions and interpretation	121 132
14	Approval of Bidder's Statement	129 140
	Appendix A – Holdco Shareholders' Deed	130 141
	Appendix B – Holdco Constitution	214 225
	Appendix C – Nominee Deed	268 279
	Corporate directory	303 314

1 Letter to Pacific Smiles Shareholders

17 September 1 October 2024



Dear Pacific Smiles Shareholder

Offer to acquire Your Pacific Smiles Shares

On behalf of Beam Dental Bidco Pty Ltd, I am pleased to provide you with this Offer to acquire your shares in Pacific Smiles Group Limited (ACN 103 087 449) for your choice of:

- All Cash Consideration of \$1.90 cash per Pacific Smiles Share;¹
- All Scrip Consideration of 1 Holdco Share per Pacific Smiles Share; or
- Mixed Consideration of 47.5 cents cash and 0.75 Holdco Shares per Pacific Smiles Share,²

in each case, in accordance with the terms of the Offer.

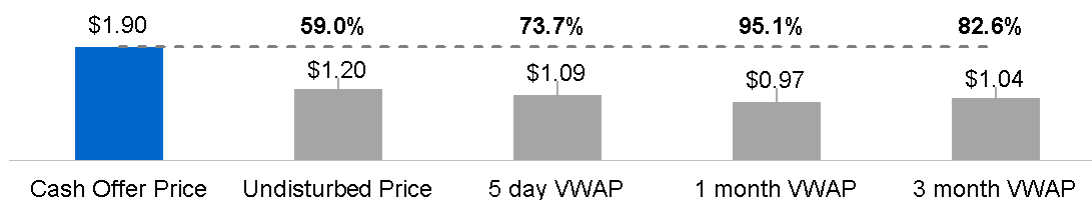
The Offer is subject to a 90% Minimum Acceptance Condition, a Board Recommendation Condition³ and a customary No Prescribed Occurrences Condition (each described further in Section 12.3).

The full terms and conditions of the Offer are set out in Section 12.

Why you should accept the Offer

The key reasons for Pacific Smiles Shareholders to accept the Offer are summarised as follows:

- **the Cash Offer Price represents a material premium relative to historical trading** of Pacific Smiles Shares up to 15 December 2023, being the last trading day prior to the announcement of Genesis Capital's initial indicative proposal of \$1.40 per Pacific Smiles Share,^{3,4}



¹ Under the Offer terms, if a Pacific Smiles Shareholder accepts the Offer in respect of its Pacific Smiles Shares and elects to receive the All Cash Consideration, Bidco will deduct from the All Cash Consideration payable in respect of those Pacific Smiles Shares the full cash amount of any dividend declared or paid by Pacific Smiles after the Announcement Date in respect of those Pacific Smiles Shares (including the Declared Dividend), unless the amount of such dividend is paid to Bidco in respect of those same Pacific Smiles Shares. Any fractional entitlement to a cent in respect of the All Cash Consideration will be rounded up or down to the nearest whole cent, in accordance with the terms of the Offer.

² Under the Offer terms, if a Pacific Smiles Shareholder accepts the Offer in respect of its Pacific Smiles Shares and elects to receive the Mixed Consideration, Bidco will deduct from the cash component of the Mixed Consideration payable in respect of those Pacific Smiles Shares 25% of the cash amount of any dividend declared or paid by Pacific Smiles after the Announcement Date in respect of those Pacific Smiles Shares (including the Declared Dividend), unless the amount of such dividend is paid to Bidco in respect of those same Pacific Smiles Shares. Any fractional entitlement to a cent in respect of the Mixed Consideration will be rounded up or down to the nearest whole Holdco Share or cent, in accordance with the terms of the Offer.

³ [The Minimum Acceptance Condition and Board Recommendation Condition are relevant to the availability of Bidco's financing through the Debt Facility. For further information, please see Sections 7.4\(c\) and 7.4\(f\).](#)

³⁻⁴ **"VWAP"** means volume weighted average price. The **"Undisturbed Price"** is the closing price of Pacific Smiles Shares on 15 December 2023.

- the Cash Offer Price falls within the range of values determined to be "fair" by the independent expert appointed by Pacific Smiles to opine on the NDC Scheme;⁴⁵
- the Cash Offer Price provides an equivalent cash amount to the offer under the NDC Scheme as at the time it was initially agreed to by Pacific Smiles [in April 2024](#) and unanimously recommended by the Pacific Smiles Board;⁵ [in April 2024](#);⁶
- the All Cash Consideration provides you certainty of value and removes the risks inherent in your Pacific Smiles investment, including the uncertainty associated with Pacific Smiles securing a new CEO and a new CFO and recent changes to the composition of the Pacific Smiles Board; and
- the option to elect to receive the All Scrip Consideration or the Mixed Consideration each provide Eligible Pacific Smiles Shareholders an opportunity to retain an indirect investment in Pacific Smiles alongside an experienced healthcare investor.⁶⁷

Details of the Offer

If you accept the Offer, you may make one of the following Elections, subject to the terms of the Offer:

- All Cash Consideration of \$1.90 cash per Pacific Smiles Share;
- All Scrip Consideration of 1 Holdco Share per Pacific Smiles Share; or
- Mixed Consideration of 47.5 cents cash and 0.75 Holdco Shares per Pacific Smiles Share.

If you hold a Pacific Smiles Share as at the record date on 25 September 2024, you will be paid the 3.25 cents per Pacific Smiles Share dividend declared by the Pacific Smiles Board on 28 August 2024 and payable on 10 October 2024, however:

- in the case of an Election to receive the All Cash Consideration, Bidco will deduct the full cash amount of the Declared Dividend from the cash amount payable to you in respect of that Pacific Smiles Share under the Offer (that is, Bidco will pay you a cash amount of \$1.8675 in respect of that Pacific Smiles Share (subject to the Offer terms) and you will retain the full cash amount of the Declared Dividend); and
- in the case of an Election to receive the Mixed Consideration, Bidco will deduct 25% of the cash amount of the Declared Dividend from the cash component of the Mixed Consideration payable

⁴⁵ In its report entitled '*Pacific Smiles Group Limited – Independent expert's report and Financial Services Guide*' dated 21 June 2024 and published in the document entitled '*Scheme Booklet*' by Pacific Smiles on 26 June 2024, the independent expert appointed by Pacific Smiles in connection with the NDC Scheme assessed the market value of one Pacific Smiles Share to be between \$1.80 - \$2.17 in the context of the NDC Scheme and, on 2 August 2024, Pacific Smiles confirmed that the independent expert's conclusion [that the scheme was fair and reasonable and in the best interests of shareholders](#) had not changed at that time. [No statement was made at that time as to the status of the expert's valuation range](#). Bidco notes that the independent expert's assessment of fair value in connection with the NDC Scheme was based on the information available to the independent expert as at the relevant time (or times). Bidco makes no representation that the independent expert would make an identical assessment of value having regard to facts and circumstances now existing ([noting that there have been a number of developments since the date of the independent expert's report including changes to the nib contract, the NDC Revised Proposal, the Genesis Revised Proposal, the release of the Pacific Smiles FY24 Financial Statements, the announced resignations of key executives and Pacific Smiles' year to date trading](#)). Bidco, on request during the bid period, will provide within 2 Business Days of the request, a copy of the independent expert's report dated 21 June 2024 (as contained in the scheme booklet for the NDC Scheme) and Pacific Smiles' ASX announcement of 2 August 2024.

⁵ ~~As announced on 29 April 2024, Pacific Smiles entered into a scheme implementation deed for the NDC Scheme under which cash consideration of \$1.90 less the amount of any permitted dividend was offered to Pacific Smiles Shareholders.~~

⁶ [As announced on 29 April 2024, Pacific Smiles entered into a scheme implementation deed for the NDC Scheme under which cash consideration of \\$1.90 less the amount of any permitted dividend was offered to Pacific Smiles Shareholders. For further information about the NDC Scheme and related circumstances \(including the NDC Revised Proposal which resulted in the consideration payable under the NDC Scheme being increased to \\$2.05\) please see Section 5.4.](#)

⁶⁷ Bidco draws to the attention of each Eligible Pacific Smiles Shareholder the detailed information in this Bidder's Statement concerning the risks and potential disadvantages of electing to receive the All Scrip Consideration or the Mixed Consideration and cautions each such shareholder to carefully consider those risks and potential disadvantages before making either such Election. Without limitation, please see Sections 4, 8 and 9 for further details of those risks and potential disadvantages.

to you in respect of that Pacific Smiles Share (that is, Bidco will pay you a cash amount of 46.69 cents in respect of that Pacific Smiles Share (subject to the Offer terms) and you will retain the full cash amount of the Declared Dividend).

Next Steps

I encourage you to read this Bidder's Statement in full for further details about the Offer, its terms, Bidco, Holdco and Genesis Capital.

The Offer is open for Acceptance until 7.00pm (Sydney time) on ~~1~~ [1 November 2024](#), unless extended or withdrawn. If you wish to accept the Offer, please follow the instructions in this Bidder's Statement and the accompanying Acceptance Form.

If you have any questions about the Offer, please call the Bidco Offer Information Line on 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made outside Australia) or contact your legal, financial or other professional adviser.

Yours sincerely,



David Gordon
Chairman
Genesis Capital

2 Summary of the Offer

The following questions and answers are intended to assist [inwith](#) your understanding of the Offer. They are qualified by, and should be read in conjunction with, the detailed information contained in this Bidder's Statement. You should read the Bidder's Statement in full before deciding whether or not to accept the Offer and/or making an Election. If you have any doubt as to how to deal with this document, you should contact your Broker, financial adviser or legal adviser immediately. You should also read the Target's Statement which Pacific Smiles will send to Pacific Smiles Shareholders as required under the Corporations Act.

What is this Bidder's Statement?

This Bidder's Statement sets out the terms of Bidco's Offer to you for Your Pacific Smiles Shares, and contains information relating to the Offer and relevant to your decision whether to accept or reject the Offer and which Election to make (if any).

What is the Offer?

Bidco is making an Offer to acquire all of Your Pacific Smiles Shares by way of an off-market takeover bid.

Subject to the terms of the Offer, you may make one of the following Elections in accepting the Offer:

- the All Cash Consideration of \$1.90 cash per Pacific Smiles Share;
- the All Scrip Consideration of 1 Holdco Share per Pacific Smiles Share; or
- the Mixed Consideration of 47.5 cents cash and 0.75 Holdco Shares per Pacific Smiles Share.

In each case, the Offer Consideration to be paid [to you](#) or issued to [the Nominee on your behalf](#) will be adjusted in accordance with the terms of the Offer. As you will be paid the Declared Dividend after the Announcement Date, Bidco will deduct the cash amount (or, in the case of the Mixed Consideration, 25% of the cash amount) of the Declared Dividend from any cash component of the Offer Consideration payable to you.

For example, this means that a Pacific Smiles Shareholder who elects to receive the All Cash Consideration will be paid \$1.8675 per Pacific Smiles Share by Bidco, subject to satisfaction or waiver of the Conditions and the terms of the Offer, and will retain the full cash amount of the Declared Dividend.

The Offer is subject to a 90% Minimum Acceptance Condition, a Board Recommendation Condition and a customary No Prescribed Occurrences Condition, each of which are set out in full in Section 12.3.

You may accept this Offer only in respect of all of Your Pacific Smiles Shares.

If you accept the Offer, you will, subject to the satisfaction or waiver of each of the Conditions and the terms of the Offer, be paid (or issued) the applicable form of Offer Consideration for each of Your Pacific Smiles Shares in accordance with your Election for All Cash Consideration, All Scrip Consideration or Mixed Consideration. If you accept the Offer but do not make an Election, you will be deemed to have elected to receive the All Cash Consideration.

The Offer also extends to Pacific Smiles Shares that are issued to you during the period from the Register Date to the end of the Offer Period in accordance with the terms of, or otherwise in connection with, the exercise or conversion of Pacific Smiles Performance Rights that are on issue on the Register Date.

Any other securities that are issued after the Register Date will not be the subject of the Offer, but they may be acquired by Bidco through the compulsory acquisition procedure set out in Chapter 6A of the Corporations Act, should Bidco become entitled to implement that procedure.

Who is making the Offer?

Bidco is a special purpose proprietary company that was incorporated in Australia by Genesis Capital and its Associates for the purpose of acquiring Pacific Smiles Shares. Further information about Bidco and the Bidder Group is set out in Section 4.

Established in 2018, Genesis Capital is Australia's leading healthcare specialist private equity firm. Over the past 16 years, the partners of Genesis Capital have (with Genesis Capital and elsewhere) invested in 19 healthcare platforms and made over 40 bolt on acquisitions. The partners of Genesis Capital have deep expertise in multi-site healthcare operations, with involvement in five multi-site corporate networks in both dentistry and general practice through their history.

Further information about Genesis Capital is set out in Section 4.

What interest does Bidco currently have in Pacific Smiles?

As at the date of this Bidder's Statement, Beam Investments, an Associate of Bidco, has a Relevant Interest in 31,750,000 Pacific Smiles Shares, which represents 19.9% of the total number of Pacific Smiles Shares on issue.

Further details of the Bidder Group's Relevant Interest in Pacific Smiles Shares, including the treatment of Beam Investment's Pacific Smiles Shares in connection with the Offer, are set out in Section 4.2 and Section 6.4.

When will I receive consideration if I accept the Offer?

Generally, Bidco will pay or issue the Offer Consideration due to you on or before the earlier of:

- one month after the later of (i) receipt of your valid Acceptance or (ii) the date on which the Offer becomes unconditional; and
 - 21 days after the end of the Offer Period.
-

Full details of when the Offer Consideration will be paid and/or issued are set out in Section 12.15.

What happens if Pacific Smiles declares or pays a dividend?

Under the terms of the Offer, if you accept the Offer in respect of Your Pacific Smiles Shares, then Bidco will be entitled to all of the Rights attaching to Your Pacific Smiles Shares, which includes any dividends declared or paid by Pacific Smiles after the Announcement Date. If Pacific Smiles pays any dividend to Pacific Smiles Shareholders after the Announcement Date and you (or any previous owner of Your Pacific Smiles Shares) receive that dividend and you accept the Offer and elect to receive the All Cash Consideration or the Mixed Consideration, Bidco will:

- in the case of the All Cash Consideration, deduct the full cash amount of such dividend from the \$1.90 per Pacific Smiles Share payable to you under the Offer – in the case of the Declared Dividend, this will involve a 3.25 cent deduction per Pacific Smiles Share; or
- in the case of the Mixed Consideration, deduct 25% of the cash amount of such dividend from the cash component of 47.5 cents per Pacific Smiles Share payable to you under the Offer – in the case of the Declared Dividend, this will involve a deduction of 0.8125 cents per Pacific Smiles Share.

The number of Holdco Shares issuable pursuant to any Election to receive the All Scrip Consideration or the Mixed Consideration will not be adjusted by reference to the Declared Dividend because the intrinsic value of Holdco Shares will be reduced by payment of the Declared Dividend.

For the avoidance of doubt, Rights do not include any franking credits attached to any dividend.

If any dividend other than the Declared Dividend is paid to, or becomes payable to, you or any other holder of Your Pacific Smiles Shares, Bidco may deduct the amount of that other dividend from any cash consideration payable to you under the Offer, subject to the terms of the Offer.

For more information, please see Sections 12.10(j) to 12.10(m) ([inclusive](#)).

When does the Offer close?

The Offer closes at 7.00pm (Sydney time) on ~~1~~ [1 November 2024](#) unless it is extended under the Corporations Act.

What are the conditions to the Offer?

The Offer is subject to the following Conditions, each described in full in Section 12.3.

Minimum Acceptance Condition

The Offer is conditional on Bidco and its Associates having Relevant Interests in at least 90% (by number) of Pacific Smiles Shares on issue at the end of the Offer Period.

Board Recommendation Condition

The Offer is conditional on a majority of the members of the Pacific Smiles Board recommending that Pacific Smiles Shareholders accept the Offer (in [the](#) absence of a superior proposal and subject to any other customary qualification).

No Prescribed Occurrences Condition

Prescribed Occurrences are certain events set out in the Corporations Act, which, if they occur, will give Bidco the right to not proceed with the Offer. Some of these events include Pacific Smiles splitting or consolidating its shares, Pacific Smiles or a subsidiary of Pacific Smiles buying back or reducing its capital, Pacific Smiles or a subsidiary of Pacific Smiles disposing of the whole or a substantial part of its business or property, or the occurrence of insolvency events in respect of Pacific Smiles or a subsidiary of Pacific Smiles.

The Offer is conditional on no Prescribed Occurrences occurring ~~between the Announcement Date and the end of~~ [during](#) the Offer Period ~~(each inclusive)~~.

What happens if a Condition to the Offer is not satisfied or waived?

If the Minimum Acceptance Condition or Board Recommendation Condition is not satisfied or waived no less than seven days before the end of the Offer Period, the Offer will lapse. [Additionally, the Minimum Acceptance Condition and Board Recommendation Condition are relevant to the availability of Bidco's financing through the Debt Facility. For further information, please see Section 7.4\(c\) and 7.4\(f\).](#)

If the No Prescribed Occurrences Condition is not satisfied or waived no less than the third Business Day after the end of the Offer Period, the Offer will lapse.

If the Offer lapses, your Acceptance will be void, Your Pacific Smiles Shares will not be acquired by Bidco, any transfer lock on Your Pacific Smiles Shares will be released, and you will not be paid or issued any Offer Consideration.

How will Pacific Smiles Performance Rights be treated?

The Offer extends to any Pacific Smiles Shares that are issued during the period from the Register Date to the end of the Offer Period in accordance with the terms of, or otherwise in connection with, the exercise or conversion of any Pacific Smiles Performance Rights on issue as at the Register Date.

This means that the holders of Pacific Smiles Performance Rights that are converted into Pacific Smiles Shares prior to the end of the Offer

Period will be able to accept the Offer in respect of the Pacific Smiles Shares which they are issued as a result of the conversion.

Bidco is not making a separate offer to holders of Pacific Smiles Performance Rights.

How do I accept the Offer?

You may accept the Offer only in respect of all of Your Pacific Smiles Shares.

Issuer sponsored shareholders

If Your Pacific Smiles Shares are registered in an Issuer Sponsored Holding (such holdings will be evidenced by your Securityholder Reference Number or SRN commencing with an 'I'), to accept this Offer, you may accept the Offer either online or by using the physical Acceptance Form:

- **Online Acceptance:** To accept the Offer online, you must follow the instructions below:
 1. Go to <https://investor.automic.com.au/#/signup>.
 2. Click "Register" then select "Pacific Smiles Takeover Offer" from the dropdown list in the Issuer Name Field.
 3. Enter your Securityholder Reference Number (SRN).
 4. Enter your postcode OR country of residence (only if outside Australia).
 5. Tick the box "I'm not a robot" and then select "Next".
 6. Complete the prompts to set up your username and password details.
 7. Once you are logged in, select "Offers" from the left-hand vertical menu and follow the prompts.
- **Acceptance Form:** To accept the Offer using a physical Acceptance Form you must complete and sign the Acceptance Form accompanying this Bidder's Statement and return it to the address indicated on the form so that it is received within business hours before the Offer closes.

CHESSE shareholders

If Your Pacific Smiles Shares are registered in a CHESSE Holding (such holdings will be evidenced by your Holder Identification Number or HIN commencing with an 'X'), you may either accept the Offer online, by using the physical Acceptance Form, or by instructing your Controlling Participant yourself:

- **Online Acceptance:** To accept the Offer online, you must follow the instructions below:
 1. Go to <https://investor.automic.com.au/#/signup>.
 2. Click "Register" then select "Pacific Smiles Takeover Offer" from the dropdown list in the Issuer Name Field.
-

3. Enter your Holder Identification Number (HIN).
 4. Enter your postcode OR country of residence (only if outside Australia).
 5. Tick the box "I'm not a robot" and then select "Next".
 6. Complete the prompts to set up your username and password details.
 7. Once you are logged in, select "Offers" from the left-hand vertical menu and follow the prompts.
- **Acceptance Form:** To accept the Offer using a physical Acceptance Form you must complete and sign the Acceptance Form accompanying this Bidder's Statement and return it [to](#) the address indicated on the form so that it is received in sufficient time to request Acceptance by your Controlling Participant within business hours before the Offer closes; or
 - **Contact your Controlling Participant:** Alternatively, you can accept the Offer by instructing your Controlling Participant (normally your Broker) to accept the Offer on your behalf, before the Offer closes.

Participants

If you are a participant, your Acceptance must be initiated in accordance with rule 14.14 of the ASX Settlement Operating Rules before the Offer closes.

Full details on how to accept the Offer are set out in Section 12.5.

Institutional Acceptance Facility

Bidco has established the Institutional Acceptance Facility to facilitate Acceptance of the Offer by institutional Pacific Smiles Shareholders. Only Pacific Smiles Shareholders that hold or beneficially own at least 265,000 Pacific Smiles Shares (\$500,000 worth based on the Cash Offer Price) are eligible to participate in the Institutional Acceptance Facility.

Lodging an intention to accept the Offer through the Institutional Acceptance Facility will not constitute acceptance of the Offer. Acceptance will only occur once the relevant conditions of the Institutional Acceptance Facility are met. See Section 11.67 for further details about the Institutional Acceptance Facility.

Can I accept the Offer for part of my shareholding?

No. You may accept the Offer only for all your shareholding in accordance with [one of](#) the three Elections being All Cash Consideration, All Scrip Consideration and Mixed Consideration. If you wish to retain an investment in Pacific Smiles, you can do so by making an Election to receive All Scrip Consideration or Mixed Consideration

and receive Holdco Shares, which will provide you with an indirect interest in Pacific Smiles.⁷⁸

What happens if I do not accept the Offer?

You will remain a Pacific Smiles Shareholder and will not receive any Offer Consideration.

If Bidco becomes entitled to compulsorily acquire Your Pacific Smiles Shares, it intends to proceed with the compulsory acquisition. If Your Pacific Smiles Shares are compulsorily acquired by Bidco, it will be on the same terms (including the same consideration for each Pacific Smiles Share acquired) as the Offer. You will ~~get~~have an opportunity to make an Election for All Cash Consideration, All Scrip Consideration or Mixed Consideration in respect of any Pacific Smiles Shares to be compulsorily acquired by Bidco. If you do not make an Election within the required timeframe, you will be deemed to have elected to be paid All Cash Consideration.

If you do not accept the Offer, you may be exposed to certain risks. These are outlined further in Section 9.

Will I need to pay brokerage or stamp duty on acceptances?

If Your Pacific Smiles Shares are registered in an Issuer Sponsored Holding in your name and you deliver them directly to Bidco, you will not incur any brokerage fees or be obliged to pay stamp duty in connection with your Acceptance.

If Your Pacific Smiles Shares are registered in a CHESS Holding, or if you are a beneficial owner whose Pacific Smiles Shares are registered in the name of a Broker, bank, custodian, or other nominee, you will not be obliged to pay stamp duty by accepting the Offer, but you should ask your Controlling Participant (usually your Broker) or that nominee whether it will charge any transactional fees or service charges in connection with Acceptance.

What is the Institutional Acceptance Facility?

Bidco has established the Institutional Acceptance Facility in relation to the Offer.

Pacific Smiles Shareholders who are Eligible Institutional Shareholders may demonstrate their intention to accept the Offer by lodging with the Institutional Acceptance Facility Operator Acceptance Instructions in accordance with the terms set out in Sections 11.67 and 12.7.

What are the tax implications of accepting the

A general description of the Australian taxation treatment for certain Pacific Smiles Shareholders accepting the Offer is set out in Section 10.

⁷⁸ Bidco draws to the attention of each Eligible Pacific Smiles Shareholder the detailed information in this Bidder's Statement concerning the risks and potential disadvantages of electing to receive the All Scrip Consideration or the Mixed Consideration and cautions each such shareholder to carefully consider those risks and potential disadvantages before making either such Election. Without limitation, please see Sections 4, 8 and 9 for further details of those risks and potential disadvantages.

Offer? The description in Section 10 is a general description only and not advice. It does not take into account your particular circumstances or needs. You should not rely on that description as advice for your own affairs.

You should consult your taxation adviser for detailed taxation advice before making a decision as to whether or not to accept the Offer for Your Pacific Smiles Shares.

What if I am a Foreign Shareholder?

Foreign Shareholders are persons whose address as shown in the Register is a jurisdiction other than Australia and its external territories.

An Eligible Foreign Shareholders is any Foreign Shareholder who Bidco (in its absolute discretion) has determined it can offer Holdco Shares to without complying with any registration, disclosure or other legal or process requirement under laws of the jurisdiction where that Pacific Smiles Shareholder is resident. All other Foreign Shareholders are Ineligible Foreign Shareholders.

If you elect the All Scrip Consideration or Mixed Consideration and you are an Ineligible Foreign Shareholder, you will not be issued Holdco Shares as a result of your Election. The Holdco Shares which you would otherwise become entitled will be issued to the Sale Agent that will deal with them in accordance with Section 12.6.

Eligible Foreign Shareholders who accept the Offer and elect to receive All Scrip Consideration or Mixed Consideration will be issued Holdco Shares in accordance with the terms of the Offer.

What is happening to Genesis Capital's existing interest in Pacific Smiles?

As at the date of this Bidder's Statement, Beam Investments, an Associate of Bidco and Genesis Capital, is the legal and beneficial owner of 31,750,000 Pacific Smiles Shares (approximately 19.9% of Pacific Smiles Shares). These Pacific Smiles Shares are subject to Put Options granted in favour of the Put Option Counterparties, being Genesis Fund and GFT2.

Beam Investments has advised Bidco that it intends to exercise the Put Options and transfer its Pacific Smiles Shares to the Put Option Counterparties during the Offer Period. The Put Option Counterparties have confirmed that if they acquire Pacific Smiles Shares under the Put Options, they will lodge Acceptance Instructions with the Institutional Acceptance Facility Operator (in accordance with the terms of the Institutional Acceptance Facility) and elect to receive the All Scrip Consideration in respect of each of those Pacific Smiles Shares.

Where do I go if I have further questions?

For queries on how to accept the Offer using the physical Acceptance Form, see the accompanying Acceptance Form.

For any further queries on how to accept the Offer, or for any other queries in relation to the Offer, please contact the Bidco Offer Information Line on 1300 101 297 (for calls made within Australia) or

+61 2 9068 1929 (for calls made outside Australia) between 9:30am and 7:00pm (Sydney time), Monday to Friday.

For queries in relation to your Pacific Smiles Shareholding, call 1300 288 664 (for calls made within Australia) or +61 2 9698 5414 (for calls made outside Australia).

Please note that the above calls may be recorded.

Additional Frequently Asked Questions relating to the Scrip Offer and Holdco Shares

Who is Holdco?

Holdco is the ultimate holding company of Bidco and is managed by the Manager.

The Co-investors and Pacific Smiles Shareholders who accept the Scrip Offer will acquire Holdco Shares and be bound by the terms of the Holdco Shareholders' Deed, Holdco Constitution and (if applicable) the Nominee Deed.

For more information, please refer to Section 4.4(d).

Do I have to become a Holdco Shareholder?

No, if you elect (or are deemed to have elected) to receive All Cash Consideration you will be paid cash for your Pacific Smiles Shares (subject to satisfaction or waiver of the Conditions and the terms of the Offer) and you will not receive any Holdco Shares.

Why do I need to verify my identity on accepting the Scrip Offer?

Bidco is unable to issue you (or the Nominee) Holdco Shares under the Offer until it has complied with the requirements set out under Australia's anti-money laundering laws. Any Pacific Smiles Shareholder who elects to receive Holdco Shares must complete identity verification. This is provided through a third-party AML solutions provider and must be completed before any Holdco Shares can be issued to ~~you or the~~ [Nominee](#) on your behalf ~~to the Nominee~~.

The process involves either verifying yourself online or returning specified documents to the Registry. If you accept the Offer and make an Election to receive All Scrip Consideration or Mixed Consideration, you will receive further instructions relating to identity verification.

~~If you make an Election to receive All Scrip Consideration or Mixed Consideration and you do not supply documents sufficient for the AML Verification Requirements within one month after the end of the Offer Period, then Bidco may void your Acceptance in which case your Shares will not be acquired as part of the Offer and you will not be entitled to any Offer Consideration. Your Shares may be acquired by Bidco through the compulsory acquisition procedure set out in Chapter 6A of the Corporations Act, should Bidco become entitled to implement that procedure.~~

Why do I need to sign the Scrip Election Deed Poll on accepting the Scrip Offer?

A requirement of the All Scrip Consideration and the Mixed Consideration is that shareholders that make an Election for Scrip Consideration must become a party to the Holdco Shareholders' Deed and the Nominee Deed. To do ~~this~~, the Shareholder making such an Election must execute the Scrip Election Deed Poll and return that executed deed poll to the Registry.

If you accept the Offer and make an Election to receive All Scrip Consideration or Mixed Consideration you will receive further instructions relating to the Scrip Election Deed Poll.

~~If you make an Election to receive All Scrip Consideration or Mixed Consideration and you do not return a duly executed Scrip Election Deed Poll within one month after the end of the Offer Period, then Bidco may void your Acceptance in which case your Pacific Smiles Shares will not be acquired as part of the Offer and you will not be entitled to any Offer Consideration. Your Pacific Smiles Shares may be acquired by Bidco through the compulsory acquisition procedure set out in Chapter 6A of the Corporations Act, should Bidco become entitled to implement that procedure.~~

What should I be aware of before I make an Election to receive All Scrip Consideration or Mixed Consideration

Importantly, Pacific Smiles Shareholders should be aware that if they make a valid Election to receive a form of Offer Consideration that includes an issuance of Holdco Shares:

- they will face risks that apply to an investment in Holdco that are materially different from, and in addition to, those risks that apply to their existing investment in Pacific Smiles;
- there will be no public market for the trading of shares in Holdco (an unlisted public company) nor is there expected to be any such market in the future;
- there are restrictions on the disposal of Holdco Shares under the Holdco Shareholders' Deed that will restrict any prospective seller of Holdco Shares from trading in those shares;
- Pacific Smiles Shareholders who receive Holdco Shares will become parties to the Holdco Shareholders' Deed which is intended to regulate the rights and obligations of Holdco Shareholders in relation to Holdco and its subsidiaries. Holdco Shareholders will have fewer rights as a Holdco Shareholder compared to your current investment in Pacific Smiles; and
- Pacific Smiles Shareholders who receive Holdco Shares may be subject to risks inherent in minority shareholdings.

Pacific Smiles Shareholders should carefully read Sections 4.6 and 9 for additional information on some of the risks associated with an investment in Holdco and consider obtaining professional advice before making an Election for All Scrip Consideration or Mixed Consideration.

What would be my rights as a

The rights and restrictions attaching to (or otherwise related to) Holdco Shares (or being a Holdco Shareholder) are set out in the Holdco

Holdco Shareholder?

Shareholders' Deed, which is attached to this Bidder's Statement as Appendix A, the Holdco Constitution, attached as Appendix B, the Nominee Deed, attached as Appendix C, and the Corporations Act.

A summary of the rights and obligations of Holdco Shareholders is set out at Section 4.6.

What is the role of the Nominee?

Holdco Shareholders (other than Genesis Shareholders) must hold their Holdco Shares through the Nominee, who will own the legal title to those Holdco Shares. Further details regarding the Nominee Deed, including a summary of the Nominee Deed, are set out in Section 4.6.

What is the value of a Holdco Share?

Valuing securities is a complex process that needs to take into account many characteristics of that security. Different methodologies may result in different outcomes.

Pacific Smiles Shareholders should be aware that the value of the All Scrip Consideration and Mixed Consideration may be less than the value of the All Cash Consideration.

As a consequence, any Pacific Smiles Shareholder who makes an Election for either All Scrip Consideration or Mixed Consideration may be electing to receive a form of consideration which is less valuable than the All Cash Consideration.

Would I be able to sell my Holdco Shares?

Any transfer of Holdco Shares is subject to restrictions set out in the Holdco Shareholder's Deed and the Holdco Board must decline to register any transfer of Holdco Shares that is not permitted by the Holdco Shareholder's Deed.

Generally, a Holdco Shareholder is unable to dispose of their Holdco Shares unless:

- Holdco Shareholders are required to dispose of their shares in connection with an initial public offering of Holdco in accordance with the Holdco Shareholders' Deed;
 - the Holdco Board requires a Holdco Shareholder (including a person who has a beneficial holding through the Nominee) with a small shareholding (being a holding of 125,000 Holdco Shares or less) to dispose of all of its Holdco Shares;
 - a Holdco Shareholder ([other than a Genesis Shareholder](#)) suffers an event of default under the Holdco Shareholders' Deed;
 - the Holdco Board approves that disposal of Holdco Shares;
 - the Holdco Shares are transferred to a permitted transferee under the terms of the Holdco Shareholders' Deed; or
 - the Holdco Board approves a buyback of Holdco Shares.
-

You may be unable to dispose of any Holdco Shares in [the](#) absence of one of the above events occurring.

[Additional background questions](#)

[How does this Offer relate to the other proposals that have been made for Pacific Smiles in the last 12 months.](#)

[In December 2023, Beam Investments \(an Associate of Bidco\) acquired an 18.75%⁹ interest in Pacific Smiles. On 18 December 2023, Genesis Capital subsequently put forward to the Pacific Smiles Board a non-binding indicative proposal to acquire 100% of the shares in Pacific Smiles. Beam Investments subsequently increased its economic interest in Pacific Smiles to 19.9%.¹⁰](#)

[In February 2024, Genesis Capital and Pacific Smiles entered into a confidentiality agreement and Genesis Capital was provided with access on a non-exclusive basis to limited and preliminary due diligence materials. In March 2024, Genesis Capital submitted a revised non-binding indicative proposal at \\$1.75 per share to the Pacific Smiles Board. Following receipt of that proposal, on 19 March 2024, Genesis Capital and Pacific Smiles entered into a process deed \("**Process Deed**"\) pursuant to which Genesis Capital was granted access to a further six-week period of non-exclusive due diligence with more detailed information. In the Proceed Deed, Pacific Smiles indicated that the Pacific Smiles Board intended to recommend the Genesis Capital proposal to Pacific Smiles Shareholders subject to the parties negotiating and entering into a binding scheme implementation agreement.](#)

[On 29 April 2024, Pacific Smiles announced that it had entered into the NDC Scheme Implementation Deed with NDC Bidco, a wholly owned subsidiary of NDC HoldCo Pty Ltd, which operates the National Dental Care network, a portfolio company of Crescent Capital. The consideration offered in respect of the NDC Scheme was a cash payment of \\$1.90. On 23 July 2024, the offer price under the NDC Scheme was increased to \\$1.91 per Pacific Smiles Share and NDC Bidco announced that this was its best and highest price \(absent a higher or superior proposal or the Pacific Smiles Board recommending any third party proposal or offer\). The Pacific Smiles Board unanimously recommended that Pacific Smiles Shareholders vote in favour of the \\$1.91 NDC Scheme.](#)

[On 24 July 2024, Genesis Capital, on behalf of Beam Investments, informed Pacific Smiles that it would vote all Pacific Smiles shares that it owned or controlled at the relevant time against the NDC Scheme.](#)

⁹ [Beam Investments as at 18 December 2023 held an economic interest in 29,913,833 shares in Pacific Smiles, representing an 18.75% economic interest, pursuant to a cash settled total return swap with Jarden Group Limited and inclusive of on-market purchases executed prior to stake acquired on 18 December 2023.](#)

¹⁰ [As released to the market on 24 January 2024, Jarden Group Limited and its related bodies corporate increased its holding from 29,913,883 shares to 31,750,000 shares.](#)

On 28 July 2024, Genesis Capital put forward a revised proposal to acquire all the shares in Pacific Smiles via a scheme of arrangement for cash consideration of \$1.90 per Pacific Smiles Share with a scrip consideration alternative to allow eligible Pacific Smiles Shareholders to elect to receive all or part of their consideration in scrip consideration. On 31 July 2024, the Pacific Smiles Board determined that this proposal was a superior proposal to the NDC Scheme and activated the matching right provisions in the NDC Scheme Implementation Deed.

On 1 August 2024, NDC Bidco increased the consideration offered in respect of the NDC Scheme to \$2.05 per Pacific Smiles Share. On 2 August 2024, Genesis Capital (on behalf of Beam Investments), informed Pacific Smiles that it would vote all Pacific Smiles shares that it owned or controlled against the further revised NDC Scheme.

The shareholder meeting convened to vote on whether or not to accept the NDC Scheme proposal (as revised on 1 August 2024) was held on 8 August 2024. At that meeting, the statutory majorities required to approve the NDC Scheme were not achieved and accordingly the NDC Scheme was not approved by Pacific Smiles Shareholders. Under the Corporations Act, a scheme of arrangement requires a 75% majority of votes cast by a 50% majority of the number of shareholders. At the meeting only 63.31% of the total votes were cast in favour of the NDC Scheme by 81.41% of Pacific Smiles Shareholders who were present and voting (whether in person, online, by proxy, attorney or corporate representative).

On 23 August 2024, Pacific Smiles announced that it had terminated the NDC Scheme Implementation Deed.

At the date of this Bidder's Statement, other than the Offer, Bidco is not aware of any other current offers or proposals in relation to all of the Pacific Smiles Shares or the Pacific Smiles business.

3 Why you should accept the Offer

Bidco is offering to acquire 100% of Your Pacific Smiles Shares for your choice of:

- the Cash Offer Price, being the All Cash Consideration of \$1.90 cash per Pacific Smiles Share;⁸¹¹
- the All Scrip Consideration of 1 Holdco Share per Pacific Smiles Share; or
- the Mixed Consideration comprising 47.5 cents cash and 0.75 ordinary Holdco Shares per ordinary Pacific Smiles Share,⁹¹²

in each case, as adjusted under and subject to the terms of the Offer.

The key reasons to accept the Offer are summarised below:

1. **The Cash Offer Price represents a significant premium relative to undisturbed historical market prices**

The Cash Offer provides a **compelling opportunity for Pacific Smiles Shareholders to realise certain cash value** for their Pacific Smiles Shares, subject to the satisfaction or waiver of the Conditions and the terms of the Offer.

The Cash Offer Price represents a **significant premium relative to recent historical trading** of Pacific Smiles Shares on ASX, on the basis that the Cash Offer Price represents a premium of:

- 73.7% to the 5-day VWAP⁴⁰¹³ of Pacific Smiles Shares up to and including 15 December 2023,⁴⁴¹⁴ being the last trading day prior to the announcement that Pacific Smiles had received Genesis Capital's initial indicative proposal of \$1.40 per Pacific Smiles Share;
- 95.1% to the 1-month VWAP of Pacific Smiles Shares up to and including 15 December 2023; and
- 82.6% to the 3-month VWAP of Pacific Smiles Shares up to and including 15 December 2023,

and an implied EV / FY24 Underlying EBITDA multiple of 10.3x⁴²¹⁵ relative to a multiple of 7.8x for the equivalent financial metric as at 15 December 2023.⁴³¹⁶

⁸¹¹ Under the Offer terms, if a Pacific Smiles Shareholder accepts the Offer in respect of its Pacific Smiles Shares and elects to receive the All Cash Consideration, Bidco will deduct from the All Cash Consideration payable in respect of those Pacific Smiles Shares the full cash amount of any dividend declared or paid by Pacific Smiles after the Announcement Date in respect of those Pacific Smiles Shares (including the Declared Dividend), unless the amount of such dividend is paid to Bidco in respect of those same Pacific Smiles Shares.

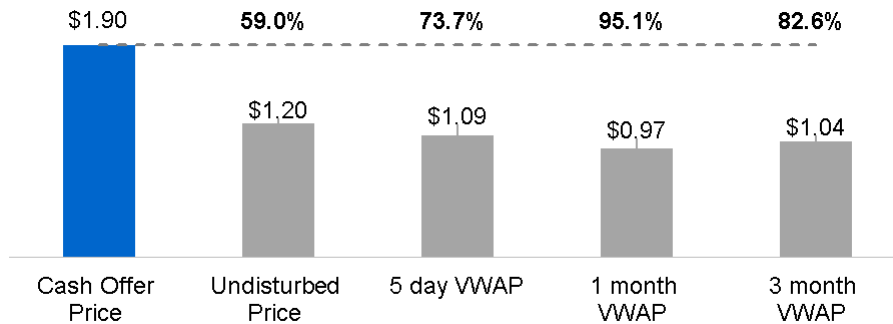
⁹¹² Under the Offer terms, if a Pacific Smiles Shareholder accepts the Offer in respect of its Pacific Smiles Shares and elects to receive the Mixed Consideration, Bidco will deduct from the cash component of the Mixed Consideration payable in respect of those Pacific Smiles Shares 25% of the cash amount of any dividend declared or paid by Pacific Smiles after the Announcement Date in respect of those Pacific Smiles Shares (including the Declared Dividend), unless the amount of such dividend is paid to Bidco in respect of those same Pacific Smiles Shares. Any fractional entitlement to Holdco Shares in respect of the Mixed Consideration will be rounded up or down to the nearest whole Holdco Share.

⁴⁰¹³ Based on market volume weighted average prices.

⁴⁴¹⁴ The "Undisturbed Price" of \$1.20 is the closing price of Pacific Smiles Shares on 15 December 2023.

⁴²¹⁵ Based on 159,581,938 ordinary shares on issue and 2,794,221 performance rights, as disclosed on 15 July 2024. Net cash position of \$17.7 million, based on last reported amount as at 30 June 2024. Pre-AASB 16 EBITDA based on underlying EBITDA of \$28.2 million as of 30 June 2024.

⁴³¹⁶ Based on 159,581,938 ordinary shares on issue and 6,703,912 performance rights, as disclosed on 23 August 2023. Net cash position of \$9.6 million, based on last reported amount as at 15 December 2023, being the 30 June 2023 balances. Pre-AASB 16 EBITDA based on underlying EBITDA of \$24.1 million as at 30 June 2023.



2. The Cash Offer Price falls within the range of values of a Pacific Smiles Share assessed to be "fair" by the independent expert appointed by Pacific Smiles in connection with the NDC Scheme

In its independent expert's report dated 21 June 2024 and based on information available to it at that time, the independent expert appointed by the Pacific Smiles Board in connection with the NDC Scheme assessed the market value of a Pacific Smiles Share in the context of the NDC Scheme to be between \$1.80 and \$2.17, on a controlling interest basis and otherwise on the basis set out in the independent expert's report. In its ASX announcement of 2 August 2024, Pacific Smiles confirmed that the independent expert's conclusion had not changed as at that time¹⁷.

The Cash Offer Price falls within the range of values (i.e. \$1.80 - \$2.17) of a Pacific Smiles Share **assessed to be "fair" by the independent expert** appointed by the Pacific Smiles Board in connection with the NDC Scheme.⁴⁴¹⁸

3. The Cash Offer Price provides Pacific Smiles Shareholders with an equivalent cash amount to the NDC Scheme as at the time it was initially agreed to by Pacific Smiles in April 2024 and unanimously recommended by the Pacific Smiles Board in April 2024

As announced on 29 April 2024, Pacific Smiles entered into a scheme implementation deed for the NDC Scheme under which cash consideration of \$1.90 less the amount of any permitted dividend was offered to Pacific Smiles Shareholders. This cash offer price continued to be unanimously recommended by the Pacific Smiles Board until NDC unilaterally increased its cash offer price by 1 cent on 23 July 2024.

4. The All Cash Consideration provides you certainty of value

The All Cash Consideration provides each Pacific Smiles Shareholder with certainty on the value of the consideration being offered for their Pacific Smiles Shares, subject to the Conditions being satisfied or waived and the terms of the Offer.

¹⁷ Please refer to footnote 18.

⁴⁴¹⁸ Bidco notes that the independent expert's assessment of fair value in connection with the NDC Scheme was based on the information available to the independent expert as at the relevant time (or times) and was dated 21 June 2024. Bidco makes no representation that the independent expert would make an identical assessment of value having regard to facts and circumstances now existing (noting that there have been a number of developments since the date of the independent expert's report including changes to the nib contract, the NDC Revised Proposal, the Genesis Revised Proposal, the release of the Pacific Smiles FY24 Financial Statements, the announced resignations of key executives and Pacific Smiles' year to date trading). Bidco, on request during the bid period, will provide within 2 Business Days of the request, a copy of the independent expert's report dated 21 June 2024 (as contained in the scheme booklet for the NDC Scheme) and Pacific Smiles' ASX announcement of 2 August 2024.

If you accept the Cash Offer in accordance with the instructions contained in the Offer and the Acceptance Form, and the Offer becomes unconditional, you will be paid the Cash Offer Price for each Pacific Smiles Share that you own on the earlier of:

- one month after this Offer is accepted or one month after the Conditions have been freed or fulfilled (whichever is later); and
- 21 days after the end of the Offer Period,

subject to the terms of the Offer.

5. The Scrip Offer provides Eligible Pacific Smiles Shareholders with an opportunity to retain an indirect exposure to Pacific Smiles under private ownership alongside an experienced healthcare investor¹⁹

Any Eligible Pacific Smiles Shareholder who elects to receive the All Scrip Consideration or the Mixed Consideration (as an alternative to the All Cash Consideration) will, subject to the satisfaction or waiver of the Conditions and the terms of the Offer, have the opportunity to invest alongside entities managed or advised by Genesis Capital, an experienced healthcare investor.

Bidco draws to the attention of each Eligible Pacific Smiles Shareholder the detailed information in this Bidder's Statement concerning the risks and potential disadvantages of electing to receive the All Scrip Consideration or the Mixed Consideration and cautions each such shareholder to carefully consider those risks and potential disadvantages before making either such Election (as an alternative to the All Cash Consideration). Without limitation, please see Sections 4, 8 and 9 for further details of those risks and potential disadvantages.

6. The price of Pacific Smiles Shares may fall if the Offer is not successful

The Offer provides Pacific Smiles Shareholders who elect to receive the All Cash Consideration with the opportunity to realise certain cash value (subject to the Conditions being satisfied or waived and the terms of the Offer) and **avoid inherent risks and uncertainties in holding shares in a listed company as well as company-specific risks, which may adversely affect the future trading price of Pacific Smiles Shares**, such as:

- uncertainty associated with Pacific Smiles securing a new CEO and a new CFO;
- changes in the composition of the Pacific Smiles Board;
- global macroeconomic conditions;
- potential regulatory risks; and/or
- potential competitive threats.

Since the announcement of Genesis Capital's offer on 18 December 2023, Pacific Smiles Shares have traded at a premium to where they traded in the lead up to the announcement in anticipation of a change of control transaction proceeding. Prior to that announcement, the Pacific Smiles Share price was impacted by various operational and financial factors, including underperformance of recent cohorts, payroll tax determinations and shareholder register turnover. Any of these factors, along with the relatively low level of liquidity of Pacific Smiles Shares, may cause the trading price of such shares to fall below its current level if the Offer is not successful.

¹⁹ [Bidco draws to the attention of each Eligible Pacific Smiles Shareholder the detailed information in this Bidder's Statement concerning the risks and potential disadvantages of electing to receive the All Scrip Consideration or the Mixed Consideration and cautions each such shareholder to carefully consider those risks and potential disadvantages before making either such Election. Without limitation, please see Sections 4, 8 and 9 for further details of those risks and potential disadvantages.](#)

If you accept the Offer and elect to receive the All Cash Consideration, and the Offer becomes unconditional, **you will no longer be exposed to the risks and uncertainties inherent in owning the Pacific Smiles Shares**. By contrast, if you do not accept the Offer or the Offer does not become unconditional, the amount which you will be able to realise for your Pacific Smiles Shares is uncertain.

7. No stamp duty or brokerage fees in accepting the Offer

You will **not be obliged to pay stamp duty** if you accept the Offer.

If Your Pacific Smiles Shares are registered in an Issuer Sponsored Holding in your name and you deliver them directly to Bidco, **you will not incur any brokerage fees** or be obliged to pay stamp duty in connection with your Acceptance.

If Your Pacific Smiles Shares are registered in a CHES Holding, or if you are a beneficial owner whose Pacific Smiles Shares are registered in the name of a Broker, bank, custodian, or other nominee, **you will not be obliged to pay stamp duty by accepting the Offer**, but you should ask your Controlling Participant (usually your Broker) or that nominee whether it will charge any transactional fees or service charges in connection with Acceptance and any service fees for managing any Holdco shareholding issued to or held by the Nominee for you.

4 Information on Genesis Capital and the Bidder Group

This Section 4 has been prepared by Bidco. This Section 4 provides information about Genesis Capital and the Bidder Group, including in relation to the rights and obligations that will attach to Holdco Shares, including information relating to the Holdco Shareholders' Deed and Nominee Deed. Information on the sources of Offer Consideration and Bidco's intentions should the Offer proceed are set out in Sections 7 and 8 respectively.

The information concerning Genesis Capital and any Bidder Group Member is the responsibility of Bidco.

4.1 Overview of Genesis Capital

Genesis Capital Manager I Pty Ltd (the "**Manager**") is the manager of entities comprising the Bidder Group and is a member of the Genesis Capital group.

Established in 2018, Genesis Capital is one of Australia's leading healthcare specialist private equity firms.

Over the past 16 years, the partners at Genesis Capital have (both with Genesis Capital and in other professional contexts) invested in 19 healthcare platforms, and over 40 bolt on acquisitions. Genesis Capital is differentiated from other investment managers due to its focus on and deep knowledge of the healthcare sector, experience executing growth strategies in partnership with management, and deep operating expertise. Genesis Capital investors include a mix of global and Australian institutional investors, leading Australia and New Zealand family offices and the Genesis Capital partners and team.

Genesis Capital currently has nine portfolio companies operating across the Australian and New Zealand healthcare sectors, [including being](#);

- **Crux Biolabs**; a growing Australian bioanalytical laboratory for vaccines, immunotherapies, immuno-oncology and infectious diseases.
- **Momentum Clinical Research**; Australasia's largest clinical trials site network providing patient access to pharmaceuticals under clinical trial across 14 locations.
- **Sana Health Group**; a leading Australian mental health inpatient group, with a particular focus on addiction, eating disorders and general mental health.
- **Impression Dental Group**; a leading dental practice operator, operating practices alongside local dentist partners across the eastern seaboard of Australia.
- **TherapyPro**; a mobile therapy service providing psychologists, occupational therapists, speech and language pathologists, and social workers across locations in Queensland, New South Wales and Victoria.
- **Southern Cross Support Services**; a leading National Disability Insurance Scheme and child youth protection service provider that operates throughout Australia.
- **HealthBright**; one of Australia's largest tele-mental health providers, offering accessible and affordable online mental health services through video and phone consultations with accredited psychologists and psychiatrists.

- **General Homecare**; an expanding group of community support and care providers in Australia, dedicated to delivering compassionate, patient-centred care.
- **Life Care Consultants**; a high-quality New Zealand occupational health platform, with services spanning healthcare training, pre employment medical checks, and employee health monitoring

Each of these portfolio companies is operated independently of each other such company, and Genesis Capital maintains customary confidentiality and conflict management protocols to ensure that its investee companies are managed in accordance with best investment management practices.

Genesis Capital Fund I, LP, a fund managed by Genesis Capital, ("**Genesis Fund**") alongside certain other co-investors, will be indirectly participating in the Offer through its investment in Holdco. For further details, please refer to Section 4.4(d), which concerns the capital structure of Holdco and Section 7, sources of Offer Consideration.

More information about Genesis Capital is available at www.genesiscapital.com.au.

4.2 Overview of Beam Investments

Beam Investments is a special purpose vehicle formed for the purpose of acquiring 31,750,000 Pacific Smiles Shares. As disclosed to the market on 7 May 2024, the acquisition of these Pacific Smiles Shares was financed via two loan agreements entered into with Genesis Fund and GFT 2 Co Pty Ltd as trustee for GFT 2 Trust ("**GFT2**") respectively.

Beam Investments is party to two Put Options in respect of its Pacific Smiles Shares, with Genesis Fund and GFT2.

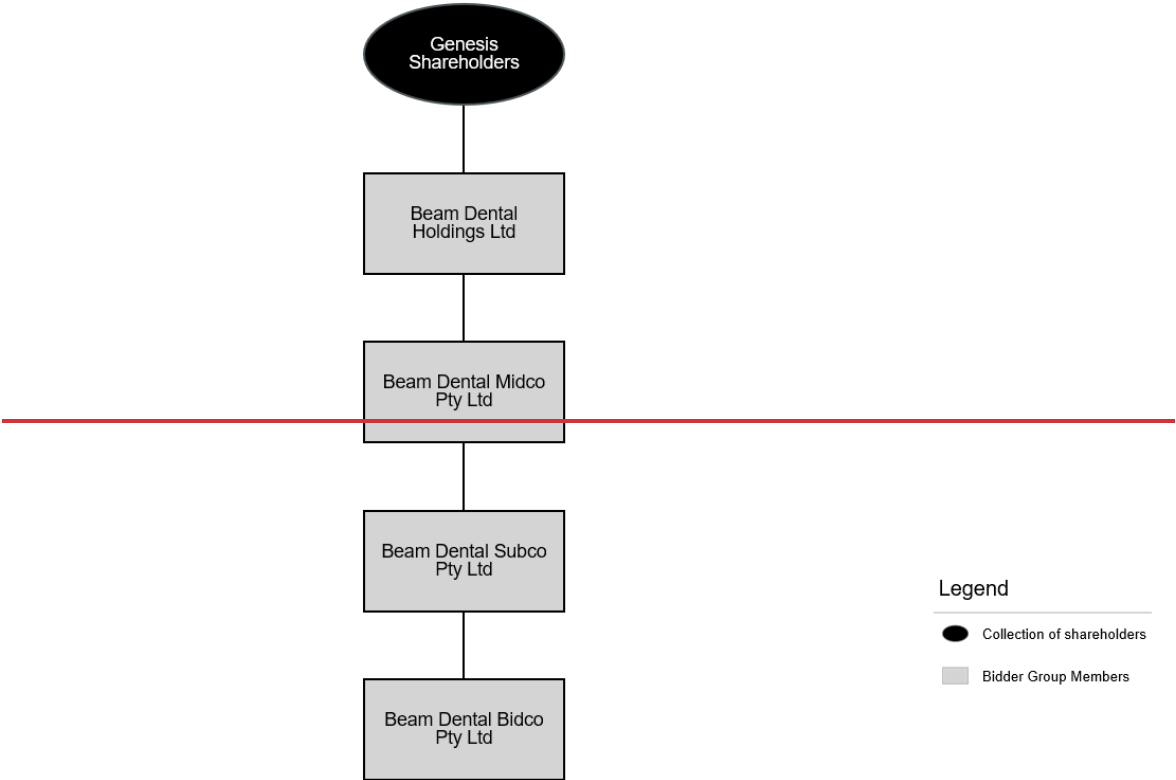
During the Offer Period, Beam Investments will exercise the Put Options and require Genesis Fund and GFT2 to acquire all of its Pacific Smiles Shares, with the consideration to be paid by Genesis Fund and GFT2 to be set off against the amounts owing under the respective loan agreements between Beam Investments and Genesis Fund and GFT2.

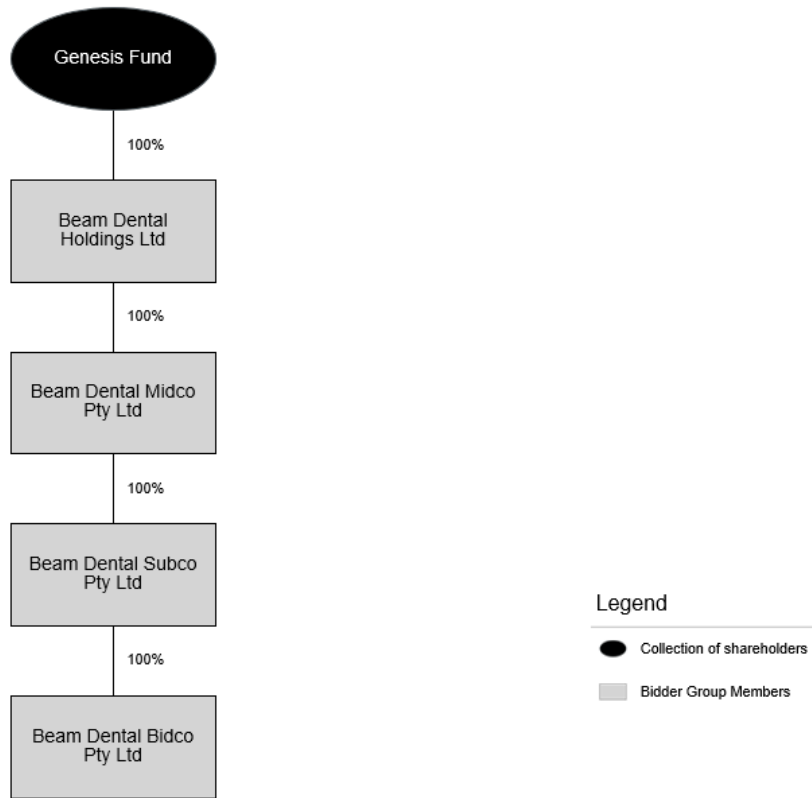
Once it has acquired those Pacific Smiles Shares from Beam Investments, each of Genesis Fund and GFT2 will lodge Acceptance Instructions with the Institutional Acceptance Facility Operator (in accordance with the terms of the Institutional Acceptance Facility) and elect to receive All Scrip Consideration. If the IAF Triggering Conditions are satisfied, Genesis Fund and GFT2 will then be issued shares in Holdco in exchange for those Pacific Smiles Shares in accordance with the terms of the Offer.

4.3 Ownership structure of the Bidder Group

(a) Before Completion of the transaction

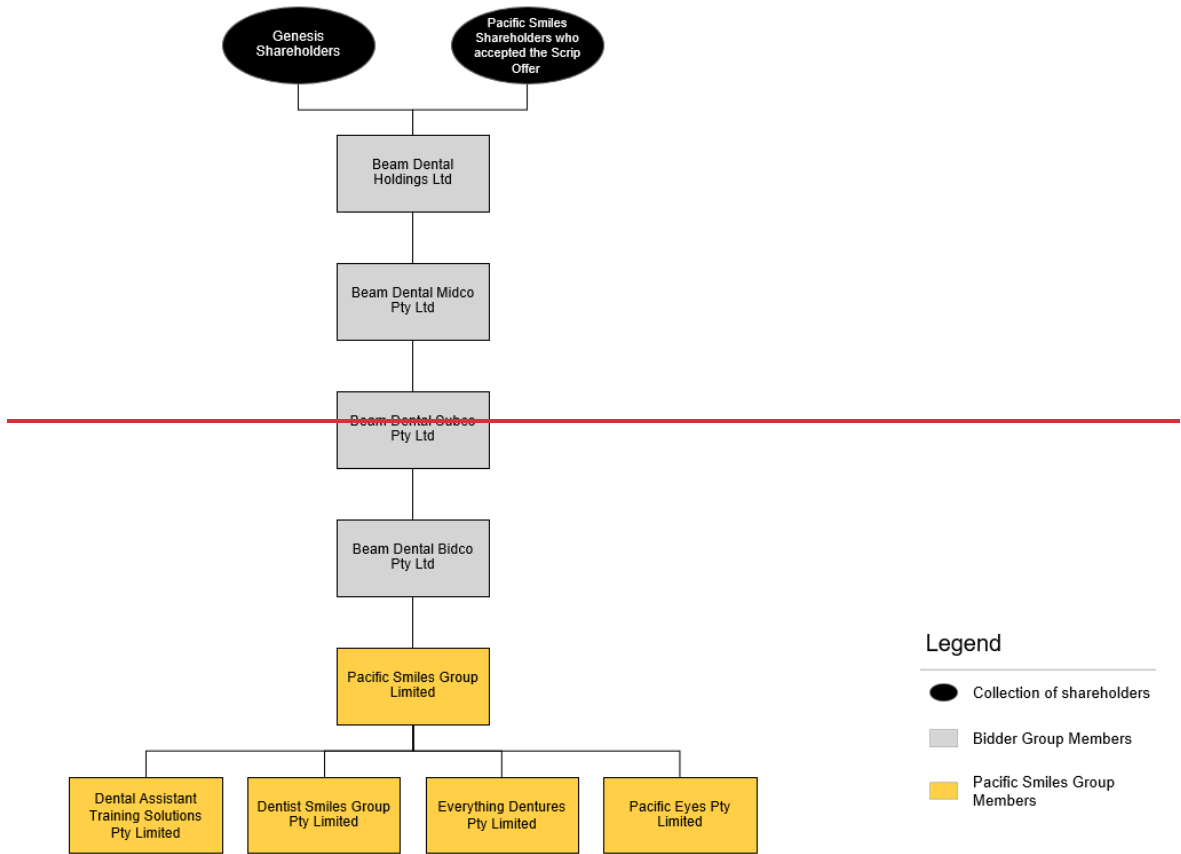
Set out below is the current structure diagram of the Bidder Group:



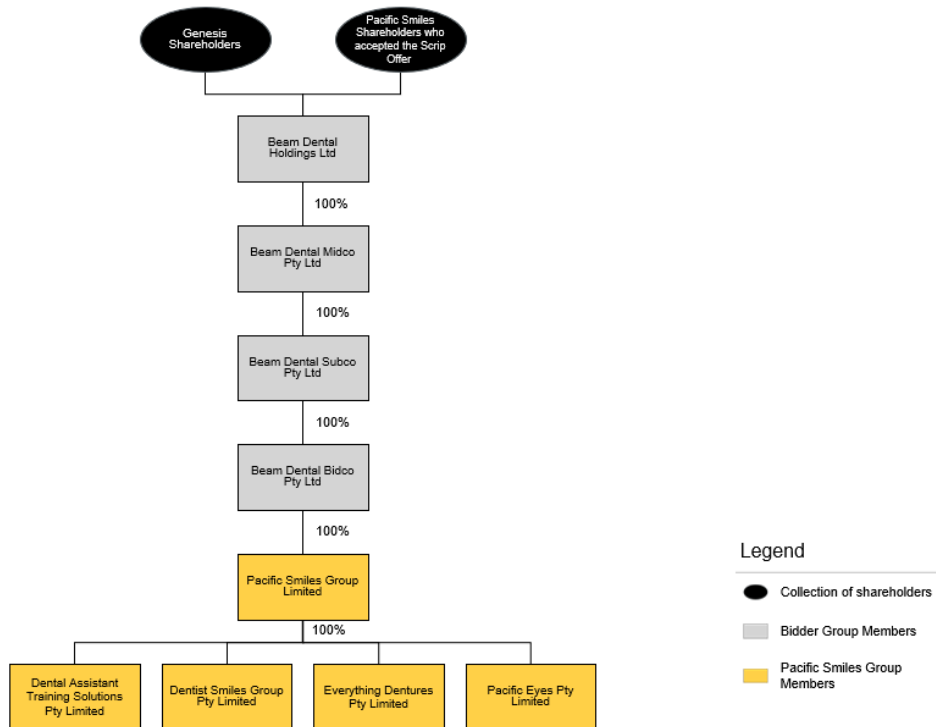


(b) **After Completion of the transaction**

Set out below is an illustrative structure chart of the Bidder Group and Pacific Smiles Group at Completion, assuming that Bidco holds 100% of the Pacific Smiles Shares at Completion.



- Legend**
- Collection of shareholders
 - Bidder Group Members
 - Pacific Smiles Group Members



As the composition of Holdco's register of members following Completion of the Offer will be influenced by a number of variables, including factors that are outside of Bidco's control, including:

- the extent to which Pacific Smiles Shareholders who accept the Offer elect to receive the All Scrip Consideration or the Mixed Consideration; and
- the precise ratio of debt and equity funding of the Bidder Group,

Bidco is unable to provide definitive details about the composition of the Holdco share register following Completion of the Offer as at the date of this Bidder's Statement.

However, for illustrative purposes, possible absolute and relative shareholdings in Holdco, split between Genesis Shareholders (including in respect of the Beam Investments stake) and Pacific Smiles Shareholders (other than the holder(s) of the Beam Investments stake from time to time) who elect to participate in the Scrip Offer, are set out in the table below. The information presented in the table:

- is based on two rollover ownership scenarios: (a) 5% of Pacific Smiles Shares (excluding the Pacific Smiles Shares currently held by Beam Investments) are exchanged for Holdco Shares under the Scrip Offer ("**5% Scenario**"); and (b) 15% of Pacific Smiles Shares (excluding the Pacific Smiles Shares currently held by Beam Investments) are exchanged for Holdco Shares under the Scrip Offer ("**15% Scenario**"); and

- \$153 million of debt is drawn under the 5% Scenario, and \$123 million of debt is drawn under 15% Scenario, from the Debt Facility to partially fund Bidco's payment obligations to pay the All Cash Consideration, the cash component of the Mixed Consideration and transaction costs incurred by the Bidder Group in connection with the Offer.

Pacific Smiles Shareholders should be aware that these scenarios are illustrative and that the actual extent of Elections to participate in the Scrip Offer, the amount of equity called from the Equity Investors, drawings under the Debt Facility and the extent of transaction costs may be different from the example shown in this Section 4.3(b).⁴⁵²⁰

Holdco Shares	Extent of rollover via the Scrip Offer (excluding the Beam Investments stake)			
	5% Scenario		15% Scenario	
	Number (million)	Percentage of Holdco Shares	Number (million)	Percentage of Holdco Shares
Genesis Shareholders (including the Beam Investments stake)	85.5	91.3%	85.5	77.8%
Other Holdco Shareholders	8.1	8.7%	24.4	22.2%
Total Holdco Shares	93.6	100.0%	109.8	100.0%

The table above illustrates that:

- the relative ownership of Holdco by the Genesis Shareholders is lower in the 15% Scenario relative to the 5% Scenario because the more Pacific Smiles Shareholders who accept the Scrip Offer and exchange their Pacific Smiles Shares for Holdco Shares, the more equity is contributed to the Bidder Group (please refer to Section 4.8 for further information) and the more Holdco Shares are issued; and
- in each of the 5% Scenario and 15% Scenario, the percentage of Holdco Shares that an Eligible Pacific Smiles Shareholder who elects to receive the All Scrip Consideration will be entitled to receive (if the Offer becomes unconditional) shall exceed their current percentage ownership of Pacific Smiles. This increased ownership interest is the result of the debt financing that the Bidder Group will utilise to partially satisfy its cash payment obligations with respect to Elections to receive the All Cash Consideration or the Mixed Consideration if the Offer becomes unconditional. For details of that debt funding, please refer to

⁴⁵²⁰ In circumstances where the amount of equity called from the Equity Investors is decreased and the amount drawn from the Debt Facility is increased, the Genesis Shareholders will have a lower absolute and relative interest in Holdco and the Pacific Smiles Shareholders who accept the Scrip Offer will hold a higher absolute and relative interest in Holdco (as the debt funding, in that circumstance, would be utilised in priority to the equity commitments from the Equity Investors). In contrast, if the Cash Offer Price was to be entirely equity funded (which Bidco does not intend to do), the percentage shareholding in Holdco of each Pacific Smiles Shareholder who elected to receive the All Scrip Consideration or the Mixed Consideration would be slightly diluted (as compared to their current shareholdings in Pacific Smiles) by the additional equity subscriptions required to pay outstanding transaction costs.

Section 7.4. For information about the risks associated with that debt funding, please refer to Section 9.4(f).

(c) **Other possible ownership structures**

While the information set out in Section 4.3(b) relates to a scenario in which Bidco acquires 100% of Pacific Smiles Shares under or in connection with the Offer, Bidco reserves its right to declare the Offer free from the 90% Minimum Acceptance Condition (and/or any other Condition to the Offer). In certain circumstances (including, without limitation, if Bidco has secured alternate unconditional debt financing), Bidco may waive one or more of the Conditions. In those circumstances, the relative shareholdings of Holdco as between the Genesis Shareholders and the remaining holders of Holdco Shares may be materially different to the information presented in the table above in Section 4.3(b), as may the relative splits of debt and equity funding of the Bidder Group. [In addition, a Pacific Smiles Shareholder that receives Scrip Consideration in circumstances where Bidco does not acquire 100% of Pacific Smiles Shares will have exchanged their direct exposure in Pacific Smiles for a shareholding in Holdco, being a company that has an investment in \(but not full ownership of\) Pacific Smiles.](#)

[If Bidco obtains financing on terms that allows it to waive the Minimum Acceptance Condition, then to the extent required, additional disclosure will be made about those financing arrangements and the relative mixes of equity and debt financing that will be used to satisfy obligations to pay cash consideration under the Offer.](#)

Please see Section 9.5 for a discussion of the risks and implications of Bidco's intentions for Pacific Smiles in the event that the Bidder Group does not receive Acceptances for more than 90% of Pacific Smiles Shares and the Minimum Acceptance Condition is waived by Bidco.

(d) **[Future developments](#)**

[Following Completion, there are a range of circumstances that may arise that may result in Holdco issuing additional securities to either existing Holdco Shareholders or third parties. To the extent that any such issue occurs on a non-pro rata basis for all Holdco Shareholders, shareholders may be diluted. Please see Section 4.6\(b\) for an overview of the regime regulating Holdco Share issues included in the Holdco Shareholders' Deed.](#)

4.4 Overview of the Bidder Group

(a) **Bidco**

Bidco is an Australian proprietary company limited by shares that was incorporated on 3 April 2024. Bidco is a wholly owned indirect subsidiary of Holdco.

To date, Bidco's activities, each in conjunction with the Manager and/or Genesis Capital, have been limited to [activities undertaken in connection with the Genesis Revised Proposal](#), preparing this Bidder's Statement and associated documents and taking any steps contemplated by those documents (including, for example, entering into the Debt Commitment Letter). [As at the date of this Bidder's Statement, Bidco has no trading history, assets or liabilities \(excluding transaction costs disclosed in this Bidder's Statements\).](#)

At the date of the Bidder's Statement, Bidco has two directors, Michael Caristo and Christopher Yoo, whose profiles are set out at Section 4.5. One or more directors may be appointed to the board of Bidco pursuant to its constitution.

(b) **Subco**

Subco is an Australian proprietary company limited by shares that was incorporated on 3 April 2024 and became the holder of all of the shares in Bidco on that date. Subco has no trading history, assets (other than the shares in Bidco) or liabilities.

At the date of the Bidder's Statement, Subco has two directors, Michael Caristo and Christopher Yoo, whose profiles are set out at Section 4.5. One or more directors may be appointed to the board of Subco pursuant to its constitution.

(c) **Midco**

Midco is an Australian proprietary company limited by shares that was incorporated on 3 April 2024 and became holder of all of the shares in Subco on that date. Midco has no trading history, assets (other than the shares in Subco) or liabilities.

At the date of the Bidder's Statement, Midco has two directors, Michael Caristo and Christopher Yoo, whose profiles are set out at Section 4.5. One or more directors may be appointed to the board of Midco pursuant to its constitution.

(d) **Holdco**

Holdco is an unlisted Australian public company limited by shares that was incorporated on 3 April 2024 for the purposes of holding all of the shares in Midco and issuing Holdco Shares to the Genesis Shareholders and Eligible Pacific Smiles Shareholders who have made valid All Scrip Consideration or Mixed Consideration Elections.

Other than entry into Co-investment Agreements and other documents ancillary to the Offer, Holdco has no trading history, assets (other than the shares of Midco) or liabilities ([excluding transaction costs disclosed in this Bidder's Statements](#)).

At the date of the Bidder's Statement, Holdco has three directors, Michael Caristo, Christopher Yoo and Tara Hariharan, whose profiles are set out at Section 4.5. Additional directors may be appointed to the board of Holdco pursuant to the Shareholders' Deed. The Holdco Shareholders' Deed provides that:

- the Genesis Shareholders' Representative will, at all times, be entitled to appoint, remove and replace a majority of the Holdco Board; and
- any individual or notified group of Holdco Shareholders (other than Genesis Shareholders) is entitled to appoint, remove and replace one director for every whole 10% shareholding in Holdco held by those shareholders.

(1) **Capital structure**

At the date of the Bidder's Statement, Holdco has one ordinary share on issue. This share is held as follows:

Shareholder	Number of Holdco Shares held	Percentage of Holdco Shares held
Genesis Capital Ultimate GP Pty Ltd as general partner of Genesis Capital Management Partnership I, LP, the	1	100%

general partner of Genesis Capital Fund I, LP		
Total	1	100%

(2) **Corporate governance**

The affairs of Holdco will be regulated under the Holdco Shareholders' Deed and the Holdco Constitution (set out at Appendix A and Appendix B respectively). A summary of the key provisions of these documents is set out at Section 4.6(b) and Section 4.6(c) (although this summary is not exhaustive and any Pacific Smiles Shareholder who is considering making an Election to participate in the Scrip Offer should read these documents in full).

The Holdco Shares are not, and may not ever be, quoted on any securities exchange. The corporate governance arrangements for Holdco will differ materially from those that Pacific Smiles currently has in place. Holdco intends to adopt an approach to corporate governance appropriate for a closely held unlisted Australian public company limited by shares.

[As at the date of this Bidder's Statement, other than Genesis Fund, which holds 1 Holdco Share \(representing 100% of the issued capital of Holdco\), no other Genesis Shareholder holds any shares in Holdco.](#)

(e) **About the Genesis Shareholders**

(1) **Genesis Fund**

Genesis ~~Capital~~ Fund ~~I~~ is an investment vehicle of Genesis Capital, a specialist healthcare investment firm. For more information on Genesis Capital please see Section 4.1. Genesis Fund has confirmed that when it receives 8,060,091 Pacific Smiles Shares following exercise of the Genesis Fund Put Option by Beam Investments, it will lodge Acceptance Instructions with the Institutional Acceptance Facility Operator (in accordance with the terms of the Institutional Acceptance Facility) and elect to receive All Scrip Consideration.

Genesis Fund has uncalled capital commitments equal to its Equity Commitment that may be drawn on an unconditional basis.

(2) **GFT2**

GFT2 Trust is an investment vehicle of a Sydney-based family office, that holds a wide range of investments.

GFT2 Trust has confirmed that when it receives 23,689,909 Pacific Smiles Shares following exercise of the GFT2 Put Option by Beam Investments, it will lodge Acceptance Instructions with the Institutional Acceptance Facility Operator (in accordance with the terms of the Institutional Acceptance Facility) and elect to receive All Scrip Consideration.

(3) **Genesis Healthcare Holdings Pty Ltd as trustee for Beam Co-investor Trust**

Beam Co-investor Trust is a managed investment trust that was established in 2024 for the purpose of participating in the equity consortium for the Offer.

Beam Co-investor Trust is managed by Genesis Capital comprising certain wholesale investors.

Beam Co-investor Trust has uncalled capital commitments equal to its Equity Commitment that may be drawn on an unconditional basis.

(4) **Franklin Park**

Franklin Park Co-Investment Fund VI, L.P. is an investment vehicle formed in 2023 and has total capital commitments of approximately US\$410 million.

Franklin Park Co-Investment Fund VI, L.P. is part of a co-mingled fund program ultimately managed by Franklin Park Associates, LLC (Franklin Park). None of the ultimate beneficial owners of Franklin Park Co-Investment Fund VI, L.P. directly or indirectly own in excess of 10% of the Franklin Park Co-Investment Fund VI, L.P.

Founded in 2003, Franklin Park is a US-headquartered private markets investment firm that provides access to private equity, private debt, and venture capital investments through fund-of-funds, co-investment funds, and advisory accounts.

More information on Franklin Park is available on its website, <https://www.franklinparkllc.com/>.

Franklin Park Co-Investment Fund VI, L.P. has uncalled capital commitments equal to its Equity Commitment that may be drawn on an unconditional basis.

(5) **LFPE**

A closed end investment vehicle registered under the law of Luxembourg, LFPE Co invest II has total undrawn and uncalled capital commitments that exceed the amount of its Equity Commitment. LFPE Co invest II is able to draw on those funds without conditions or restrictions for the purpose of funding its Equity Commitment and will draw on those funds as needed to fund its Equity Commitment of A\$5 million.

(6) **Axiom Asia**

A6J Ltd, Axiom Asia 6-A SCSp, SICAV-RAIF and ACF-2 Ltd are investment vehicles managed by Axiom Asia ("**Axiom**").

Founded in 2006, Axiom is a Singapore-headquartered private equity investment firm focused on the Asia-Pacific region. Axiom currently manages ten private equity funds diversified across buyout, growth and venture capital, with total commitments of over US\$8 billion.

More information on Axiom Asia is available on its website, <https://axiomasia.com/>.

The Axiom investment vehicles listed above collectively have uncalled capital commitments equal to their Equity Commitment that may be drawn on an unconditional basis.

(7) **Ares**

ADL ANZ Opportunities I Pte. Limited and Asia Opportunities (Singapore) Pte. Limited ("**Ares Investing Entities**") are indirectly wholly owned by Ares Asia Direct Lending LP ("**ADL Fund**") and Ares SSG Secured Lending Opportunities III, L.P. ("**Secured Lending Fund**"), respectively. Ares Investing entities are incorporated in Singapore and will be able to draw on funds as needed to fund its

Equity Commitment of \$20 million, [with the provision of such funding being subject to utilisation of the Debt Facility](#).

The Ares Investing entities are advised by Ares Management Asia (Singapore) Pte. Ltd, an indirect, wholly-owned subsidiary of Ares Management Corporation.

Ares Management Corporation (listed on the New York Stock Exchange) (“Ares”) is a leading global alternative investment manager offering clients complementary primary and secondary investment solutions across the credit, private equity, real estate and infrastructure asset classes. Ares seeks to provide flexible capital to support businesses and create value for its stakeholders and within its communities. By collaborating across its investment groups, Ares aims to generate consistent and attractive investment returns throughout market cycles. As of June 30, 2024, Ares Management Corporation's global platform had approximately US\$447 billion of assets under management, with approximately 2,950 employees operating across North America, Europe, Asia Pacific and the Middle East. For more information, please visit www.aresmgmt.com.

(8) **Genesis Fund II**

Genesis Fund II is a new investment vehicle of Genesis Capital. For more information on Genesis Capital, please see Section 4.1. Once Genesis Fund II has closed its first funding round, which is expected to take place during the Offer Period and obtained required regulatory authorisations, it may give an equity commitment to Holdco or, alternatively, may directly acquire Holdco Shares (whether by way of share transfer or subscription for new Holdco Shares). The structure and size of the investment from Genesis Fund II (if any) will be determined closer to the time at which any investment is made.

For the purposes of the Offer, no funding is required from Genesis Fund II to satisfy the All Cash Offer Amount.

The Manager and management fees

Genesis Capital, or the Manager, is a Sydney-based Australian healthcare focused investment manager and is the manager and ~~adviser~~ of Genesis Fund, Beam Investments and other Co-investor vehicles (i.e. the Genesis Shareholders) and the entities comprising the Bidder Group. This management relationship is defined by management (or other) agreements in place between the respective entities and the Manager. The Manager is an active investor and expects to work closely with Pacific Smiles' management team to identify and execute strategic performance opportunities within the business.

Holdco and the other members of the Bidder Group do not currently pay any management fees to the Manager.

As permitted by the Holdco Shareholders' Deed, a Bidder Group Member (including, from Completion, Pacific Smiles) may enter into a management services agreement with the Manager or their affiliate. Any management services agreement must be on arm's length terms ([which in this context is on a cost pass through / cost reimbursement basis](#)) or otherwise approved to the extent required under the Corporations Act.

Under the related party transaction provisions of the Holdco Shareholders' Deed, directors of Holdco appointed by the Genesis Shareholders' Representative will not be permitted to vote on entry into ~~the~~ any proposed

management agreement proposed to be entered into between Holdco and the Manager [to the extent such voting gives rise to a conflict of interest for that director](#).

4.5 Bidder Group Directors

Set out below are brief biographies of the current directors of the Bidder Group. As noted above, additional directors may be appointed.

(a) **Dr Michael Caristo**

Michael is a Founding Partner of Genesis Capital. Prior to founding Genesis Capital, Michael was an investment professional at Crescent Capital Partners. Michael represented Crescent as a non-executive director on several of its portfolio businesses, including Cover-More, National Home Doctor Service, SunDoctors and LifeHealthcare (previously ASX:LHC). Michael began his career at Bain & Co, where he specialised in transaction services.

Michael holds a Bachelor of Science (Honours) and a Bachelor of Medicine and Surgery (Honours) from the University of New South Wales. He is also a published contributor in the field of stem-cell research.

Michael is currently director of Genesis Capital portfolio companies Sana Health Group, Impression Dental, Crux Biolabs, Syntro and Momentum Research as well as a former director of Avance, Agilex and SmartClinics.

(b) **Christopher Yoo**

Chris is a Founding Partner of Genesis Capital. Prior to Genesis Capital, he was a Partner and member of the investment committee at Crescent Capital Partners, a Principal at Bain Capital and a Senior Associate at Bain & Co. Chris has held numerous directorships and board roles at companies including: Cover-More (previously ASX:CVO), MyHealth Medical Centres, Australian Clinical Labs, NZ Panel Group, National Dental Care and LifeHealthcare (previously ASX:LHC). Chris is currently a Director of Genesis Capital portfolio companies General Homecare, Therapy Pro, HealthBright, Lifecare Consultants and Southern Cross Support Services.

Chris holds a Bachelor of Engineering and Bachelor of Laws from the University of Sydney.

(c) **Tara Hariharan**

Tara is an Investment Manager at Genesis Capital. Prior to this she was a management consultant at Bain & Company, and has worked across the healthcare, financial services, and not for profit sectors. Tara holds a Bachelor of Laws and Bachelor of Commerce from the University of Sydney. She received Honours (First Class) in Health Economics for her work on the early-childhood determinants of adulthood outcomes and has published papers in this field.

Tara is currently a Director of Genesis portfolio company Impression Dental Group.

4.6 Rights and obligations attaching to Holdco Shares

Pacific Smiles Shareholders who receive Holdco Shares as a result of accepting the Scrip Offer will become parties to the Holdco Shareholders' Deed. Under the terms of the Holdco Shareholders' Deed, Holdco Shareholders (other than Genesis Shareholders) will

be required to hold their Holdco Shares through a nominee / bare trust arrangement, where the legal title to their Holdco Shares is held by the Nominee, who is also party to the Holdco Shareholders' Deed. Further, Holdco Shareholders will be subject to the Holdco Constitution, which binds Holdco, its directors and its shareholders (including the Nominee).

As an Australian unlisted public company with less than 50 shareholders, Holdco is subject to a different regulatory regime than Pacific Smiles at the date of the Bidder's Statement. This Section 4.6 sets out the key considerations concerning the rights and obligations attaching to Holdco Shares arising from the Nominee Deed, Holdco Shareholders' Deed, Holdco Constitution and the consequences of the different regulatory regime applying to Holdco. Pacific Smiles Shareholders who are considering making an Election to accept the Scrip Offer should read this Section 4.6 carefully and in its entirety, together with the full text of each document summarised herein.

(a) **Nominee arrangements**

Each Holdco Shareholder (other than a Genesis Shareholder) must hold its Holdco Shares through the Nominee and subject to the terms of the Nominee Deed and the Holdco Shareholders' Deed.

The Nominee will hold all of the Holdco Shares issued in favour of each Holdco Shareholder, other than the Genesis Shareholders, on bare trust pursuant to the terms of the Nominee Deed and the Holdco Shareholders' Deed.

This means, if a Pacific Smiles Shareholder makes a valid Election to accept the Scrip Offer, the legal title to the Holdco Shares component of their Offer Consideration will not be held directly by the Holdco Shareholder and will instead be held by the Nominee as bare trustee for the Holdco Shareholder.

The key terms of the Nominee Deed are set out below. A copy of the Nominee Deed is set out at Appendix C. This summary is not exhaustive and Pacific Smiles Shareholders should read the Nominee Deed in full:

- Holdco Shareholders, through the Nominee, will be beneficial holders in relation to Holdco Shares, capital, assets and any income held by the Nominee as bare trustee on their behalf in a separate bare trust for each shareholder.
- Each beneficial holder will be able to instruct the Nominee to attend any shareholders' meetings and exercise voting rights or take other steps as the registered holder of Holdco Shares on its behalf and the Nominee, to the extent reasonably practical, must comply with those instructions. Where the beneficial holder does not provide the Nominee with instructions, it will take no action and will not vote.
- The Nominee agrees, and Holdco will procure, that any distribution or dividend that would otherwise be paid to the Nominee will instead be paid to the relevant beneficial holder in proportion to the number of Holdco Shares that are held on trust for that beneficial holder.
- Holdco will give, make available or dispatch all notices (including notice of meetings) or other information it circulates to its shareholders to beneficial holders at the same time it sends such notices to the shareholders.
- There will be no meetings of the beneficial holders.
- The restrictions on transfer set out in Section 4.6(b) below apply to Holdco Shareholders that are beneficial holders through the Nominee. However, provided that the Nominee and Holdco Shareholder acts in

accordance with the Nominee Deed and the Holdco Shareholders' Deed, a beneficial holder may instruct the Nominee to transfer their beneficial interest to a permitted transferee on the basis that the Nominee is directed to hold legal title to the relevant Holdco Shares as bare trustee on behalf of the transferee, unless the Holdco Board decides otherwise.

(b) **Holdco Shareholders' Deed**

A copy of the Holdco Shareholders' Deed is set out at Appendix A. The following is a summary of the Holdco Shareholders' Deed and a summary of rights attaching to the Holdco Shares compared ~~to~~with your current rights as a Pacific Smiles Shareholder. This summary is not exhaustive and Pacific Smiles Shareholders should read this document in full.

Topic	Summary of rights in the Holdco Shareholders' Deed attaching to Holdco Shares	Summary of current rights as a Pacific Smiles Shareholder and impact of the Offer on those rights
Issue and ranking	<p>Pacific Smiles Shareholders who accept the Scrip Offer will receive Holdco Shares.</p> <p>Holdco may issue "Class M" shares to certain officers or employees of any group company under a management equity plan.</p>	<p>Pacific Smiles currently has ordinary shares and Pacific Smiles Performance Rights on issue.</p> <p>Only certain officers or employees of Pacific Smiles have been issued or are able to hold Performance Rights.</p>
Holdco Board	<p>The Genesis Shareholders' Representative will, at all times, be entitled to appoint, remove and replace a majority of the Holdco board of directors ("Holdco Board").</p> <p>Any other Holdco Shareholder or a group of Holdco Shareholders (who are Associates of one another and who have given Holdco notice), and, who together hold at least 10% of Holdco Shares are entitled to appoint one director to the Holdco Board per 10% shareholding.</p> <p>The Holdco Board may appoint, remove and replace any one or more executive or non-executive directors.</p> <p><i>For further information refer to clause 4.2 of the Holdco Shareholders' Deed.</i></p>	<p>All Pacific Smiles directors are currently appointed by a resolution approved by a simple majority of Pacific Smiles Shareholders at a general meeting of shareholders.</p> <p>Under rule 6.1(d) of the Pacific Smiles constitution, directors may appoint any natural person to be a director, either as an addition to the existing directors or to fill a casual vacancy. A director appointed under rule 6.1(d) must retire from office at the next annual general meeting following his or her appointment.</p> <p>Except to the extent they hold or form part of an associated group of Holdco Shareholders that together holds at least 10% of Holdco Shares, Pacific Smiles Shareholders who accept the Scrip Offer will have no influence over the appointment of directors to the Holdco Board.</p> <p><i>For further information refer to rule 6.1 of the Pacific Smiles constitution.</i></p>

<p>Quorum of Holdco Board meetings</p>	<p>Quorum of the Holdco Board is two directors, one of whom must be a director appointed by the Genesis Shareholders' Representative.</p> <p><i>For further information refer to clause 5.2 of the Holdco Shareholders' Deed.</i></p>	<p>Unless otherwise fixed by the directors of the Pacific Smiles Board, quorum of the Pacific Smiles Board is three directors.</p> <p><i>For further information refer to rule 6.12 of the Pacific Smiles constitution.</i></p>
<p>Quorum of Holdco Shareholders' meetings</p>	<p>Quorum for Holdco shareholders' meetings is two Holdco Shareholders, one of whom must be a Holdco Shareholder represented by the Genesis Shareholders' Representative.</p> <p><i>For further information refer to clause 4.15 of the Holdco Shareholders' Deed.</i></p>	<p>Quorum of the Pacific Smiles Shareholders consists of (i) where the number of members entitled to vote is two or more, two of those members; or (ii) if only one member is entitled to vote, that member.</p> <p>Pacific Smiles Shareholders who accept the Scrip Offer may be comparatively disadvantaged as no shareholder meetings can be held without a Holdco Shareholder represented by the Genesis Shareholders' Representative present.</p> <p><i>For further information refer to rule 5.4 of the Pacific Smiles constitution.</i></p>
<p>Related party transactions</p>	<p>If a Holdco director or Holdco Shareholder (or their respective affiliates or related parties) is interested in a transaction (excluding a transaction that affects all shareholders in the same way) that director or any director appointed by that shareholder:</p> <ul style="list-style-type: none"> • must, prior to or at the Holdco Board meeting at which the relevant matter is to be considered and/or voted on, disclose to the Holdco Board that the "Director's interest" clause in the Shareholders' Deed applies; • is entitled to receive information regarding, and participate in discussions and deliberations of the Holdco Board in relation to, the relevant matter, to the extent that doing so does not unfairly or unreasonably prejudice the interests of Holdco or any other group company; and • is not entitled to vote on any resolution of the Holdco Board in relation to the relevant matter to the extent such voting gives rise to a conflict of interest for the director. 	<p>Under the Corporations Act, Pacific Smiles must comply with the provisions contained in:</p> <ul style="list-style-type: none"> • Division 2 of Part 2D.1 of the Corporations Act, which excludes directors of public companies with material personal interests in certain matters attending directors meetings about, or voting on these matters; and • Chapter 2E of the Corporations Act, which requires public companies to obtain shareholders' approval to provide a financial benefit to a related party, subject to certain exceptions. <p>In addition, Chapter 10 of ASX Listing Rules imposes restrictions on persons in a position of influence, such as related parties, a subsidiary, or a substantial holder, from entering into certain transactions with the listed entity unless certain conditions are met. In prescribed cases, transactions of this nature will require security holder approval.</p>

	<p><i>For further information see clause 4.6(b) of the Holdco Shareholders' Deed</i></p> <p>As an unlisted Australian public company, Holdco must comply with the provisions contained in:</p> <ul style="list-style-type: none"> • Division 2 of Part 2D.1 of the Corporations Act, which excludes directors of public companies with material personal interests in certain matters attending directors meetings about, or voting on these matters; and • Chapter 2E of the Corporations Act, which requires public companies to obtain shareholders' approval to provide a financial benefit to a related party, subject to certain exceptions. 	
<p>Directors acting in the interests or direction of nominating Shareholders</p>	<p>Holdco directors may:</p> <ul style="list-style-type: none"> • disclose information to any nominating shareholder(s) received in their capacity as a director; • have regard to or represent or act in the interests of their nominating shareholder(s); and • act on the directions and in the interests of their nominating shareholder(s). <p><i>For further information please refer to clause 4.7 of the Holdco Shareholders' Deed.</i></p>	<p>All Pacific Smiles directors may only act in the best interests of Pacific Smiles.</p> <p>Pacific Smiles Shareholders who accept the Scrip Offer may be comparatively disadvantaged, as some Holdco directors may make decisions that are contrary to their interests.</p>
<p>Issue of further Holdco Shares</p>	<p>Holdco's Board may only issue further Holdco Shares or other securities if the issue of securities is:</p> <ul style="list-style-type: none"> • a permitted issue (as set out below); • a pro rata issue to all existing Holdco Shareholders; or • an issue that has been approved by Holdco Shareholders by simple majority resolution. <p>A permitted issue includes the following:</p> <ul style="list-style-type: none"> • (Emergency funding) if the Holdco Board determines, after considering other means of financing, that further funds (i) are necessary so that Holdco does not breach the terms of any financing facilities, (ii) are 	<p>Pacific Smiles is presently required to comply with ASX Listing Rules in relation to the issuance of Pacific Smiles Shares, including obtaining Pacific Smiles Shareholder approval for issuances in certain circumstances, including where a proposed new issue of equity securities exceeds 15% of Pacific Smiles' capital..</p> <p><i>For more information, see Chapter 7 of ASX Listing Rules.</i></p> <p>Pacific Smiles Shareholders who accept the Scrip Offer may be comparatively disadvantaged, owing to the circumstances where permitted issues are permitted on a non pre-emptive basis.</p>

	<p>otherwise required by its external financiers or (iii) are necessary to prevent insolvency, then it may undertake an emergency funding share issue. Any new shares must be issued pro rata to Holdco Shareholders or Holdco Shareholders are subsequently given the later opportunity to acquire new shares to maintain their proportionate shareholding.</p> <ul style="list-style-type: none"> • (Offer related issuances) issues of Holdco Shares in connection with the Offer; • (Manager) board approved issues of "Class M" shares or other securities to a manager (or an affiliate of a manager) pursuant to any approved management equity plan; • (Acquisitions/mergers) an issue of securities in respect of a bona fide, arm's length, Holdco Board approved acquisition of, or merger with, a company, business or assets; • (Reorganisation) and issue of securities in connection with a reorganisation event, provided that the reorganisation event does not have a materially adverse impact on the holdings, rights and obligations of a Holdco Shareholder's shares or dilute a Holdco Shareholder's shares; • (IPO) an issue of securities pursuant to an initial public offering of shares in Holdco or for a pre-initial public offering funding round in contemplation of an initial public offering; • (Debt financing) an issue of securities in connection with a bona fide, board approved debt financing; or • (Conversion) and issue of securities upon the conversion of another instrument convertible into ordinary shares, where permitted by the terms of issue. <p><i>For further information refer to clause 8.3 of the Holdco Shareholders' Deed.</i></p>	
Restrictions on transfer and	The Holdco Board must decline to register any transfer of Holdco	Pacific Smiles Shareholders are presently able to sell their Holdco

<p>granting of security interests</p>	<p>Shares, unless that transfer is permitted by the Holdco Shareholders' Deed.</p> <p>A transfer or disposal of Holdco Shares will include disposal by means of assignment or granting an encumbrance or security interest over those shares.</p> <p><i>For further information refer to clause 10 of the Holdco Shareholders' Deed.</i></p>	<p>Shares on market at any time and there is a liquid market for Pacific Smiles Shares.</p> <p>Pacific Smiles Shareholders who accept the Scrip Offer should be aware that Holdco will be an unlisted public company and there will be no public market for the trading of Holdco Shares and a lack of liquidity in respect of their shares and other securities in Holdco.</p> <p>Further, the Holdco Shareholders' Deed imposes extensive restrictions on the transfer of Holdco Shares with limited exceptions which further restrict the ability of a Holdco Shareholder in being able to sell their securities.</p> <p>Pacific Smiles Shareholders may also create or permit security interests or encumbrances over their Pacific Smiles Shares.</p>
<p>Restrictions on dealing</p>	<p>Generally, a Holdco Shareholder must not dispose of (including transfer) their Holdco Shares unless:</p> <ul style="list-style-type: none"> • (Small holdings) a Holdco Shareholder (including a person who has a beneficial holding through the Nominee) who has a "small holding" may dispose of all of its securities pursuant to the small holdings compulsory acquisition process detailed in clause 15.1 of the Shareholders' Deed (see below); • (Board approval / Right of First Refusal) if a Holdco Shareholder wishes to sell its Holdco Shares pursuant to the right of first refusal process, that Holdco Shareholder must first obtain Holdco Board approval to do so. Having obtained Holdco Board approval, the selling Holdco Shareholders ("ROFR Seller") must first serve an irrevocable notice on the Genesis Shareholders' Representative and each 10% Shareholder setting out (a) the number of Holdco Shares the ROFR Seller wishes to sell (b) the 	<p>Currently there are no restrictions preventing a Pacific Smiles Shareholder from disposing of or transferring their Pacific Smiles Shares, other than those imposed by the Corporations Act and ASX Listing Rules.</p> <p>Pacific Smiles Shareholders who accept the Scrip Offer may be comparatively disadvantaged due to the limited ways in which they can dispose of their Holdco Shares.</p>

	<p>price the ROFR Seller proposes to sell their shares for; (c) any other material terms of sale and (d) granting each Genesis Shareholder and each 10% Shareholder the right to acquire the Holdco Shares the ROFR Seller is proposing to sell. Each Genesis Shareholders and each 10% Shareholder will be able to accept the sale offer in respect of any number of shares, to be allocated between accepting shareholders proportionate to their shareholdings (if applicable). If there are any Holdco Shares unallocated or not purchased by the Genesis Shareholders or a 10% Shareholder, the selling Holdco Shareholder may then sell those shares to a third party on terms no less favourable than the terms offered to the Genesis Shareholders and 10% Shareholders within 20 Business Days of the date of the sale notice; or</p> <ul style="list-style-type: none"> • (Permitted Transferee) the shares are transferred to a permitted transferee (as defined in the Shareholders' Deed), <p>or as otherwise permitted by the Holdco Shareholders' Deed.</p> <p><i>For further information refer to clause 10 of the Holdco Shareholders' Deed.</i></p>	
<p>Drag along rights</p>	<p>If one or more Genesis Shareholders ("Selling Shareholders") proposes to complete a share sale of at least 50% of the securities held by the Genesis Shareholders to a third party buyer, the Selling Shareholders may give each of the Holdco Shareholders ("Dragged Shareholders") a drag notice requiring each Holdco Shareholder to sell their shares (in the same proportion as the Selling Shareholders), and the Dragged Shareholders must dispose of their Holdco Shares on the terms stipulated in the drag notice. The terms of the sale must include:</p>	<p>There is no equivalent provision currently affecting Pacific Smiles Shareholders.</p>

	<ul style="list-style-type: none"> • that the sale price for each Holdco Share must be the same price (which need not be cash consideration) that the Genesis Shareholders are proposing to receive from the third party buyer; and • that other than in respect of restrictive covenants, the terms are not materially less favourable (on an overall basis) to the Dragged Shareholders than the terms on which the Genesis Shareholders are proposing to sell their Holdco Shares to the third party buyer. <p><i>For further information refer to clause 12 of the Holdco Shareholders' Deed.</i></p>	
Tag along rights	<p>If one or more Genesis Shareholders propose to complete a share sale of at least 50% of Holdco to a third party, and have not given a drag notice or the drag notice has been revoked, the Genesis Shareholders' Representative must give an invitation to the Holdco Shareholders to tag with the Genesis Shareholders to dispose of their Holdco Shares to the third party on materially the same terms.</p> <p><i>For further information refer to clause 14 of the Holdco Shareholders' Deed.</i></p>	There is no equivalent provision currently affecting Pacific Smiles Shareholders.
Exit	<p>The Genesis Shareholders' Representative may at any time give notice of an intention to proceed with an exit (including an initial public offering or a sale of at least 50% of the securities the securities held by the Genesis Shareholders to a third party). The Genesis Shareholders' Representative will determine all matters related to the conduct, implementation and execution of the process to achieve the exit event. Each other Holdco Shareholder must cooperate and use their best endeavours to do all acts, matters and things within its power to effect the exit on the terms specified by the Genesis Shareholders' Representative.</p>	There is no equivalent provision currently affecting Pacific Smiles Shareholders.

	<i>For further information refer to clause 11 of the Holdco Shareholders' Deed.</i>	
Compulsory acquisition of small holdings	<p>After the date that is three months from the end of the Offer Period, the Holdco Board may by written notice ("Small Holdings Disposal Notice") require (at any time) a Holdco Shareholder (including a person who has a beneficial holding through the Nominee) to dispose all of its Holdco Shares if the total number of Holdco Shares held by that Holdco Shareholder (including a person who has a beneficial holding through the Nominee) is 125,000 Holdco Shares or less ("Small Holding Securities"). A Small Holding Disposal Notice must state:</p> <ul style="list-style-type: none"> • whether the Small Holding Securities will be bought-back, redeemed, cancelled (including by way of capital reduction) and/or transferred to another Holdco Shareholder or third party nominated by the Holdco Board; • the fair value per share comprising of the Small Holding Securities the subject of the Small Holdings Disposal Notice; and <p>the date or dates on which the disposal of the Small Holding Securities is proposed to be completed.</p> <p>Small Holding Disposal Notices may be given at multiple times.</p> <p><i>For further information please see clause 15 of the Holdco Shareholders' Deed.</i></p>	<p>There is no equivalent provision currently affecting Pacific Smiles Shareholders, although Pacific Smiles may sell the shares of a holder who has less than a Marketable Parcel (as defined in the ASX Listing Rules as shareholdings of less than \$500) of those shares, subject to the provisions of rule 2.7 of the Pacific Smiles constitution.</p> <p><i>For further information refer to rule 2.7 of the Pacific Smiles constitution.</i></p> <p>Accordingly, Pacific Smiles Shareholders who accept the Scrip Offer may be comparatively disadvantaged as, should they have a holding of 125,000 Holdco Shares or less, the Holdco Board may require them to dispose of that holding.</p>
Events of default	<p>The following matters are events of default under the Holdco Shareholders' Deed:</p> <ul style="list-style-type: none"> • a Holdco Shareholder becomes the subject of an "Insolvency Event" (see the Holdco Shareholders' Deed for more details); • a Holdco Shareholder breaches a material provision of the Holdco Shareholders' Deed which cannot be remedied within applicable grace periods; or • either: 	<p>There is no equivalent provision currently affecting Pacific Smiles Shareholders.</p> <p>Accordingly, Pacific Smiles Shareholders who accept the Scrip Offer may be comparatively disadvantaged.</p>

	<ul style="list-style-type: none"> ○ there is a change in control in relation to a Holdco Shareholder and a person who has control as a result of that change was not a "Permitted Transferee"; or ○ that Holdco Shareholder ceases to be a "Permitted Transferee" and does not comply with the snap back provisions set out in clause 10.3 of the Holdco Shareholders' Deed. <p>If an event of default has occurred in relation to a Holdco Shareholder (other than a Genesis Shareholder), Holdco may give notice to the defaulting shareholder requiring the defaulting shareholder to dispose of any or all of the defaulting shareholder's Holdco Shares to:</p> <ul style="list-style-type: none"> • Holdco by way of a purchase, buy-back, cancellation as part of a reduction of capital or redemption (or any combination thereof); or • the Genesis Shareholders in the proportions determined by the Genesis Shareholders' Representative, by way of a sale. <p>The sale price payable for each applicable Holdco Share will be an amount equal to the lower of:</p> <ul style="list-style-type: none"> • 80% of the market value as at the date the event of default first occurs; and • the aggregate issue price of the relevant Holdco Shares, as determined by the Holdco Board. <p><i>For further information please see clause 16 of the Holdco Shareholders' Deed.</i></p>	
Powers of attorney	Each Holdco Shareholder irrevocably appoints the Genesis Shareholders' Representative and Holdco as its attorney to complete and execute documents, attend meetings and vote on resolutions and take such other steps for and on its behalf as the attorney thinks	<p>There is no equivalent provision currently affecting Pacific Smiles Shareholders.</p> <p>Accordingly, each Pacific Smiles Shareholder who accepts the Scrip Offer may be comparatively disadvantaged, as they would be</p>

	<p>necessary or desirable to give effect to certain transactions contemplated by the Holdco Shareholders' Deed (including in connection with the drag along, tag along, compulsory acquisition of small holdings, the disposal of shares, an event of default and exit provisions in the Holdco Shareholders' Deed).</p> <p>In addition, all Holdco Shareholders appoint the Genesis Shareholders' Representative as its attorney to exercise shareholder's rights at a meeting of Shareholders or to sign a resolution of members for and on behalf of that shareholder to approve:</p> <ul style="list-style-type: none"> • any financial assistance by Holdco in connection with debt financing or acquisitions in respect of Holdco or any its subsidiaries; and • the acquisition and/or cancellation of any Holdco Shares (whether by way of buy-back, cancellation, redemption or capital reduction) by Holdco in connection with the compulsory acquisition of small holdings pursuant to clause 15. <p><i>For further information refer to clause 27 of the Holdco Shareholders' Deed.</i></p>	<p>unable to prevent the transfer of their Holdco Shares in those specific transactions by refusing to execute any relevant documents.</p>
Accession deed poll	<p>No person may be registered as a holder of Holdco Shares unless they execute and deliver an accession deed poll agreeing to be bound by the terms of the Holdco Shareholders' Deed (except for an issue in connection with an initial public offering).</p> <p><i>For further information refer to clause 24 of the Holdco Shareholders' Deed.</i></p>	<p>There is no shareholders' agreement in place in respect of Pacific Smiles.</p>
Nominee Deed	<p>Each Holdco Shareholder (other than a Genesis Shareholder) will be required to hold its Holdco Shares through the Nominee.</p> <p>Holdco will appoint the Nominee to hold all of the Holdco Shares issued to a Holdco Shareholder on bare trust pursuant to the terms of the Nominee Deed.</p>	<p>There is no equivalent provision currently affecting Pacific Smiles Shareholders.</p>

	<p><i>For further information refer to clause 18 of the Holdco Shareholders' Deed.</i></p>	
<p>Amendment to Holdco Shareholders' Deed</p>	<p>The Holdco Shareholders' Deed can be varied by the board with the approval of a simple majority of Holdco Shareholders.</p> <p>Where a variation would materially and adversely affect the rights of the non-Genesis Shareholders in a manner that would be disproportionate to the effect of the variation on the rights of the Genesis Shareholders, the variation must be approved by non-Genesis Shareholders holding a majority of Holdco Shares that are held by non-Genesis Shareholders.</p> <p><i>For more information please see clause 26.1 of the Holdco Shareholders' Deed.</i></p>	<p>There is no shareholders' agreement in place in respect of Pacific Smiles.</p> <p>Accordingly, Pacific Smiles Shareholders who accept the Scrip Offer may be comparatively disadvantaged as they must comply with the terms of the Shareholders' Deed and have limited ability to exercise control over any proposed amendments to it.</p>
<p>Information rights</p>	<p>Holdco Shareholders may request a copy of the most recent available annual audited accounts and Holdco must provide the requested information within a reasonable time (but not later than 10 business days after such request).</p> <p><i>For more information please see clause 6.2 of the Holdco Shareholders' Deed.</i></p>	<p>Pacific Smiles Shareholders currently have additional information rights available to them, as Pacific Smiles is a public listed company. These rights are discussed further at Section 4.6(d).</p> <p>Accordingly, Pacific Smiles Shareholders who accept the Scrip Offer may be comparatively disadvantaged due to their ability to obtain information regarding their investment in Holdco being more limited.</p>
<p>Directors' Fees</p>	<p>Any non-executive director appointed by the Holdco board pursuant to clause 4.2(d) is entitled to remuneration determined from time to time by the Holdco Board.</p> <p>Directors appointed by either the Genesis Shareholders' Representative or by a Holdco Shareholder or a group of Holdco Shareholders (who are Associates of one another and who have given Holdco notice), and, who together hold at least 10% of Holdco Shares, are not entitled to any directors' fees.</p> <p><i>For more information, please see clause 4.11 of the Holdco Shareholders' Deed.</i></p>	<p>Non-executive directors on the Pacific Smiles board are paid directors' fees. More information of the fees paid to the non-executive directors of Pacific Smiles are included in the 'Remuneration Report' of Pacific Smiles that was included in the Pacific Smile's Appendix 4E and Financial Statements that was released on the ASX market announcements platform on 28 August 2024.</p>

	<u>At the date of this Bidder's Statement no decision has been made as to whether any directors would be appointed under clause 4.2(d) of the Holdco Shareholders Deed and if so what the quantum of fees to be paid would be.</u>	
<u>Directors' & Officers' insurance and indemnities</u>	<p><u>Holdco must, to the fullest extent permitted by law, purchase and maintain directors' and officers' insurance for each Holdco Director against any liability incurred by the Holdco Director as an officer of Holdco or any subsidiary, including liability for negligence, and for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal, on policy terms approved by the Holdco Board and on terms reasonably available in the market and appropriate for the operation of Holdco and its business.</u></p> <p><u>Holdco must procure that each Holdco Director obtains the benefit of a deed of access and indemnity under which relevant group companies indemnify the relevant director to the maximum extent permitted by law and gives the relevant director a right to have access to and make copies of all board papers, records and minutes in respect of the period during which the relevant director is or was a director of the relevant group company.</u></p> <p><u>For more information, please see clause 4.12 of the Holdco Shareholders' Deed.</u></p>	<p><u>Pacific Smiles' directors have the benefit of director's and officer's insurance. Further information can be found in the Pacific Smile's Pacific Smile's Appendix 4E and Financial Statements that was released on the ASX market announcements platform on 28 August 2024.</u></p> <p><u>Based on public disclosures from Pacific Smiles, it is understood that Pacific Smiles has entered into deeds of access, indemnity and insurance with its directors.</u></p>

(c) **Holdco Constitution**

A copy of the Holdco Constitution is set out at Appendix B. The following is a summary of the Holdco Constitution as concerns the material rights and or obligations attaching to the Holdco Shares. This summary is not exhaustive and Pacific Smiles Shareholders should read the Holdco Constitution in full.

Topic	Summary of rights in the Holdco Constitution attaching to Holdco Shares
Precedence of Holdco Shareholders' Deed	The Holdco Constitution and the Holdco Shareholders' Deed provide that the terms of the Holdco Shareholders' Deed will prevail in the event of any inconsistency between the provisions of the Holdco Constitution and the Holdco Shareholders' Deed.
General meetings	Subject to the other terms of the Holdco Constitution and to any rights or restrictions attached to any shares or class of shares, each Holdco

	<p>Shareholder is entitled to receive notice of, and to attend and vote at, general meetings of Holdco and to receive all notices and documents required to be sent to Holdco Shareholders under the Holdco Constitution, the Holdco Shareholders' Deed and the Corporations Act.</p> <p>The Holdco Board may convene a general meeting whenever they think fit. Holdco Shareholders may call a general meeting in accordance with the Corporations Act.</p> <p>A notice of general meeting must be given in accordance with the Corporations Act and must specify the place, date and time of the meeting and the general nature of the business to be transacted at the meeting.</p> <p>Subject to the Holdco Shareholders' Deed, quorum at general meetings under the Holdco Constitution consists of: (i) where the number of Holdco Shareholders entitled to vote is two or more, two of those Holdco Shareholders; or (ii) if only one Holdco Shareholder is entitled to vote, that Holdco Shareholder.</p> <p>These provisions should be read in conjunction with the Nominee Deed.</p>
Voting	<p>Subject to the other terms of the Holdco Constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:</p> <ul style="list-style-type: none"> • on a show of hands, every Holdco Shareholder present has one vote; and • on a poll, every Holdco Shareholder present has: <ul style="list-style-type: none"> ○ one vote for each fully paid share held by the Holdco Shareholder and in respect of which the member is entitled to vote; and ○ a fraction of one vote which the amount paid (not credited) on the share bears to the total issue price of that share and excludes amounts paid in advance of a call. <p>These provisions should be read in conjunction with the Nominee Deed.</p>
Transfer restrictions	<p>A Holdco Shareholder may not transfer the Holdco Ordinary Shares other than in accordance with the Holdco Shareholders' Deed and the Holdco Constitution.</p>
Variation of rights attaching to shares	<p>Subject to the Holdco Constitution and Holdco Shareholders' Deed, the rights attached to the shares in any class may be altered at any time by resolution of the board of directors.</p>
Dividends	<p>Subject to the Holdco Constitution, Holdco Shareholders' Deed and the Corporations Act, the directors may declare or determine to pay any dividend that, in their judgment, the financial position of Holdco justifies.</p>
Winding up	<p>Subject to the Holdco Constitution and Holdco Shareholders' Deed, if Holdco is windwound up and there are excess funds after paying all debts and liabilities, the excess must be divided among the members in proportion to the number of shares they hold.</p>

(d) **Different regulatory regime**

Holdco is an unlisted public company limited by shares.

Holdco will not, and may not ever, be quoted on the ASX or any other securities exchange. Accordingly, a different regulatory regime will apply to Holdco (and the Holdco Shares) as compared to that which currently applies in relation to Pacific Smiles (and the Pacific Smiles Shares). Further, as Holdco is, and will be, an unlisted public company with less than 50 shareholders, neither the Listing Rules nor Australia's takeover regime contained in the Corporations Act will apply to Holdco or the Holdco Shares.

As a result of the above, investor protections currently available to Pacific Smiles Shareholders in respect of their Pacific Smiles Shares under the Listing Rules and the Corporations Act will not apply to those Pacific Smiles Shareholders who accept the Scrip Offer and are issued Holdco Shares.

A summary of some of the key types of investor protections that will no longer apply is set out in the table below. The summary is not exhaustive.

Regulation	Summary of investor protections currently applying to Pacific Smiles Shares	Description protections not applying to Holdco
Continuous Disclosure (Listing Rules – Chapter 3)	This Chapter contains obligations on listed entities to immediately disclose material price sensitive information to the market.	Holdco will not have an obligation to disclose material price sensitive information. If Holdco has less than 100 shareholders, it will not have an obligation to provide any disclosure to its shareholders that could be comparable to continuous disclosure. It is a requirement under the Holdco Shareholders' Deed that Holdco has no more than 50 shareholders.
Securities (Listing Rules – Chapter 6)	This Chapter provides that each class of equity security must be appropriate and equitable in the ASX's view. It also provides protections in relation to voting rights of holders of ordinary shares.	The terms of the Holdco Shares are not subject to the ASX's approval.
Changes in capital and share issues (Listing Rules – Chapter 7)	This Chapter requires issuers who issue more than 15% of a listed entity's capital in a 12 month period to seek security holder approval, subject to certain exceptions. It also imposes limits on the ability of listed entities to issue shares under a rights issue, dividend or distribution plan or during a takeover unless prescribed conditions are met.	Holdco Shareholders may be diluted without the approval of all Holdco Shareholders at a general meeting.
Transactions with persons of influence	This Chapter imposes restrictions on persons in a position of	Transactions between Holdco, members of the Bidder Group or

(Listing Rules – Chapter 10)	influence, such as related parties, a subsidiary or a substantial holder, from entering into certain transactions with the listed entity unless certain conditions are met. In prescribed cases, transactions of this nature will require shareholder approval.	members of Genesis Capital and/or their related parties may not require Holdco shareholder approval, unless shareholder approval is required pursuant to Chapter 2E of the Corporations Act.
Significant transactions (Listing Rules – Chapter 11)	This Chapter requires a listed entity to obtain the approval of shareholders in certain circumstances (and where required by the ASX), if it proposes to make a significant change to the nature or scale of its activities.	A significant change to the operations of Holdco will not require shareholder approval.
Takeovers (Corporations Act – Chapter 6)	<p>This Chapter sets out Australia’s takeover regime. This regime is supplemented by ASIC regulatory guides and guidance notes issued by the Takeovers Panel.</p> <p>Chapter 6 prohibits a person from acquiring relevant interests in a listed company’s shares where it would have the effect of causing the person’s or someone else’s voting power in the company to increase from 20% or below to above 20% or from a starting point of above 20% and below 90% unless an exception, such as a takeover bid or scheme of arrangement, applies.</p> <p>The takeover regime in Chapter 6 contains a range of rules designed to provide investors with sufficient time and detailed disclosure requirements relating to a takeover bid so that they may assess the offer put to them by the bidder.</p> <p>In addition, the takeover regime in Chapter 6 includes rules designed to provide for shareholders in a company which is the subject of a takeover to have an equal opportunity to participate in the offer and any takeover premium offered by the bidder.</p>	<p>A person may acquire control of Holdco in a manner that would have not been permitted had Chapter 6 of the Corporations Act applied, for example, without making a takeover bid or proposing a scheme of arrangement.</p> <p>A person may acquire control of Holdco in circumstances where less information was disclosed to Holdco Shareholders or where less time was given to them to assess the offer put to them about the control transaction, than would have been permitted had Chapter 6 of the Corporations Act applied.</p> <p>A person may acquire control of Holdco in a manner that does not give shareholders equal opportunity to participate in the offer and any takeover premium offered by the bidder.</p>
Financial reporting (Corporations Act – Chapter 2M)	Chapter 2M of the Corporations Act requires public companies of every size to disclose their annual financial report and	Holdco, being a public company (but not a disclosing entity) must lodge with ASIC an annual financial report and directors’

	<p>directors' report. The financial report includes the audited financial statements for the year, and the directors' declaration about the statements.</p> <p>A listed public company's annual financial report and directors' report must include additional information specified by the Corporations Act.</p> <p>A listed public company's financial statements must include a declaration by the CEO and CFO regarding those financial statements, including that they give a true and fair view. A listed public company's directors' report must include an 'operating and financial review' which contains information that shareholders would reasonably require to make an informed assessment of the company's operations, financial position, business strategies and prospects for future financial years.</p> <p>If the public company is listed, they must also make their remuneration report available, which is voted on at its annual general meeting.</p> <p>A disclosing entity must also provide a financial report and directors' report for each half-year.</p>	<p>report. The financial report includes the audited financial statements for the year, and the directors' declaration about the statements.</p> <p>There is no requirement for Holdco's financial statements to include:</p> <ul style="list-style-type: none"> • a declaration by the CEO and CFO that they give a true and fair view; • an 'operating and financial review'; and • financial report and directors' report for each half year. <p>Holdco Shareholders have the right to request the most recent copy of Holdco's audited accounts (or those of its subsidiaries) under the Holdco Shareholders' Deed.</p>
<p>Corporate Governance Statements (Listing Rules – Chapter 4)</p>	<p>Chapter 4 of the ASX Listing Rules requires each listed company to include in its annual report either a corporate governance statement or a website address where such statement is located.</p>	<p>There is no requirement for Holdco to provide a corporate governance report.</p>

4.7 Information on the Scrip Offer

This Section 4.7 sets out information about Holdco Shares and includes important details for Pacific Smiles Shareholders who are considering making an Election to accept the Scrip Offer. As an alternative to receiving All Cash Consideration, Eligible Pacific Smiles Shareholders may elect to receive All Scrip Consideration or Mixed Consideration, which enable Pacific Smiles Shareholders to retain an indirect equity exposure to Pacific Smiles

in the event that the Conditions to the Offer are satisfied or waived and the Offer proceeds²¹.

This information will only apply to your investment decision if you are considering making an Election for All Scrip Consideration or Mixed Consideration.

Before making an Election to receive All Scrip Consideration or Mixed Consideration, you should carefully read this Bidder's Statement in its entirety and specifically consider the information in this Section 4 and the risks, features and relevant considerations in relation to an investment in Holdco Shares set out in Section 9.

(a) **Transaction overview**

As detailed in Section 12.2 and elsewhere in this Bidder's Statement, Pacific Smiles Shareholders are entitled to make an Election to receive All Cash Consideration, All Scrip Consideration or Mixed Consideration.

If you accept the Offer but do not make an Election, you will be deemed to have made an Election for All Cash Consideration.

(b) **Overview of Holdco Shares**

The Holdco Shares that are offered to Pacific Smiles Shareholders under the Offer are fully paid ordinary shares in the capital of Holdco, and, from the date of their issue, will rank equally with all then existing Holdco ordinary shares and will have the same rights and liabilities attaching to them.

The rights and liabilities attaching to Holdco Shares are governed by the Holdco Constitution, the Holdco Shareholders' Deed, the Nominee Deed, the Corporations Act and the general law of Australia. For an overview of the rights and liabilities attaching to Holdco Shares, including a comparison ~~to~~^{of} how those rights may differ from those attaching to Pacific Smiles Shares, please refer to Section 4.6.

(c) **Risks of making an Election to receive the All Scrip Consideration or Mixed Consideration**

You should form your own view as to whether you wish to make an Election to receive the All Scrip Consideration or Mixed Consideration based on your individual circumstances, financial situation, taxation position, investment objectives and risk profile. You should also consider obtaining professional advice appropriate to your specific circumstances before making any Election.

It is important to understand that any investment in unlisted shares would represent a fundamentally different investment than your current investment in Pacific Smiles. In particular, your continuing exposure to Pacific Smiles would have materially different risks and a different investment and financial profile to that of your existing investment in Pacific Smiles as an ASX-listed company.

Furthermore, the value of the All Scrip Consideration and Mixed Consideration is less certain than the All Cash Consideration and there is no assurance that the present or future value of Holdco Shares will be equal to or higher than the value of the All Cash Consideration (and they may be materially lower than such value).

²¹ [Bidco draws to the attention of each Eligible Pacific Smiles Shareholder the detailed information in this Bidder's Statement concerning the risks and potential disadvantages of electing to receive the All Scrip Consideration or the Mixed Consideration and cautions each such shareholder to carefully consider those risks and potential disadvantages before making either such Election. Without limitation, please see Sections 4, 8 and 9 for further details of those risks and potential disadvantages.](#)

Important information in relation to the All Scrip Consideration and Mixed Consideration only (this does not apply to the All Cash Consideration)

Importantly, Pacific Smiles Shareholders should be aware that if they make an Election to receive All Scrip Consideration or Mixed Consideration:

- they will face risks that apply to an investment in Holdco that are materially different from, and in addition to, those risks that apply to their existing [direct](#) investment in Pacific Smiles;
- they will hold shares [via the Nominee](#) in an unlisted public company, which will not be subject to the same level of regulation as an ASX-listed public company (for example, it will not be subject to ASX Listing Rules, Australia's takeover regime, continuous disclosure obligations and certain other investor protections that apply to ASX-listed public companies);
- a Nominee will hold all of the Holdco Shares on bare trust for Holdco Shareholders (other than the Genesis Shareholders);
- [the Shareholders' Deed permits Holdco to require Holdco Shareholders who hold 125,000 Holdco Shares or less \(whether personally or via the Nominee\) to dispose of their Holdco Shares pursuant to the terms of a Small Holdings Disposal Notice;](#)
- they will face a lack of liquidity in respect of their Holdco Shares because there will be no active market for the sale and purchase of Holdco Shares; and
- they will become a party to the Holdco Shareholders' Deed, which restricts the ability of Holdco Shareholders to transfer or deal with their Holdco Shares.

Accordingly, there is a risk that a holder of Holdco Shares may not be able to transfer or sell the Holdco Shares issued to them other than through an Exit (as that term is defined in the Shareholders' Deed), and there is no guarantee that an Exit will take place.

This means that if you want to sell your Holdco Shares at any time in the future you should not assume that you will be able to do so in a timely manner (including in an 'emergency' scenario).

There is consequently a risk that a Holdco Shareholder may not be able to transfer or sell their Holdco Shares issued to them if and when they would like to do so.

Please refer to Section 4.6 above which sets out a summary of the Holdco Shareholders' Deed and the rights attaching to Holdco Shares.

Moreover, you should carefully read Section 9, and consider obtaining appropriate professional advice before making any Election to receive the All Scrip Consideration or Mixed Consideration. In particular, you should consider the risks, features and relevant considerations in relation to an investment in Holdco Shares [as](#) set out in Section 9.

(d) **Effect of the Scrip Offer on the sources of Offer Consideration**

The total cash that Bidco will be required to pay to Pacific Smiles Shareholders may be reduced if Pacific Smiles Shareholders make Elections to accept the Scrip Offer.

If a Pacific Smiles Shareholder makes an Election for All Scrip Consideration or Mixed Consideration, they will forgo some or all of their entitlement to a cash payment (depending on their Election).

Please see Section 7 for a further discussion on Bidco's sources of Offer Consideration.

(e) **Tax considerations**

A summary of the tax considerations applicable to certain Pacific Smiles Shareholders who will receive Holdco Shares as a result of their Election is set out in Section 10.

(f) **Foreign Shareholders**

Foreign Shareholders are persons whose address as shown in the Register as being in a jurisdiction other than Australia and its external territories.

Eligible Foreign Shareholders are Foreign Shareholders that Bidco has determined (in its absolute discretion) as being an Eligible Foreign Shareholder after being satisfied that it is not unlawful, not unduly onerous and not unduly impracticable to make the Offer to that Pacific Smiles Shareholder in the relevant jurisdiction and to issue Holdco Shares to such a Pacific Smiles Shareholder on Acceptance, and that it is not unlawful for such a Pacific Smiles Shareholder to accept the Offer in such circumstances in the relevant jurisdiction.

All Foreign Shareholders that are not Eligible Foreign Shareholders are Ineligible Foreign Shareholders.

If an Ineligible Foreign Shareholder elects to receive the All Scrip Consideration or the Mixed Consideration, the Ineligible Foreign Shareholder will not be issued Holdco Shares as a result of the Election. Instead, the Holdco Shares to which the Ineligible Foreign Shareholder would otherwise become entitled will be issued to the Sale Agent that will deal with them in accordance with Section 12.6 of the Offer.

Eligible Foreign Shareholders who elect to receive All Scrip Consideration or Mixed Consideration will be issued Holdco Shares in accordance with the terms of the Offer and subject to the Offer becoming unconditional.

4.8 Financial position of the Bidder Group

(a) **Overview**

This Section 4.8 sets out illustrative information concerning the financial position of the Bidder Group following Completion, including a pro forma statement of financial position and summary information concerning net profit and cash flows.

The pro forma financial information set out in this Section should be read together with:

- (1) the basis of preparation set out in Section 4.8(b): [below](#);
- (2) the sources of Offer Consideration in Section 7;

- (3) risk factors set out in Section 9; and
- (4) all other information contained in this Bidder's Statement.

(b) **Basis of Preparation**

The pro forma statement of financial position set out in this Section 4.8 has been prepared to provide an indication of potential financial impacts of the acquisition of 100% of Pacific Smiles Shares by Bidco under the Offer, with an indication of the financial position of Holdco as if Completion had occurred on 30 June 2024.

It is important to note that the information set out in this Section 4.8 does not reflect the actual financial position of Holdco. This information has been prepared solely for the purpose of inclusion in this Bidder's Statement and is provided for illustrative purposes only. It has been derived from the financial information disclosed by Pacific Smiles in its annual report for the financial year ended 30 June 2024 ("**Pacific Smiles FY24 Financial Statements**") and pro forma adjustments described in this Section 4.8.

The financial information presented in this Section 4.8:

- is not representative or suggestive of likely actual or prospective reported profit or loss, financial position or cash flows of Holdco. Pacific Smiles Shareholders should note that past results do not guarantee future performance; and
- other than where expressly stated, assumes that the Offer results in Completion and that the only participation in the Scrip Offer are Elections by the Put Option Counterparties to receive the All Scrip Consideration in respect of the 19.9% of Pacific Smiles Shares held by Beam Investments as at the date of this Bidder's Statement ("**0% Scenario**").

The illustrative pro forma statement of financial position in this Section 4.8 includes adjustments to the Pacific Smiles FY24 Financial Statements to reflect Holdco's capital structure and relevant purchase price accounting under the Offer. The pro forma statement of financial position assumes no adjustments are made to the carrying value of assets and liabilities in Pacific Smiles' statutory statement of financial position as at 30 June 2024. The purchase price accounting set out herein does not account for fair value adjustments, on the basis that it is illustrative and focused on presenting the pro forma capital structure of Holdco following Completion.

The table below sets out the purchase price accounting that is assumed in the illustrative pro forma statement of financial position in this Section 4.8:

Consideration (A\$m)	
Total equity value of Pacific Smiles based on the Cash Offer price ⁴⁶²²	303.3
Total purchase price	303.3
Net assets acquired	
Pacific Smiles' net book asset position as at 30 June 2024, less dividend to be paid on 10 October, less Transactions costs associated with the Offer ⁴⁷²³	27.8
Goodwill created (difference between 'Total purchase price' and 'Net assets less costs')	275.5

⁴⁶²² Calculated as the total number of Pacific Smiles Shares on issue multiplied by \$1.8675, being \$1.90 less the amount of the Declared Dividend *plus* the total number of Pacific Smiles Performance Rights multiplied by the Cash Offer price, assuming that any new Pacific Smiles Shares that are issued following the exercise of a Pacific Smiles Performance Rights will not be entitled to the Declared Dividend. For more information, see Section 7.2.

⁴⁷²³ The transaction costs of \$27.5 million include an estimate of the Bidder Group's transaction costs associated with the Offer, together with an estimate of certain (but not all) of Pacific Smiles likely transaction costs based on public disclosures made by Pacific Smiles. The transaction costs amount includes an amount equal to the revised break fee (\$3.3 million) that was agreed with NDC Bidco in connection with the NDC Revised Proposal. Payment of the break fee is contingent upon circumstances arising which trigger the break fee payment terms set out in the NDC Scheme Implementation Deed. It is important to note that actual transaction costs are likely to exceed this estimate, including because Bidco is unable to reasonably estimate the full extent of Pacific Smiles' transaction costs.

(c) **Illustrative pro forma statement of financial position**

The following table provides an illustration of the pro forma statement of financial position of Holdco as at 30 June 2024 on the basis described in this Section 4.8.

Statement of financial position as at 30 June 2024	Ref	Pacific Smiles (as reported ¹⁶²⁴)	Impact of the Offer	Pro forma
Currency: (A\$m)				
Cash and cash equivalents	1	12.5	(2.5)	10.0
Receivables		4.7	-	4.7
Inventories		7.7	-	7.7
Other		1.2	-	1.2
Total current assets		26.0	(2.5)	23.5
<u>Non-current assets</u>				
Receivables		0.3	-	0.3
Property, plant and equipment		51.2	-	51.2
Right-of-use assets		62.4	-	62.4
Intangibles	2	12.9	275.5	288.4
Deferred tax		14.0	-	14.0
Total non-current assets		140.8	275.5	416.3
<u>Current liabilities</u>				
Payables		18.7	-	18.7
Lease liabilities		14.6	-	14.6
Income tax		4.4	-	4.4
Provisions		4.8	-	4.8
Total current liabilities		42.4	-	42.4
<u>Non-current liabilities</u>				
Borrowings	3	-	168.8	168.8
Lease liabilities		60.7	-	60.7
Provisions		8.3	-	8.3
Total non-current liabilities		69.0	168.8	237.8
<u>Equity</u>				
Contributed equity	4	52.1	107.5	159.6
Reserves	4	6.7	(6.7)	-
Retained profits / (accumulated losses)	4	(3.5)	3.5	-
Total equity		55.4	104.2	159.6

(d) **Summary of pro forma adjustments**

- (1) The starting cash balance has been adjusted to account for the dividend to be paid on 10 October 2024. Pro forma adjustment accounts assume approximately \$2.5 million of cash is used to fund a portion of Pacific Smiles' transaction costs.

¹⁶²⁴ Starting cash and retained profits balance has been adjusted for the dividend that is to be paid on 10 October 2024, of 3.25 cents multiplied by 159,581,938 Pacific Smiles Shares.

- (2) This adjustment, as further described in Section 4.8(b), relates to the illustrative purchase price accounting and subsequent creation of goodwill that would occur following Completion.
- (3) This adjustment reflects an estimate of the borrowings from the new Debt Facility that will be drawn in connection with the Offer. This is an indicative amount which provides an indication of the amount that may be drawn under the Debt Facility assuming that no Pacific Smiles Shareholders (other than the holders of the Beam Investments stake) accept the Scrip Offer and receive Holdco Shares (i.e. the 0% Scenario). For more information on how the borrowings may be used by the Bidder Group, please refer to Section 7.5.
- (4) The adjustments to equity reflect the purchase of the net assets of the business funded with new contributed equity from the value of Beam Investments stake and equity contributed by the Equity Investors. The pro forma statements above do not include any equity that would be contributed by any other Pacific Smiles Shareholders who accept the Scrip Offer and receive Holdco Shares.

(e) **Impact of the Offer on net profit after tax**

As the Offer Consideration will be partially funded by the interest-bearing Debt Facility, the financial performance of Holdco will be affected by higher interest costs than are currently borne by the Pacific Smiles Group because it does not have any drawn borrowings on its balance sheet.

As more fully described in Section 4.8(g), Bidco may incur an interest expense of between \$12.3 million (in the 15% Scenario) and \$17.7 million (in the 0% Scenario) in the 12 months following Completion of the Offer, based on the assumptions set out in Section 4.8(g). To the extent incurred, this interest expense will reduce the net profit after tax of Holdco on a dollar-for-dollar basis.

Bidco notes that the 0% Scenario and 15% Scenario are each purely illustrative in nature and are not presented as a prediction of the actual level of Holdco Share ownership by Pacific Smiles Shareholders other than the Genesis Shareholders.

(f) **Impact of the Offer on cash flows**

Any interest incurred under the Debt Facility will also reduce the free cash flow of the Bidder Group.

While Bidco has a right to capitalise a portion of the interest payable under the Debt Facility in certain circumstances, Bidco expects to apply up to approximately \$12.3 million of cash (in the 15% Scenario) and \$17.7 million of cash (in the 0% Scenario) to satisfy interest obligations under the Debt Facility in the 12 months following Completion of the Offer, based on the assumptions set out in Section 4.8(g).

To the extent cash is paid, this interest expense will reduce the extent of free cash flow otherwise available to Holdco to apply to other uses, such as the payment of dividends.

Bidco again notes that the 0% Scenario and 15% Scenario are each purely illustrative in nature and are not presented as a prediction of the actual level of Holdco Share ownership by Pacific Smiles Shareholders other than the Genesis Shareholders.

(g) **Financial obligations of Bidder Group under the Debt Facility**

The Bidder Group will be subject to ongoing obligations in respect of the Debt Facility (as described in Section 7.4).

Between \$123 million (in the 15% Scenario) and \$169 million (in the 0% Scenario) of debt could be drawn under the Debt Facility to partially satisfy Bidco's obligations under the Offer and to pay transaction costs associated with the Offer, based on the example rollover numbers of Pacific Smiles Shareholders and the Equity Investors contributing \$100.295 million of equity.

The Debt Facility has a facility limit of \$175 million, being the maximum amount that may be drawn under the Debt Facility, subject to the terms of that facility. Interest will accrue on the Debt Facility at a variable rate, being BBSY, plus a margin. The margin is determined by reference to a pricing grid based on the most recently calculated Leverage Ratio.

The opening pro forma net leverage ratio, assuming between \$123 million (in the 15% scenario) and \$169 million (in the 0% Scenario) of debt could be drawn under the Debt Facility, the Bidder Group having \$10 million of cash on hand immediately following Completion of the Offer and \$28.2 million of the underlying EBITDA for the financing year ending 2024 ("**FY24 Underlying EBITDA**"), could be between 4.0 - 5.6x. The Debt Facility will be subject to an opening net leverage ratio covenant of 7.25x – implying between 22 – 45% of headroom.

The Debt Facility will have a cash interest rate of BBSY plus a margin of between 5-6.00% per annum that varies for each interest period based on the prevailing net leverage ratio, implying a cash interest expense of \$12.3 - 17.7 million. ⁴⁹²⁵ This illustratively implies an Interest Coverage Ratio of 1.6 – 2.3x, based on the FY24 Underlying EBITDA of \$28.2 million.

Pacific Smiles Shareholders should be aware that these examples set out in Sections 4.8(e), (f) and (g) are illustrative only and that the actual extent of Elections to participate in the Scrip Offer, the amount of equity called from the Equity Investors and drawings under the Debt Facility may change from that shown.

⁴⁹²⁵ Assuming BBSY of 4.50%.

5 Information on Pacific Smiles

5.1 Overview of Pacific Smiles

Pacific Smiles Group (ASX: PSQ) is an Australian public company which was founded in 2002 and admitted to the official list of the ASX on 21 November 2014.

Pacific Smiles Group is the largest branded Dentist Service Organisation in Australia, currently operating 136 dental centres containing more than 540 active dental chairs. These dental centres include 11 nib branded centres which are owned and operated by Pacific Smiles, and 8 HBF dental centres which are operated by Pacific Smiles. Pacific Smiles provides dentists with fully serviced and equipped facilities including support staff, materials, marketing and administrative services. Pacific Smiles is largely engaged by dentists under its standard services and facilities agreements (SFAs), pursuant to which the dentists are charged service fees for the provision of these fully serviced dental facilities. Pacific Smiles' revenue consists mostly of these service fees, however there are also revenues derived through direct patient fees incurred through dental services provided by dentists engaged or employed by Pacific Smiles.

As at 31 December 2023, Pacific Smiles was engaged by more than 760 dentists, assisted by more than 1,600 support staff and attended to approximately 1,000,000 patient appointments in the preceding 12 months.

Pacific Smiles has long-term partnerships with a number of private health insurance providers. Key relationships include;

- **nib:** Pacific Smiles owns and operates 11 nib branded dental care centres, which currently provide a “no gap” preventative offer for patients who are nib members;
- **HBF:** in July 2020 Pacific Smiles agreed to a 10-year Managed Service Agreement with HBF. Under this agreement, Pacific Smiles operates 8 centres in Western Australia (HBF dental centres) for a fee on behalf of HBF; and
- **ahm:** exclusive ahm no-gap preventative provider on the eastern seaboard; and
- a number of other partnerships and umbrella preferred provider agreements with other private health insurers.

Pacific Smiles' agreement with nib is due to expire in May 2027, however as announced on ~~19 June~~ 24 July 2024, the parties have entered into a ~~non-binding memorandum of understanding~~ definitive agreement, pursuant to which they ~~agree to vary~~ have varied the commercial terms of the existing agreement.

~~The proposed~~ Pacific Smiles has disclosed that the changes to the agreement with nib contemplates the provision of the preventative gap-free dental offering for nib members for a period of two years to 117 Pacific Smiles branded dental centres from 1 July 2024 on an exclusive basis in the geographies which those centres operate. At the end of this two-year period, the Pacific Smiles branded dental centres will form part of a broader nib 'First Choice Network' of dental providers on a non-exclusive basis. Further details regarding the proposed changes are set out in Pacific Smiles' announcement dated ~~19 June~~ 24 July 2024.

More information about Pacific Smiles is available on its website: www.pacificsmilesdental.com.au.

5.2 Directors of Pacific Smiles

As at the date of this Bidder's Statement, the Pacific Smiles Board comprises the following directors:

(a) **Giselle Collins (Non-Executive Chairperson)**

Giselle Collins is a Director with significant executive experience in property, tourism and financial services as well as having worked in professional services with KPMG in Sydney, London and Zug, Switzerland and at NRMA Motoring & Services as GM in charge of Treasury, Property, Holiday Parks and the investment in the Travelodge Hotel Group.

Giselle's past board experience includes being the Chairman of Aon Superannuation, Chairman of the Travelodge Hotel Group and Chairman of the Heart Research Institute, as well as having served on the **B**boards of BIG4 Holiday Parks, Vinomofa, ASX listed Peak Rare Earths and the Royal Australian Institute of Architects.

Giselle is currently Chairman of Hotel Property Investments (ASX:HPI), a non-executive Director and Chairman of the Audit Committee for both Generation Development Group (ASX:GDG) and Cooper Energy (ASX:COE). Giselle is also Chairman of the Responsible Entity for AMP's registered managed investment schemes and Director of Group Homes Australia Pty Ltd.

(b) **Andrew Vidler (Managing Director and Chief Executive Officer)**

Andrew is an accomplished senior executive with over 30 years of experience in retail, consumer products, and health industries. He excels in driving growth and innovation within large and complex businesses, focusing on building high-performing teams that are market-oriented and customer-centric.

Andrew's leadership style is anchored in values and relationships, as demonstrated during his successful tenure leading Priceline and Priceline Pharmacy, navigating through the pandemic and overseeing the transition to new ownership with Wesfarmers. Prior to this, he spent over two decades at EBOS Group Ltd, establishing a comprehensive career in Consumer Health and Pharmacy retailing.

(c) **Dr Scott Kalniz (Non-executive Director)**

Dr. Kalniz has over 20 years of dental industry experience in the United States. He started his career as a practicing dentist with a single location practice and purchased a number of other dental practices, eventually selling his group to North American Dental.

At North American Dental, he helped grow the business to over 50 locations. Dr. Kalniz then partnered with a private equity firm, as CEO and Chief Dental Officer, to create a new Chicago headquartered Dental Services Organisation (DSO), Elite Dental Partners. In under 5 years, the business grew to over 110 locations in 12 states. Dr. Kalniz retired from the **B**board of Elite Dental Partners in September 2020. Dr. Kalniz currently serves as a Non-Executive Director of Signature Dental Partners, a DSO based in Phoenix, Arizona, as well as Director to Premier Dentist Partners and Smile America Partners. Dr. Kalniz also previously served on the **B**board of Heartland Veterinary Partners.

(d) **Jodie Leonard (Non-Executive Director)**

Jodie is an ASX-experienced, Non-Executive Director and Digital Transformation Advocate. Her **B**board portfolio focuses on companies undergoing customer and digital transformation and has included the Great

Ocean Road Coast & Parks Authority, RACV, Flexigroup, BWX (Sukin consumer brand), Beyond Bank Australia, Racing Victoria and Kinetic Superannuation. Jodie is currently on the Board of the Barwon Region Water Corporation and Regis Healthcare. She has also chaired both remuneration and risk committees.

Jodie has experience in a diverse range of industries including banking, financial services, consumer goods, media & entertainment, technology, telecommunications, travel & tourism, and professional services. Jodie has over 30 years of marketing experience and was formerly a Chief Marketing Officer with both P&L and international experience. Her executive career included General Electric, British Airways, Telstra, the Nine Network, Colgate Palmolive, and Unilever.

(e) **Steven Rubic (Non-Executive Director)**

Steven has over 30 years of health care executive leadership experience including CEO roles of Healthscope, I-MED Radiology Network and St Vincent's & Mater Health. Steven is currently a Non-Executive Director of Healthscope, the Mercy Partners, Mater Misericordiae Limited, Invocare Ltd and Catholic Healthcare Limited. Steven was previously the Chair of Monte Sant' Angelo Mercy College, a past Board Director of the Garvan Institute of Medical Research, the Chris O'Brien Lifehouse, the Macquarie University Council and the NSW Private Hospitals Association.

Steven has an MBA and is a Fellow of the AICD and Fellow of ACHSM. He has worked closely with Boards and private equity firms over the last 11 years, growing a number of businesses with a focus on commercial outcomes and delivering strong returns to shareholders.

5.3 Substantial holders

Based on publicly available information, the following persons have disclosed themselves as 'substantial holders' of Pacific Smiles (as at the date of this Bidder's Statement):

Substantial holder	Number of Shares held	Percentage of total issued Shares ²⁰²⁶
Beam Investments Co Pty Ltd (ACN 673 355 658)	31,750,000	19.90%
MA Financial Group Limited (ACN / ARSN 142008428)	20,917,737	13.11%
Spheria Asset Management Pty Ltd	18,197,442	11.40%
HBF Health	16,000,000	10.03%
Dr Alison J Hughes	15,860,190	9.94%
Dr Alexander J Abrahams	15,404,646	9.65%
Pinnacle Investment Management Group Limited	8,014,129	5.02%

²⁰²⁶ Based on 159,581,938 basic shares on issue (as at the date of this Bidder's Statement).

See Section 6.4 for details of Bidco's interest in Pacific Smiles Shares as of the date of this Bidder's Statement.

5.4 Recent proposals for Pacific Smiles

In December 2023, Beam Investments (an Associate of Bidco) acquired an 18.75%²⁷ interest in Pacific Smiles. On 18 December 2023, Genesis Capital subsequently put forward to the Pacific Smiles Board a non-binding indicative proposal to acquire 100% of the shares in Pacific Smiles. Beam Investments subsequently increased its economic interest in Pacific Smiles to 19.9%²⁸.

In February 2024, Genesis Capital and Pacific Smiles entered into a confidentiality agreement and Genesis Capital was provided with access on a non-exclusive basis to limited and preliminary due diligence materials. In March 2024, Genesis Capital submitted a revised non-binding indicative proposal at \$1.75 per share to the Pacific Smiles Board. Following receipt of that proposal, on 19 March 2024, Genesis Capital and Pacific Smiles entered into a process deed ("**Process Deed**") pursuant to which Genesis Capital was granted access to a further six-week period of non-exclusive due diligence with more detailed information. In the Proceed Deed, Pacific Smiles indicated that the Pacific Smiles Board intended to recommend the Genesis Capital proposal to Pacific Smiles Shareholders subject to the parties negotiating and entering into a binding scheme implementation agreement.

On 29 April 2024, Pacific Smiles announced that it had entered into the NDC Scheme Implementation Deed with NDC Bidco, a wholly owned subsidiary of NDC HoldCo Pty Ltd, which operates the National Dental Care network, a portfolio company of Crescent Capital. The consideration offered in respect of the NDC Scheme was a cash payment of \$1.90. On 23 July 2024, the offer price under the NDC Scheme was increased to \$1.91 per Pacific Smiles Share and NDC Bidco announced that this was its best and highest price (absent a higher or superior proposal or the Pacific Smiles Board recommending any third party proposal or offer). The Pacific Smiles Board unanimously recommended that Pacific Smiles Shareholders vote in favour of the \$1.91 NDC Scheme.

On 24 July 2024, Genesis Capital, on behalf of Beam Investments, informed Pacific Smiles that it would vote all Pacific Smiles shares that it owned or controlled at the relevant time against the NDC Scheme.

On 28 July 2024, Genesis Capital put forward a revised proposal to acquire all the shares in Pacific Smiles via a scheme of arrangement for cash consideration of \$1.90 per Pacific Smiles Share with a scrip consideration alternative to allow eligible Pacific Smiles Shareholders to elect to receive all or part of their consideration in scrip consideration. On 31 July 2024, the Pacific Smiles Board determined that this proposal was a superior proposal to the NDC Scheme and activated the matching right provisions in the NDC Scheme Implementation Deed.

On 1 August 2024, NDC Bidco increased the consideration offered in respect of the NDC Scheme to \$2.05 per Pacific Smiles Share. On 2 August 2024, Genesis Capital (on behalf of Beam Investments), informed Pacific Smiles that it would vote all Pacific Smiles shares that it owned or controlled against the further revised NDC Scheme.

The shareholder meeting convened to vote on whether or not to accept the NDC Scheme proposal (as revised on 1 August 2024) was held on 8 August 2024. At that meeting, the

²⁷ Beam Investments as at 18 December 2023 held an economic interest in 29,913,833 shares in Pacific Smiles, representing an 18.75% economic interest, pursuant to a cash settled total return swap with Jarden Group Limited and inclusive of on-market purchases executed prior to stake acquired on 18 December 2023.

²⁸ As released to the market on 24 January 2024, Jarden Group Limited and its related bodies corporate increased its holding from 29,913,883 shares to 31,750,000 shares.

statutory majorities required to approve the NDC Scheme were not achieved and accordingly the NDC Scheme was not approved by Pacific Smiles Shareholders. Under the Corporations Act, a scheme of arrangement requires a 75% majority of votes cast by a 50% majority of the number of shareholders. At the meeting only 63.31% of the total votes were cast in favour of the NDC Scheme by 81.41% of Pacific Smiles Shareholders who were present and voting (whether in person, online, by proxy, attorney or corporate representative).

On 23 August 2024, Pacific Smiles announced that it had terminated the NDC Scheme Implementation Deed.

At the date of this Bidder's Statement, other than the Offer, Bidco is not aware of any other current offers or proposals in relation to all of the Pacific Smiles Shares or the Pacific Smiles business.

5.45 Other material information about Pacific Smiles

Pacific Smiles will have the opportunity to disclose in its Target's Statement any information about the Pacific Smiles Group it considers Pacific Smiles Shareholders would reasonably require in order to make an informed assessment as to whether to accept the Offer.

5.56 Publicly available information about Pacific Smiles

Pacific Smiles is a listed disclosing entity for the purposes of the Corporations Act and as such is subject to regular reporting and disclosure obligations. Specifically, as a listed company, Pacific Smiles is subject to the Listing Rules which require continuous disclosure of any information Pacific Smiles has concerning it that a reasonable person would expect to have a material effect on the price or value of its securities.

A significant amount of information about Pacific Smiles (including copies of its financial statements) is available in electronic form from the ASX website: www.asx.com.au/.

In addition, Pacific Smiles is required to lodge various documents with ASIC. Copies of documents lodged with ASIC by Pacific Smiles may be obtained from ASIC.

6 Information on Pacific Smiles' securities

6.1 Pacific Smiles' issued securities

According to documents provided by Pacific Smiles to ASX, as at the date of this Bidder's Statement, Pacific Smiles had the following securities on issue:

- 159,581,938 Pacific Smile Shares; and
- 2,794,221 Pacific Smiles Performance Rights.²⁴²⁹

6.2 Pacific Smiles Performance Rights

According to documents provided by Pacific Smiles to ASX, Pacific Smiles has a number of unquoted performance rights on issue that have been granted under the Pacific Smiles long term incentive plan ("**Pacific Smiles Performance Rights**") and a number of cash rights on issue to Andrew Vidler, Pacific Smiles' CEO ("**Pacific Smiles Cash Rights**").

Each Pacific Smiles Performance Right entitles the holder to receive one Pacific Smiles Share for no cash consideration, subject to the relevant performance hurdles being met over the applicable performance period. The Pacific Smiles Performance Rights will expire and lapse at the end of the applicable performance period to the extent the relevant performance hurdles have not been met.

Under the long term incentive plan rules [on a change of control occurring](#):

- [in respect of Pacific Smiles Performance Rights issued before FY23](#), a proportion of each holder's Pacific Smiles Performance Rights will vest upon a change of control occurring. The [Pacific Smiles Board](#) then has discretion as to how to treat the remaining Pacific Smiles Performance Rights; [and](#)

~~Further, the Board has absolute discretion to determine whether any Pacific Smiles Performance Rights will vest or lapse upon Pacific Smiles becoming subject to a takeover, scheme of arrangement or other transaction that may result in a person becoming entitled to exercise control over Pacific Smiles.~~

- [in respect of Pacific Smiles Performance Rights issued after FY23, the Pacific Smiles Board has discretion as to how these Pacific Smiles Performance Rights will be treated upon a change of control, having regard to the prevailing circumstances.](#)

Pacific Smiles has also disclosed that in connection with the appointment of ~~Mr~~ Andrew Vidler as Chief Executive Officer and Managing Director on 15 January 2024, Pacific Smiles granted Pacific Smiles Cash Rights to Mr Vidler as a long term incentive alternative to issuing Pacific Smiles Performance Rights (which would require the approval of Pacific Smiles Shareholders).

The Pacific Smiles Cash Rights are a contractual right granted by Pacific Smiles for Mr Vidler to be paid up to \$225,600 in cash, subject to the applicable long term incentive performance hurdles ~~noted above for the tranche 9 Pacific Smiles Performance Rights~~ being met. The Pacific Smiles Cash Rights do not entitle Mr Vidler to receive any Pacific Smiles Shares or any other securities in Pacific Smiles.

~~Pacific Smiles has indicated that it intends to seek approval for issue of up to 186,446 Pacific Smiles Performance Rights to Mr Vidler at its 2024 annual general meeting, which~~

²⁴²⁹ As disclosed by Pacific Smiles on 15 July 2024.

~~(if issued) will replace the Pacific Smiles Cash Rights and be on the same terms as the tranche 9 Pacific Smiles Performance Rights noted above.~~

Pacific Smiles Performance Rights are subject to certain conditions in order for them to vest. This includes that, in circumstances where a holder of Pacific Smiles Performance Rights ends their employment with Pacific Smiles, any Pacific Smiles Performance Rights held by them will only vest if they are a "Good Leaver" under the terms of the long term incentive plan rules (subject to the [Pacific Smiles](#) Board's discretion). As at the date of this Bidder's Statement, Pacific Smiles has announced that ~~Mathew~~[Mr](#) Cordingley and ~~Andrew~~[Mr](#) Vidler have resigned from their positions at Pacific Smiles, but ~~have~~[has](#) made no announcement as to the treatment of any Pacific Smiles Share Rights held by ~~Messrs~~[Mr](#) Cordingley and [Mr](#) Vidler.

6.3 Short term incentive arrangements

Pacific Smiles has disclosed that in its 2024 financial year, Pacific Smiles operated a short-term incentive plan pursuant to which eligible Pacific Smiles employees will receive an award subject to performance hurdles being met over the relevant financial year.

Under the 2024 financial year short-term incentive offer, any award will be settled 67% in cash and 33% in Pacific Smiles Performance Rights (or, in the case of Mr Vidler, Pacific Smiles Cash Rights). Any such Pacific Smiles Performance Rights and Pacific Smiles Cash Rights automatically vest one-year after grant, subject to the relevant holder remaining employed.

As noted above, at the date of this Bidder's Statement, Pacific Smiles has announced that Mr Vidler has resigned from his position at Pacific Smiles, but have made no announcement as to the treatment of any Pacific Smiles Share Rights or Pacific Smiles Cash Rights held by him.

6.4 Interests in Shares

As at the date of this Bidder's Statement:

- Bidco's voting power in Pacific Smiles was 19.90%; and
- Bidco does not have a Relevant Interest in any Pacific Smiles Shares, however its Associates, Beam Investments [and Manager](#), ~~has~~[have](#) a Relevant Interest in 31,750,000 Shares.

~~{~~As at the date of the Offer:

- Bidco's voting power in Pacific Smiles was 19.90%; and
- Bidco does not have a Relevant Interest in any Pacific Smiles Shares, however its Associates, Beam Investments [and Manager](#), ~~has~~[have](#) a Relevant Interest in 31,750,000 Shares.~~}~~

6.5 Dealings in Shares

(a) Previous four months

Neither Bidco nor any Associate of Bidco (including Holdco) has provided, or agreed to provide, consideration for Pacific Smiles Shares under any purchase or agreement during the four months before the date of this Bidder's Statement.

(b) **Period before Offer**

Neither Bidco nor any Associate of Bidco (including Holdco) has provided, or agreed to provide, consideration for Shares under any purchase or agreement during the period starting on the date of this Bidder's Statement and ending on the date immediately before the date of the Offer except as described below.

(c) **Dealing to occur during the Offer Period**

As noted in Section 4.2, Beam Investments is party to two put option deeds in respect of its Pacific Smiles Shares, between itself and Genesis Fund and GFT2 (respectively). These put options were granted in December 2023.

Prior to the close of the Offer Period, Beam Investments will exercise those Put Options and require Genesis Fund and GFT2 to acquire all of its Pacific Smiles Shares, with the consideration to be paid by Genesis Fund and GFT2 to be set off against the amounts owing under the respective loan agreements between Beam Investments and Genesis Fund and GFT2.

Once it has acquired those Pacific Smiles Shares from Beam Investments, each of Genesis Fund and GFT2 will lodge Acceptance Instructions with the Institutional Acceptance Facility Operator (in accordance with the terms of the Institutional Acceptance Facility), elect to receive All Scrip Consideration and, once the IAF Triggering Conditions are satisfied, be issued shares in Holdco in exchange for those Pacific Smiles Shares accepted into the Offer.

[The exercise of the Put Options will not change Bidco's voting power in Pacific Smiles, as Manager \(who is an associate of Bidco³⁰\) will retain its relevant interest in the Pacific Smiles Shares \(the subject of the Put Options\) when the relevant Pacific Smiles Shares are transferred to Genesis Fund and GFT2 pursuant to the terms of the Put Options.³¹ Pursuant to the terms of the co-investment agreement dated 15 December 2023 \(and appended to the form 603 filed with ASX on 7 May 2024\), Manager was appointed by each of Genesis Fund and GFT2 as sole manager of their respective investments in Pacific Smiles with the right to exercise all powers, rights and discretions in any way relating to the investment in the Manager's absolute discretion.](#)

6.6 No pre-Offer benefits

During the period of four months before the date of this Bidder's Statement, neither Bidco nor any Associate of Bidco (including Holdco) gave, or offered to give, or agreed to give a benefit to another person which was likely to induce the other person, or an Associate of the other person, to:

- accept the Offer; or
- dispose of Pacific Smiles Shares,

and which is not offered to all Pacific Smiles Shareholders under the Offer.

[During the period from the date of this Bidder's Statement to the date immediately before the date of the Offer, neither Bidco nor any Associate of Bidco (including Holdco) gave, or offered to give, or agreed to give a benefit to another person which was likely to induce the other person, or an Associate of the other person, to:

- accept the Offer; or

³⁰ See Form 603 Notice of Initial Substantial Holder filed with ASX on 29 July 2024.

³¹ See Form 604 Notice of Initial Substantial Holder filed with ASX on 7 May 2024.

- dispose of Pacific Smiles Shares,

and which was not offered to all Pacific Smiles Shareholders under the Offer.†

6.7 No escalation agreements

Neither Bidco nor any Associate of Bidco has entered into any escalation agreement that is prohibited by section 622 of the Corporations Act.

7 Sources of Offer Consideration

7.1 Provision of Offer Consideration

On the basis of the arrangements described in this Section 7, Bidco is of the opinion that it has a reasonable basis for forming the view, and holds the view, that it will be able to provide 100% of the cash required for the acquisition of Pacific Smiles Shares pursuant to the Offer as and when it falls due for payment and will be able to satisfy its obligations under the Offer and will also meet its costs associated with the Offer.

The Offer Consideration for the acquisition of the Pacific Smiles Shares to which the Offer relates will be satisfied by the payment of cash (in Australian dollars) and/or the issue of Holdco Shares, depending on the nature of the Elections made by accepting Pacific Smiles Shareholders.

Beam Investments' holding of 31,750,000 Pacific Smiles Shares, equivalent to 19.55% of the diluted shares outstanding, will be acquired by Genesis Fund and GFT2, pursuant to the terms of the Put Options. Genesis Fund and GFT2 will subsequently lodge Acceptance Instructions with the Institutional Acceptance Facility Operator (in accordance with the terms of the Institutional Acceptance Facility) in respect of those Pacific Smiles Shares which will be the subject of Elections to receive All Scrip Consideration. Accordingly, funding will not be required in respect of these Pacific Smiles Shares.

7.2 All Cash Consideration

(a) All Cash Offer Amount

As at the close of trading on the day prior to the date of this Bidder's Statement, according to documents provided by Pacific Smiles to ASX, there were 159,581,938 Pacific Smiles Shares and 2,794,221 Pacific Smiles Performance Rights on issue.²²³²

If Acceptances are received for all Pacific Smiles Shares on issue as at the date of this Bidder's Statement and all Pacific Smiles Shareholders elect to receive All Cash Consideration, the aggregate amount of cash consideration that Bidco would be required to pay would be \$298.0 million.²³³³

If all Pacific Smiles Share Rights are exercised and the resulting Pacific Smiles Shares are accepted into the Offer and those Pacific Smiles Shareholders elect to receive All Cash Consideration, approximately \$5.3 million²⁴³⁴ additional cash consideration would be payable.

However, as detailed above, the Pacific Smiles Shares currently held by Beam Investments will be acquired by Genesis Fund and GFT2 and then applicable Acceptance Instructions will be lodged with the Institutional Acceptance Facility Operator (in accordance with the terms of the Institutional Acceptance Facility) and be the subject of Elections to receive All Scrip Consideration, therefore lowering the amount of cash consideration Bidco would need to fund. The cash

²²³² As disclosed by Pacific Smiles on 15 July 2024.

²³³³ Calculated by multiplying the total number of Pacific Smiles Shares on issue by \$1.8675, being the Cash Offer Price net of the amount of the Declared Dividend.

²⁴³⁴ Calculated by multiplying the total number of Pacific Smiles Performance Rights by the Cash Offer price, assuming that any new Pacific Smiles Shares that are issued following the exercise of ~~a~~ Pacific Smiles Performance Rights will not be entitled to the Declared Dividend.

value of the Beam Investments holding (based on the Cash Offer) is approximately \$59.3 million.²⁵³⁵

The aggregate of \$298 million and \$5.3 million less the cash consideration that would be attributable to the Beam Investments holding (i.e. \$59.3 million), being \$244 million, is the "**All Cash Offer Amount**".

(b) **Sources of All Cash Offer Amount**

The funds required by Bidco to pay the All Cash Offer Amount will be made available to Bidco by way of Equity Commitments and debt commitments, each as further detailed in Sections 7.3 and 7.4.

Holdco has committed to contributing the Equity Commitment (as defined in Section 7.3) to Bidco (including via any intermediate Bidder Group Member) in sufficient time to allow Bidco to pay, to the extent necessary, the All Cash Offer Amount.

If the conditions to drawdown are satisfied, Bidco will be able to draw down the Debt Facility (as defined in Section 7.4) in order to pay the All Cash Offer Amount.

7.3 Equity Commitments

Each Co-investor named below (each an "**Equity Investor**") has entered into a Co-investment Agreement with, among others, Holdco and Bidco to provide an amount of up to its equity commitment (as set out in the table below) ("**Equity Commitment**") as and when required by the Manager for the purpose of the Offer.

Equity Investor		Equity Commitment
Genesis Capital Fund I, LP		\$26,000,000
Beam Co-investor Trust		\$14,295,000
Franklin Park Co-Investment Fund VI, L.P.		\$15,000,000
LFPE Co-Invest II SLP		\$5,000,000
Asia Opportunities (Singapore) Pte. Limited and ADL ANZ Opportunities I Pte. Limited (in aggregate)		\$20,000,000
Axiom Asia	A6J Ltd	\$6,100,000
	ACF-2 Ltd	\$10,000,000
	Axiom Asia 6-A SCSp, SICAV-RAIF	\$3,900,000
Total equity commitments		\$100,295,000

Under the Co-investment Agreements, each Equity Investor commits, on a several basis, to provide to Holdco the amount of its called commitment in cash by procuring that those funds are paid to Holdco in immediately available funds for the purpose of enabling Bidco to pay the cash consideration under the Offer.

Each Equity Investor has satisfied Holdco and Bidco that it has sufficient available and uncommitted cash to meet its applicable Equity Commitment.

²⁵³⁵ Calculated by multiplying the total number of Pacific Smiles Shares held by Beam Investments by \$1.8675, being the Cash Offer price less the value of the Declared Dividend.

There are no outstanding conditions to the Equity Commitment that are outside of the control of Bidco.

The obligation of an Equity Investor to provide the Equity Commitment remains in force until, and will terminate automatically upon, the earliest to occur of:

- the Manager making a public statement that the proposed transaction will no longer be pursued;
- the Equity Commitment having been fully paid; and
- 30 June 2025.

The full terms of the Co-Investment Agreements have been disclosed to the ASX [in](#) a form 603 filed on 29 July 2024 and a form 604 filed on or around the date of this Bidder's Statement on behalf of, amongst others, the applicable Equity Investors.

7.4 Debt commitments

(a) Overview of funding arrangements

Bidco will obtain the cash required by it to settle Acceptances under the Cash Offer by making drawings under a committed loan facility (the "**Debt Facility**") which Bidco and Subco will, subject to certain conditions, enter into with Ares Management Asia (Singapore) Pte. Ltd., on behalf of certain entities advised by Ares Management Asia (Singapore) Pte. Ltd and QIC Limited in its capacity as trustee for QIC Private Debt Fund - Government Clients (together, the "**Financiers**").

The maximum amount that Bidco is permitted to draw under the Debt Facility for the purpose of settling the Cash Offer is \$175 million.

The terms of the Debt Facility will require Subco, Bidco and certain Pacific Smiles Group Members to comply with customary terms and conditions on an ongoing basis, including in respect of early repayment events, group guarantees and security arrangements, compliance with financial covenants and restrictions on the payment of distributions, amongst other terms.

(b) Commitment letter and the Debt Facility

A binding debt commitment letter (the "**Debt Commitment Letter**") has been signed by Bidco and the Financiers pursuant to which the Financiers have agreed, subject to certain conditions, to enter into a formal syndicated facility agreement to provide the Debt Facility (the "**Facility Agreement**") under which (subject to the terms of the Facility Agreement) Bidco will be able to borrow:

- (1) an amount which, after taking into account the Equity Commitment, is in excess of the amount necessary to fully fund the All Cash Offer Amount, as well as all associated fees, costs, taxes and expenses for the Debt Facility and the Offer;
- (2) an additional amount which can be used to refinance the current indebtedness of the Pacific Smiles Group. This amount will be used for that purpose if necessary, noting that, as [per](#) the Pacific Smiles FY24 Financial Statements, the Pacific Smiles Group has no drawn debt facilities as at 30 June 2024; and
- (3) retain up to \$10,000,000 as cash on its balance sheet.

The Facility Agreement will also include:

- (4) a committed \$55 million facility (the "**Acquisition and Capex Facility**") that may be used for funding permitted acquisitions, growth capital expenditure and restructuring costs; and
- (5) an up to \$15m revolving multi-option working capital facility (the "**Working Capital Facility**") that may be used for general corporate purposes to be provided by a financial institution appointed in the future. This facility is uncommitted as at the date of this Bidder's Statement.

As part of the Debt Commitment Letter, Bidco and the Financiers have agreed all of the material terms and conditions of the Debt Facility. Each Financier has received all internal approvals necessary for it to provide the Debt Facility.

(c) **Conditions precedent**

After the Facility Agreement has been executed, Bidco will need to satisfy each of the following conditions precedent before it is able draw the Debt Facility:

- (1) a certificate from a director of Bidco confirming:
 - (A) Bidco has been capitalised on the drawdown date in an amount of at least 45% of the aggregate amount of Debt Facility drawings and equity contributions in Bidco;
 - (B) all material authorisations by a government agency required to implement the acquisition of Pacific Smiles have been obtained;
 - (C) the Financing Condition (as defined in [sSection 7.4 7.4\(f\)\(3\)³⁶](#)) has been satisfied; and
 - (D) there has been no amendment to any term of the Offer set out exclusively in Section 12 (The terms and conditions of the Offer) of this Bidder's Statement (including any supplementary Bidder's Statement), the Holdco Shareholders' Deed or Holdco Constitution which would be materially prejudicial to the interests of the Financiers (in their capacity as such) without their prior consent (subject to certain matters which shall not require consent);
 - (E) upon completion of the acquisition of all issued shares in Pacific Smiles, Bidco will become 100% owner of Pacific Smiles;
- (2) the Financiers have received a legal opinion from their legal advisers in relation to the Facility Agreement and Debt Facility documents in a form satisfactory to the Financiers;
- (3) certain representations and warranties given by Bidco and Subco being true and correct in all material respects;

³⁶[The Financing Condition as defined in Section 7.4\(f\)\(3\) of this Bidder's Statement requires that by the date falling 3 months after Bidco publicly announces its intention to make the Offer \(i.e. by 17 December 2024\) the following to have occurred:](#)

- [a majority of the members of the board of directors of Pacific Smiles have publicly recommended that the shareholders of Pacific Smiles accept the Offer \(in the absence of a superior proposal and subject to any other customary qualification\); and](#)
- [Bidco and its associates \(as defined in section 9 of the Corporations Act\) have relevant interests in at least 90% \(by number\) of the issued shares in Pacific Smiles.](#)

- (4) no actual or potential major event of default (see events of default below) is subsisting at the date of drawdown of the Debt Facility or would be caused by the drawing of the Debt Facility; and
- (5) certain other conditions precedent which are considered by Bidco to be procedural in nature and which are within the sole control of Bidco.

Bidco is not aware of any reason why any of the conditions precedent described above will not be satisfied in time to allow the Debt Facility to be drawn by Bidco to pay the any cash component of the Offer Consideration as and when required under the Cash Offer.

(d) **Events of default**

The Debt Facility is subject to events of default which are customary for a facility of this nature. The major events of default under the Facility Agreement are as follows:

- (1) Bidco or Subco fails to pay any principal or interest payable under a Debt Facility document within three business days;
- (2) Bidco or Subco does not comply with certain undertakings in the Facility Agreement (relating to restrictions on acquisitions, joint ventures, disposals, finance debt, negative pledge, financial accommodation, guarantees, distributions, merger, sanctions, anti-bribery and corruption and takeover-related undertakings) and such breach is not remedied within 20 business days;
- (3) certain representations or warranties made by Bidco or Subco (relating to status / corporate existence, binding obligations, non-conflict with other obligations, power and authority, authorisations, insolvency, pari passu ranking, benefit, immunity, sanctions, anti-bribery and corruption and holding company) is incorrect or misleading in any material respect and is not corrected within 20 business days;
- (4) an insolvency event occurs in relation to Bidco or Subco (including the appointment of an administrator or receiver, certain steps are taken for any such appointment or for the winding-up of Bidco or Subco, entry into a scheme of arrangement or a deed of company arrangement, creditor enforcement or execution against assets, or Bidco or Subco being unable to pay its debts as and when they become due and payable);
- (5) it becomes unlawful for Bidco or Subco to perform any of its obligations under any Debt Facility document or any security given by it ceases to be effective;
- (6) Bidco or Subco rescinds or repudiates a Debt Facility document; or
- (7) any provision of a Debt Facility document is/or becomes, invalid, void, voidable or unenforceable in any material respect.

(e) **Representations, warranties and general undertakings**

The representations, warranties and general undertakings (which include positive and restrictive covenants) to be given by Bidco, Subco and certain Pacific Smiles Group Members under the Facility Agreement are considered by Bidco to be customary for a facility of this nature.

(f) **Period of commitment**

The Debt Facility will be available for drawing until the date falling four months after the date of the Debt Commitment Letter, which is dated 17 September 2024.

A Financier may terminate its commitment to provide the Debt Facility:

- (1) if Bidco breaches, in any material respect, any of its obligations or representations under the Debt Commitment Letter;
- (2) if Bidco notifies the Financiers that it does not intend to proceed with the acquisition of Pacific Smiles;
- (3) if both of the following (the "**Financing Condition**") have not occurred by the date falling 3 months after Bidco publicly announces its intention to make the Offer (i.e. by 17 December 2024):
 - (A) a majority of the members of the board of directors of Pacific Smiles have publicly recommended that the shareholders of Pacific Smiles accept the Offer (in the absence of a superior proposal and subject to any other customary qualification); and
 - (B) Bidco and its associates (as defined in section 9 of the Corporations Act) have relevant interests in at least 90% (by number) of the ~~of the~~ issued shares in Pacific Smiles;
- (4) by mutual agreement between the Financier and Bidco; or
- (5) if the Debt Facility is not drawn by four months after the date of the Debt Commitment Letter.

[As Bidco intends to utilise the Debt Facility to partly satisfy its cash payment obligations under the Offer, if the Financing Condition has not been satisfied or waived by 17 December 2024, the Offer will need to close by no later than that date.](#)

(g) **Interest**

Interest will accrue on the daily outstanding principal amount of the Australian dollar loans under the Facility Agreement for each interest period at the rate which is the sum of the Australian Bank Bill Swap Reference Rate (Bid) administered by ASX Benchmarks Pty Limited ("**BBSY**") and the interest margin.

The interest margin is a rate between 5-6.00% per annum that varies for each interest period based on the prevailing net leverage ratio (see financial covenant below for further details). Bidco has agreed that the minimum BBSY will be 1.00% per annum.

For each interest period during the first 24 month period following the drawing of the Debt Facility, Bidco may (provided there is no event of default at that time) elect to capitalise a portion of the interest margin which has accrued on the loan under the Debt Facility or the Acquisition and Capex Facility (instead of paying that portion in cash) to provide it with additional liquidity (a "**PIK Election**"). Interest is otherwise payable in cash at the end of each 3 month interest period for any loans under the Debt Facility and the Acquisition and Capex Facility.

If Bidco makes a PIK Election:

- (1) the first 4.25 percentage points per annum of the applicable interest margin accruing on the loan for the relevant interest period must be paid in cash;
- (2) up to 2.00 percentage points per annum (above the portion of the interest margin that must be paid in cash) of the applicable interest margin accruing on the loan for the relevant interest period may be capitalised in 0.50% per annum increments at Bidco's election; and
- (3) the applicable interest margin accruing on the loan for the relevant interest period will be increased by 0.125% per annum for every 0.50% per annum increment of the interest margin that is capitalised.

Any interest capitalised will be automatically added to the outstanding loan under the Debt Facility or the Acquisition and Capex Facility (as applicable) on the relevant interest payment date and bear interest at the rate of interest applicable to the loan under the relevant Debt Facility or Acquisition and Capex Facility.

(h) **Other fees**

Commitment fees will accrue on the undrawn commitments under the Acquisition and Capex Facility and (once committed) the Working Capital Facility from first drawdown of the Debt Facility and will be payable quarterly in arrears.

Early repayment fees are payable if drawn amounts under the Debt Facility or the Acquisition and Capex Facility are repaid during the first 24 months following the drawdown of the Debt Facility in most cases.

Additionally, an establishment fee of approximately \$7 million is payable out of the proceeds of the first draw down of the Debt Facility and a ticking fee of approximately \$280,000 per month is payable from mid-October 2024 until the date the loan under the Debt Facility is drawn.

(i) **Repayment**

All outstanding loans under the Facility Agreement must be repaid on the date which is 5 years after the date that the Debt Facility is first drawn.

If a change of control of Holdco occurs, the Debt Facility, Acquisition and Capex Facility and Working Capital Facility will be cancelled and Bidco must repay all loans and other amounts outstanding under the Facility Agreement unless each Financier otherwise agrees. A change of control includes (among other circumstances) where:

- (1) Genesis Capital does not, or ceases to, have the power to appoint or remove the majority of the directors of Holdco;
- (2) if, following the last acquisition of Pacific Smiles Shares under the Offer, Genesis Capital holds at least 75% of Pacific Smiles Shares and Genesis Capital subsequently ceases to hold or have the power to cast (or control the casting of) at least 50.1% of Holdco Shares or appoint or remove all (or the majority of) the directors of, or otherwise control, Holdco; or
- (3) any entity (or entities acting in concert) other than Genesis Capital has the power to cast, or control the casting of, at least 50.1% of Holdco Shares or appoint or remove all, or the majority of, the directors of Holdco.

The Facility Agreement will contain mandatory prepayment events customary for a facility of this nature, requiring a portion of the excess annual cashflow of Subco and its subsidiaries and any disposal proceeds, insurance proceeds, acquisition claim proceeds or initial public offering proceeds received by Subco or any of its subsidiaries (subject to limited exceptions) in prepayment of loans outstanding under the Facility Agreement.

On Completion of the acquisition by Bidco of all of the Pacific Smiles Shares, Bidco must repay the excess over \$10,000,000 from the amount drawn under the Debt Facility and retained as cash on its balance sheet.

(j) **Guarantee and security**

The loans and other amounts outstanding under the Facility Agreement will be guaranteed by Bidco and Subco and secured by security given by each of them over all, or substantially all, of their assets (which will include the shares acquired by Bidco in Pacific Smiles).

The Facility Agreement also requires wholly-owned members of the Pacific Smiles Group to provide guarantees and security over all, or substantially all, of their assets as credit support for the loans and other amounts outstanding under the Facility Agreement, subject to limited exceptions.

(k) **Financial covenant**

Under the Facility Agreement, Bidco will undertake to ensure that, on each 31 March, 30 June, 30 September and 31 December quarter end date (commencing with the first quarter end date to occur after 2 clear quarters after the drawdown of the Debt Facility), the net leverage ratio (being the ratio of net debt of Subco and its subsidiaries on that quarter end date to the EBITDA of Subco and its subsidiaries for the 12 month period ending on that quarter end date) will not exceed 7.25x, stepping down to 6.00x on each quarter end date falling during the period from 36 months to 48 months after the drawdown of the Debt Facility, and stepping down again to 5.00x for each quarter end date falling after 48 months after the drawdown of the Debt Facility.

Failure to comply with the financial covenant will trigger an event of default under the Facility Agreement and enable the Financiers to demand early repayment of all loans and other amounts outstanding under the Facility Agreement, claim on the guarantees or enforce the security given by the Pacific Smiles Group Members described in the guarantee and security section above.

(l) **Distribution restrictions**

Subco and its subsidiaries will be restricted from making distributions to its shareholders unless (a) the net leverage ratio described in the financial covenant section above (both immediately before and after making any proposed distribution) is less than 3.25x, (b) on the most recent interest payment date before the proposed distribution, no PIK Election was made and (c) there is no actual or potential event of default (and none would immediately result from the making of the distribution) under the Facility Agreement.

7.5 Illustrative sources and uses of funds

The scenarios set out in the table below illustrates the potential sources and uses of funds of the Bidder Group under three different rollover acceptance scenarios (the 0% Scenario, 5% Scenario and 15% Scenario).²⁶³⁷

The consolidated sources and uses of funds shown in the table below are based on both Bidco assumptions around various items as at a notional close of Offer date, including:

- that the Equity Investors contribute total equity commitments of \$100.295 million through subscribing for Holdco Shares;
- that funding drawn from the Debt Facility is between \$123 – 169 million, as required, depending on extent of participation of Pacific Smiles Shareholders in the Scrip Offer as per each of the rollover scenarios; and
- that funding required to meet the Bidder Group's Offer transaction costs (which includes assumptions made by Bidco in respect of all transaction costs) and provide starting balance sheet liquidity is \$25 million.²⁷³⁸

Pacific Smiles Shareholders should be aware that the assumptions set out above are illustrative and that the actual extent of valid Elections to participate in the Scrip Offer, the amount of equity called from the Genesis Shareholders and drawings under the Debt Facility may change from that shown in this Section 7.5

% of Pacific Smiles Shares that are exchanged for Holdco Shares (excluding the Beam Investments stake)		0%	5%	15%
Sources of cash				
Cash via equity subscriptions from Equity Investors	A\$m	100	100	100
Cash drawn from loan under Debt Facility	A\$m	169	154	123
Total sources	A\$m	269	254	224
Uses of cash				
Payment of consideration under the Cash Offer ²⁸³⁹	A\$m	244	229	199
Payment of transaction costs and initial liquidity	A\$m	25	25	25
Total uses	A\$m	269	254	224

²⁶³⁷ That is, the percentage of Pacific Smiles Shares that are exchanged for Holdco Shares under the Scrip Offer.

²⁷³⁸ This figure does not include all Pacific Smiles' transaction costs that may be payable.

²⁸³⁹ For more information, please refer to Section 7.2(a).

8 Bidco's intentions in relation to Pacific Smiles

8.1 Background

Bidco has been established by Holdco for the purpose of making the Offer and acquiring Pacific Smiles Shares. Accordingly, the intentions of Bidco are the same as the intentions of Holdco.

This Section 8 sets out Bidco's intentions for Pacific Smiles. These intentions have been formed on the basis of facts and information concerning Pacific Smiles, and the general business environment, which are known at the time of preparing this Bidder's Statement. Final decisions will only be reached by Bidco in light of material information and circumstances at the relevant time. Accordingly, the statements set out in this Section 8 are statements of current intention only and accordingly, may vary as new information becomes available or circumstances change.

The articulation and formulation of Bidco's intentions are necessarily limited by virtue of the fact that it has only had limited access to information about Pacific Smiles and its affairs in connection with the Offer.

Specific intentions in respect of Pacific Smiles Performance Rights

The Offer does not extend to any Pacific Smiles Performance Rights. However, the Offer extends to all Pacific Smiles Shares that are issued before the end of the Offer Period as a result of the vesting of, conversion of, or exercise of rights attached to, Pacific Smiles Performance Rights that are on issue as at the Register Date. This means that holders of Pacific Smiles Performance Rights that vest, convert or are exercised will be able to accept the Offer in respect of the Pacific Smiles Shares issued during the Offer Period as a result of that vesting or exercise.

Bidco encourages holders of Pacific Smiles Performance Rights to exercise their Pacific Smiles Performance Rights before the end of the Offer Period to the extent they are entitled to do so, and accept the Offer in respect of the Pacific Smiles Shares issued on exercise. After the end of the Offer Period, Bidco may seek to acquire any remaining Pacific Smiles Performance Rights by doing one or more of the following (at their Election):

- making a private offer to holders of those Pacific Smiles Performance Rights to acquire them; or
- where Bidco becomes entitled under Chapter 6A of the Corporations Act to compulsorily acquire all outstanding Pacific Smiles Shares, compulsorily acquiring the Pacific Smiles Performance Rights.

8.2 Intentions for Pacific Smiles if Bidco acquires a Relevant Interest in 90% or more of Pacific Smiles Shares

This Section 8.2 describes Holdco's intentions if Bidco acquires a Relevant Interest in 90% or more of Pacific Smiles Shares, and so becomes entitled to proceed to compulsory acquisition of any outstanding Shares in accordance with Part 6A.1 of the Corporations Act.

In that circumstance, Bidco's current intentions are as follows:

(a) **Corporate matters**

Bidco intends to:

- (1) proceed with compulsory acquisition of the outstanding Pacific Smiles Shares in accordance with the provisions of Part 6A.1 of the Corporations Act, including any Pacific Smiles Shares which are issued after the close of the Offer as a result of the exercise, vesting or conversion of Pacific Smiles Performance Rights (see Section 6.1);
- (2) apply for termination of the official quotation of Pacific Smiles Shares on the ASX and arrange for Pacific Smiles to be removed from the official list of the ASX; and
- (3) replace the members of the Pacific Smiles Board with nominees of Bidco. Replacement board members have not yet been identified by Bidco and their identity will depend on the circumstances at the relevant time.

In addition, if Bidco becomes entitled to exercise the general compulsory acquisition right under Part 6A.2 of the Corporations Act, it may exercise those rights to compulsorily acquire or cancel any outstanding Pacific Smiles Performance Rights then on issue in accordance with the provisions of Part 6A.2 of the Corporations Act.

(b) **General operational overview**

After the Offer Period, Bidco intends to undertake a general review of Pacific Smiles operations covering strategic, financial and operating matters, including the current dividend policy. As a part of this review, Bidco intends to evaluate the future operations of Pacific Smiles Group [with a view to optimising and enhancing the performance of the Pacific Smiles Group](#).

[Notwithstanding the foregoing and without prejudicing the outcome of the general operational review, Bidco intends for Pacific Smiles to have its own management team who will have day to day responsibility for the operation of the business with customary delegation policies and protocols in place to ensure that the Holdco Board can carry out its supervisory functions, while management carries out its day to day and operational functions.](#)

[As noted in Section 4.1, Genesis Capital has a number of portfolio companies and each such portfolio company is operated independently of each other such company. Genesis Capital maintains customary confidentiality and conflict management protocols to ensure that its investee companies are managed in accordance with best investment management practices. Accordingly, if Pacific Smiles becomes a portfolio company of Genesis Capital, then Pacific Smiles will be operated independently of each other such portfolio company \(including Impression Dental Group\) and such customary confidentiality and conflict management protocols would apply with respect to each of those companies.](#)

(c) **Impact on employees**

After the Offer Period, and as part of the general operational review described above, certain job losses may occur associated with redundant functions such as, but not limited to, the activities associated with maintenance of an ASX listing. Bidco will seek to provide continued employment to Pacific Smiles' existing workforce.

(d) **Ongoing Pacific Smiles funding arrangements**

Based on information announced by Pacific Smiles to the ASX on 28 August 2024, Pacific Smiles has zero drawn debt but has the following external debt financing arrangements in place with a total facilities size of approximately \$25.5 million comprising:

- bank overdraft of \$500,000;
- bank loans of \$20,000,000; and
- bank guarantees of \$5,000,000.

It is not known to Bidco whether Pacific Smiles' financing arrangements contain "change of control" provisions which would require consent from financiers before, or trigger an event of default or other consequences on, Bidco acquiring a majority of Pacific Smiles Shares. If there are such provisions, this may result in amounts owing under the financing arrangements becoming due and payable. If such provisions do exist, then it will be necessary for Bidco to negotiate with Pacific Smiles and its financiers to either ensure that those Pacific Smiles financings will remain available or that new replacement financing can be arranged. Bidco believes that it has reasonable grounds to expect to be able to organise replacement financing or utilise its existing cash resources while it puts in place replacement financing.

(e) Practitioner Incentive Scheme

Holdco understands that for some practitioners having access to equity exposure to the business in which they participate may be important. As such, following Completion, Holdco will consider the possibility of implementing a 'Practitioner Incentive Scheme'. As part of such consideration, if Completion occurs, Holdco intends to engage with Pacific Smiles' existing practitioners to obtain their views and feedback on any such practitioner incentive scheme.

(f) Growth

Bidco's immediate intention following Completion is to focus on the operations and business of the Pacific Smiles Group as it is currently constituted and implementing the outcomes of the general operational review referred to above.

While Bidco has no present intention to pursue inorganic growth opportunities, it may choose to do so in the future. If Bidco were to adopt a strategy of growing the business of the Pacific Smiles Group by way of acquisition, then any potential opportunity would be assessed on its merits at the relevant time.

If a potential acquisition opportunity involved a related party of a Holdco Shareholder or Genesis Capital (such as Impression Dental Group), then such transaction would need to be conducted in a manner consistent with the related party transaction requirements applicable to Holdco (including, without limitation, those contained in Chapter 2E of the Corporations Act, while Holdco is a public company).

(g) Dividend policy

As noted in Section 8.2(b), as part of its general operational review, the Holdco Board will review the dividend policy of Pacific Smiles.

Further information in relation to the payment of dividends by Holdco is set out in Sections 4.6(c), 9.3(d) and 9.4(h). For the reasons outlined in Sections 9.4(h) of this Bidder's Statement, Holdco does not expect to be in a position to pay dividends to Holdco Shareholders in the short-term.

8.3 Intentions for Pacific Smiles as a part owned controlled entity

This Section should be read in conjunction with Section 9.5.

Bidco reserves its right to declare the Offer free from the 90% Minimum Acceptance Condition (or any other Condition) of the Offer. However, it has made no decision as to whether it will do so.

This Section 8.3 describes Bidco's intentions if Pacific Smiles becomes a controlled entity of Bidco, but Bidco is not entitled to proceed to compulsory acquisition in accordance with Part 6A.1 of the Corporations Act.

In that circumstance, Bidco's current intentions are as follows:

(a) **Corporate matters**

After the end of the Offer Period, Bidco:

- (1) intends (subject to the Corporations Act and the constitution of Pacific Smiles) to seek to replace some of the members of the Pacific Smiles Board. Bidco would consider the recommendations in the ASX Corporate Governance Principles when determining the composition of the board. Replacement board members have not yet been identified by Bidco and their identity will depend on the circumstances at the relevant time. Bidco will conduct a review to determine the most appropriate replacement board members; and
- (2) may apply for termination of the official quotation of the official quotation of the Shares on the ASX and arrange for Pacific Smiles to be removed from the official list of the ASX.

In this regard, ASX guidance indicates that the usual conditions that the ASX would expect to be satisfied in order for it to approve the removal of Pacific Smiles from the official list in the context of a successful takeover bid include:

- at the end of the Offer, Bidco owns or controls at least 75% of the Shares and the Offer has remained open for at least two weeks after Bidco has attained ownership or control of at least 75% of the Shares; and
- the number of Pacific Smiles Shareholders (other than Bidco and its Associates) having holdings with a value of least \$500 is fewer than 150,

and, in such case, the ASX will not usually require Bidco to obtain Pacific Smiles Shareholder approval for Pacific Smiles's removed from the official list of the ASX.

In addition, ASX may, even if the above conditions are not satisfied, approve an application for Pacific Smiles to be removed from the official list of the ASX with Pacific Smiles Shareholder approval and, where such removal is sought later than 12 months after the close of the Offer, subject to the ASX's discretion, Bidco may be entitled to vote on the resolution approving the removal.

If Pacific Smiles is removed from the official list of the ASX, there may be risks related to remaining as a minority shareholder in Pacific Smiles. These include reduced or non-existent liquidity if Pacific Smiles Shareholders wish to sell their Shares.

It is possible that, even if Bidco is not entitled to proceed to compulsory acquisition of minority holdings after the end of the Offer Period under Part 6A.1 of the Corporations Act, it may subsequently become entitled to exercise rights of general compulsory acquisition under Part 6A.2 of the Corporations Act, for example, as a result of acquisitions of Pacific Smiles Shares in reliance on the '3% creep' exception in item 9 of section 611 of the Corporations Act. If so, it intends to exercise those rights.

(b) **General operational review**

After the end of the Offer Period, Bidco intends to propose to the Pacific Smiles Board that an immediate, broad based review of Pacific Smiles's operations be conducted on both a strategic and financial level (including the current dividend policy of Pacific Smiles).

Bidco intends, subject to the approval of the [Pacific Smiles](#) Board, to participate in this review.

(c) **Further acquisition of Pacific Smiles Shares**

Bidco may, at some later time, acquire further Pacific Smiles Shares in a manner consistent with the Corporations Act.

If Bidco becomes entitled at some time to exercise compulsory acquisition rights under the Corporations Act in respect of Pacific Smiles Shares, it may exercise those rights.

8.4 Intentions for Pacific Smiles if not controlled by Bidco

This Section should be read in conjunction with Section 9.5.

Bidco reserves its right to declare the Offer free from the 90% Minimum Acceptance Condition (or any other Condition) of the Offer. However, it has made no decision as to whether it will do so.

This Section 8.4 describes Bidco's intentions if Pacific Smiles does not become a controlled entity of Bidco.

In that circumstance Bidco does not expect to be in a position to give effect to the intentions set out in Sections 8.3 or 8.4 of this Bidder's Statement. Notwithstanding:

- (a) Bidco will seek to:
- (1) obtain representation on the Pacific Smiles Board which is at least consistent with its proportionate shareholding; and
 - (2) gain a more detailed understanding of the business' assets and operations in order to evaluate the performance, profitability and prospects of Pacific Smiles in light of the information then available to Bidco;
- (b) Bidco will, to the extent possible, procure the Pacific Smiles Board to follow the intentions set out in Sections 8.2 or 8.3; and
- (c) Bidco would otherwise have regard to the circumstances at the time and consider the appropriate courses of action that are in the best interests of Bidco.

Further acquisition of Pacific Smiles Shares

Bidco may, at some later time, acquire further Pacific Smiles Shares in a manner consistent with the Corporations Act.

If Bidco becomes entitled at some time to exercise compulsory acquisition rights under the Corporations Act in respect of Pacific Smiles Shares, it may exercise those rights.

8.5 Limitations in giving effect to intentions

The ability of Bidco to implement the intentions set out in this Section 8 will be subject to the legal obligations of Pacific Smiles directors to have regard to the interests of Pacific Smiles and all Pacific Smiles Shareholders, and the requirements of the Corporations Act

and the Listing Rules relating to transactions between related parties. Bidco will only make a decision on the above mentioned courses of action following legal and financial advice in relation to those requirements.

9 Risks in relation to the Offer

9.1 Introduction

The Offer presents a number of potential risks that Pacific Smiles Shareholders should consider, including when deciding whether to accept the Scrip Offer and receive All Scrip Consideration or Mixed Consideration. In making your decision, you should carefully read this Bidder's Statement in its entirety. You should also carefully consider the risk factors, features and considerations outlined in this Section 9 and your personal circumstances. This Section 9 is general in nature only and does not take into account your individual objectives, financial situation, tax position or particular needs.

This Section 9 outlines:

- (a) general investment risks (refer to Section 9.2);
- (b) specific risks associated with your current investment in Pacific Smiles (refer to Section 9.3);
- (c) additional features and considerations in relation to an investment in Holdco Shares (refer to Section 9.4);
- (d) risks arising for Holdco Shareholders and Pacific Smiles Shareholders in circumstances where Bidco waives the Minimum Acceptance Condition (refer to Section 9.5).

If you accept the Cash Offer and elect to receive All Cash Consideration only, the risks in Sections 9.2, 9.3 9.4 and 9.5 will not apply because you will not hold Holdco Shares nor be exposed to the risks of holding Pacific Smiles Shares, subject to the satisfaction or waiver of the Conditions. The risk factors in Sections 9.2, 9.3, 9.4 and 9.5 will continue to apply to Pacific Smiles Shareholders who elect All Scrip Consideration or Mixed Consideration as they will hold Holdco Shares.

If the Offer is withdrawn or lapses, Pacific Smiles Shares will remain quoted on [the ASX](#) and all Pacific Smiles Shareholders will continue to be subject to the risks in Sections 9.2 and 9.3.

There are some risks associated with the Offer for Pacific Smiles Shareholders who do not accept the Offer and remain Pacific Smiles Shareholders. If, in connection with or following the Offer, Bidco acquires a Relevant Interest in at least 90% of the Pacific Smiles Shares, Bidco may be entitled to compulsorily acquire the remaining Pacific Smiles Shares. For more information, please see Sections 8.2 and 11.25.

Additionally, there are risks for Pacific Smiles Shareholders who accept the Scrip Offer and receive Holdco Shares and Pacific Smiles Shareholders who do not accept the Offer in circumstances where Bidco waives the Minimum Acceptance Condition. For more information, please see Section 9.5.

This Section 9 is not an exhaustive list of the risks, features and matters to be considered in relation to an investment in Holdco Shares. This Section 9 does not purport to list every risk or consideration that may be associated with an investment in Holdco now or in the future.

The occurrence or consequences of some of the risks described in this Section 9 may be partially or completely outside the control of Pacific Smiles or Bidco or their respective directors and management teams.

The risk factors do not take into account the individual investment objectives, financial situation, position or particular needs of Pacific Smiles Shareholders. Pacific Smiles Shareholders should seek professional advice from their accountant, tax adviser,

stockbroker, lawyer or other professional adviser before making an Election. Before making any Election for All Scrip Consideration or Mixed Consideration, you should have a sufficient understanding of these matters having regard to your own individual risk profile, portfolio strategy, investment objectives, financial circumstances and taxation position.

These risks may, individually or in combination, have a material adverse effect on Holdco's future financial performance, financial position, cash flows distributions and your ability to dispose of Holdco Shares if you wish to do so and, consequently, on the value of your Holdco Shares. Further, there is no guarantee that Holdco will achieve its stated objectives or any of its statements of current future intent as described in Section 8, or that any dividends or distributions will be paid to Holdco Shareholders.

You should carefully consider the matters discussed in this Section 9, as well as the other information contained in this Bidder's Statement before accepting the Offer. Despite the operating history of Pacific Smiles, an investment in Holdco should be considered a speculative investment.

9.2 General investment risks

The value of Pacific Smiles Shares and future distributions made to the shareholders of Pacific Smiles in the future (including, indirectly, Holdco) will be influenced by a number of macroeconomic factors including:

- changes in investor sentiment and overall performance of the Australian and international stock markets;
- changes in credit markets;
- changes in general business, industry cycles and economic conditions including inflation, interest rates, exchange rates, commodity prices, employment levels, wage rates, property markets including changing building costs, house prices and residential supply and demand, population growth, retail sales and consumer demand;
- a change to the current taxation regime or the way tax laws are interpreted may affect Pacific Smiles and Pacific Smiles Shareholders (personal tax liabilities are the responsibility of each individual investor in Pacific Smiles and Pacific Smiles is not responsible for taxation or penalties incurred by investors in Pacific Smiles);
- changes in government fiscal, monetary and regulatory policies, including foreign investment and immigration;
- geopolitical conditions, hostilities, civil or political unrest, any acts of war, sabotage, cyberattack or terrorism (including any outbreak, escalation or worsening of each of the foregoing in any relevant state or jurisdiction), imposition of trade sanctions, embargoes, tariffs or other market barriers that create disruption to supply chains; ~~and~~
- natural disasters and catastrophes, whether on a global, regional or local scale; [and](#)
- accounting standards which affect the financial performance and position reported by Pacific Smiles.

9.3 Risk factors relating to the business and operations of Pacific Smiles

In considering the Offer you should be aware that there are a number of risk factors, both general and specific associated with the Offer. These are relevant to Holdco Shareholders on the basis that you will be taking an indirect interest in the operations of Pacific Smiles in the event that you begin to hold Holdco Shares. This means that to an extent that a risk applies to Pacific Smiles Shares, those risks are likely to apply in a similar way to Holdco Shares.

The degree to which some of these risks will apply to a Holdco Shareholder will depend on how many Pacific Smiles Shares are held by Bidco on close of the Offer, particularly in the event that the Minimum Acceptance Condition is waived. Importantly, the Bidder Group has not been granted access by Pacific Smiles to conduct due diligence using proprietary information available to Pacific Smiles for the purposes of making the Offer.

Consequently, the outline of risks set out below has been made without the benefit of the Bidder Group undertaking due diligence in respect of Pacific Smiles for the purposes of making the Offer.

(a) **Pacific Smiles share price volatility if Offer is withdrawn or terminated**

If the Offer is withdrawn or terminated, Pacific Smiles Shares will remain quoted on the ASX and will continue to be subject to market volatility, including as a result of general stock market movements and the impact of general economic conditions.

If the Offer is withdrawn or is terminated, the price at which Pacific Smiles Shares trade may fall.

(b) **Regulation under the Corporations Act**

The Corporations Act and the rules thereunder provide certain protections to investors and impose certain restrictions on companies. Amongst other things, such rules limit or prohibit transactions with related parties, impose limitations on the issue of debt and equity securities and impose certain governance requirements.

(c) **Risks associated with a separation of economic interest from control**

If the Conditions to the Offer are satisfied or waived, Bidco may obtain a controlling interest in Pacific Smiles and, as a result of such controlling interest, Bidco will be able to control the appointment and removal of Pacific Smiles' directors and, accordingly, exercise substantial influence over Pacific Smiles.

To the extent that the Genesis Shareholders maintain control rights over Holdco, they may use their control rights in a manner that conflicts with the economic interests and investment goals of Holdco Shareholders.

In addition, debt incurred by Holdco could exacerbate the separation of economic interest from controlling interest, thereby creating an incentive to leverage Holdco, Pacific Smiles and their respective investments. Any such increase in debt would also make Pacific Smiles and Holdco more sensitive to declines in revenues, increases in expenses and interest rates, and adverse market conditions.

(d) **Future dividends**

The future payment of dividends (if any) by Pacific Smiles is determined at the discretion of the Pacific Smiles Board and in accordance with the Corporations Act from time to time. This is dependent on several factors such as profitability, capital structure and strategic initiatives of Pacific Smiles.

(e) **Internal control failure**

Any failure to maintain adequate internal control over financial reporting or to implement required, new or improved controls, or difficulties encountered in their implementation, could cause Holdco or Pacific Smiles to report material weaknesses or other deficiencies in its internal control over financial reporting and could result in a more than remote possibility of errors or misstatements in its consolidated financial statements that would be material.

In addition, material weaknesses in internal controls could require significant expense and management time to remediate.

(f) **Loss of key personnel**

Pacific Smiles may depend on the diligence, skill and business contacts of Pacific Smiles' professionals and the information and opportunities they generate during the normal course of their activities. Pacific Smiles' success could depend on the continued service of these individuals, who are not obligated to remain employed with Pacific Smiles.

The departure of certain key Pacific Smiles professionals or a significant number of Pacific Smiles' professionals for any reason, or the failure to appoint qualified or effective successors in the event of such departures, could have a material adverse effect on Pacific Smiles' ability to achieve its objectives.

(g) **Loss of dentists**

Pacific Smiles relies on entering into arrangements with individual dentists (or their operating dental companies), who provide dental services at clinics operated by Pacific Smiles. If a significant number of dentists were to terminate their arrangements with Pacific Smiles and were unable to be adequately replaced by other practitioners, this could materially and adversely impact Pacific Smiles' service fee revenues, its ability to implement growth strategies and its future financial performance. This could be caused by an industry-wide event or events specific to Pacific Smiles, for example, reputational damage or negative public perception.

(h) **Conflicts of interest**

The organisational and ownership structure of Pacific Smiles following closing of the Offer may give rise to conflicts of interest between Genesis Capital, Bidco, Pacific Smiles Group Members, Genesis Shareholders and Holdco Shareholders. In certain instances, the interests of Genesis Capital, Bidco and Pacific Smiles Group Members may differ from Genesis Shareholders and Holdco Shareholders, including with respect to the types of acquisitions made, the timing and amount of the distributions of Pacific Smiles, the reinvestment of returns generated by the operations, the use of leverage when making acquisitions and the appointment of outside advisers and service providers.

(i) **Financing and credit risk**

General economic and business conditions that impact the debt or equity markets could affect access credit markets in the future.

Pacific Smiles' ability to finance its operations is likely subject to various risks relating to the state of the capital markets. Changes in Pacific Smiles' credit ratings may have an adverse effect on Pacific Smiles' financial position and ability to raise capital.

Pacific Smiles Group Members could use leverage. Such indebtedness may result in Pacific Smiles Group Members being subject to certain covenants

which restrict their ability to engage in certain types of activities or to make distributions of equity.

(j) **Bribery and corruption**

Pacific Smiles may suffer a significant loss resulting from fraud, bribery, corruption, other illegal acts by its employees or officers, inadequate or failed internal processes or systems, or from external events, such as security threats affecting its ability to operate. Although specific programs, policies, standards and methodologies may have been developed to support the management of these risks, these cannot guarantee that such conduct does not occur and if it does, it can result in direct or indirect financial loss, reputational impact or regulatory consequences.

(k) **Transfer pricing risks**

To the extent that Pacific Smiles enters into transactions or arrangements with parties with whom they do not deal at arm's length, the relevant tax authorities may seek to adjust the quantum or nature of the amounts received or paid by such entities if the tax authorities consider that the terms and conditions of such transactions or arrangements differ from those that would have been made between persons dealing at arm's length. This could result in more tax being paid by Pacific Smiles and therefore the return to its shareholders could be reduced.

In addition, Pacific Smiles may also be liable for transfer pricing penalties in respect of transfer pricing adjustments unless reasonable efforts were made to determine, and use, arm's length transfer prices.

(l) **General taxation risks**

Pacific Smiles' operations may involve separate taxation authorities and differing regulations, which results in significant complexity. Any changes to taxation law, its interpretation, or its administration may increase the amount of tax paid by Pacific Smiles or affect the treatment of tax losses that may have been, or may be, accumulated. These changes could adversely affect the accounting profit and loss recognised by Pacific Smiles, the cash tax that it pays, and the tax treatment of distributions.

(m) **People and safety**

The Pacific Smiles Group Members are exposed to the following risks in relation to people and safety that may impact on their financial position:

- injury to employees, contractors and other third parties;
- industrial relations activity that impacts their ability to meet their contractual and customer expectations; and
- attraction and retention (as discussed in Section 9.3(f)) of key senior management and operational staff.

(n) **Counterparty risk**

Pacific Smiles may be exposed to counterparty risks. Counterparty risk includes the risk that a major customer, or a number of significant customers, will fail to meet its or their contractual obligations. In those circumstances, there would be a risk of financial loss to Pacific Smiles.

(o) **Competition, fee pressure and alternative markets**

Pacific Smiles operates in a fragmented and competitive industry. Pacific Smiles competes on the basis of a number of factors, including the variety and

quality of its products and services, brand recognition, reputation, and price. There is no assurance that competitors or new market entrants in the Australian dental industry will not succeed in offering services or products that are more economic or otherwise more desirable than those being offered by Pacific Smiles, which will have negative effects on Pacific Smiles' market position. An increase in competition may result in the loss of major customers. The increase may be caused by new or existing entrants or by government legislated changes resulting in increased competition.

An increase in the number of qualified dentists relative to population in Australia, could lead to increased price-based competition amongst dentists. Such an increase in price-based competition could lead to fee pressures on the dental industry over time.

There is also an emerging trend towards patients seeking lower-cost cosmetic and other medical and dental procedures offshore, particularly in Asia, which may impact on the fees for dental services in Australia and impact on industry revenues as a whole.

(p) **Global and local markets conditions**

The Pacific Smiles Group Members may be exposed to volatility in global economic conditions. Accordingly, global and local market conditions may significantly impact Pacific Smiles' revenues.

If domestic or global economic conditions deteriorate, the Pacific Smiles Group Members may not be able to access financial markets to seek equity or debt funding on competitive terms. This may adversely impact the financial performance of Pacific Smiles or the capacity for the Pacific Smiles Group Members to implement their strategy.

(q) **Changes in government policy or and regulations**

Any change in the application of relevant laws and other changes to regulation administrative practices, industry practice standards and employment that apply to the Pacific Smiles Group Members may impact the efficient operation of the Pacific Smiles Group's business and, as a consequence, its financial performance.

In particular, the Government may change the funding it provides for dental services (including levels of funding or conditions or eligibility requirements), patients may face higher out-of-pocket expenses and be less likely to obtain dental treatment as regularly or to the same extent. This may cause the dental industry as a whole, and Pacific Smiles in particular, to experience reduced demand for its services and reduced revenues and profitability.

(r) **Operational risk**

The Pacific Smiles Group Members may also be subject to the following common operational risks:

- capacity constraints and disruptions caused by weather events, natural disasters and/or failure of critical IT platforms and support;
- performance, compliance and reputational issues;
- disruption or loss of critical supply inputs, including security breaches of IT platforms;
- integration risks associated with acquisitions and business restructures including the impact on customer service levels; and

- impact of disruptive technologies on traditional supply chains.

(s) **Customer demand for Pacific Smiles' services**

Pacific Smiles' revenues are subject to fluctuations in customer demand for the services that Pacific Smiles provides. Customer demand may be adversely affected by a number of factors, including but not limited to, interest rates, the unemployment rate and consumer and business sentiment, which may individually or in aggregate adversely affect Pacific Smiles' future financial performance and position.

(t) **Reduction in private health insurance coverage or membership rates**

Any material reduction in private health insurance cover, composition of policy coverage between dental services and other health services, or reductions in general membership rates (for example, as a result of increasing policy costs) could significantly impact total expenditure on dental care and the earnings generated by the dental industry as a whole. This could, in turn, impact Pacific Smiles' revenue and future financial performance.

A worsening economic climate, changes in the private health insurance rebate and tax incentives, or increases in private health insurance premiums may cause reductions in private health insurance membership levels. A higher proportion of out-of-pocket expenditure for dental services as a result of any reductions in private health insurance coverage could increase the importance of cost as a barrier to accessing dental services. This has the potential to reduce demand for Pacific Smiles' services, put downward pressure on patient fees, and adversely impact its revenues and financial performance.

(u) **Deterioration or loss of key insurer relationships**

Adverse changes to the arrangements between private health insurance and dentists, including changes to the nature of benefits offered to patients under the preferred provider agreements and the number of dentists to whom preferred provider agreements apply, whether as a result of termination or amendments of Pacific Smiles' contractual arrangements with private health insurers or a deterioration in the quality of the relationship with the insurers, may reduce the volume of patients attending Pacific Smiles dental centres. This may in turn impact dentists' patient fees, and the service fees derived by Pacific Smiles which could materially impact its revenues and financial performance.

(v) **Customer service**

Pacific Smiles' ability to maintain relationships with customers is likely to be integral to its financial performance.

This in turn depends on Pacific Smiles' ability to offer competitive service standards and pricing. Poor performance in either area may lead to a loss of major customers which may have a material impact on the division's financial performance.

(w) **Litigation risk**

As with any business, Pacific Smiles faces a risk of disputes, claims or legal proceedings. Involvement in such disputes, claims or legal proceedings could disrupt Pacific Smiles' operations, lead to significant legal costs being incurred and impede management's ability to focus on day-to-day operations.

(x) **Technology, privacy and cybersecurity**

Pacific Smiles' business is likely to be reliant upon the use of technology. This technology may include computer systems used for providing services but also

for the purpose of accessing or storing information, including personal information, administrative functions and commercial operations.

Computer systems may be subject to cybersecurity risks or other breaches of information technology security, noting the increasing frequency and severity of these kinds of incidents.

A breach of Pacific Smiles' cyber or data security measures, the failure of any such computerised system or of the operating equipment used by Pacific Smiles for a significant time period could have a material adverse effect on its business prospects, financial condition, results of operations and cash flow, and cause operational disruption, personal and sensitive information loss, financial loss and reputational damage.

(y) **Intangible assets**

Pacific Smiles has a material amount of intangible assets on its balance sheet. Under Australian accounting standards, intangible assets must be regularly tested for impairment. If impaired, Pacific Smiles would need to write down the value of its intangible assets, which would result in an expense in the income statement, thereby potentially materially impacting Pacific Smiles' financial condition and reported earnings.

(z) **Reputational damage**

Pacific Smiles' brand is likely to be an important asset of its business. As such, the perception of its brand, and Pacific Smiles at large, as being of high quality and credible could be negatively impacted by several factors including, but not limited to:

- negative press;
- a data security breach;
- one-off unforeseen event;
- service quality issues; and
- breach of any regulatory requirements.

These factors may be within or outside the control of Pacific Smiles. The actions of Pacific Smiles employees or dentists who engage Pacific Smiles may contribute to or cause reputational damage, including through a failure to provide customers with consistent and quality treatment and services or clinical incidents.

While dentists are responsible for their conduct and clinical treatments, and are required to hold professional indemnity insurance, clinical incidents can cause reputations risks, as well as increase the risk of legal proceedings and potential liability for Pacific Smiles (for example, vicarious liability for medical malpractice claims or claims that Pacific Smiles staff have contributed to a patient claim).

Reputational damage arising from these factors (amongst others) may impact demand for Pacific Smiles' services and its performance. Significant erosion in the reputation of Pacific Smiles or its brands could have an adverse flow-on effect for customer loyalty, relationships with dentists, employee retention rates and significantly impact demand for Pacific Smiles' services, all of which could adversely affect Pacific Smiles' financial performance.

9.4 Additional features and considerations regarding an investment in Holdco Shares

This Section 9.4 sets out some of the other features and considerations which Pacific Smiles Shareholders should consider if they are contemplating making an Election to accept the Scrip Offer and, accordingly, invest in Holdco Shares. The features that apply to an investment in Holdco are materially different from those that apply to your existing investment in Pacific Smiles.

(a) Different regulatory regime

Holdco will be an unlisted Australian public company and Pacific Smiles will be removed from the official list of ASX if the Conditions to the Offer are satisfied or waived and Bidco holds Relevant Interests in 75% or more of the Pacific Smiles Shares (or Pacific Smiles Shareholders otherwise approved of delisting Pacific Smiles).

Many of the protections available to shareholders of Australian listed companies are not available to shareholders of unlisted companies. For example, ASX listed companies are subject to continuous disclosure obligations under ASX Listing Rules. Further, and subject to certain conditions, Australia's takeover regime will not apply and information that may have required disclosure under ASX Listing Rules may not be available to shareholders.

There is a risk that, because of the different regulatory regime that applies to an investment in Holdco, Holdco Shareholders may not realise the outcome with respect to their investment that they intended, or which might have been available were their investment in a listed entity. A summary of some of the key types of investor protections that currently apply to Pacific Smiles Shareholders and will no longer apply to Pacific Smiles Shareholders who accept Holdco Shares as part of the Offer is set out at Section 4.6(d).

(b) Holdco Shareholders' Deed and Nominee Deed

If the Conditions to the Offer are satisfied or waived, Pacific Smiles Shareholders who elected to accept the Scrip Offer will be required to execute the Scrip Election Deed Poll and will become parties to the Holdco Shareholders' Deed and beneficial holders of Holdco Shares with the legal title to their Holdco Shares being held by the Nominee (who will also be party to the Holdco Shareholders' Deed). The Holdco Shareholders' Deed is intended to govern the relationship between investors in Holdco. The Holdco Shareholders' Deed provides Holdco Shareholders with certain rights and obligations in connection with, amongst other things, the governance of Holdco and the disposal of shares and other securities in Holdco. These rights include, in the case of the Genesis Shareholders' Representative, an entitlement to appoint, remove and replace a majority of the Holdco Board at all times.

(c) Exit

Consistent with usual private equity practice, the Genesis Shareholders may seek to sell their investment in Holdco and consequently, the Pacific Smiles business, [or Bidco may seek to dispose of its investment in Pacific Smiles](#), in the future ("**Exit**"). This is subject to the Genesis Shareholders' preferences, prevailing market conditions, the performance of the business and other factors which may be considered relevant at the time. As such, the time period for the Exit is currently unknown and is at the discretion of the Genesis Shareholders (meaning Holdco Shareholders may not agree with the exit strategy adopted by the Genesis Shareholders or receive the price and return on investment they expect).

There is no guarantee that Holdco Shareholders will be able to sell their Holdco Shares if a decision to Exit is not made by the Genesis Shareholders. In particular, there will be no active market for the sale and purchase of Holdco Shares and there are restrictions in the Holdco Shareholders' Deed on the ability of Holdco Shareholders to sell or transfer their Holdco Shares other than in very limited circumstances.

For further information about the exit rights of Holdco Shareholders, see Section 4.6(b).

(d) **Lack of liquidity**

In the event that the Conditions are satisfied or waived, Pacific Smiles Shareholders who elected to accept the Scrip Offer and who are issued Holdco Shares will become shareholders in an unlisted public company. As such, there will be no public market for the trading of Holdco Shares received by Holdco Shareholders if the Conditions to the Offer are satisfied or waived, nor is there expected to be any such market in the future. As noted above, there are also substantial restrictions on the ability of Holdco Shareholders to transfer their Holdco Shares under the Holdco Shareholders' Deed, including a requirement to first obtain Holdco board approval (in absence of a transfer in the context of a sale or exit transaction, or the compulsory acquisition of small holdings, for more information see Section 4.6(b)). To the extent a transfer is permitted or approved in accordance with the Holdco Shareholders' Deed, securities law requirements relating to any proposed sale of securities may further limit the potential pool of transferees.

This will result in Holdco Shares being substantially illiquid. As discussed in Section 4.6(b), this may also affect the value of Holdco Shares following the Conditions to the Offer being satisfied or waived as well as Holdco Shareholders' ability to dispose of them, either at all or in a timely manner.

(e) **Dilution**

Holdco may need to raise additional capital through the issue of new shares in the future in order to meet the operating and/or financing requirements of itself, the Bidder Group, and Pacific Smiles.

Future capital raisings, equity funded acquisitions by the Bidder Group or issuance of shares to management undertaken in accordance with the Holdco Shareholders' Deed, may dilute the holdings of a particular Holdco Shareholder relative to other Holdco Shareholders.

In the event that further equity funding is required, existing Holdco Shareholders may be offered to participate and, if they do not take up their proportional share of any pro rata issue of shares offered to them, have their stakes diluted relative to other Holdco Shareholders who elected to take up their proportional share of any pro rata issue.

See Section 4.6(b) for further information on the circumstances in which Holdco may raise capital.

(f) **Leverage**

A Holdco Shareholder will be exposed to the risks arising from the commitments obtained by Bidco and Subco under the Debt Facilities obtained for the purposes of financing the Offer (for more information, please refer to Section 7.4). Specifically, a Holdco Shareholder may become exposed to greater risks than they currently face in circumstances where Holdco and its subsidiaries (including, after Completion, Pacific Smiles) have debt facility commitments

which lead it to have a gearing (debt to equity) ratio that is significantly greater than the gearing ratio of Pacific Smiles and other similar ASX-listed companies. Interest payment obligations owed by the Bidder Group may reduce the free cash flow of the consolidated group and lower the profits available for distribution to Holdco Shareholders.

For more information including an illustrative example of a possible financial position of the Bidder Group at Completion, please refer to Section 4.8.

Additionally, a Holdco Shareholder may be exposed to the risks arising from any new debt facilities Holdco (or other members of the Bidder Group) choose to implement in future.

(g) **Fewer rights as minority shareholders**

Pacific Smiles Shareholders who receive Holdco Shares will be subject to risks that are inherent in minority shareholdings. However, Holdco Shareholders will have access to certain protections provided under the Holdco Shareholders' Deed (as set out in Section 4.6(b)).

Furthermore, under the Corporations Act there are remedies available to minority shareholders against minority oppression.

Pacific Smiles Shareholders who receive Holdco Shares as part of their Offer Consideration will be issued Holdco Shares if the Conditions to the Offer are satisfied or waived. Relevantly the Holdco Shares carry the rights set out in the Holdco Constitution. In relation to voting rights, Holdco Shares are entitled to the voting rights set out in the Holdco Constitution.

The Holdco Shareholders' Deed contains provisions under which Holdco Shareholders may be compelled to transfer their Holdco Shares. For example, the Holdco Shareholders' Deed includes a "drag-along" provision, which allows holders of a majority of Holdco Shares (i.e. the Genesis Shareholders) to require each other Holdco Shareholder to transfer their Holdco Shares to the same transferee in certain circumstances (see the "Drag along rights" section of the table in Section 4.6(b) for further details).

(h) **Lack of dividends**

While each Holdco Share ranks equally with each other for payment of dividends, the declaration and payment of any dividends will be at the sole discretion of the Holdco Board.

The Holdco Board's determination in respect of any dividend will have regard to matters including the retention of such reasonable and proper reserves for working capital requirements, possible future acquisitions, capital expenditure, debt amortisation or other actual or contingent liabilities or commitments of Pacific Smiles as the Holdco Board considers reasonably appropriate.

Whether any dividend can be paid by Holdco will be determined by the overall profitability of the Bidder Group post Completion. Increased leverage of the Bidder Group will increase its interest expense obligations. This may, in turn, lower free cash flow and reduce the profit available for distribution to Holdco Shareholders.

To the extent Holdco pays any dividends in the future, the level of franking on any dividends on Holdco Shares will be affected by the level of Holdco's available franking credits and distributable profits. Holdco's level of franking credits may be affected by a wide range of factors, including its business performance and any other franked dividends it may receive (if any). Holdco's distributable profits may also be affected by a wide range of factors including its

level of earnings. The level of franking on any dividend may vary over time and dividends may be partially, fully or not franked. The value and availability of franking credits to a Holdco Shareholder will depend on that Holdco Shareholder's particular circumstances.

(i) **Genesis Capital Fees**

Subject to approval by the Holdco board of directors, Holdco and its subsidiaries may enter into a management services agreement with the Genesis Shareholders' Representative (or its affiliate) pursuant to which it may charge fees for advisory or management services and cost reimbursement. The amount of fees charged under such arrangements would reduce Holdco earnings which may otherwise be available for dividends or distributions, operational expenditure or capital expenditure or repayment of debt. Any management services agreement so entered must be on arms' length terms or otherwise approved to the extent required under the Corporations Act.

(j) **No due diligence and reliance on information**

Bidco has not been granted access by Pacific Smiles to conduct due diligence using proprietary information available to Pacific Smiles for the purposes of making the Offer.

Bidco has prepared the summary of risks set out in this Section 9 on the basis of information regarding Pacific Smiles that is known to Bidco from its review of publicly accessible information and accordingly there may be other risks associated with Pacific Smiles that are were not publicly available to Bidco.

Additionally, there is a risk that the information currently available to Bidco in respect of Pacific Smiles may contain inaccuracies or have changed due to changes in the economy or other risk factors outside of the control of either Bidco or Pacific Smiles.

(k) **Compulsory buy-out right**

As described in Section 4.6(b), after the date that is three months from the end of the Offer Period, the Holdco Board may by the provision of Small Holdings Disposal Notices require (at any time) a Holdco Shareholder (including a person who has a beneficial holding through the Nominee) to dispose all of its Holdco Shares if the total number of Holdco Shares held by that Holdco Shareholder (including a person who has a beneficial holding through the Nominee) is 125,000 Holdco Shares or less.

This means that if you have a beneficial interest in 125,000 or less Holdco Shares as a result of your Acceptance, then Holdco may compulsorily acquire, or require the transfer of, the Holdco Shares that are held on your behalf, in which case you will receive a cash payment for the fair value of the Holdco Shares the subject to the Small Holding Disposal Notice and you will cease to have an interest in HoldCo Shares.

For further information please see Section 4.6(b) and clause 15 of the Holdco Shareholders' Deed.

(~~k~~) **Change of control**

In the event that the Conditions to the Offer are satisfied or waived and Bidco obtains more than 50% of the Pacific Smiles Shares, a change of control in Pacific Smiles will occur.

Certain material contracts to which a Pacific Smiles Group Member is a party may be subject to pre-emptive rights, review or termination upon a change of control.

Bidco is not aware of any counterparty that may wish to terminate, review or exercise pre-emptive rights under such a material contract. However, in the event that such rights exist, the relevant Pacific Smiles Group Member may lose the benefit of the contract and may be unable to obtain similar terms upon entry into replacement contracts (should such replacement contracts be available). Holdco Shareholders are consequently exposed to this risk.

(tm) **Transaction costs**

Bidco and Pacific Smiles will incur transaction costs in connection with the Offer. Both Bidco and Pacific Smiles will pay transaction fees and other expenses related to the Offer, including financial advisers' fees, filing fees, legal and accounting fees, regulatory fees and mailing costs. Some of these costs may be reduced by the Offer not being implemented, while other costs may be incurred irrespective of the Offer outcome.

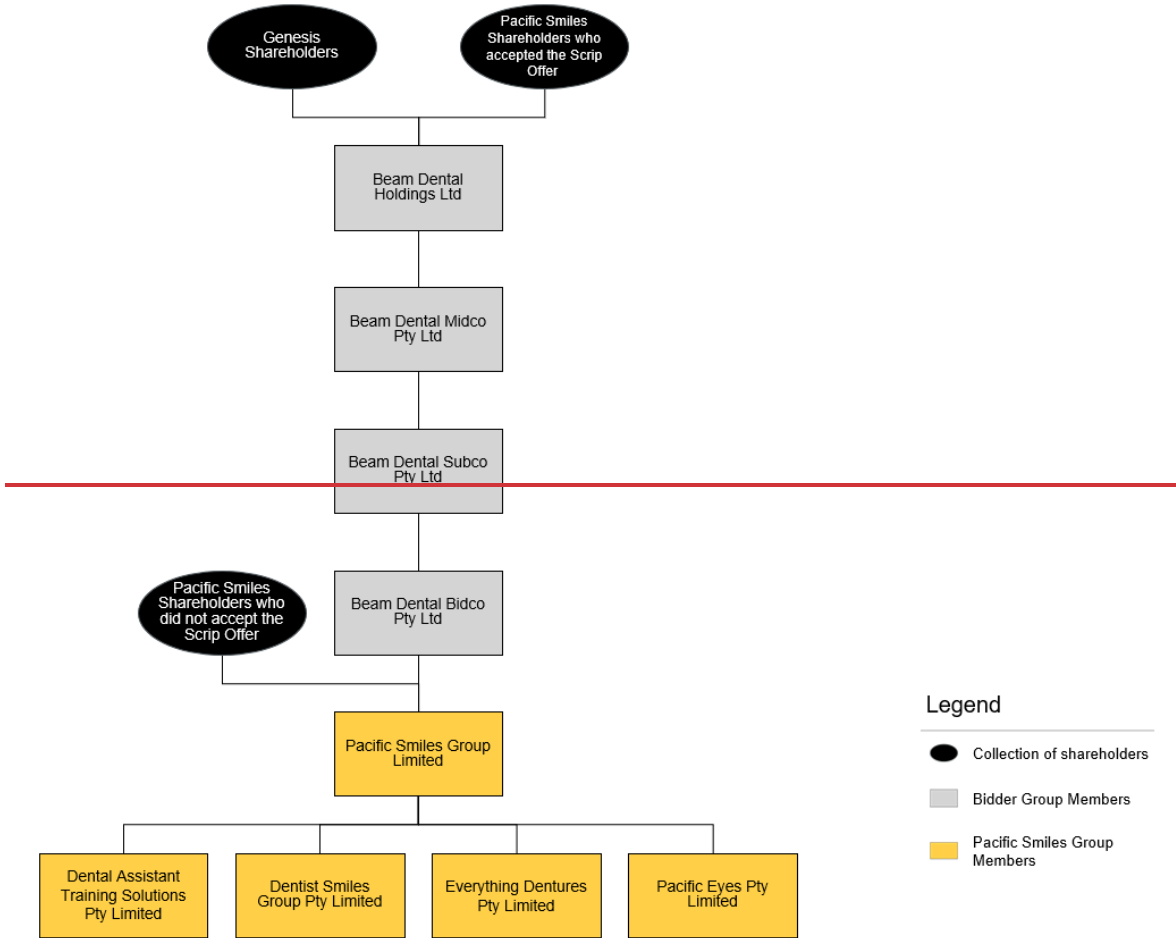
9.5 Risks for Holdco Shareholders where Bidco has waived the Minimum Acceptance Condition

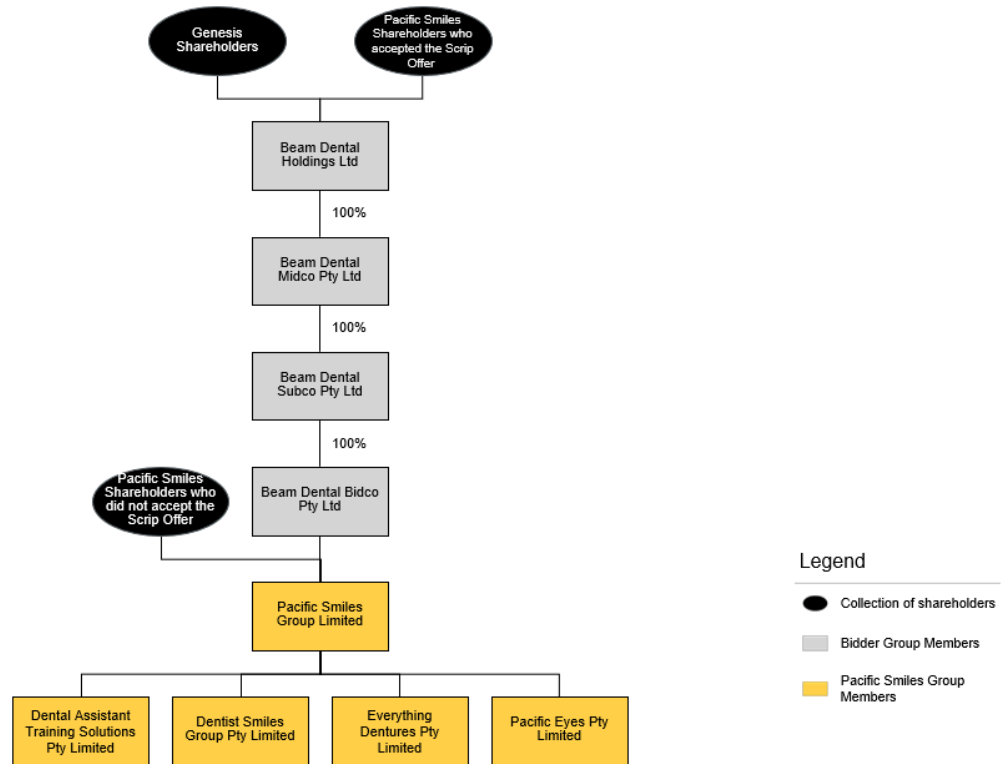
During the Offer Period, Bidco may obtain alternate funding that permits it to waive the Conditions to the Offer (including the Minimum Acceptance Condition) and declare the Offer free from the Conditions. If this occurs, all Acceptances then received by Bidco will be enlivened and Bidco would begin acquiring Pacific Smiles Shares that have been accepted into the Offer.

In these circumstances, at the end of the Offer Period, Bidco could hold less than 100% of the Pacific Smiles Shares. There are four alternative ownership structures that could arise depending on the final levels of acceptance at the end of the Offer Period. These are as follows:

- **Structure A - Supermajority Control:** Bidco holds more than 75% of Pacific Smiles Shares but less than 90%.
- **Structure B – Majority Control:** Bidco holds more than 50% of Pacific Smiles Shares but less than 75%.
- **Structure C – Effective Control:** Bidco holds less than 50% of Pacific Smiles Shares but a number close to 50% that allows Bidco to effectively cast a majority of votes at a meeting of Pacific Smiles Shareholders after taking into account the typical number of abstentions cast by Pacific Smiles Shareholders on any given shareholder resolution ("**Effective Control**").
- **Structure D – Minority Interest:** The Bidder Group holds less than 50% of Pacific Smiles Shares and is unable to exercise Effective Control over Pacific Smiles.

In each case there would be current Pacific Smiles Shareholders who will continue to hold shares directly in Pacific Smiles. This would result in a Pacific Smiles corporate structure as follows:





In circumstances where the Conditions (including the Minimum Acceptance Condition) [have](#) been waived, Pacific Smiles Shareholders who elect to accept the Scrip Offer and receive Holdco Shares may be subject to these additional risks:

(a) **Failure to obtain a controlling interest**

In the event the Minimum Acceptance Condition is waived and Bidco does not obtain 50% majority control over Pacific Smiles, Bidco may be unable to implement its intentions for Pacific Smiles outlined in Section 8 above. Please refer to Section 8 for further details on Bidco's intentions should it not obtain a controlling interest Pacific Smiles.

In these circumstances Holdco and Holdco Shareholders will be exposed to a significant but non-controlling interest in Pacific Smiles. As a result, Bidco's ability to obtain the benefits of its interest in Pacific Smiles will necessarily be limited. Bidco's ability to effect its intentions with respect to Pacific Smiles will also be subject to the legal obligations of the directors of Pacific Smiles to have regard to the interests of all Pacific Smiles Shareholders.

This could significantly impact the value of Holdco Shares.

(b) **Failure to obtain 80% of Pacific Smiles and availability of capital gains tax roll-over relief**

In the event the Minimum Acceptance Condition is waived and Bidco does not obtain a Relevant Interest in at least 80% of Pacific Smiles shares, capital gains tax roll-over relief will not be available for Pacific Smiles Shareholders who have sold their shares under the Offer and elected to receive Holdco Shares.

This may have significant financial implications for Pacific Smiles Shareholders who elect to accept the Scrip Offer and receive Holdco Shares.

(c) **Failure to obtain 90% of Pacific Smiles Shares**

If, in connection with the Offer, Bidco acquires more than 50.1% but less than 90% of the Pacific Smiles Shares, Bidco will hold a controlling interest in Pacific Smiles.

Pacific Smiles Shareholders who elect to accept the Scrip Offer and are issued Holdco Shares will be invested in a company with a large controlling shareholding in Pacific Smiles.

They will encounter a lower level of liquidity in Pacific Smiles Shares than that exists today, which could result in a lower price for those Pacific Smiles Shares should they wish to sell them in future. Trading liquidity could also be reduced in the event that Bidco possesses the necessary voting power to pass a special resolution to delist Pacific Smiles.

Please refer to Section 8 for further details on Bidco's intentions should it obtain a controlling stake in Pacific Smiles, but less than 90% of Pacific Smiles Shares.

(d) **Additional risk for Pacific Smiles Shareholders who do not accept the Offer and Bidco waives the Minimum Acceptance Condition**

If you do not accept the Offer and Bidco waives the Minimum Acceptance Condition and subsequently acquires more than 50% of Pacific Smiles Shares, but owns less than 90% of Pacific Smiles Shares, you will be a minority shareholder of Pacific Smiles.

Being a minority shareholder in Pacific Smiles may have the following potential implications:

- you will be invested in company with a large controlling shareholder, whose objectives for Pacific Smiles may differ from your own;
- the price at which Pacific Smiles Shares are traded on the ASX may fall and may trade at a material discount to the Offer Price;
- the market for Pacific Smiles Shares may be less liquid;
- Pacific Smiles' distribution policy, capital structure and board configuration may change; and / or
- Pacific Smiles may be delisted from the official list of the ASX, which may further reduce trading liquidity of Pacific Smiles Shares.

Whether or not any of the following risks eventuate will depend on the final number of Acceptances received by Bidco in respect of the Offer. Bidco's intentions for Pacific Smiles, assuming differing levels of control over Pacific Smiles are obtained, are set out further at Section 8.

10 Tax considerations

10.1 Introduction

The following is intended only as a general guide of the Australian income tax, goods and services tax (“**GST**”) and stamp duty consequences for Pacific Smiles Shareholders who dispose of Pacific Smiles Shares in conjunction with the Offer. The comments set out below are also relevant to those Pacific Smiles Shareholders who do not accept the Offer if Bidco proceeds to compulsorily acquire their shares upon meeting the requisite thresholds under the Corporations Act.

The comments set out below are relevant only to those Pacific Smiles Shareholders who hold their Pacific Smiles Shares on capital account for tax purposes.

The comments below are not relevant to Pacific Smiles Shareholders who:

- hold their Pacific Smiles Shares as revenue assets or as trading stock;
- acquired their Pacific Smiles Shares pursuant to an employee share, option or rights plan;
- are subject to the taxation of financial arrangement rules in Division 230 of the *Income Tax Assessment Act 1997 (Cth)* (“**ITAA 1997**”) in relation to gains and losses on their Pacific Smiles Shares;
- are non-residents of Australia who hold their Pacific Smiles Shares in carrying on a business through a permanent establishment in Australia;
- are financial institutions, insurance companies, partnerships, tax exempt organisations, sovereign entities, trusts or superannuation funds; or entities subject to the Investment Manager Regime under Subdivision 842-I of the ITAA 1997 in respect of their shares; or
- are temporary residents or have changed their tax residence while holding Pacific Smiles Shares.

This guide does not consider the individual circumstances of a particular Pacific Smiles Shareholder. This guide does not constitute tax advice. It does not purport to be a complete analysis of all the potential tax consequences of the Offer and is intended as a general guide to the Australian income tax, GST and stamp duty implications. It is recommended that the Pacific Smiles Shareholders should seek advice from an appropriate professional tax adviser with regard to the tax implications of the Offer in light of current tax laws and based on their own individual circumstances.

The comments also do not take into account tax legislation of any country other than Australia. Pacific Smiles Shareholders who are tax residents of a country other than Australia (whether or not they are also Australian tax residents, or are temporary tax residents of Australia) should take into account the tax consequences under the laws of their country of tax residence, as well as under Australian tax law, and any applicable tax treaty between Australia and that country, of acceptance of the Offer.

The following description is based upon the Australian tax law and administrative practice in effect at the date of this Bidder’s Statement, but the descriptions are general in nature and are not intended to be an authoritative or complete statement of the tax laws applicable to the particular circumstances of every Pacific Smiles Shareholder. Other than as expressly discussed or specified, the comments do not take into account or anticipate changes in Australian tax law or future judicial interpretations of law after this time.

10.2 Australian resident shareholders

(a) Shareholders who accept the Offer

If the Offer becomes unconditional, acceptance of the Offer will involve the disposal by Pacific Smiles Shareholders of their Pacific Smiles Shares by way of transfer to Bidco. This will constitute a capital gains tax ("**CGT**") event for Australian tax purposes.

The date of disposal for CGT purposes will be the date the contract to dispose of the Pacific Smiles Shares is formed. As Conditions to the Offer are all conditions subsequent that do not prevent formation of a contract by acceptance of the Offer, the date of disposal will be the date that the Offer is accepted.

(b) Shareholders whose Pacific Smiles Shares are purchased through Compulsory acquisition

If a Pacific Smiles Shareholder does not dispose of their Pacific Smiles Shares under the Offer and their Pacific Smiles Shares are compulsorily acquired in accordance with Part 6A.1 of the Corporations Act, those Pacific Smiles Shareholders will also be treated as having disposed of their Pacific Smiles Shares for CGT purposes. In that case, the date of disposal for CGT purposes will be the date when Bidco becomes the owner of the Pacific Smiles Shares.

(c) CGT

Calculation of capital gain or capital loss (apart from scrip for scrip roll-over relief)

Australian resident Pacific Smiles Shareholders may make a capital gain or capital loss on the disposal of Pacific Smiles Shares. Pacific Smiles Shareholders will make a capital gain to the extent that their capital proceeds from the disposal of the Pacific Smiles Shares exceeds their cost base. Conversely, Pacific Smiles Shareholders will make a capital loss to the extent that the capital proceeds are less than their reduced cost base of those Pacific Smiles Shares.

The cost base of the Pacific Smiles Shares generally includes the cost of acquisition and any incidental costs of acquisition and disposal that are not deductible to the shareholder. The reduced cost base of a Pacific Smiles Share is usually determined in a similar, but not identical, manner.

The capital proceeds will be cash or the market value of the Holdco Shares received per Pacific Smiles Share, calculated at the date of disposal for CGT purposes (discussed above).

Individuals, complying superannuation entities or trustees that have held Pacific Smiles Shares for at least 12 months before the date of disposal may be entitled to a discount from the disposal of Pacific Smiles Shares (50% discount for individuals and trusts (except a trust that is a complying superannuation entity) or 33 1/3% for complying superannuation entities of the amount of the capital gain (after application of capital losses)).

Pacific Smiles Shareholders should seek tax advice on the availability of the CGT discount. Capital gains and losses of a taxpayer in a year of income are aggregated to determine whether there is a net capital gain. Any net capital gain (after discount) is included in assessable income and is subject to income tax at the taxpayer's marginal tax rate. Capital losses may not be deducted against other income for income tax purposes. However, capital losses may be carried

forward to offset against future capital gains (subject to the satisfaction of any applicable loss utilisation tests).

Scrip for scrip roll-over relief

Scrip for scrip roll-over relief may be available if Bidco attains at least an 80% shareholding in Pacific Smiles through the Offer, including any Pacific Smiles Shares already held. If scrip for scrip roll-over relief is available, Australian resident Pacific Smiles Shareholders who have a capital gain on their Pacific Smiles Shares that they have accepted into the Scrip Offer can choose to disregard that capital gain.

In order to choose scrip for scrip roll-over relief, Pacific Smiles Shareholders must make an election prior to the lodgement of their income tax return for the income year in which the CGT event occurs. The way you prepare the tax return is sufficient evidence of the making of the choice. Bidco will not make a choice under section 124-795(4) of the ITAA 1997 to deny scrip for scrip roll-over relief.

Roll-over relief is not available if a capital loss arises on the exchange of the Pacific Smiles Shares.

(d) **Implications of holding Holdco Shares**

As a consequence of accepting the Scrip Offer, a Pacific Smiles Shareholder will cease to be a shareholder of Pacific Smiles and will become a shareholder of Holdco. Dividends received by an Australian resident shareholder of Holdco would generally be included in the assessable income of such a shareholder, and, if franked, may qualify for benefits under the dividend imputation regime.

(e) **CGT on subsequent disposal of Holdco Shares**

A subsequent disposal of Holdco Shares will generally result in Australian CGT implications as described above. The precise consequences will differ depending upon whether or not scrip for scrip roll-over relief was claimed in relation to the disposal of Pacific Smiles Shares pursuant to the Offer.

Where scrip for scrip roll-over relief was not chosen or available

Where scrip for scrip roll-over relief was not chosen or was not available in relation to the disposal of the Pacific Smiles Shares, the cost base of the Holdco Shares would include the market value of the Pacific Smiles Shares exchanged for the Holdco Shares at the acquisition date of the Holdco Shares which are subsequently being disposed.

Other amounts may also be included in the cost base of the Holdco Shares, such as any incidental costs to sell the Holdco Shares.

The acquisition date of the Holdco Shares will be when the contract for disposal of the Pacific Smiles Shares was formed or the date the Holdco Shares are issued if the Pacific Smiles Shares were compulsorily acquired. The CGT discount may be available for certain shareholders if the Holdco Shares are held for more than 12 months.

Where scrip for scrip roll-over chosen

Where a Pacific Smiles Shareholder chooses scrip for scrip roll-over relief, the cost base for the Holdco Shares is determined by attributing, on a reasonable basis, the existing cost base of the Pacific Smiles Shares disposed of to the Holdco Shares acquired.

Other amounts may also be included in the cost base of the Holdco Shares, such as any incidental costs to sell the Holdco Shares.

A shareholder will be taken to have acquired the Holdco Shares at the time the Pacific Smiles Shares were originally acquired for CGT purposes, including for the purposes of determining whether the CGT discount may apply.

10.3 Non-resident shareholders

For a Pacific Smiles Shareholder who:

- is not, and has not been, a resident of Australia for Australian tax purposes;
- holds their Target Shares on capital account; and
- does not hold their Target Shares in carrying on a business through a permanent establishment in Australia,

the disposal of Pacific Smiles Shares will generally only result in Australian CGT implications if those Pacific Smiles Shares constitute an “indirect Australian real property interest” (“**IARPI**”). The Pacific Smiles Shares will constitute an IARPI if:

- that Pacific Smiles Shareholder together with its Associates held 10% or more of the Pacific Smiles Shares at the time of disposal or throughout any 12-month period within two years preceding the disposal; and
- more than 50% of the market value of Pacific Smiles' assets comprise direct or indirect interests in Australian real property assets (which includes Australian mining and exploration leases and licences).

Bidco is obligated to pay an amount equal to 12.5% of the consideration payable to Pacific Smiles Shareholders to the Australian Taxation Office in certain circumstances if those Pacific Smiles Shares constitute an IARPI. For completeness, the Australian Government is proposing to increase this withholding tax from 12.5% to 15% for acquisitions of relevant CGT assets made on or after the later of 1 January 2025 and the commencement of this measure. This proposal is currently under consultation as of the date of this Bidder's Statement.

Pacific Smiles Shareholders that hold a non-portfolio interest in Pacific Smiles or have carried on business in Australia at any time through a permanent establishment should contact their taxation adviser to determine if any capital gain on the disposal of the Pacific Smiles Shares is taxable.

Pacific Smiles Shareholders should also seek advice from their taxation adviser as to the taxation implications of accepting the Offer in their country of residence.

For non-resident Pacific Smiles Shareholders that are required to recognise a capital gain on the disposal of their Pacific Smiles Shares and who are Ineligible Foreign Shareholders receiving net proceeds from the sale of Holdco Shares, scrip for scrip roll-over relief should not be available.

For non-resident Pacific Smiles Shareholders that are required to recognise a capital gain on the disposal of their Pacific Smiles Shares and who are issued Holdco Shares, scrip for scrip roll-over is generally not available unless your Holdco Shares constitute an IARPI.

Non-residents who are issued Holdco Shares should seek their own advice as to the tax treatment of dividends on the Holdco Shares and any subsequent disposal of the Holdco Shares. In general, fully franked dividends will not attract dividend withholding tax; and unfranked dividends will attract withholding tax prima facie at a rate of 30% of the gross amount of the dividend, but subject to rate reduction under tax treaties.

10.4 **Stamp Duty**

Pacific Smiles Shareholders should not be liable to pay any stamp duty on the disposal of their Pacific Smiles Shares under the Offer, nor should they be liable to pay any stamp duty arising on the acquisition of the Pacific Smiles Shares by Bidco. Pacific Smiles Shareholders should seek their own advice as to whether stamp duty arises on their acquisition of Holdco Shares.

10.5 **GST**

Pacific Smiles Shareholders should not be liable to pay any GST in respect of a disposal of those Pacific Smiles Shares or acquisition of Holdco Shares.

The disposal and acquisition of shares are 'financial supplies' for GST purposes. If Pacific Smiles Shareholders incur any costs which include GST (such as adviser fees) relating to their participation in the Offer, they may only be entitled to input tax credits for such costs in certain circumstances and should seek specific advice.

11 Other material information

11.1 Relevant Interests in Pacific Smiles Shares and voting power

As at the date of this Bidder's Statement, Beam Investments, an Associate of Bidco, is the legal and beneficial owner of 31,750,000 Pacific Smiles Shares representing 19.90% of the issued share capital of Pacific Smiles. These Pacific Smiles Shares were acquired from Jarden Scientific pursuant to the exercise by Beam Investments of its right to physically settle a total return swap written by Jarden Scientific and which Jarden Scientific had hedged via ownership of Pacific Smiles Shares. Jarden Scientific acquired those Pacific Smiles Shares through on-market acquisitions during the period of December 2023 to January 2024. The maximum price paid for any of those Pacific Smiles Shares was \$1.40.

11.2 Date for determining holders of Shares

For the purposes of section 633 of the Corporations Act, the date for determining the people to whom information is to be sent under items 6 and 12 of subsection 633(1) is the Register Date.

11.3 Other Pacific Smiles Securities and the No Prescribed Occurrence Condition

As noted in Section 6.2, Pacific Smiles currently has Pacific Smiles Performance Rights on issue. Under the terms of the Offer, Bidco is unable to rely on the No Prescribed Occurrence Condition in respect of any issuances of any Pacific Smiles Shares in connection with the exercise, vesting or conversion of Pacific Smile Performance Rights that are on issue on the Register Date.

11.4 Treatment of Acceptances for Scrip Consideration

An Eligible Pacific Smiles Shareholder that elects to receive Scrip Consideration is required to provide documentation for AML Verification Requirements and to return an executed Scrip Election Deed Poll. Eligible Pacific Smiles Shareholders that accept the Offer and elect to receive Scrip Consideration will receive further instructions relating to the AML Verification Requirements and the Scrip Election Deed Poll. The form of the Scrip Election Deed Poll is attached to the Holdco Shareholders' Deed.

Notwithstanding anything to the contrary in this Bidder's Statement, Bidco confirms and undertakes that it will not void an Acceptance pursuant to the terms of Section 12.11(b) if an Eligible Pacific Smiles Shareholder does not meet the AML Verification Requirements or return the executed Scrip Election Deed Poll.

11.45 Compulsory acquisition

If Bidco becomes entitled to compulsorily acquire outstanding Pacific Smiles Shares under the provisions of either Part 6A.1 or Part 6A.2 of the Corporations Act, Bidco presently intends to proceed with the compulsory acquisition of those Pacific Smiles Shares.

Bidco may proceed with the compulsory acquisition in one of two ways:

(a) **Compulsory acquisition under Part 6A.1 of the Corporations Act**

Part 6A.1 of the Corporations Act provides that if during or at the end of the Offer Period, Bidco, together with its Associates, have a Relevant Interest in at least 90% (by number) of Pacific Smiles Shares, and Bidco has acquired at least 75% (by number) of Pacific Smiles Shares that Bidco has offered to acquire under the bid (whether the acquisitions happened under the bid or otherwise), Bidco may compulsorily acquire any remaining Pacific Smiles Shares not accepted into the Offer.

Beam Investments, an Associate of Bidco, currently owns 19.9% of the issued capital of Pacific Smiles.

If these two conditions to compulsory acquisition are satisfied, Bidco intends to proceed with compulsory acquisition of Pacific Smiles shares as soon as practicable, whether or not that is during the Offer Period. That process requires, amongst other things, that Bidco give a compulsory acquisition notice to remaining Pacific Smiles Shareholders in accordance with the requirements of the Corporations Act informing those Pacific Smiles Shareholders that Bidco is entitled to acquire their Pacific Smiles Shares and of their rights under Part 6A.1 of the Corporations Act.

Because alternative forms of consideration (being the Scrip Offer) are being offered under this Offer, this notice must allow the remaining Pacific Smiles Shareholders to elect to receive either All Cash Consideration, All Scrip Consideration or Mixed Consideration, and specify which form of consideration will apply in the event that the Pacific Smiles Shareholder does not make a relevant election. Pacific Smiles Shareholders will have one month from the date the notice is given to make their election, or, should they request details relating to the other minority shareholders under section 661D of the Corporations Act, they must make their election within 14 days of receiving that statement.

When the compulsory acquisition notice is given to Pacific Smiles Shareholders and lodged with ASIC, Bidco may proceed with compulsory acquisition of Pacific Smiles Shares before the end of 14 days after the end of one month after the notice is lodged with ASIC (or, if a request has been made by one or more Pacific Smiles Shareholders for details of other minority shareholders under section 661D, 14 days after the last statement was given, or, if a shareholder has made an application to the Court to stop the compulsory acquisition, 14 days after final determination of the application that allows the compulsory acquisition to proceed).

Compulsory acquisition under this regime would result in remaining Pacific Smiles Shareholders having to claim the consideration for their Pacific Smiles Shares. The consideration received will be the same as the Offer Consideration that would have been paid. However, payment of that consideration would likely occur later than if the Offer had been accepted by a Pacific Smiles Shareholder.

(b) **Compulsory acquisition under Part 6A.2 of the Corporations Act**

Part 6A.2 of the Corporations Act provides that if a person (together with their related body corporates) is a "90% holder" in relation to a class of securities of a company they may compulsorily acquire all the securities in that class if either the holders of securities in that class who object to the acquisition hold less than 10% by value of the remaining securities at the end of a specified notice period or the acquisition is approved by the Court.

If Bidco becomes entitled to exercise general compulsory acquisition rights pursuant to Part 6A.2 of the Corporations Act at or before the close of the Offer Period, it currently intends to exercise those rights if it could not proceed with compulsory acquisition under Part 6A.1 of the Corporations Act as described above and may choose to exercise those rights during the Offer Period prior to it becoming entitled to proceed with compulsory acquisition under Part 6A.1 of the Corporations Act. Bidco will be entitled to give notices to compulsorily acquire Pacific Smiles Shares under Part 6A.2 within 6 months of having become a 90% holder.

The procedure for compulsory acquisition under these alternative provisions differ from the procedures referred to above in relation to Part 6A.1 of the Corporations Act.

Under these provisions, Bidco may only acquire securities for a cash sum. Bidco presently intends to offer the amount equivalent to the Cash Offer as the applicable cash sum if it exercises the compulsory acquisition right under Part 6A.2 of the Corporations Act.

11.56 ASIC Market Integrity Rule 5.13.1 Disclosure

In accordance with rule 5.13.1 of the ASIC Market Integrity Rules, Bidco reserves, and may at any time [after the Offer becomes or is declared Unconditional](#), exercise, the right to acquire Pacific Smiles Shares on-market at or below the Offer Price during the bid period (as defined in the ASIC Market Integrity Rules). Bidco has appointed Jarden Australia Pty Ltd (ABN 33 608 611 687) (AFSL 485351) as broker to acquire Pacific Smiles Shares on market during normal trading hours on the ASX during the "bid period" (as defined in the ASIC Market Integrity Rules) at prices equal to, below, or higher than, the Offer Price ("**On Market Purchases**").

Pursuant to section 651A of the Corporations Act, if the price per share paid to acquire shares in an On Market Purchase is higher than the Cash Offer:

- the consideration payable per Pacific Smiles Share under the Cash Offer will be automatically increased to that higher price (and Pacific Smiles Shareholders who have previously been paid cash for their Pacific Smiles Shares shall be entitled to receive the increase in consideration immediately); and
- any Pacific Smiles Shareholders who, at any time during the Offer Period, have accepted the Scrip Offer will be entitled to elect to amend their Acceptance to receive a cash sum equal to the highest On Market Purchase price instead of receiving Holdco Shares.

If the price per share paid to acquire shares in an On Market Purchase is higher than the Cash Offer, Bidco will continue to trade at volume at or above that higher price until notification of the increased cash consideration payable per Pacific Smiles Share under the Offer is disclosed by Bidco to the ASX (noting that at the time Bidco executes at a higher price than the Cash Offer, Bidco's order may execute with any existing offers in the market at a price between the Cash Offer and that higher price). Any On Market Purchases will be disclosed to the ASX in substantial shareholder notices which Bidco is required to lodge under the Corporations Act.

11.67 Institutional Acceptance Facility

Bidco has established an Institutional Acceptance Facility open to Pacific Smiles Shareholders that hold or beneficially own at least 265,000 Pacific Smiles Shares (approximately \$500,000 worth based on the value of the Cash Offer) in order to facilitate

receipt of acceptances of the Offer. Pacific Smiles Shareholders who are not Eligible Institutional Shareholders cannot participate in the Institutional Acceptance Facility.

To ensure that Bidco is able to fulfil the Conditions (including the 90% Minimum Acceptance Condition), and put itself in a position to declare the Offer unconditional and therefore pay the Offer Consideration to Pacific Smiles Shareholders, Bidco encourages you to accept the Offer or, if you are an Eligible Institutional Shareholder, provide your acceptance instructions into the Institutional Acceptance Facility as soon as possible. Before making a decision whether or not to participate in the Institutional Acceptance Facility, Eligible Institutional Shareholders are encouraged to consult with their financial or other professional adviser.

The Institutional Acceptance Facility has been established to enable Eligible Institutional Shareholders to indicate their intentions to accept the Offer, as Bidco recognises that some of these shareholders may be unwilling or unable to accept the Offer, for example, by reason of their investment mandates, until the Offer becomes or is declared unconditional.

The Institutional Acceptance Facility is subject to the following IAF Triggering Conditions:

- (a) that Bidco has declared the Offer unconditional or otherwise stated that it will declare the Offer unconditional (subject to the processing of Acceptance Instructions); and
- (b) that the number of Pacific Smiles Shares that Bidco and its Associates have Relevant Interests in together with the securities that are subject to Acceptance Instructions under the Institutional Acceptance Facility has exceeded 80% of the number of Pacific Smiles Shares on issue.

The IAF Triggering Conditions cannot be waived.

For further information on the Institutional Acceptance Facility please see Section 12.67.

11.78 Regulatory and other approvals

The Offer is not subject to any regulatory or other Governmental approval.

11.89 Acceptance results in power of attorney being granted to Bidco

Section 12.10(d) provides that your Acceptance results in the appointment of Bidco as your attorney from the later of the date that all Conditions are satisfied and/or waived or the date of your Acceptance. Bidco would then have the power to attend and vote at any meeting of Pacific Smiles Shareholders (including any court convened meeting of Pacific Smiles).

It follows that Bidco could vote Your Pacific Smiles Shares against a Competing Proposal and defeat the Competing Proposal once Offer has become unconditional.

11.910 Modifications to and exemptions from the Corporations Act

ASIC has published various instruments providing for modifications and exemptions that generally apply to all persons including Bidco, in relation to the operation of Chapter 6 of the Corporations Act.

Amongst others, Bidco has relied on a modification to section 636(3) of the Corporations Act set out in paragraph 6 of ASIC Corporations (Takeover Bids) Instrument 2023/683 ("**ASIC Instrument 2023/683**") to include references to certain statements which are made or based on statements made by the independent expert in the *'Pacific Smiles Group Limited – Independent expert's report and Financial Services Guide'* dated 21

June 2024 and published in the document entitled '*Scheme Booklet*' by Pacific Smiles on 26 June 2024, which was lodged with ASIC and ASX. Pursuant to ASIC Instrument 2023/683, the consent of the relevant person is not required for the inclusion of such statements in this Bidder's Statement. As required by ASIC Instrument 2023/683, Bidco will make available a copy of this document (or of relevant extracts from these documents), free of charge, to you and other Pacific Smiles Shareholders who request it during the bid period within 2 Business Days of the request. To obtain a copy of these documents (or the relevant extracts), you may telephone the Bidco Offer Information Line on 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made outside Australia).

11.101 Social security and superannuation implications of the Offer

Acceptance may have implications under your superannuation or pension arrangements or on your social security entitlements. If in any doubt, Pacific Smiles Shareholders should seek specialist advice before accepting the Offer.

11.142 Withholding of Offer Consideration

Bidco is not currently aware of any amounts that are or would be treated as withholding amounts under Section 12.15(e). However, it is possible that Bidco may become aware of an obligation in this regard after the date of this Bidder's Statement.

For example, under section 255 of the *Income Tax Assessment Act 1936 (Cth)*, the ATO may notify Bidco that all or part of the Offer Consideration otherwise payable under the Offer to Pacific Smiles Shareholders who are non-residents of Australia is to be retained by Bidco, or paid to the ATO, instead of being paid to the relevant Pacific Smiles Shareholders. Similarly, under section 260-5 of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*, the ATO may require Bidco to pay to the ATO all or part of the Offer Consideration otherwise payable under the Offer to Pacific Smiles Shareholders who owe tax-related debts to the Australian Government. Furthermore, under Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953 (Cth)*, Bidco may be required to pay to the ATO an amount in respect of the disposal of Your Pacific Smiles Shares on account of foreign resident capital gains withholding tax.

11.123 Consents to be named

This Bidder's Statement includes or is accompanied by statements which are made in or based on statements made in documents lodged with ASIC or on the company announcement platform of ASX.

Each of Jarden, Clifford Chance, Perpetual, Automic Group, Ares Management Asia (Singapore) Pte. Ltd., and QIC Limited in its capacity as trustee for QIC Private Debt Fund - Government Clients and the Co-Investors have given and have not, before lodgement of this Bidder's Statement with ASIC, withdrawn their consent to the inclusion of:

- (a) references to its name;
- (b) each statement it has made; and
- (c) each statement which is based on a statement it has made,

in the Bidder's Statement in the form and context in which those statements appear and to the maximum extent permitted by law expressly disclaims and takes no responsibility for any part of this Bidder's Statement other than any statement which has been included in this Bidder's Statement with the consent of that party.

Each person who is named in this Bidder's Statement as acting in a professional capacity for Bidco in relation to the Offer (including, without limitation, Jarden, Clifford Chance, Perpetual and Automic Group):

- (a) does not make, or purport to make, any statement in this Bidder's Statement or any statement on which a statement in this Bidder's Statement is based; and
- (b) to the maximum extent permitted by law, expressly disclaims and takes no responsibility for any part of this Bidder's Statement.

11.134 No other material information

Except as set out in this Bidder's Statement, there is no information material to the making of a decision by an offeree whether or not to accept the Offer, being information that is known to Bidco and has not previously been disclosed to the holders of Pacific Smiles Shares.

12 The terms and conditions of the Offer

12.1 Offer for Your Pacific Smiles Shares

- (a) Bidco offers to acquire all of Your Pacific Smiles Shares together on the terms and conditions set out in this Section 12.
- (b) If Bidco acquires Your Pacific Smiles Shares under this Offer, Bidco is also entitled to all Rights in respect of those Pacific Smiles Shares (see Section 12.10(j) and Section 12.10(k)). For the avoidance of doubt, Rights do not include any franking credits attached to any dividend.
- (c) This Offer is being made to each person registered as the holder of Pacific Smiles Shares in the Register on the Register Date. It also extends to:
 - (1) any person who becomes registered, or entitled to be registered, as the holder of Your Pacific Smiles Shares during the Offer Period; and
 - (2) holders of Pacific Smiles Performance Rights in existence at the Register Date that become Pacific Smiles Shares during the period from the Register Date to the end of the Offer Period due to the conversion of, or exercise of rights conferred by, such Pacific Smiles Performance Rights.
- (d) If, at the time the Offer is made to you, or at any time during the Offer Period, another person is, or is entitled to be, registered as the holder of some or all of Your Pacific Smiles Shares, then:
 - (1) a corresponding offer on the same terms and conditions as this Offer will be deemed to have been made to that other person in respect of those Pacific Smiles Shares;
 - (2) a corresponding offer on the same terms and conditions as this Offer will be deemed to have been made to you in respect of any other Pacific Smiles Shares you hold to which the Offer relates; and
 - (3) this Offer will be deemed to have been withdrawn immediately at that time.
- (e) If at any time during the Offer Period you are registered, or entitled to be registered, as the holder of one or more parcels of Pacific Smiles Shares as trustee or nominee for, or otherwise on account of, another person, you may accept as if a separate and distinct offer on the same terms and conditions as if this Offer had been made in relation to each of those distinct parcels and any distinct parcel you hold in your own right. To validly accept the offer for each parcel, you must comply with the procedure in section 653B(3) of the Corporations Act. If, for the purposes of complying with that procedure, you require additional copies of this Bidder's Statement and/or the Acceptance Form, please call the Offer Information Line on 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia), to request those additional copies.
- (f) If Your Pacific Smiles Shares are registered in the name of a Broker, investment dealer, bank, trust company or other nominee, you should contact that nominee for assistance in accepting the Offer.
- (g) Offers on terms and conditions identical to those contained in this Offer have been dispatched or will be dispatched to all holders of Pacific Smiles Shares registered in the Register on the Register Date.

- (h) The Offer is dated [insert date] 1 October 2024.

12.2 Consideration for the Offer

- (a) Subject to the terms of this Offer, the consideration offered by Bidco for Your Pacific Smiles Shares to which the Offer relates is, at your election:
- (1) \$1.90 per Pacific Smiles Share (the "**All Cash Consideration**");
 - (2) 1 Holdco Share per Pacific Smiles Share (the "**All Scrip Consideration**"); or
 - (3) 47.5 cents cash and 0.75 Holdco Shares per Pacific Smiles Share (the "**Mixed Consideration**").
- (b) Subject to the terms of the Offer, you may choose to receive:
- (1) the All Cash Consideration for all of Your Pacific Smiles Shares;
 - (2) the All Scrip Consideration for all of Your Pacific Smiles Shares; or
 - (3) the Mixed Consideration for all Your Pacific Smiles Shares.
- You must specify your choice when accepting the Offer online, completing the Acceptance Form or instructing your Controlling Participant. If you accept the Offer but do not specify which form of Offer Consideration you wish to receive, or your Election is indistinct, you will be treated as choosing the All Cash Consideration for all of Your Pacific Smiles Shares.
- (c) If you are an Ineligible Foreign Shareholder and you would otherwise be issued Holdco Shares under your Election, then despite any other provision of this Offer, you are offered and will be paid for your Holdco Shares a cash amount calculated under Section 12.6.
- (d) If you would otherwise become entitled to a fraction of a Holdco Share or of a cent as a result of your acceptance of the Offer and your Election, any such fractional entitlements will be rounded to the nearest whole number of Holdco Shares or cents, with an entitlement of 0.5 rounded down.

12.3 Conditions

The Offer is subject to the following Conditions:

- (a) **Minimum Acceptance Condition**
- At the end of the Offer Period, Bidco and its Associates have Relevant Interests in at least of 90% (by number) of Pacific Smiles Shares on issue at that time.
- (b) **Board Recommendation Condition**
- Before the end of the Offer Period, a majority of the members of the Pacific Smiles Board have publicly recommended that Pacific Smiles Shareholders accept the Offer (in absence of a superior proposal and subject to any other customary qualification).
- (c) **No Prescribed Occurrences Condition**
- During the Offer Period, none of the following events occur:
- (1) Pacific Smiles converts all or any of its shares into a larger or smaller number of shares under section 254H of the Corporations Act;

- (2) Pacific Smiles or a subsidiary of Pacific Smiles resolves to reduce its share capital in any way;
- (3) Pacific Smiles or a subsidiary of Pacific Smiles enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (4) Pacific Smiles or a subsidiary of Pacific Smiles issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option, other than any issue of Pacific Smiles Shares during the period from the Register Date to the end of the Offer Period in accordance with the terms of, or otherwise in connection with, Pacific Smile Performance Rights that are on issue on the Register Date;
- (5) Pacific Smiles or a subsidiary of Pacific Smiles issues, or agrees to issue, convertible notes;
- (6) Pacific Smiles or a subsidiary of Pacific Smiles disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (7) Pacific Smiles or a subsidiary of Pacific Smiles grants, or agrees to grant, a security interest in the whole, or a substantial part, of its business or property;
- (8) Pacific Smiles or a subsidiary of Pacific Smiles resolves to be wound up;
- (9) a liquidator or provisional liquidator of Pacific Smiles or a subsidiary of Pacific Smiles is appointed;
- (10) a court makes an order for the winding up of Pacific Smiles or a subsidiary of Pacific Smiles;
- (11) an administrator of Pacific Smiles or a subsidiary of Pacific Smiles is appointed under section 436A, 436B or 436C of the Corporations Act;
- (12) Pacific Smiles or a subsidiary of Pacific Smiles executes a deed of company arrangement;
- (13) a restructuring practitioner for Pacific Smiles, or for a subsidiary of Pacific Smiles, is appointed under section 453B of the Corporations Act;
- (14) Pacific Smiles or a subsidiary of Pacific Smiles makes a restructuring plan under Division 3 of Part 5.3B of the Corporations Act; or
- (15) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of Pacific Smiles or a subsidiary of Pacific Smiles.

provided that a Prescribed Occurrence will not include any matter:

- (16) required to be done or procured by Pacific Smiles under this Offer or is otherwise contemplated by this Offer; or
- (17) approved in writing by Bidco.

12.4 Offer Period

- (a) Unless extended (or withdrawn under Section 12.18(b)) in accordance with the Corporations Act, this Offer is open for acceptance during the period that begins

on the date of this Offer and ends at 7:00pm (Sydney time) on **insert date** 1 November 2024.

- (b) Bidco reserves the right, exercisable in its discretion, to extend the Offer Period in accordance with the Corporations Act.

12.5 How to accept this Offer

(a) **Accept for all Your Pacific Smiles Shares**

You may only accept this Offer during the Offer Period for all, and not some only, of Your Pacific Smiles Shares. You will be taken to have accepted the Offer for all Your Pacific Smiles Shares plus any additional Pacific Smiles Shares held by you (on Bidco's copy of the Register) on the date your Acceptance is processed (despite any difference between that number and the number of Pacific Smiles Shares specified on your Acceptance Form when you accept this Offer).

(b) **Issuer Sponsored Holdings and other holdings**

If Your Pacific Smiles Shares are held on the Pacific Smiles issuer sponsored subregister (in which case Your Securityholder Reference Number ("**SRN**") will commence with 'I') to accept this Offer you must accept the Offer either online or by completing and returning the enclosed Acceptance Form:

- (1) **Online:** to accept the Offer online, you must follow the instructions below:
- (A) Go to <https://investor.automic.com.au/#/signup>.
 - (B) Click "Register" then select "Pacific Smiles Takeover Offer" from the dropdown list in the Issuer Name Field.
 - (C) Enter your Securityholder Reference Number (SRN).
 - (D) Enter your postcode OR country of residence (only if outside Australia).
 - (E) Tick the box "I'm not a robot" and then select "Next".
 - (F) Complete the prompts to set up your username and password details.
 - (G) Once you are logged in, select "Offers" from the left-hand vertical menu and follow the prompts.; or
- (2) **Acceptance Form:** to accept the Offer using a physical Acceptance Form, complete the enclosed Acceptance Form in accordance with the instructions on it and return it to the address on the Acceptance Form so that it is received before 7:00pm (Sydney time) on the last day of the Offer Period.

(c) **CHESS Holdings**

If Your Pacific Smiles Shares are in a CHESS Holding (in which case your Holder Identification Number ("**HIN**") will commence with 'X'), to accept this Offer, you must either accept the Offer online, or by contacting your Controlling Participant (usually your Broker), or by completing and returning the enclosed Acceptance Form:

Online: To accept the Offer online, you must follow the instructions below:

- (A) Go to <https://investor.automic.com.au/#/signup>.
 - (B) Click "Register" then select "Pacific Smiles Takeover Offer" from the dropdown list in the Issuer Name Field.
 - (C) Enter your Holder Identification Number (HIN).
 - (D) Enter your postcode OR country of residence (only if outside Australia).
 - (E) Tick the box "I'm not a robot" and then select "Next".
 - (F) Complete the prompts to set up your username and password details.
 - (G) Once you are logged in, select "Offers" from the left-hand vertical menu and follow the prompts.; or
- (2) **Contact your Controlling Participant:** contact your Controlling Participant (usually your Broker) and instruct them to accept the Offer on your behalf so that it is processed before 7:00pm (Sydney time) on the last day of the Offer Period. This is the quickest and most effective way for CHESS holders to accept the Offer; or
- (3) **Acceptance Form:** to accept the Offer using a physical Acceptance Form, complete the enclosed Acceptance Form in accordance with the instructions on it and return it to the address on the Acceptance Form. For the return of a CHESS Acceptance Form to be an effective acceptance of the Offer, it must be received in time for the Registry to give instructions to your Controlling Participant and for your Controlling Participant to carry out those instructions before the end of the Offer Period.

You must comply with any other applicable ASX Settlement Operating Rules and the terms of the sponsorship agreement between you and the Controlling Participant.

If you are a Controlling Participant, you must yourself initiate acceptance under rule 14.14 of the ASX Settlement Operating Rules so as to be effective before the end of the Offer Period.

(d) **Separate holdings**

If some of Your Pacific Smiles Shares are in an Issuer Sponsored Holding and some of Your Pacific Smiles Shares are in a CHESS Holding your acceptance of this Offer will require separate action in relation to the separate portions of Your Pacific Smiles Shares.

(e) **Risk in Acceptance Form**

The transmission of an Acceptance Form and any documents that accompany that form to Bidco is at your risk. Neither Bidco, nor anyone on its behalf, will acknowledge receipt of those documents to you.

12.6 Ineligible Foreign Shareholders

If you are an Ineligible Foreign Shareholder and you accept this Offer and choose the All Scrip Consideration or Mixed Consideration you will not be entitled to receive Holdco Shares as consideration for Your Pacific Smiles Shares. Instead, Bidco will:

- (a) arrange for the issue to a nominee approved by ASIC ("**Sale Agent**") of the number of Holdco Shares to which you and all other Ineligible Foreign Shareholders would have been entitled but for this Section 12.6;
- (b) procure that any one or more of the Genesis Shareholders acquire the Holdco Shares that have been issued to the Sale Agent under Section 12.6(a) from the Sale Agent in accordance with the terms set out in clause 17 of the Holdco Shareholders' Deed; and
- (c) cause the amount ascertained in accordance with the formula below to be paid to you:

$$\text{Sale Agent Net Sale Proceeds} = \frac{\text{Your Holdco Shares}}{\text{Sale Agent Shares}}$$

where:

Sale Agent Net Sale Proceeds is the amount remaining after deducting the expenses of sale and of appointing the Sale Agent from the total proceeds of sale of the Holdco Shares issued to the Sale Agent under this Section 12.6;

Sale Agent Shares is the total number of Holdco Shares issued to the Sale Agent under this Section 12.6; and

Your Holdco Shares is the number of Holdco Shares which would, but for this Section 12.6, have been issued to you.

You will be paid by cheque in Australian currency. The cheque will be sent at your risk by pre-paid airmail to the address shown in the Acceptance Form.

12.7 Institutional Acceptance Facility

- (a) **General:** Bidco has established an institutional acceptance facility open to Pacific Smiles Shareholders that hold or beneficially own at least 265,000 Pacific Smiles Shares ("**Eligible Institutional Shareholders**") (being a number of Pacific Smiles Shares having an approximate value of \$500,000 worth on the value of the Cash Offer) in order to facilitate receipt of acceptances of the Offer ("**Institutional Acceptance Facility**"). Pacific Smiles Shareholders who are not Eligible Institutional Shareholders cannot participate in the Institutional Acceptance Facility.
- (b) **Operator:** The operator of the Institutional Acceptance Facility is Automic Markets Pty Ltd ABN 54 137 305 527 ("**Institutional Acceptance Facility Operator**").
- (c) **Operation of the Institutional Acceptance Facility:** The Institutional Acceptance Facility will operate as follows:
 - (1) Eligible Institutional Shareholders may demonstrate their intention to accept the Offer by lodging with the Institutional Acceptance Facility Operator acceptance instructions in the form of:
 - (A) where the Eligible Institutional Shareholder is recorded as the holder of Pacific Smiles Shares, a duly completed and executed Acceptance Form; and/or
 - (B) where the Eligible Institutional Shareholder is a beneficial holder whose securities are held by a custodian on the person's behalf, directions to its custodian (the form of which will be made available to Eligible Institutional Shareholders

- on request by the Institutional Acceptance Facility Operator ("**Nominee Directions**") to accept the Offer
- (together, referred to as "**Acceptance Instructions**"),
- thereby demonstrating their intention to accept the Offer.
- (2) The Institutional Acceptance Facility is subject to the following triggering conditions, for the purposes of subsection 609A(3) of the Corporations Act ("**IAF Triggering Conditions**"):
- (A) Bidco has (i) declared the Offer free of all Conditions; (ii) stated that it will declare the Offer free from all Conditions no later than the time that all Acceptance Instructions lodged with the Institutional Acceptance Facility Operator are processed or (iii) stated that it will declare the Offer free from all Conditions that have not been fulfilled or previously freed once all Acceptance Instructions lodged with the Institutional Acceptance Facility Operator are processed; and
- (B) the number of Pacific Smiles Shares that Bidco and its Associates have Relevant Interests in, together with the securities that are the subject of Acceptance Instructions, has exceeded 80% of the number of Pacific Smiles Shares on issue.
- (3) The Institutional Acceptance Facility Operator will hold the Acceptance Instructions as acceptance facility collection agent only subject to a bare trust and subject to satisfaction of the IAF Triggering Conditions. The IAF Triggering Conditions cannot be waived.
- (4) Under subsection 609A(1) of the Corporations Act and under the terms of appointment of the Institutional Acceptance Facility Operator contained in the Acceptance Instructions, Bidco will not acquire a Relevant Interest in any Pacific Smiles Shares through the receipt by the Institutional Acceptance Facility Operator of an Acceptance Instruction, because the Institutional Acceptance Facility has been established on the basis that it fulfils the requirements of subsection 609A(2) of the Corporations Act.
- (5) The Institutional Acceptance Facility Operator must deliver:
- (A) the Acceptance Forms in accordance with the instructions on the relevant Acceptance Forms; and
- (B) the Nominee Directions to the relevant custodians, immediately after the Institutional Acceptance Facility Operator receives written notice from Bidco ("**Confirmation Notice**") that the IAF Triggering Conditions are satisfied.
- (6) Bidco reserves the right to free the Offer from all Conditions at any time before the end of the Offer Period (subject to the Corporations Act), irrespective of the number of Acceptances held by Bidco or the number of Acceptance Instructions held by the Institutional Acceptance Facility Operator.
- (7) Eligible Institutional Shareholders are able to withdraw their Acceptance Instructions at any time prior to the Institutional Acceptance Facility Operator receiving the Confirmation Notice from Bidco. Until the Institutional Acceptance Facility Operator receives the

Confirmation Notice from Bidco, Eligible Institutional Shareholders will retain all Rights in relation to their Pacific Smiles Shares.

- (8) A copy of the appointment of the Institutional Acceptance Facility Operator (including the terms of the appointment and the form of the Nominee Direction) will be provided to Eligible Institutional Shareholders on request and may be requested from the Institutional Acceptance Facility Operator by email to IAF@automicgroup.com.au or by leaving a message with the Offer Information Line on 1300 101 297 (for calls made within Australia) and +61 2 9068 1929 (for calls made outside Australia) from Monday to Friday between 9:03am and 7:00pm (Sydney time).

(d) **Disclosure of Acceptance Instructions**

The Institutional Acceptance Facility Operator will inform Bidco of the number of Pacific Smiles Shares in respect of which Acceptance Instructions have been received on a regular basis during the Offer Period. Following receipt of this information from the Institutional Acceptance Facility Operator, pursuant to section 609A of the Corporations Act, for every movement of at least 1% in the aggregate level of Bidco's voting power during the Offer Period, Bidco will announce to ASX by 9.30am on the next trading day after the movement a notice setting out the aggregate number and percentage of Pacific Smiles Shares:

- (1) in which Bidco and its Associates have a Relevant Interest; and
- (2) which are the subject of Acceptance Instructions,

and a breakdown between the two categories above and any other information required by subsection 609A(4) of the Corporations Act.

12.8 Effect of Acceptance Form

By signing and returning the Acceptance Form or otherwise accepting this Offer, you irrevocably authorise Bidco and each of its officers and agents to:

- (a) alter the Acceptance Form on your behalf by inserting correct details of Your Pacific Smiles Shares and filling in any blanks remaining on the form;
- (b) correct any errors in, or omissions from, the Acceptance Form necessary to:
 - (1) make it an effective acceptance of this Offer for Your Pacific Smiles Shares; and
 - (2) enable the transfer of Your Pacific Smiles Shares to Bidco; and
- (c) if any of Your Pacific Smiles Shares are in a CHESS Holding:
 - (1) instruct your Controlling Participant to effect your acceptance of this Offer for Your Pacific Smiles Shares under rule 14.14 of the ASX Settlement Operating Rules; and
 - (2) give to your Controlling Participant on your behalf any other instructions in relation to those Pacific Smiles Shares which are contemplated by the sponsorship agreement between you and your Controlling Participant or otherwise, as determined by Bidco acting in its own interest as beneficial owner of those Pacific Smiles Shares.

12.9 Validation of Acceptance Form

Subject to this Section 12.9, Bidco may (except in relation to Pacific Smiles Shares in a CHESS Holding) treat the receipt by it of a signed Acceptance Form before the end of the Offer Period as valid even though it does not receive the other documents required by the instructions on the Acceptance Form or there is not compliance with any one or more of the other requirements for acceptance.

If Bidco does treat such an Acceptance Form as valid, subject to Section 12.15, Bidco will not be obliged to give the Offer Consideration to you until Bidco receives all those documents and all of the requirements for Acceptance referred to in Section 12.5 and in the Acceptance Form have been met (other than the requirement of your Acceptance Form to be received before the end of the Offer Period).

12.10 Your agreement

By carrying out the instructions in Section 12.5 on how to accept this Offer:

- (a) you irrevocably accept this Offer in respect of all of Your Pacific Smiles Shares, including all Pacific Smiles Shares held by you at the date your Acceptance is processed, despite any difference between that number and the number of Pacific Smiles Shares specified in the Acceptance Form;
- (b) you represent and warrant to Bidco as a fundamental condition going to the root of the contract resulting from your Acceptance that, at the time of your Acceptance and at the time of transfer of Your Pacific Smiles Shares to Bidco:
 - (1) all Your Pacific Smiles Shares are and will upon registration be fully paid up;
 - (2) Bidco will acquire good title to and beneficial ownership of Your Pacific Smiles Shares, free from Encumbrances or restrictions on transfer of any kind; and
 - (3) you have full power and capacity to sell and transfer Your Pacific Smiles Shares (including any associated Rights) and that you have paid all amounts which at the time of Acceptance have fallen due for payment in respect of Your Pacific Smiles Shares (including any Rights);
- (c) you transfer, or consent to the transfer in accordance with the ASX Settlement Operating Rules, of Your Pacific Smiles Shares to Bidco in accordance with this Offer and subject to the terms as set out in the constitution of Pacific Smiles;
- (d) with effect from the later of your Acceptance and the date that all Conditions are satisfied and/or waived, you irrevocably appoint Bidco and each director of, and any nominee of, Bidco jointly and each of them severally as your attorney (with full powers of substitution) to exercise all powers and rights which you could lawfully exercise as the registered holder of Your Pacific Smiles Shares or in exercise of any right derived from the holding of Your Pacific Smiles Shares, including, without limiting the generality of the foregoing:
 - (1) requesting Pacific Smiles to register Your Pacific Smiles Shares in the name of Bidco or its nominee;
 - (2) attending and voting in respect of Your Pacific Smiles Shares at all general and class meetings of Pacific Smiles, demanding a poll for any vote taken at or proposing or seconding any resolutions to be considered at any general or class meeting of Pacific Smiles and

requisitioning or convening any general or class meeting of Pacific Smiles;

- (3) executing all forms, notices, documents (including a document appointing a director of Bidco as a proxy for any of Your Pacific Smiles Shares) and resolutions relating to Your Pacific Smiles Shares;
- (4) perform such actions as may be appropriate in order to vest good title in Your Pacific Smiles Shares in Bidco; and
- (5) doing all things incidental or ancillary to any of the foregoing.

You will have, or will be deemed to have, acknowledged and agreed that in exercising such powers the attorney may act in the interests of Bidco as the intended registered holder of those Pacific Smiles Shares. This appointment will terminate on the registration of Bidco as the holder of Your Pacific Smiles Shares;

- (e) you agree that, in exercising the powers conferred by the power of attorney in Section 12.10(d), Bidco and each of its directors and its nominees are entitled to act in the interests of Bidco;
- (f) you agree not to exercise, or to purport to exercise, (in person, by proxy or otherwise) any of the powers conferred on Bidco and any director or nominee of Bidco by or under Section 12.10(d);
- (g) you authorise Bidco to transmit a message to ASX Settlement in accordance with rule 14.17.1 of the ASX Settlement Operating Rules so as to enter Your Pacific Smiles Shares which are in a CHESS Holding into Bidco's Takeover Transferee Holding or submit a transfer of your Issuer Sponsored Holdings regardless of whether it has provided the Offer Consideration due to you under this Offer;
- (h) you agree to do all such acts, matters and things that Bidco may require to give effect to the matters the subject of this Section 12.10;
- (i) you agree to indemnify Bidco and each of its agents and nominees in respect of any claim or action against it or any loss, damage or liability incurred by it as a result of you not producing your HIN or SRN or in consequence of the transfer of Your Pacific Smiles Shares being registered by Pacific Smiles without production of your HIN or SRN;
- (j) you irrevocably authorise and direct Pacific Smiles to pay to Bidco or to account to Bidco for all Rights in respect of Your Pacific Smiles Shares, subject, however, to any such Rights received by Bidco being accounted for by Bidco to you in the event that this Offer is withdrawn or avoided and provided that the Declared Dividend will in all circumstances be treated in the manner described in this Bidder's Statement;
- (k) except where Bidco has received the value of a Right in respect of Your Pacific Smiles Shares, you irrevocably authorise Bidco to:
 - (1) deduct from any cash amount payable in respect of Your Pacific Smiles Shares, or
 - (2) reduce the issue price of the Holdco Shares to be issued to you in respect of Your Pacific Smiles Shares,

in each case by the value of the Right received by you (or any previous owner of Your Pacific Smiles Shares). Where the Right takes a non-cash form, your Offer Consideration will be reduced by an amount will be the value of the Right as reasonably assessed by Bidco;

- (l) if you have elected to receive All Cash Consideration or Mixed Consideration, Bidco will deduct in the case of:
 - (1) All Cash Consideration, 100% of the value of the Right; and
 - (2) Mixed Consideration, 25% of the value of the Right,
 from the cash component of your Offer Consideration.
- (m) if you have elected to receive All Scrip Consideration, the issue price of each Holdco Share to be issued to you will be reduced by the value of the Right. This means that the proposed issue price of a Holdco Share of \$1.90 will be reduced to \$1.8675 for each Holdco Share as a result of the Declared Dividend;
- (n) you irrevocably authorise Bidco to notify Pacific Smiles on your behalf that your address for the purpose of serving notices upon you in respect of Your Pacific Smiles Shares is the address specified by Bidco;
- (o) you have represented and warranted to Bidco that, if you are the legal owner but not the beneficial owner of Your Pacific Smiles Shares:
 - (1) the beneficial holder has not sent a separate Acceptance in respect of the Pacific Smiles Shares;
 - (2) the number of Pacific Smiles Shares you have specified as being the entire holding of Pacific Smiles Shares you hold on behalf of a particular beneficial holder is in fact the entire holding; and
 - (3) that you are irrevocably and unconditionally entitled to transfer Your Pacific Smiles Shares, and to assign all of the beneficial interest therein, to Bidco; and
- (p) you agree that the undertakings and authorities in this Section 12.10 will remain in force after you receive your Offer Consideration for Your Pacific Smiles Shares and after Bidco becomes registered as the holder of Your Pacific Smiles Shares.

12.11 Further agreement where Scrip Offer is accepted

- (a) By carrying out the instructions in Section 12.5 on how to accept this Offer, if you have made an Election to receive All Scrip Consideration or Mixed Consideration, you also:
 - (1) acknowledge and agree that if Bidco has determined that you are an Ineligible Foreign Shareholder, Section 12.6 applies to you; and
 - (2) agree to provide any identity verification documents or other information required pursuant to Australia's anti-money laundering laws prior to the issue of Holdco Shares to you ("**AML Verification Requirements**"). If you accept the Offer and make an Election to receive All Scrip Consideration or Mixed Consideration you will receive further instructions relating to the AML Verification Requirements;
 - (3) unless Section 12.6 applies to you and subject to Section 12.12:
 - (A) agree to accept the beneficial interest in Holdco Shares to which you become entitled to by accepting this Offer subject to the Holdco Constitution and Holdco Shareholders' Deed and authorise Holdco to place the Nominee's name on its register of members as the holder of legal title to the Holdco Shares that you are beneficially entitled; and

- (B) agree to become a party to and be bound by the Nominee Deed and Holdco Shareholders' Deed, and become bound by the Holdco Constitution;
 - (4) agree to return a duly executed Scrip Election Deed Poll, which will make you a party to the Nominee Deed and Holdco Shareholders' Deed. If you Accept the Offer and make an Election to receive All Scrip Consideration or Mixed Consideration you will receive further instructions relating to the Scrip Election Deed Poll; and
 - (5) without the need for any further act irrevocably appoint Bidco, Holdco and each of their respective directors, officers and secretaries (jointly and severally) as your attorney and agent for the purpose of executing and delivering any agreements, instruments, transfers or other documents or form or doing any other act necessary to give effect to the Scrip Offer.
- (b) If you make an Election to receive All Scrip Consideration or Mixed Consideration and you do not supply documents sufficient for the AML Verification Requirements and/or you fail to return a duly executed Scrip Election Deed Poll within one month after the end of the Offer Period, then Bidco may void your Acceptance in which case your Pacific Smiles Shares will not be acquired as part of the Offer and you will not be entitled to any Offer Consideration. Your Shares may be acquired by Bidco through the compulsory acquisition procedure set out in Chapter 6A of the Corporations Act, should Bidco become entitled to implement that procedure.

12.12 No revocation of Acceptance

If you accept the Offer, you will be unable to revoke your Acceptance and the contract resulting from your Acceptance will be binding on you. You will therefore be unable to withdraw Your Pacific Smiles Shares from the Offer or otherwise dispose of those Pacific Smiles Shares, except as follows:

- (a) if, by the relevant times specified in Section 12.13(e), the Conditions have not all been fulfilled or waived, this Offer will automatically terminate and Your Pacific Smiles Shares will be returned to you; or
- (b) if the Offer Period is extended for more than one month and the obligations of Bidco to pay or provide the Offer Consideration are postponed for more than one month and, at the time, this Offer remains subject to one or more of the Conditions, you may be able to withdraw your Acceptance and Your Pacific Smiles Shares in accordance with section 650E of the Corporations Act. A notice will be sent to you at the time explaining your rights in this regard.

12.13 Conditions

- (a) **The Offer is subject to the Conditions being fulfilled or waived**
This Offer and the contract resulting from the Acceptance of the Offer (and each other Offer and each contract resulting from the Acceptance therefore) are subject to the Conditions being fulfilled or waived by Bidco.
- (b) **The Conditions are for benefit of Bidco**
Each Condition, subject to the Corporations Act, operates only for the benefit of Bidco and any breach or non-fulfilment of a Condition may be relied upon only by Bidco.

(c) **Nature of the Conditions**

Each Condition is a condition subsequent to contract formation and does not prevent a contract to sell Your Pacific Smiles Shares resulting from your acceptance of this Offer but:

- (1) a breach of a Condition entitles Bidco to rescind that contract by notice to you; and
- (2) non-fulfilment of a Condition at the end of the Offer Period will have the consequences set out in this Section 12.13.

(d) **Condition applies to multiple events**

Where an event occurs that would mean at the time the event occurs a Condition to which this Offer or the contract resulting from your Acceptance of this Offer is then subject would not be fulfilled, each of the occurrences outlined in the Condition affected by that event will become two separate Conditions on identical terms except that:

- (1) one of them relates solely to that event; and
- (2) the other specifically excludes that event.

To the extent permitted by law, Bidco may declare the Offer free under this Section 12.13 from either of those separate Conditions without declaring it free from the other and may do so at different times. This section may apply any number of times to any Condition (including a Condition arising from a previous operation of this section).

(e) **Notice declaring Offers free of the Conditions**

Bidco may declare this Offer and any contract resulting from Acceptance of this Offer free from any or all of the Conditions, either generally or by reference to a particular fact, matter, event, occurrence or circumstance (or class thereof), by giving written notice to Pacific Smiles and ASX declaring this Offer to be free from the relevant Condition or Conditions in accordance with section 650F of the Corporations Act. This notice may be given not later than:

- (1) in the case of the Prescribed Occurrence, no later than three Business Days after the end of the Offer Period; and
- (2) in the case of the other Offer Conditions, no less than seven days before the end of the Offer Period.

(f) **Notice of status of the Conditions**

The date for giving the notice on the status of the Conditions as required by section 630(1) of the Corporations Act is ~~insert date~~ 25 October 2024 (subject to extension in accordance with the Corporations Act if the Offer Period is extended).

(g) **Contract void if Conditions not fulfilled or waived**

If at the end of the Offer Period (or in the case of the Prescribed Occurrences Condition at the end of the third Business Day after the end of the Offer Period), the Conditions have not been fulfilled and Bidco has not declared the Offer (or it has not become) free from the Conditions, all contracts from the Acceptance of the Offer will be automatically void.

12.14 Powers of attorney and deceased estates

When accepting this Offer, you should forward for inspection:

- (a) if the Acceptance Form is executed by an attorney, a certified copy of the power of attorney; and
- (b) if the Acceptance Form is executed by the executor of a will or the administrator of the estate of a deceased Pacific Smiles Shareholder, the relevant grant of probate or letters of administration.

12.15 Payment of Offer Consideration

(a) When will Bidco pay you?

Subject to the terms of this Offer and the Corporations Act, if you accept this Offer, Bidco will pay you any applicable amount of the cash component of the Offer Consideration that you have elected to receive for Your Pacific Smiles Shares to which Bidco acquires good title on or before the earlier of:

- (1) one month after this Offer is accepted or, if this Offer is subject to a Condition when you accept this Offer, one month after this Offer has become unconditional; and
- (2) 21 days after the end of the Offer Period.

Under no circumstances will interest be paid on the Offer Consideration, regardless of any delay in making payment or extension of the Offer Period.

(b) When will Holdco issue Holdco Shares to you?

Subject to the terms of this Offer and the Corporations Act, if you accept this Offer, Holdco will issue to the Nominee on your behalf the applicable number of Holdco Shares you have elected to receive for Your Pacific Smiles Shares to which Bidco acquires good title on or before the earlier of:

- (1) one month after this Offer is accepted or, if this Offer is subject to a Condition when you accept this Offer, one month after this Offer has become unconditional; and
- (2) 21 days after the end of the Offer Period.

Subject to the Corporations Act and the constitution of Holdco, Bidco will send you a transaction confirmation statement for any Holdco Shares issued in connection with the Offer at your risk by pre-paid ordinary mail. Any Holdco Shares issued to the nominee on your behalf will also be recorded in Holdco's share register.

(c) Acceptance Form requires additional documents

Where documents are required to be given to Bidco with your Acceptance to enable Bidco to become the holder of Your Pacific Smiles Shares (such as a power of attorney, grant of probate or letters of administration):

- (1) if the documents are given to Bidco with your Acceptance and before the end of the Offer Period, Bidco will pay you the cash component of any Offer Consideration that you are entitled to in accordance with Section 12.15(a) or procure the issue of Holdco Shares to you in accordance with Section 12.15(b);
- (2) if the documents are given to Bidco after your Acceptance and before the end of the period referred to in Section 12.15(a) or Section 12.15(b) (as applicable), Bidco will pay you the cash component of any Offer Consideration that you are entitled to in accordance with Section 12.15(a) or procure the issue of Holdco Shares to you in accordance with Section 12.15(b) (as applicable); or

- (3) if the documents are given to Bidco after your Acceptance and after the end of the period referred to in Section 12.15(a) or Section 12.15(b) (as applicable), Bidco will pay you the cash component of any Offer Consideration that you are entitled to or procure the issue of Holdco Shares to you (as applicable) on or before the date that is 10 Business Days after Bidco is given the documents.

(d) **Payment of cash**

Payment of any cash amount to which you are entitled under the Offer will be made in the following manner:

- (1) if you have previously nominated account details to Pacific Smiles and these details are provided to Bidco, payment will be made electronically to that account. You can verify and update any existing account details online at <https://investor.automic.com.au/#/signup>, once you have registered for the Offer. If you have not previously nominated account details to Pacific Smiles and want to be paid electronically, you must provide your details via <https://investor.automic.com.au/#/signup> prior to accepting the Offer;
- (2) if you have not previously nominated account details to Pacific Smiles or these details are not provided to Bidco, you will be paid by cheque in Australian currency. Cheques will be posted to you at your risk by ordinary mail (or in the case of overseas shareholders, by airmail) at the address shown in the register copy supplied by Pacific Smiles from time to time; and
- (3) if Your Pacific Smiles Shares are held in a joint name, any cheque issued will be in the name of the joint holders and forwarded to the address that appears first in the register of Pacific Smiles.

(e) **Non-Australian residents**

If, at the time you accept this Offer or at the time the Offer Consideration is provided under it:

- (1) any authority or clearance of the Reserve Bank of Australia or the ATO or other Public Authority is required for you to receive any Offer Consideration; or
- (2) you are located in or a resident of a place to which, or you are a person to whom any of the following applies:
 - (A) the *Autonomous Sanction Regulations 2011* (Cth);
 - (B) the *Charter of the United Nations Act 1945* (Cth), the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth) or any other law or regulation made under that act; or
 - (C) any other law of Australia or elsewhere that would make it unlawful for Bidco to provide the Offer Consideration for Your Pacific Smiles Shares,

then your Acceptance does not create or transfer to you any right (contractual or contingent) to receive the Offer Consideration specified in this Offer unless and until you obtain all requisite authorities or clearances.

(f) **Withholding required by law**

If any amount ("**withholding amount**") is determined by Bidco as being required under any law or by any Public Authority to be:

- (1) withheld from any Offer Consideration otherwise payable to you under this Offer and paid to a Public Authority; or
- (2) retained by Bidco out of any Offer Consideration otherwise payable to you under this Offer, Bidco may withhold or retain the withholding amount and the withholding or retention by Bidco of the withholding amount (as applicable) will constitute full discharge of Bidco's obligation to pay the Offer Consideration to you to the extent of the withholding amount.

12.16 Costs and stamp duty

- (a) Bidco will pay all costs and expenses of the preparation and circulation of the Offer and any stamp duty payable on the transfer of any Pacific Smiles Shares to Bidco.
- (b) If Your Pacific Smiles Shares are registered in an Issuer Sponsored Holding in your name and you deliver them directly to Bidco, you will not incur any brokerage in connection with your Acceptance of this Offer.

12.17 Pacific Smiles Shares subject to Pacific Smiles transfer restrictions

If at any time during the Offer Period some of Your Pacific Smiles Shares are subject to transfer restrictions imposed by Pacific Smiles (for example, because you hold some of Your Pacific Smiles Shares under an employee incentive plan), then you may accept this Offer in respect of those Pacific Smiles Shares as if a separate offer in the form of this Offer had been made in relation to the balance of Your Pacific Smiles Shares. Acceptance for the balance of Your Pacific Smiles Shares is ineffective unless you give Bidco notice stating the number of Your Pacific Smiles Shares that are subject to a transfer restriction and explaining the nature of the restriction, and your Acceptance specifies the balance of Your Pacific Smiles Shares.

12.18 Variation and withdrawal of Offer

- (a) **Variation**
Bidco may vary this Offer in accordance with the Corporations Act.
- (b) **Withdrawal**
In accordance with section 652B of the Corporations Act, this Offer may be withdrawn with the written consent of ASIC, which consent may be subject to conditions. If so, Bidco will give notice of the withdrawal to ASX and will comply with any other conditions imposed by ASIC.

12.19 Notices

Any notices to be given by Bidco to you under the Offer may be given to you by sending them by pre-paid ordinary post or courier, or if your address is outside Australia, by prepaid airmail or courier, to your physical address or by providing electronic notice to your electronic address, in each case as disclosed to Bidco by Pacific Smiles under section 641 of the Corporations Act and subject to any election you have made under

section 110E of the Corporations Act (disregarding subsection 110E(8)) that has been disclosed to Bidco by Pacific Smiles.

12.20 Governing law

This Offer and any contract resulting from acceptance of it are governed by the law in force in New South Wales, Australia.

13 Definitions and interpretation

13.1 Definitions

The following terms have the meanings set out below unless the context requires otherwise:

"**0% Scenario**" has the meaning given to it in Section 4.8(b).

"**5% Scenario**" has the meaning given to it in Section 4.3(b).

"**15% Scenario**" has the meaning given to it in Section 4.3(b).

"**Acceptance**" means your acceptance of the Offer.

"**Acceptance Form**" means the form of Acceptance of the Offer enclosed with this Offer and this Bidder's Statement or, as the context requires, any replacement or substitute acceptance form provided by or on behalf of Bidco (and includes, to avoid doubt, both the issuer acceptance form and CHES acceptance form).

"**Acceptance Instructions**" has the meaning given to it in Section 12.7(c).

"**All Cash Consideration**" has the meaning set out in Section 12.2(a)(1).

"**All Cash Offer Amount**" has the meaning given to it in Section 7.2.

"**All Scrip Consideration**" has the meaning set out in Section 12.2(a)(2).

"**AML Verification Requirements**" has the meaning set out in Section 12.11(a)(2).

"**Announcement Date**" means 17 September 2024.

"**ASIC**" means the Australian Securities & Investments Commission.

"**Associate**" has the meaning given to it in section 12(2) of the Corporations Act.

"**ASX**" means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

"**ASX Corporate Governance Principles**" means the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* (4th edition) released on 27 February 2019.

"**ASX Listing Rules**" or "**Listing Rules**" means the official listing rules of the ASX, as amended and waived from ASX from time to time.

"**ASX Settlement**" means ASX Settlement Pty Limited (ABN 49 008 504 532), the body which administers the CHES system in Australia.

"**ASX Settlement Operating Rules**" means the operating rules of ASX Settlement.

"**ATO**" means the Australian Tax Office.

"**Automic Group**" means the Registry and the Institutional Acceptance Facility Operator.

"**BBSY**" has the meaning given to it in Section 7.4(g).

"**Beam Investments**" means Beam Investments Co Pty Limited ACN 673 355 658.

"**Bidco**" means Beam Dental Bidco Pty Limited ACN 676 303 254.

"**Bidder Group Member**" means the applicable member of the Bidder Group.

"**Bidder Group**" means Bidco and the entities wholly owned or Controlled by Holdco.

"Bidder's Statement" means this document, being the statement made by Bidco under Part 6.5 Division 2 of the Corporations Act relating to the Offer.

~~"Board" means the board of directors of Pacific Smiles.~~

"Board Recommendation Condition" means the Condition contained in Section 12.3(b).

"Broker" means a person who is a share broker and participant in CHES.

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

"Cash Offer" means the offer of \$1.90 per Pacific Smiles Share, subject to the terms of the Offer.

"Cash Offer Price" means the All Cash Consideration of \$1.90 cash per Pacific Smiles Share, comprising a cash payment of \$1.8675 from Bidco and retention of the full cash amount of 3.25 cents under the Declared Dividend, subject to the terms of the Offer.

"CGT" means capital gains tax.

"CHES" means the Clearing House Electronic Subregister System operated by ASX Settlement, which provides for the electronic transfer, settlement and registration of securities.

"CHES Holding" means a holding of shares on the CHES Subregister of Pacific Smiles.

"CHES Subregister" has the meaning set out in the ASX Settlement Operating Rules.

"Closing Date" means 7:00pm (Sydney time) on ~~insert date~~ [1 November 2024](#), unless the Offer is extended or withdrawn in accordance with its terms.

"Co-investment Agreement" means:

- (a) the co-investment agreement disclosed to the ASX on 29 July 2024 on behalf of, amongst others, the applicable Co-investors; and
- (b) the co-investment agreement disclosed to the ASX on or around the date of this Bidder's Statement on behalf of, the applicable Co-investors.

"Co-investors" means:

- (a) Genesis Healthcare Holdings Pty Ltd as trustee for Beam Co-investor Trust;
- (b) Franklin Park Co-Investment Fund VI, L.P.;
- (c) LFPE Co-Invest II SLP;
- (d) Asia Opportunities (Singapore) Pte. Limited;
- (e) ADL ANZ Opportunities I Pte. Limited;
- (f) Genesis Fund;
- (g) GFT 2;
- (h) A6J Ltd;
- (i) Axiom Asia 6-A SCSp, SICAV-RAIF;
- (j) ACF-2 Ltd;
- (k) Genesis Fund II.

"Competing Proposal" means any expression of interest, proposal (including a Competing Scheme Proposal or Competing Takeover Proposal), offer or transaction (or

series of transaction) that would, if a completed substantially in accordance with its terms, result in:

- (a) any person or persons other than Bidco or one of its Associates acquiring:
 - (1) an interest in all of a substantial part of the assets of Pacific Smiles or any Pacific Smiles Group Member;
 - (2) a Relevant Interest in more than 15% of the voting shares of Pacific Smiles or any Pacific Smiles Group Member; or
 - (3) Control of Pacific Smiles or any Pacific Smiles Group Member within the meaning of section 50AA of the Corporations Act; or
- (b) Pacific Smiles and another person or persons (other than Bidco or one of its Associates) operating under a dual listed company, or similar structure.

"Competing Scheme Proposal" means a scheme of arrangement in accordance with Part 5.1 of the Corporations Act.

"Competing Takeover Proposal" means a takeover bid in accordance with Part 5.1 of the Corporations Act.

"Completion" means the time at which Bidco has taken legal title to all Pacific Smiles Shares acquired in accordance with the terms of the Offer, together with any Pacific Smiles Shares acquired under the compulsory acquisitions process under the Corporations Act.

"Condition" means the conditions of the Offer set out in Section 12.3.

"Confirmation Notice" has the meaning given to it in Section 12.7(c)(5).

"Control" has the meaning given in section 50AA of the Corporations Act except that in addition, an entity controls the second entity if the first entity would be taken to control second entity but for subsection 50AA(4) and **"Controlled"** has a corresponding meaning.

"Controlling Participant" has the meaning set out in the ASX Settlement operation Rules.

"Corporations Act" means the *Corporations Act 2001* (Cth) and any regulations made under that Act, as modified by any relevant exemption or declaration by ASIC.

"Debt Commitment Letter" has the meaning given to it in Section 7.4(b).

"Debt Facility" has the meaning given to it in Section 7.4(a).

"Declared Dividend" means the dividend of 3.25 cents per Pacific Smiles Share declared by Pacific Smiles on 28 August 2024, to be paid to Pacific Smiles Shareholders on 10 October 2024.

"EBITDA" means earnings before interest, taxes, depreciation, and amortization.

"Effective Control" has the meaning given to it in section 9.5.

"Election" means an election by a Pacific Smiles Shareholder to receive either the All Cash Consideration, All Scrip Consideration or Mixed Consideration.

"Eligible Foreign Shareholder" means a Foreign Shareholder that Bidco has determined (in its absolute discretion) as being an Eligible Foreign Shareholder after being satisfied that it is not unlawful, not unduly onerous and not unduly impracticable to make the Offer to that Pacific Smiles Shareholder in the relevant jurisdiction and to issue Holdco Shares to such a Pacific Smiles Shareholder on Acceptance of the Offer, and that it is not unlawful for such a Pacific Smiles Shareholder to accept the Offer in such circumstances in the relevant jurisdiction.

"Eligible Institutional Shareholder" has the meaning given to it in Section 12.6.

"Eligible Pacific Smiles Shareholder" means a Pacific Smiles Shareholder that is not an Ineligible Foreign Shareholder.

"Encumbrance" means:

- (c) a security interest;
- (d) an easement, restrictive covenant, caveat or similar restriction over property;
- (e) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property (including a right to set off or withhold payment of a deposit or other money);
- (f) a right of any person to purchase, occupy or use an asset (including under an option, agreement to purchase, licence, lease or hire purchase);
- (g) any other thing that prevents, restricts or delays the exercise of a right over property, the use of property or the registration of any interest in or dealing with property; or
- (h) an agreement to create anything referred to above or to allow any of them to exist.

"Equity Commitment" has the meaning given to that term in Section 7.3.

"Equity Investors" means those Co-investors listed at Section 7.3.

"Exit" has the meaning given to it in Section 9.4(c).

"Facility Agreement" has the meaning given to it in Section 7.4(b).

"Financiers" has the meaning given to it in Section 7.4(a).

"Financing Condition" has the meaning given to it in Section 7.4(f)(3).

"Foreign Shareholder" means a person whose address as shown in the Register as being in a jurisdiction other than Australia and its external territories.

"Genesis Capital" means the Manager and its Related Entities together with those funds Controlled or managed by them, who together comprise the Genesis Capital Group.

"Genesis Fund" means Genesis Capital Fund I, LP (ILP2100002) a fund managed by the Manager.

"Genesis Fund II" means Genesis Capital Fund II, LP (ILP2400016), a fund managed by Genesis Capital Manager II Pty Ltd (ACN 677 941 758).

"Genesis Fund Put Option" means the put option deed dated 7 December 2023 between Beam Investments and Genesis Capital Ultimate GP Pty Ltd, as general partner of Genesis Capital Management Partnership I, LP (ILP 1900016), the general partner of Genesis Capital Fund I, LP (ILP 2100002).

"Genesis Revised Proposal" means [the revised proposal announced on 29 July 2024 from Genesis Capital to acquire all the shares in Pacific Smiles via a scheme of arrangement for cash consideration of \\$1.90 per Pacific Smiles Share with a consideration alternative to allow eligible Pacific Smiles Shareholders to elect to receive all or part of their consideration in scrip consideration.](#)

"Genesis Shareholders" means the Co-investors and any other person named as an "Investor Shareholder" in the Holdco Shareholders' Deed.

"Genesis Shareholders' Representative" means the Manager.

"**GFT2**" means GFT 2 Co Pty Ltd as trustee for the GFT 2 Trust.

"**GFT2 Put Option**" means the put option deed dated 15 December 2023 between GFT2 and Beam Investments.

"**GST**" has the same meaning as in the GST Act.

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

"**Holdco**" means Beam Dental Holdings Limited ACN 676 301 456.

"**Holdco Board**" has the meaning given to that term in clause 4.6(b).

"**Holdco Constitution**" means the constitution of Holdco on those terms set out in Appendix B.

"**Holdco Share**" means an ordinary share in the capital of Holdco.

"**Holdco Shareholder**" means a holder of a Holdco Share.

"**Holdco Shareholders' Deed**" means the shareholders' deed in respect of the affairs of Holdco to be entered into by the shareholders of Holdco on substantially those terms set out in Appendix C.

"**Holder Identification Number**" or "**HIN**" means the number used to identify a Pacific Smiles Shareholder on the CHESS Subregister of Pacific Smiles.

"**IAF Triggering Conditions**" has the meaning given to it in Section 12.7(c)(2).

"**IARPI**" has the meaning given to it in Section 10.3.

["Impression Dental Group" means the business that is known as Impression Dental Group which is ultimately owned by Smiles Holdco Pty Limited ACN 647 886 208.](#)

"**Ineligible Foreign Shareholder**" means a Foreign Shareholder that is not an Eligible Foreign Shareholder.

"**Institutional Acceptance Facility**" has the meaning given to it in Section 12.6.

"**Institutional Acceptance Facility Operator**" the meaning given to it in Section 12.6.

"**Issuer Sponsored Holding**" means a holding of Pacific Smiles Shares on Pacific Smiles' issuer sponsored subregister.

"**ITAA 1997**" means the *Income Tax Assessment Act 1997* (Cth).

"**Jarden**" means Jarden Australia Pty Limited (ABN 33 608 611 687)

"**Jarden Scientific**" means Jarden Scientific Trading Limited (New Zealand company number 6847134).

"**Manager**" means Genesis Capital Manager I Pty Limited ACN 634 339 576.

"**Midco**" means Beam Dental Midco Pty Limited ACN 676 303 147.

"**Minimum Acceptance Condition**" means the Condition contained in Section 12.3(a).

"**Mixed Consideration**" has the meaning given to it in Section 12.2(a)(3).

["NDC Bidco" means NDC Bidco Pty Limited ACN 676 877 802.](#)

["NDC Revised Proposal" means the revised proposal announced on 1 August 2024 from NDC Bidco in connection with the NDC Scheme.](#)

"**NDC Scheme**" means the scheme of arrangement proposed between Pacific Smiles and Pacific Smiles shareholders in connection with the [NDC Scheme Implementation Deed](#).

"NDC Scheme Implementation Deed" means the scheme implementation deed entered into between Pacific Smiles and NDC Bidco ~~Pty Limited~~ dated 29 April 2024 (as amended from time to time) and terminated on 23 August 2024.

"No Prescribed Occurrence Condition" means the Condition contained in Section 12.3(c).

"Nominee" means Perpetual Corporate Trust Limited, a nominee to be appointed by Holdco, at a future date under the terms of the Shareholders' Deed (or any other nominee appointed under the terms of the Shareholders' Deed).

"Nominee Deed" means the nominee deed in substantially the same form as set out in Appendix C to be entered into by the Nominee, Holdco and each other person who accedes to that deed from time to time.

"Nominee Directions" has the meaning given to it in Section 12.7(c).

"Offer" means the offer for Pacific Smiles Shares contained in Section 12, or the off-market takeover bid constituted by that offer, and Offer means the several like offers which together constitute the Offer, as varied in accordance with the Corporations Act.

"Offer Consideration" means the forms of consideration offered under the terms of the Offer by Bidco, which is comprised of the All Cash Consideration, the All Scrip Consideration and the Mixed Consideration.

"Offer Period" means the period in which the Offer will remain open for Acceptance in accordance with Section 12.4.

"On Market Purchases" has the meaning given to it in Section 11.56.

"Pacific Smiles" means Pacific Smiles Group Limited ACN 103 087 449.

"Pacific Smiles Board" means the board of directors of Pacific Smiles.

"Pacific Smiles Cash Rights" has the meaning given to it in Section 6.2.

"Pacific Smiles FY24 Financial Statements" has the meaning given to it in Section 4.8(b).

"Pacific Smiles Group" means Pacific Smiles and the entities wholly owned or Controlled by Pacific Smiles.

"Pacific Smiles Group Member" means a member of the Pacific Smiles Group.

"Pacific Smiles Performance Rights" has the meaning given to it in Section 6.2.

"Pacific Smiles Shareholder" means a person who is registered as the holder of Pacific Smiles Shares in the Register.

"Pacific Smiles Shares" means a fully paid ordinary share on issue in Pacific Smiles.

"PIK Election" has the meaning given to it in Section 7.4(g).

"Prescribed Occurrences" means the occurrence of any of the matters set out in Section 12.3(c), being the prescribed occurrences listed in section 652C of the Corporations Act.

"Public Authority" means any government or any governmental, semi-governmental, administrative, statutory or judicial entity, authority or agency, whether in Australia or elsewhere, including the Australian Competition and Consumer Commission and any self-regulatory organisation established under statute or any stock exchange, but excluding;

(a) ASIC or the Takeovers Panel for the purpose or in the exercise of powers and directions conferred on either of them by the Corporations Act; and

(f) any court that hears or determines proceeds under section 657G or proceedings commenced by a person specified in section 659B(1) of the Corporations Act in relation to the Offer.

"Put Option Counterparties" means GFT 2 Co Pty Ltd and Genesis Capital Ultimate GP Pty Ltd as the general partner of Genesis Capital Fund I, LP.

"Put Options" means the Genesis Fund Put Option and the GFT2 Put Option.

"Register" means the register of Pacific Smiles Shareholders maintained by Pacific Smiles in accordance with the Corporations Act.

"Register Date" means 7:00pm (Sydney time) on 18 September 2024, being the date set by Bidco under section 633(2) of the Corporations Act.

"Registry" means Automic Pty Limited ACN 152 260 814.

"Related Entity" means, in relation to a person, any entity that is related to that person within meaning of section 50 of the Corporations Act or that is in an economic entity (as defined in any approved Australian accounting standard) that is Controlled by that person.

"Relevant Interest" has the meaning given to that term in section 608 and 609 of the Corporations Act.

"Rights" means all accretions, rights or benefits of whatever kind attaching to or arising from or in respect of the Pacific Smiles Shares, whether directly or indirectly at or after the Announcement Date, including, without limitation all rights to receive dividends (but excluding the attaching franking credit), to receive or subscribe for shares, units, notes, options, or other securities and to receive all other distributions or entitlements declared, paid, made or issued by Pacific Smiles or any Pacific Smiles Group Member after the Announcement Date.

"ROFR Seller" has the meaning given to it in Section 4.6(b).

"Sale Agent" has the meaning given to that term in Section 12.6(a).

"Scrip Election Deed Poll" means an accession deed poll, pursuant to which a person will become a party to the Shareholders' Deed and the Nominee Deed.

"Scrip Offer" means:

- (a) the offer of 1 Holdco Share per Pacific Smiles Share pursuant to an Election to receive the All Scrip Consideration, subject to the terms of the Offer; and
- (b) the offer of a 0.75 Holdco Share per Pacific Smiles Share pursuant to an Election to receive the Mixed Consideration, subject to the terms of the Offer.

"Section" means a section of this Bidder's Statement.

"Securityholder Reference Number" or **"SRN"** means the number allocated by Pacific Smiles' share registry to identify a Pacific Smiles Shareholder on its issuer sponsored subregister.

["Small Holdings Disposal Notice"](#) has the meaning given to that term in [Section 4.6\(b\)](#)

"Subco" means Beam Dental Subco Pty Limited ACN 676 303 192.

"Target's Statement" means the target's statement issued by Pacific Smiles in response to this Bidder's Statement in accordance with Part 6.5 Division 3 of the Corporations Act.

"VWAP" means volume ~~average~~-weighted [average](#) price.

"Working Capital Facility" has the meaning given to it in [Section 7.4\(b\)\(5\)](#).

"Your Pacific Smiles Shares" means subject to sections 12.1(d) and 12.1(e) the Pacific Smiles Shares:

- (a) of which you are registered or entitled to be registered as the holder in the Register on the Register Date; or
- (b) to which you are able to give good title at the time you accept the Offer during the Offer period.

13.2 Interpretation

- (a) The following words and phrases have the corresponding meaning:
 - (1) stamp duty means Australian stamp duty; and
 - (2) Sydney time means the time in Sydney, Australia.
- (b) In this Bidder's Statement any words which have the effect of referring to 'Holdco Shares being issued to you', should be read to being a reference to 'Holdco Shares being issued to the Nominee on your behalf'.
- (c) In this Bidder's Statement any words which have the effect that 'you will retain the full cash amount of the Declared Dividend' is a reference to 'the registered holder of the applicable Pacific Smiles Shares on 25 September 2024 retaining the full cash amount of the Declared Dividend'.
- (bd) Words and phrases which are defined by the Corporations Act have the same meaning in this Bidder's Statement and the Acceptance Form and, if a special meaning is given for the purposes of Chapter 6 or 6A or a provision of Chapter 6 or 6A of the Corporations Act, have that special meaning.
- (ee) Words and phrases which are defined by the GST Act have the same meaning in this Bidder's Statement unless the context requires otherwise.
- (ef) Headings are for convenience only, and do not affect interpretation.
- (eg) The following rules also apply in interpreting this Bidder's Statement and the Acceptance Form, except where the context makes it clear that a rule is not intended to apply:
 - (1) a singular word includes the plural, and vice versa;
 - (2) a word which suggests 1 gender includes the other genders;
 - (3) if a word is defined, another part of speech has a corresponding meaning;
 - (4) unless otherwise stated references in this Bidder's Statement to schedules, sections, paragraphs and sub-paragraphs are to schedules, sections, paragraphs and subparagraphs of this Bidder's Statement;
 - (5) a reference to a person includes a body corporate;
 - (6) a reference to \$ is to the lawful currency in Australia unless otherwise stated; and
 - (7) appendices to this Bidder's Statement form part of it.

14 Approval of Bidder's Statement

This Bidder's Statement has been approved by a resolution of the directors of Bidco.

Dated ~~17 September~~ 1 October 2024

Signed on behalf of Bidco by Dr Michael Caristo who is authorised to sign by a resolution of the directors of Bidco.



Dr Michael Caristo
Director
Beam Dental Bidco Pty Limited

BEAM DENTAL HOLDINGS LTD ACN 676 301 456 ("COMPANY")

THE PERSONS LISTED IN Schedule 1
("INITIAL INVESTOR SHAREHOLDERS")

AND

EACH PERSON WHO HAS ACCEDED TO THIS DEED FROM TIME TO TIME

SHAREHOLDERS' DEED

CONTENTS

Clause	Page
1. Defined terms and interpretation.....	1
2. Capital Structure.....	2
3. Business and management of the Company.....	3
4. Board.....	5
5. Board Meetings.....	10
6. Audit and reporting obligations.....	11
7. Distributions to Shareholders.....	13
8. Issue of Securities.....	13
9. Pro rata issue of Securities.....	16
10. Dealing with Securities.....	18
11. Exit Event.....	21
12. Drag rights.....	23
13. IPO.....	25
14. Tag along rights.....	27
15. Compulsory acquisition of Small Holdings.....	29
16. Event of Default.....	31
17. Sale Agent.....	33
18. Nominee arrangements.....	33
19. Confidential Information.....	42
20. GST.....	44
21. Representations, warranties and Acknowledgements.....	46
22. Term.....	48
23. Limitation of liability - trustee.....	48
24. Accession Deed Poll.....	50
25. Notices and other communications.....	50
26. General.....	51
27. Powers of attorney.....	52
28. Shareholder's relationship.....	55
29. Governing law.....	56
Schedule 2 Dictionary.....	59
Schedule 3 Accession Deed Poll.....	72
Schedule 4 Scrip Election Deed Poll.....	76

THIS DEED is made on _____ 2024

BETWEEN:

- (1) **BEAM DENTAL HOLDINGS LTD (ACN 676 301 456)** of Level 9, 309 Kent Street, Sydney NSW 2000 (the "**Company**");
- (2) **THE PERSONS LISTED IN Schedule 1** (each an "**Initial Investor Shareholder**" and together the "**Initial Investor Shareholders**"); and
- (3) **Each person who has acceded to this deed from time to time.**

RECITALS:

- (A) As at the date of this deed, the Initial Investor Shareholders together hold 100% of the issued shares in the Company, being only ordinary shares.
- (B) Beam BidCo, an indirect subsidiary of the Company, intends to make an off-market takeover offer under which it will make offers to acquire all of the shares in PSQ.
- (C) The consideration offered to PSQ shareholders under the Beam Takeover includes ordinary shares in the capital of the Company.
- (D) A PSQ shareholder who accepts the offer under the Beam Takeover will become a party to this deed as a 'Rollover Shareholder' through an Accession Deed Poll and:
 - (i) the Nominee will hold the legal title to the Rollover Shareholder's Securities as bare trustee under a bare trust; and
 - (ii) the Rollover Shareholder will retain its beneficial interest in its Securities.
- (E) The Initial Investor Shareholders will, on or around the date of this deed, subscribe for ordinary shares in the Company pursuant to Clause 8.3(b).
- (F) Managers may be invited to participate in, and acquire Class M Shares under, a Management Equity Plan.
- (G) This deed sets out provisions which regulate the rights and obligations of the Shareholders in relation to the Group.

THIS DEED WITNESSES AS FOLLOWS:

1. DEFINED TERMS AND INTERPRETATION

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 2, has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and

- (c) which is defined in the GST Law, but not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

1.2 Interpretation

The interpretation clause in Schedule 2 sets out rules of interpretation for this deed.

1.3 Precedence of this deed

Where this deed and the Constitution deal with the same or a similar topic differently:

- (a) this deed prevails in relation to that topic; and
- (b) if a Shareholder gives the Company a notice specifying the difference and requesting an amendment to the Constitution that will remove that difference, each other Shareholder must take all necessary steps to amend the Constitution to make the Constitution consistent with this deed.

2. CAPITAL STRUCTURE

2.1 Initial Shareholding

- (a) As at the date of this deed, the Investor Shareholders will hold the Securities set out opposite their names in Schedule 1.
- (b) The parties acknowledge that the initial holdings of the Investor Shareholders may change and that there may be additional Affiliates of the Investor Shareholders ("**Additional Investor Shareholder Entities**") that receive transfers of Securities from other Investor Shareholders. The Investor Shareholders' Representative will notify each other Shareholder of the details of the relevant Securities and any such Additional Investor Shareholder Entity. Any Additional Investor Shareholder Entity must sign an Accession Deed Poll and each party agrees that with effect from the date of the Accession Deed Poll that Additional Investor Shareholder Entity will be bound by this deed and have rights under this deed as if that entity were named as a party to this deed as an Investor Shareholder.

2.2 Investor Shareholders

- (a) The parties acknowledge and agree that when this deed provides that any action, power or decision may be performed, any notice may or must be given by or to, or any consent may be given by, the Investor Shareholders or similar expressions, then unless the contrary intention appears:
 - (i) the Investor Shareholders' Representative may perform that action, power or decision, or give or receive that notice or consent, for and on behalf of all Investor Shareholders and to the exclusion of the Investor Shareholders; and
 - (ii) the Shareholders (other than the Investor Shareholders) may deal solely with the Investor Shareholders' Representative and may rely on the exercise, decision, action, notice, instruction or consent of the Investor

Shareholders' Representative in relation to any such matters as having been given on behalf of all the Investor Shareholders.

- (b) Each Investor Shareholder:
 - (i) irrevocably appoints the Investor Shareholders' Representative and the Company, severally, as its attorney in accordance with Clause 27.1 to exercise any of its rights, and perform any of its obligations, under this deed; and
 - (ii) agrees to ratify and be bound by all lawful acts and omissions of the Investor Shareholders' Representative in exercising its rights and performing its obligations under this deed.

2.3 Shareholder Resolutions for financial assistance and share buy-backs and capital reductions

Each Shareholder irrevocably appoints the Investor Shareholders' Representative and the Company, severally, as its attorney in accordance with Clause 27.1 to exercise, on behalf of the Shareholder, all of the rights and powers that the Shareholder could exercise at general meetings of the Company and to sign any consent to short notice or a resolution of members for and on behalf of the Shareholder:

- (a) to approve any financial assistance by the Company and any Group Company or other company (of which the Company is or will be the holding company) under or in connection with any Debt Financing or Acquisition; and
- (b) to approve the acquisition and/or cancellation of any Securities (whether by way of a purchase, buy-back, cancellation as part of a redemption or capital reduction (or any combination thereof)) by the Company:
 - (i) in connection with a compulsory acquisition of small holdings pursuant to Clause 15; or
 - (ii) in accordance with Clause 16.2.

2.4 Class M Shares

Any Class M Shares acquired by an Investor Shareholder or a Permitted Transferee of an Investor Shareholder, or by a Non-Investor Shareholder or a Permitted Transferee of a Non-Investor Shareholder, will be automatically re-classified as ordinary shares.

3. BUSINESS AND MANAGEMENT OF THE COMPANY

3.1 Objectives

The primary objectives of the Company are to:

- (a) deliver the highest-quality services for the Group's clients and stakeholders;

- (b) operate, carry on and grow the business of the Group, in a proper and efficient manner in accordance with sound business practice and so as to give effect to the Business Plan; and
- (c) maximise the sustainable value of the Group in line with the direction and strategy of the Group as determined by the Board from time to time in accordance with this deed.

3.2 **Function of the Board**

The function of the Board is to govern the management of the Group. Subject to the Corporations Act, the Board may do all things necessary or desirable in connection with this function including:

- (a) determining the overall business strategy and direction for the Group;
- (b) reviewing and approving annual Business Plans and Budgets; and
- (c) determining any other matter in relation to the Group.

3.3 **Management, committees and delegation**

- (a) The Board will be responsible for the day-to-day management and operation of the Business.
- (b) The Board will be responsible for the appointment or removal of the CEO, CFO and other senior management (including jurisdictional line management heads).
- (c) The Board may:
 - (i) establish one or more committees whose composition shall be determined by the Board;
 - (ii) delegate to a committee or to senior management matters which are part of the day-to-day management of the Group; and
 - (iii) in its absolute discretion and at any time, amend, revoke or replace any delegation made to a committee or to senior management.

3.4 **Business Plan and Budget**

- (a) The Company must ensure that the Group conducts its Business in each Financial Year in accordance with the Business Plan and Budget approved and adopted by the Board for that Financial Year, or as may be amended by the Board from time to time.
- (b) The Board will, as soon as practicable after the date of this deed, adopt an initial Business Plan and initial Budget.

3.5 **New Business Plans and Budgets**

Each Shareholder must exercise its rights as a Shareholder to ensure that:

- (a) at least one month before the beginning of each Financial Year, the management of the Company submits to the Board a draft Business Plan and Budget; and
- (b) the Board considers the draft Business Plan and Budget and, if considered appropriate, approves and adopts that Business Plan and Budget before the start of the next Financial Year.

3.6 **Shareholders' resolutions**

Subject to applicable law and the terms of this deed, all resolutions by Shareholders will be made by Simple Majority Resolution.

4. **BOARD**

4.1 **Number of Directors**

The number of Directors must, at any time, not be less than three and not more than the greater of ten or such other number as enables the Investor Shareholders' Representative to fully exercise its rights under Clause 4.2(a) after taking into account each exercise of rights under Clause 4.2(b) at that time (excluding alternate directors), unless otherwise approved by Shareholders by Simple Majority Resolution.

4.2 **Appointment of Directors**

- (a) The Investor Shareholders' Representative will at all times be entitled to appoint, remove and replace a majority of the Directors, by providing written notice to the Company and, subject to applicable laws, any appointment of the Director takes effect when such notice is given.
- (b) Subject to Clause 4.2(a), each Non-Investor Shareholder, or group of Non-Investor Shareholders who are Associates of one another and who have each given to the Company a notice contemplated in Clause 4.3 (excluding any Non-Investor Shareholder that has, individually or as part of another group of Non-Investor Shareholders, separately appointed a Director pursuant to this Clause 4.2(b)), is entitled to appoint, remove and replace one Director to the Board for every whole 10% Shareholding held by the Non-Investor Shareholder (or group of Non-Investor Shareholders), by providing written notice to the Company and, subject to applicable laws, any appointment of the Director takes effect when such notice is given.
- (c) If a Non-Investor Shareholder (or group of Non-Investor Shareholders) that appointed a Director pursuant to Clause 4.2(b) subsequently ceases to be entitled to appoint a Director under Clause 4.2(b), the Non-Investor Shareholder (or group of Non-Investor Shareholders) must promptly remove the appointed Director and promptly procure the resignation of such Director.
- (d) Subject to Clause 4.1 and Clauses 4.2(a) to 4.2(c), the Board may appoint, remove and replace any one or more executive or non-executive directors.

4.3 **Shareholder notice of collective Shareholding**

- (a) Non-Investor Shareholders who are Associates of one another may give notice to the Company that, for the purposes of Clauses 4.2(b) and 4.10(a), they wish to elect for their Shareholdings to be aggregated together.
- (b) A Non-Investor Shareholder may only give a notice under this Clause 4.3 once.
- (c) A notice given under this Clause 4.3 is irrevocable.

4.4 **Chairperson**

The Chairperson of the Board may be appointed, removed and replaced by the Board.

4.5 **Eligibility and vacation of office**

A Director must (and his or her appointing Shareholder must procure that he or she) immediately vacate their office and shall be automatically removed if he or she is disqualified from acting as a Director or managing a corporation, or has been or is convicted of or charged with an indictable offence.

4.6 **Directors' interest**

- (a) A Director is not disqualified (solely by virtue of being a Director) from holding any office or place of profit, including any office or place of profit with a Shareholder or any of their Affiliates or Related Parties. For the avoidance of doubt, a Director may:
 - (i) be or become a director of or otherwise hold office or a place of profit in any entity promoted by a Shareholder, its Affiliates or its Related Parties or in which a Shareholder, its Affiliates or its Related Parties may be interested; and
 - (ii) contract or make any arrangement with a Shareholder, its Affiliates or its Related Parties.
- (b) If the Board is required to consider any:
 - (i) Related Party Transaction involving a Director or Shareholder (or their respective Affiliates or Related Parties);
 - (ii) matter related to the enforcement of the rights of the Company or any other Group Company against, or litigation involving, a Director or Shareholder (or their respective Affiliates or Related Parties); or
 - (iii) matter in which a Director has a material personal interest,

but excluding any matter in respect of which all Shareholders are affected in substantially the same way, then the relevant Director or the Director nominated by that Shareholder (as the case may be):

- (iv) must, prior to or at the Board Meeting at which the relevant matter is to be considered and/or voted on, disclose to the Board:
 - (A) that this Clause 4.6(b) applies; and
 - (B) to the extent that such disclosure would not breach any duty of confidence or similar obligation that the Director or Shareholder (as the case may be) is subject to, the nature and extent of the interest of the Director or Shareholder (or their respective Affiliates or Related Parties) in the relevant matter and its relation to the affairs of the Company or any other Group Company;
- (v) is entitled to receive information regarding, and participate in discussions and deliberations of the Board in relation to, the relevant matter, to the extent that doing so does not unfairly or unreasonably prejudice the interests of the Company or any other Group Company; and
- (vi) is not entitled to vote on any resolution of the Board in relation to the relevant matter to the extent such voting gives rise to a conflict of interest for the Director.

4.7 Directors acting in interests or at direction of nominating Shareholder

Subject to applicable law:

- (a) a Director:
 - (i) may disclose to their nominating Shareholder(s) any information obtained in the Director's capacity as a Director (and any information disclosed under this Clause 4.7(a)(i) is Confidential Information that is given subject to Clause 19);
 - (ii) may have regard (including exclusive regard) to, represent and/or act in the interests of their nominating Shareholder(s), the funds managed or advised by their nominating Shareholder(s), its Affiliates or its Related Parties and their direct and indirect investors, if any, in priority to the interests of the other Shareholders and/or the Company, in performing their duties or exercising any power, right or discretion as a Director in relation to any Group Company; and
 - (iii) may act on the directions and in the interests of their nominating Shareholder(s), its Affiliates or its Related Parties and their direct and indirect investors (if any) in performing their duties or exercising any power, right or discretion as a Director in relation to any Group Company,

and a Director who does any of the things described in this Clause 4.7 will not, for that reason alone, be in breach of their duties to the Company or any Group Company; and

- (b) where a Shareholder gives directions to its nominated Director and, as a result, that Shareholder is considered to be involved in the management of any Group Company or to be a de facto Director, the Shareholders agree that the appointing Shareholder will not, in giving such directions, have any obligation to represent or take into consideration the interests of any other Shareholder and may act solely in its own interests.

4.8 Voting entitlements of Directors

- (a) Subject to Clause 4.8(b), each Director is entitled to one vote.
- (b) Where a Shareholder (or group of Shareholders) has appointed more than one Director pursuant to Clause 4.2(b), each Director appointed by that Shareholder (or group of Shareholders) and who is present and entitled to vote on a resolution is entitled to the number of votes that is equal to the number of Directors appointed by the appointing Shareholder(s) divided by the number of Directors appointed by the appointing Shareholder(s) who are present and entitled to vote on the resolution.
- (c) The Chairperson will not have a casting vote.

4.9 Alternate Directors

- (a) Subject to Clause 4.9(b), each Director may appoint any person as an alternate to represent him or her at Board Meetings by providing written notice to the Company and that person need not be approved by the Board.
- (b) An alternate director must not be, and must (and his or her appointing Director must procure that he or she) immediately vacate their office and shall be automatically removed if he or she is, disqualified from acting as a Director or managing a corporation, or has been or is convicted of or charged with an indictable offence.
- (c) An alternate director will be entitled to attend and vote at Board Meetings, and to be counted in determining whether a quorum is present, in place of his or her appointing Director.

4.10 Observer

- (a) Where a Shareholder (or group of Shareholders) is entitled to appoint a Director pursuant to Clause 4.2(b), then such Shareholder (or group of Shareholders) is entitled to appoint, remove and replace one person as an observer to the Board by providing written notice to the Company.
- (b) An observer has the right to be notified of and attend Board Meetings (and receive copies of all Board papers), but does not have the right to vote nor the right to be counted in a quorum.
- (c) Each Shareholder that appoints an observer pursuant to Clause 4.10(a) must procure that such observer complies with the same confidentiality obligations that apply to the Shareholders under this deed.

- (d) The Board may, at any time and from time to time, invite one or more members of the Group's senior management team to attend all or any part of a Board Meeting.

4.11 Directors' expenses

- (a) Any non-executive director appointed under Clause 4.2(d) is entitled to a Director's fee as determined from time to time by the Board.
- (b) Other than as set out in Clause 4.11(a), a Director is not entitled to any Director's fees.
- (c) The Company will reimburse all reasonable and substantiated travel, accommodation or similar third party costs and expenses incurred by Directors in attending to the Business of the Group, including attending Board Meetings, site visits and major meetings with clients, customers and suppliers, if incurred in accordance with the Company's relevant policies and procedures as approved by the Board from time to time.

4.12 Directors' and officers' insurance

- (a) The Company must, to the fullest extent permitted by law, purchase and maintain insurance for each Director against any liability incurred by the Director as an officer of any Group Company including liability for negligence, and for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal, on policy terms approved by the Board and on terms reasonably available in the market and appropriate for the operation of the Group and its Business.
- (b) The Company must procure that each Group Company enters into a deed of access and indemnity with each of its directors under which the relevant Group Company indemnifies the relevant director to the maximum extent permitted by law and gives the relevant director a right to have access to and make copies of all board papers, records and minutes of the Group Company in respect of the period during which the relevant director is or was a director of the Group Company.

4.13 Shareholder obligations

Each Shareholder must, and must exercise its rights as a Shareholder to, ensure the Board is composed, and its meetings are conducted, in accordance with this Clause 4.

4.14 Subsidiaries

- (a) The provisions of Clause 3 and this Clause 4 apply equally to each Subsidiary so that, among other things, the Shareholders have the same rights of appointment to the board of directors of a Subsidiary as it has to the Board.
- (b) The Company must procure that the full effect is given to any appointment, substitution or removal under Clause 4.14(a).

- (c) Each Shareholder must, and must exercise its rights as a Shareholder to, ensure the board of directors, and operation, of each Subsidiary of the Company acts in accordance with the decisions of the Board.

4.15 **Quorum for Shareholder meetings**

- (a) The quorum for a meeting of Shareholders is two Shareholders of which one must be a Shareholder represented by the Investor Shareholders' Representative.
- (b) If a quorum is not present within 30 minutes of the time set for a meeting of the Shareholders, the meeting is adjourned to the same time and place five Business Days later and notice reconvening the adjourned meeting must be promptly given to all Shareholders.
- (c) If a quorum is not present at the scheduled commencement time of the reconvened meeting, the quorum for the meeting will be the presence of at least one Shareholder represented by the Investor Shareholders' Representative.

5. **BOARD MEETINGS**

5.1 **Meetings**

- (a) The Board must meet at least four times per year at times determined by the Board.
- (b) Any Director may convene a meeting of the Board ("**Board Meeting**") at any time by giving at least five Business Days' notice to the other Directors, which notice must include:
 - (i) an agenda for the Board Meeting; and
 - (ii) any proposed resolutions for the Board Meeting,in each case, to the extent that detail is known by the convening Director.
- (c) A Board Meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Directors need not be all physically present in the same place. A Director who participates in a Board Meeting in accordance with this Clause 5.1(c) is treated as being present and entitled to vote at the meeting.

5.2 **Quorum**

- (a) The quorum for a Board Meeting is at least two Directors, which must include a Director appointed by the Investor Shareholders' Representative.
- (b) If a quorum is not present within 30 minutes of the time set for the Board Meeting, the Board Meeting is adjourned to the same time and place five Business Days later and notice reconvening the adjourned Board Meeting must be promptly given to all Directors.

- (c) If a quorum is not present within 30 minutes of the time set for the reconvened Board Meeting (such reconvened Board Meeting to have the same quorum requirements as set out in Clause 5.2(a)), the Board Meeting is adjourned to the same time and place two Business Days later and notice reconvening the further adjourned Board Meeting must be promptly given to all Directors, and the quorum at the further reconvened Board Meeting will be satisfied by the Directors present. At the further reconvened Board Meeting, only matters included in the notice of Board Meeting may be discussed and only resolutions proposed in the notice of Board Meeting may be approved.

5.3 Board decisions

Subject to applicable law and except as otherwise provided under this deed, all resolutions of the Board will be made by Simple Majority Resolution.

5.4 Circulating resolutions of Directors

- (a) The Directors may pass a resolution without a Board Meeting being held if all of the Directors entitled to vote on the resolution sign a written document containing a statement that they are in favour of the resolution set out in the document, **provided that**, the proposed resolution was circulated to all Directors.
- (b) The resolution is passed when the last Director signs the document.
- (c) Two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document.
- (d) An emailed 'portable document format' (PDF) document containing the text of the document expressed to have been signed by a Director and sent to the other Directors is a document signed by that Director at the time of its receipt by the last of the other Directors.

6. AUDIT AND REPORTING OBLIGATIONS

6.1 Information to the Investor Shareholders

- (a) The Company must (and each Shareholder must exercise its rights as a Shareholder to procure that the Company), and must procure that each Group Company and the CEO and CFO, promptly deliver to, or as directed by, the Investor Shareholders' Representative:
 - (i) within 5 Business Days after they have been finalised, a copy of the audited statement of financial position, statement of financial performance and a statement of cash flows for the Company and each other Group Company for each Financial Year, including details of accounting policies applied and any deviation from the applicable Accounting Standards;
 - (ii) within 20 calendar days after the end of the relevant half-year period, half-early accounts for the Company and each other Group Company;

- (iii) within 10 calendar days after the end of the relevant month, monthly management accounts for the Company and each other Group Company;
 - (iv) within 10 calendar days after the end of the relevant month, monthly operational reports for the Company and each other Group Company;
 - (v) within 60 Business Days after any Shareholder has become entitled to a distribution, a copy of a distribution statement which sets out the distribution paid or owing to the Shareholder;
 - (vi) promptly after becoming aware of the same, on an ongoing basis, details of any actual or prospective material change in the business or the financial position or affairs of the Group and any material litigation, arbitration or other dispute involving, or which is reasonably expected to be commenced by or against, the Group; and
 - (vii) such other financial and other information relating to the Company (or any other Group Companies) as the Investor Shareholders' Representative may request, including any information as may be reasonably requested or required by the Investor Shareholders' Representative from time to time including, without limitation, to enable them to prepare their Tax returns or for Tax, regulatory and/or fund reporting purposes.
- (b) The Company must (and each Shareholder must exercise its rights as a Shareholder to procure that the Company) promptly provide to the Investor Shareholders' Representative, upon request, full access to:
- (i) visit and inspect the assets and property of the Company or any other Group Company;
 - (ii) inspect and take copies of documents relating to the Business or the Company or any other Group Company;
 - (iii) discuss the client relationships, affairs, finances and accounts of the Company and any other Group Company with the Company's and any other Group Company's officers, employees, agents, representatives, contractors, consultants, the Auditor or advisers, including by arranging monthly business performance review meetings with the CEO, the CFO and other senior management; and
 - (iv) any other information requested from time to time.

6.2 Information to other Shareholders

Any Non-Investor Shareholder (other than a Class M Shareholder) may request a copy of the most recent available annual audited accounts of the Company and its Related Bodies Corporate and the Company must provide the requested information to that Non-Investor Shareholder within a reasonable time of the request (which must not be more than 10 Business Days after such request). For the avoidance of doubt, a Non-

Investor Shareholder is not entitled to any information relating to the Company or any other Group Company other than as set out in this Clause 6.2.

6.3 Information to Directors

The Company must send to each Director:

- (a) promptly following each Board Meeting, copies of all Board minutes, papers and resolutions and any circulating resolutions that have been approved (but that have not otherwise been circulated to the Director); and
- (b) promptly following each Board committee meeting, copies of all minutes, papers and resolutions and any circulating resolutions that have been approved by that committee.

6.4 Audit

The Company must ensure that the accounts of the Group are audited annually by the Auditor in accordance with all applicable laws and contractual obligations of the Group and/or a Group Company.

6.5 Confidentiality

Any information disclosed under this Clause 6 is Confidential Information that is given subject to Clause 19.

7. DISTRIBUTIONS TO SHAREHOLDERS

7.1 Decision to pay dividend

Subject to the Corporations Act, a decision to pay and the amount of any dividend will be at the sole discretion of the Board.

7.2 Dividend to be made on a *pro rata* basis

The Company may not declare, make or pay any dividend or other distribution to Shareholders in a class, unless such dividend or other distribution is declared or made on a *pro rata* basis to all Shareholders in that class.

8. ISSUE OF SECURITIES

8.1 No obligation to provide further funding

- (a) Except as otherwise provided in this deed, no Shareholder is obliged to provide any further funding (by way of debt or equity, guarantee or otherwise) to the Group.
- (b) Nothing in this deed constitutes an undertaking by a Shareholder:
 - (i) to make any loan or give any other financial accommodation to or for the benefit of the Company or any Group Company;

- (ii) to give any guarantee or indemnity in respect of any obligation or liability of the Company or any Group Company; or
- (iii) to acquire or subscribe for any Securities of the Company or any Group Company.

8.2 New Securities

The Company must not issue any Securities unless the issue is:

- (a) a permitted issue, as set out in Clause 8.3;
- (b) a *pro rata* issue, as set out in Clause 9; or
- (c) approved by Shareholders by Simple Majority Resolution.

8.3 Permitted issues

The Company may issue Securities (including, for the avoidance of doubt, Securities in a new class of Securities) if the issue is:

- (a) ("**emergency funding**") to one or more Shareholders, or their respective Affiliates, if the Board determines (acting reasonably), after having first *bona fide* considered other means of financing, that an injection of funds:
 - (i) is necessary or desirable in order to ensure that a Group Company does not breach (or ceases to breach (where a breach is already subsisting) or is prevented from breaching (where the Board reasonably believes in good faith that a breach is reasonably likely to occur)) a covenant or condition of its external finance facilities;
 - (ii) is otherwise required by its external financiers in writing and the Board considers in good faith that the requirement is reasonable; or
 - (iii) is necessary to ensure that a Group Company does not become insolvent, such issuance being an "**Emergency Issue**" and such Shareholder subscribing for Securities pursuant to the Emergency Issue being the "**Funding Shareholder**", and **provided that** as soon as practicable (and in any case within 20 Business Days) after the Emergency Issue either:
 - (iv) the Funding Shareholder offers to each other Shareholder the opportunity to acquire a Relevant Proportion of the investment comprising the Emergency Issue; or
 - (v) the Company offers to the other Shareholders the opportunity to subscribe for Securities on the same terms as the Emergency Issue,

in each case:

- (vi) using the process set out in Clause 9, *mutatis mutandis* as though the Emergency Issue were in satisfaction of a *pro rata* offer to Shareholders in accordance with Clause 9; and
 - (vii) so as to give each Investor Shareholder and each Non-Investor Shareholder (other than a Class M Shareholder and the Funding Shareholder) the opportunity to either subscribe for, or acquire from one or more of the Funding Shareholders, Securities on the same terms as the Emergency Issue, to maintain or restore their Relevant Proportion immediately prior to the Emergency Issue;
- (b) ("**Offer related issuances**") the issue of:
- (i) ordinary shares to the Investor Shareholders to provide funding to:
 - (A) pay for transaction costs incurred by or on behalf of the Investor Shareholders in connection with the Beam Takeover; and
 - (B) finance the payment of the cash consideration under the Beam Takeover to PSQ shareholders or repay the debts of PSQ in place prior to completion of the Beam Takeover,such ordinary shares to be issued at an issue price equal to the maximum per share cash consideration under the Beam Takeover; and
 - (ii) ordinary shares pursuant to the Beam Takeover in consideration for the transfer of shares in PSQ to a Group Company;
- (c) ("**Manager**") approved by the Board and is an issue of Class M Shares or other Securities to a Manager (or an Affiliate of a Manager) pursuant to any Management Equity Plan, subject to Clause 8.5;
- (d) ("**acquisitions/mergers**") an issue of Securities in connection with an Acquisition;
- (e) ("**Reorganisation**") an issuance of Securities in connection with a *bona fide*, Board approved corporate restructure or reorganisation that does not have a materially adverse impact on the holdings, rights and obligations of Shareholders and **provided that** the corporate restructure or reorganisation does not dilute a Shareholder's proportion of:
- (i) Securities of a given type or class as that bears to the total number of Securities of that type or class held by all Shareholders; and
 - (ii) Securities of any given type or class that bears to the total number of Securities held by all Shareholders;
- (f) ("**IPO**") an issue of Securities pursuant to an IPO that is:
- (i) initiated in accordance with Clause 11; or

- (ii) approved by the Board,
or an issue of Securities in a pre-IPO funding round, in contemplation of such an IPO;
- (g) ("**debt financing**") an issue of Securities in connection with a Debt Financing;
or
- (h) ("**conversion**") an issue of Securities upon the conversion of another instrument convertible into a Security, where permitted by the terms of issue.

8.4 **No requirement to prepare disclosure document**

Any person's rights to be offered Securities and/or to subscribe for Securities (whether under this Clause 8, Clause 9 or otherwise) are subject to those rights not requiring the Company to issue a disclosure document (including a prospectus) or a product disclosure statement, undertake any registration or filing with any Governmental Body or take any comparable action, whether under Chapter 6D or Chapter 7 of the Corporations Act or any comparable legislation in any other jurisdiction, unless the Company (with the Board's approval) agrees otherwise. For the avoidance of doubt, neither the Company nor any other party will be in breach of this deed if it fails to offer any Securities to any person, or give any notice which would constitute an offer of any Securities to any person, in circumstances where such offer or issue of Securities would require the taking of any action described in this Clause 8.4.

8.5 **Management Equity Plan**

- (a) The Board will, as soon as reasonably practicable after the date of this deed, adopt a Management Equity Plan.
- (b) Any Securities issued under a Management Equity Plan will be subject to the applicable plan rules in respect of the Management Equity Plan and, where determined necessary or appropriate by the Board, the terms of this deed.

9. **PRO RATA ISSUE OF SECURITIES**

9.1 **Pro rata offer to Shareholders**

- (a) If the Board wishes to issue Securities pursuant to this Clause 9, the Board may resolve to issue Securities (other than an issue in accordance with Clause 8.3), only on the basis that those Securities are offered to all Shareholders in accordance with this Clause 9.
- (b) The number of Securities allocated to the Investor Shareholders and the amount that they may invest will be aggregated for the purpose of all calculations under this Clause 9 and the Investor Shareholders' Representative may allocate that amount and the number of Securities amongst the Investor Shareholders as it may determine.

9.2 Basis of issue

The Company must ensure that the issue is conducted on the following basis:

- (a) the Company must (subject to clause 8.4) serve notice on the Investor Shareholders' Representative (in respect of each Investor Shareholder) and each Non-Investor Shareholder (other than a Class M Shareholder and the Sale Agent) ("**Issue Notice**") specifying:
 - (i) the proposed terms of issue;
 - (ii) the issue price per new Security, which must be the Market Value;
 - (iii) the total number of new Securities to be issued;
 - (iv) the number and type of new Securities for which the Shareholder would need to subscribe to maintain its Relevant Proportion;
 - (v) the date on which acceptance of the offer by the Shareholder (or its nominated Affiliate) must be received by the Company (which acceptance may be conditional on receipt by the relevant Shareholder of any required regulatory approvals), which shall be no earlier than 10 Business Days after the date of the Issue Notice ("**Initial Acceptance Period**"); and
 - (vi) the date on which subscription monies for the new Securities must be paid to the Company (being not less than 10 Business Days after the date of the Issue Notice or, if later, 10 Business Days after receipt by the relevant Shareholder of any required regulatory approvals),

in each case as approved by the Board;

- (b) the issue must be for cash and the new Securities are offered on the same terms to the Investor Shareholders' Representative (in respect of each Investor Shareholder) and each Non-Investor Shareholder (other than a Class M Shareholder) (or their nominated Affiliates) on a *pro rata* basis in their Relevant Proportions in accordance with this Clause 9;
- (c) in the event a Shareholder ("**Non-contributing Shareholder**") does not take up its entitlement within the Initial Acceptance Period:
 - (i) the Investor Shareholders' Representative (on behalf of any or all Investor Shareholders); and
 - (ii) any one or more 10% Shareholders,

may each give notice to the Company that it (or its nominated Affiliate) ("**Accepting Shareholder**") wishes to subscribe for those new Securities that were not taken up by the Non-contributing Shareholder, in which case that Accepting Shareholder may subscribe for the new Securities not taken up by the Non-contributing Shareholder and those new Securities will be issued to one or more of the Accepting Shareholders. If there is more than one Accepting

Shareholder, each Accepting Shareholder will be offered its Relevant Proportion of the new Securities not taken up by a Non-contributing Shareholder;

- (d) the Company may issue any new Securities that are not subscribed for by Shareholders in accordance with Clauses 9.2(a) to 9.2(c) to any Shareholder or Shareholders approved by the Board within 180 days of the date of service of the Issue Notice on terms no more beneficial to the subscriber than those set out in the Issue Notice; and
- (e) if the Company does not issue the new Securities within 180 days of the date of service of the Issue Notice, it may not issue those new Securities without first complying again with this Clause 9.2.

9.3 Classes of Securities to be issued

- (a) Any Securities issued pursuant to this Clause 9 (regardless of whom the Securities were initially offered to) will be ordinary shares and all ordinary shares must be issued for the same price and otherwise on the same terms.
- (b) No Class M Shares or other Securities issuable under a Management Equity Plan may be issued under this Clause 9.

10. DEALING WITH SECURITIES

10.1 Restrictions on Disposal

- (a) A Shareholder (other than an Investor Shareholder) must not Dispose of any of its Securities, including by way of an indirect transfer of Securities, unless:
 - (i) the Disposal is expressly permitted or provided for in:
 - (A) Clause 10.2 (Permitted Disposals);
 - (B) Clause 11 (Exit Event);
 - (C) Clause 12 (Drag rights);
 - (D) Clause 13 (IPO);
 - (E) Clause 14 (Tag along rights);
 - (F) Clause 15 (Compulsory acquisition of Small Holdings); or
 - (G) Clause 16 (Event of Default);
 - (H) Clause 17 (Sale Agent); or
 - (I) Clause 18 (Nominee arrangements); and
 - (ii) the provisions of Clause 24 are complied with.

- (b) Subject to compliance with Clause 24, an Investor Shareholder (acting through the Investor Shareholders' Representative) may Dispose of its Securities without restriction.

10.2 Permitted Disposals

Subject to Clauses 10.1 and 10.3, the following Disposals of Securities may be effected:

- (a) ("**Sale by the Investor Shareholders**") an Investor Shareholder may Dispose of some or all of its Securities:
 - (i) pursuant to an Investor Exit Event that is an IPO; and
 - (ii) pursuant to an Investor Exit Event that is a Share Sale **provided that** it complies with Clause 12;
- (b) ("**Small holdings**") a Small Shareholder may Dispose of all of its Securities pursuant to Clause 15.1;
- (c) ("**Board approval**") a Shareholder may Dispose of all or any of its Securities:
 - (i) with the approval of the Board (which must not be unreasonably withheld or delayed); and
 - (ii) subject to compliance with Clause 10.4; or
- (d) ("**Permitted Transferee**"):
 - (i) subject to Clause 24.2, a Shareholder may Dispose of all or any of its Securities to a person who is, at the time of Disposal, a Permitted Transferee of that Shareholder; or
 - (ii) pursuant to Clause 10.3.

10.3 Ceasing to be Permitted Transferee

If a person to whom Securities are Disposed under Clause 10.2(d)(i) ("**Holder**") ceases to be a Permitted Transferee of the transferor ("**Transferor**"), the Holder must immediately upon ceasing to be a Permitted Transferee:

- (a) transfer its entire legal and beneficial interest in the relevant Securities back to the Transferor; or
- (b) transfer its entire legal and beneficial interest in the relevant Securities to another Permitted Transferee of the Transferor.

10.4 Right of first refusal

- (a) If any Shareholder ("**ROFR Seller**") wishes to Dispose of its Securities under Clause 10.2(c), it must first serve a notice ("**ROFR Sale Notice**") to that effect on the Investor Shareholders' Representative and each 10% Shareholder:
 - (i) setting out:

- (A) the number of Securities that the ROFR Seller wishes to sell (the "**ROFR Sale Shares**");
 - (B) the price per ROFR Sale Share at which the ROFR Seller proposes to sell the ROFR Sale Shares (the "**Sale Price**"); and
 - (C) any other material terms on which the ROFR Seller proposes to sell the ROFR Sale Shares; and
- (ii) granting each Investor Shareholder (acting through Investor Shareholders' Representative) and each 10% Shareholder the right to purchase the ROFR Sale Shares allocated under Clause 10.4(c), on the terms set out in the ROFR Sale Notice,

and each Investor Shareholder (acting through Investor Shareholders' Representative) and each 10% Shareholder will have the right to purchase all or any of the ROFR Sale Shares allocated under Clause 10.4(c), on the terms set out in the ROFR Sale Notice by serving a notice of acceptance setting out the number of ROFR Sale Shares it wishes to purchase ("**ROFR Acceptance Notice**") on the ROFR Seller within 20 Business Days of the date of the ROFR Sale Notice.
- (b) A ROFR Sale Notice is irrevocable by the ROFR Seller unless agreed by the Investor Shareholders' Representative.
- (c) The number of ROFR Sale Shares allocated to:
 - (i) the Investor Shareholders will be aggregated for the purpose of all calculations under this Clause 10.4 and the Investor Shareholders' Representative may allocate that number of ROFR Sale Shares amongst the Investor Shareholders as it may determine; and
 - (ii) a 10% Shareholder will be the Relevant Proportion in respect of that 10% Shareholder, based on the aggregate holdings of issued ordinary shares of all Investor Shareholders and 10% Shareholders.
- (d) If the Investor Shareholders' Representative (on behalf of one or more Investor Shareholders) or a 10% Shareholder ("**ROFR Buyer**") serves a ROFR Acceptance Notice in accordance with Clause 10.4(a), the ROFR Seller must sell to the ROFR Buyer, and the ROFR Buyer must purchase from the ROFR Seller, the applicable ROFR Sale Shares set out in the ROFR Acceptance Notice within a period of 60 Business Days from the date of the ROFR Acceptance Notice, and the ROFR Seller must provide customary warranties in favour of the ROFR Buyer in relation to the ROFR Sale Shares, including that the ROFR Sale Shares are being transferred with unencumbered legal title, free of any Encumbrances.
- (e) If any ROFR Sale Shares remain unallocated or are not purchased by the ROFR Buyers (other than due to default by the ROFR Seller), upon expiry of the period specified in Clause 10.4(d), the ROFR Seller may, within a period of

60 Business Days from expiry of that period, sell the remaining ROFR Sale Shares to a Third Party Buyer provided that:

- (i) the price per ROFR Sale Share is not less than the Sale Price; and
 - (ii) the terms of sale are no more favourable (on an overall basis) to the Third Party Buyer than the terms contained in the ROFR Sale Notice.
- (f) If on expiry of the period referred to in Clause 10.4(e) the ROFR Seller has not sold all the ROFR Sale Shares on terms which comply with Clause 10.4(e), the ROFR Seller must not sell those ROFR Sale Shares without first complying again with this Clause 10.4.

10.5 Power of attorney

On default by a Shareholder of its obligations under this Clause 10, that Shareholder irrevocably appoints the Investor Shareholders' Representative and the Company, severally, as its attorney in accordance with Clause 27.1 to perform its obligations under this Clause 10.

11. EXIT EVENT

11.1 Exit Process

- (a) The Investor Shareholders' Representative may at any time:
 - (i) initiate or pursue an Exit Event that is an IPO; and
 - (ii) initiate or pursue an Exit Event that is a Share Sale and, in their absolute discretion, exercise their rights under Clause 12.
- (b) The Investor Shareholders' Representative will determine all matters related to the conduct, implementation and execution of the process to achieve the Exit Event ("**Exit Process**"), including:
 - (i) the structure of the Exit Process;
 - (ii) the advisers, consultants and experts to be engaged in connection with the Investor Exit Process (including, if applicable, one or more underwriters or lead managers, co-lead managers, co-managers and brokers for an IPO) ("**Advisers**"), and the terms of engagement of such Advisers, **provided that** the cost of any such Adviser must be paid by the Company;
 - (iii) the timetable for the Exit Process; and
 - (iv) the terms of the Exit Event (including the valuation of the Company implied by such Exit Event).
- (c) For the avoidance of doubt, the Investor Shareholders' Representative is not required to consummate and complete any Exit Event unless the Investor

Shareholders' Representative is satisfied, in its absolute discretion, with the terms that it has achieved for that Exit Event.

- (d) The Investor Shareholders' Representative may undertake multiple Exit Events (including in respect of the same Securities).

11.2 Cooperation

If the Investor Shareholders' Representative initiates or pursues an Exit Event, then:

- (a) the Investor Shareholders' Representative must notify the other Shareholders and the Company that they are seeking to initiate or pursue an Exit Event ("**Exit Notice**") and specify whether the Exit Event is intended to be an IPO, a Share Sale, or a dual-track IPO and Share Sale;
- (b) the Investor Shareholders' Representative may appoint (or direct the Company to appoint) one or more Advisers to assist in evaluating, preparing for and implementing the Exit Event and the cost of any such Adviser must be paid by the Company; and
- (c) each Shareholder and the Company must, and each Shareholder must procure that its Relevant Individual (if applicable) must:
 - (i) co-operate in good faith with the Investor Shareholders' Representative;
 - (ii) do everything reasonably requested by the Investor Shareholders' Representative;
 - (iii) promptly take all reasonable action within their power (including by exercising voting rights, promptly providing such information as may be requested by the Investor Shareholders' Representative and promptly procuring senior management and other management personnel provide all necessary assistance); and
 - (iv) approve or agree to (including by executing documents) certain matters, such as:
 - (A) confidentiality restrictions;
 - (B) the entry into a shareholders' agreement for the Company or a new holding company on similar terms to this deed;
 - (C) amendments to this deed which do not have a materially adverse or disproportionately adverse impact on the rights or obligations of the Company and the Non-Investor Shareholders; and
 - (D) the transfer of Securities;

to execute, implement, consummate and complete an Exit Event.

12. DRAG RIGHTS

12.1 Drag Notice

If one or more Investor Shareholders propose to consummate and complete a Share Sale, the Investor Shareholders' Representative may give a Drag Notice to each other Shareholder ("**Dragged Shareholders**") (with a copy to the Company).

12.2 Contents of Drag Notice

A "**Drag Notice**" must state:

- (a) the identity of the proposed Third Party Buyer, except where the identity of the Third Party Buyer is unknown due to the proposed Disposal being by way of auction or a similar reason;
- (b) the number of Securities proposed to be Disposed by the Investor Shareholders, and the percentage that represents of the total number of Securities held by the Investor Shareholders ("**Drag Proportion**");
- (c) the sale price for each Security (except where the sale price is unknown due to the proposed Disposal being by way of auction or a similar reason, in which case a minimum sale price must be specified) ("**Drag Price**") to be sold by the Investor Shareholders (which need not be cash consideration), which must be the same price that the Investor Shareholders are proposing to Dispose their Securities to the Third Party Buyer;
- (d) any other terms of the proposed sale by the Investor Shareholders to the Third Party Buyer, which must be:
 - (i) other than in respect of restrictive covenants, not materially less favourable (on an overall basis) to the Dragged Shareholders than the terms on which the Investor Shareholders are proposing to Dispose of their Securities to the Third Party Buyer; and
 - (ii) materially in accordance with the terms set out in Clause 12.3(d),
(together, the "**Drag Terms**");
- (e) that the Investor Shareholders require the Dragged Shareholders to Dispose the Drag Proportion of the Dragged Shareholder's Securities ("**Dragged Shares**") to the Third Party Buyer at the Drag Price per Security and on the Drag Terms. Any securities to be issued to the Investor Shareholders and the Dragged Shareholders as consideration for any Disposal of Securities under this Clause 12 must be the same class, including with the same economic and voting rights; and
- (f) if known, the date on which the proposed sale to the Third Party Buyer is proposed to be completed.

12.3 Effect of Drag Notice

If a Drag Notice is given (and not revoked), then:

- (a) each Dragged Shareholder must, if the proposed Disposal in respect of which the Drag Notice is given proceeds to completion, Dispose its Dragged Shares to the Third Party Buyer on the terms stated in the Drag Notice;
- (b) the Dragged Shareholders must do all things and execute such documentation as is reasonably necessary or is reasonably required by the Investor Shareholders' Representative to effect the proposed Disposal to the Third Party Buyer, subject to the sale agreement complying with the Drag Terms;
- (c) the Investor Shareholders must not complete the proposed Disposal in respect of which the Drag Notice is given unless, at the same time, the Third Party Buyer offers to buy all the Dragged Shares of Dragged Shareholders at the Drag Price per Security and on the Drag Terms;
- (d) the Investor Shareholders' Representative may require each Dragged Shareholder (and their Relevant Individual, if applicable) to give representations, warranties, indemnities and restrictive covenants under any agreements relating to the purchase of such Dragged Shares, the Business or the Group, **provided that:**
 - (i) any such representations, warranties and indemnities are given on an equivalent basis and subject to the same liability regime as to those given by the Investor Shareholders, which must be:
 - (A) on a several (but not joint) basis;
 - (B) in respect of liability for warranties (other than warranties in relation to title and capacity), given by selling Shareholders in their Relevant Proportions; and
 - (C) in respect of liability for warranties in relation to title and capacity, given by selling Shareholders in respect of their Securities only;
 - (ii) the liability of each Dragged Shareholder (and its Relevant Individual, if applicable) arising from a breach of any such representations, warranties, and indemnities is limited to the proportion of the consideration actually received by the Dragged Shareholder (and its Relevant Individual, if applicable) in connection with the purchase of such Dragged Shares; and
 - (iii) the Investor Shareholders' Representative must use its reasonable endeavours to procure that warranty and indemnity insurance is obtained by the Third Party Buyer to minimise the exposure of all Shareholders participating in the Disposal on terms in line with prevailing market practice. Any cost associated with that warranty and indemnity insurance will be shared on a pro-rata basis by all Shareholders participating in the Disposal based on their Relevant Proportion, other

than where such cost is borne by the Company, the Third Party Buyer or any of their respective Related Bodies Corporate; and

- (e) each Dragged Shareholder must, if the proposed Disposal in respect of which the Drag Notice is given proceeds to completion, reimburse the Investor Shareholders' Representative and the Investor Shareholders, or enter into such arrangements as the Investor Shareholders' Representative may reasonably request to give effect to a reimbursement of, the Dragged Shareholder's Relevant Proportion of the Sale Costs.

12.4 **Power of attorney**

On default by a Dragged Shareholder of their obligations under this Clause 12, that Dragged Shareholder irrevocably appoints the Investor Shareholders' Representative and the Company, severally, as its attorney in accordance with Clause 27.1 to perform its obligations under this Clause 12.

13. **IPO**

13.1 **Shareholders' obligations**

If the Investor Shareholders' Representative issues an Exit Notice pursuant to Clause 11.1 that relates to an IPO or a dual-track IPO and Share Sale, each Shareholder will, as considered necessary or desirable by the Investor Shareholders' Representative in connection with the IPO:

- (a) act in good faith to sell down or retain as part of the IPO such interests in the Company (or the entity being listed which may be a new holding company) as the underwriters, joint lead managers or financial advisers in relation to the IPO recommend as being desirable in order to maximise the success of the IPO;
- (b) give all reasonable undertakings and enter into any reasonable escrow arrangements in relation to their Securities as may reasonably be required by the relevant Securities Exchange or as the underwriters, joint lead managers or financial advisers in relation to the IPO recommend as being desirable in order to maximise the success of the IPO, **provided that** such escrow arrangements do not extend beyond the 12 month anniversary of the IPO unless required by law (and if required by law, will not extend beyond the minimum amount of time required by law) or otherwise agreed by the Shareholder;
- (c) if recommended by the underwriters, joint lead managers or financial advisers in relation to the IPO, do all things reasonably necessary to effect a change in the number and mix of Securities issued by the Company (or its Subsidiary);
- (d) assist the Company in preparing a prospectus or similar disclosure document;
- (e) provide all reasonable assistance necessary to obtain requisite Securities Exchange and Shareholder approvals for the IPO;
- (f) enter into an underwriting or offer management agreement or similar agreement on market terms;

- (g) provide all necessary or reasonable assistance, and procure senior management and other management personnel provide all necessary or reasonable assistance, for marketing activities, including road shows;
- (h) approve or agree to (including by executing documents) certain matters, such as:
 - (i) the conversion of the Company to a listed public company in connection with an IPO;
 - (ii) the change of a Group Company's name;
 - (iii) the incorporation of a new holding company and the exchange of Securities for securities in that new holding company;
 - (iv) the adoption of a new constitution for a Group Company or a new holding company; and
 - (v) changes to the share capital of the Company or a new holding company (including as a result of the issue of securities), and other restructure or preparatory steps (including the transfer of assets of the Group); and
- (i) take all actions reasonably required by the Company in order to effect a buyback, exchange or conversion of some or all of its Securities (which may involve the exchange of Securities in the Company for securities in a different entity which is to be listed),

in each case, to achieve an IPO on the terms and structure determined by the Investor Shareholders' Representative.

13.2 **Company's obligations**

The Company must:

- (a) pay the costs of preparing the prospectus (or other relevant offer document), advisory fees, underwriting commissions (if any), expenses of due diligence investigations, Securities Exchange fees, fees of the relevant regulatory authorities, legal fees, expert's fees, printing expenses and postage expenses; and
- (b) use its best endeavours to satisfy all terms and conditions of admission to listing imposed by the Securities Exchange.

13.3 **Power of attorney**

On default by a Shareholder of its obligations under this Clause 13, that Shareholder irrevocably appoints the Investor Shareholders' Representative and the Company, severally, as its attorney in accordance with Clause 27.1 to perform its obligations under this Clause 13.

14. TAG ALONG RIGHTS

14.1 Invitation to Tag

If the Investor Shareholders' Representative proposes to consummate and complete a Share Sale and have not given a Drag Notice or the Drag Notice has been revoked, the Investor Shareholders' Representative must give an Invitation to Tag to each other Non-Investor Shareholder (other than a Class M Shareholder) ("**Tagged Shareholders**") (with a copy to the Company).

14.2 Contents of Invitation to Tag

An "**Invitation to Tag**" must state:

- (a) if known, the identity of the proposed Third Party Buyer;
- (b) the number of Securities proposed to be Disposed by the Investor Shareholders ("**Investor Shareholders' Sale Shares**") and the percentage that represents of the total number of Securities held by the Investor Shareholders ("**Tag Proportion**");
- (c) if known, the proposed minimum sale price ("**Tag Price Minimum**") for each Security to be sold by the Investor Shareholders (which need not be cash consideration) and, if known, any other proposed terms of the proposed sale by the Investor Shareholders to the Third Party Buyer ("**Tag Terms Minimum**");
- (d) that the Tagged Shareholder has an option ("**Tag Option**") to direct the Investor Shareholders to include in the Disposal to the Third Party Buyer the Tag Proportion of the Tagged Shareholder's Securities (the "**Tagged Shares**"):
 - (i) at, if a Tag Price Minimum is specified in the Invitation to Tag, a price per Tagged Share no less than the Tag Price Minimum;
 - (ii) if any Tag Terms Minimum is specified in the Invitation to Tag, the Tag Terms Minimum; and
 - (iii) otherwise, other than in respect of restrictive covenants, on terms that are not materially less favourable (on an overall basis) to the Tagged Shareholder than the terms applicable to the Investor Shareholders for the sale of the Investor Shareholder's Sale Shares to the Third Party Buyer. Any securities to be issued to the Investor Shareholders and the Tagged Shareholders as consideration for any Disposal of Securities under this Clause 14 must be the same class, including with the same economic and voting rights; and
 - (iv) materially in accordance with the terms set out in Clause 14.4(d),
(together, the "**Tag Terms**");
- (e) the period during which the Tag Option may be exercised, which must not be less than 10 Business Days from the date of the Invitation to Tag; and

- (f) if known, the date on which the proposed sale to the Third Party Buyer is proposed to be completed.

14.3 Exercise of a Tag Option

- (a) A Tag Option may be exercised by notice in writing to the Investor Shareholders' Representative (with a copy to the Company) within the exercise period stated in the Invitation to Tag.
- (b) Any exercise of a Tag Option must be for all Tagged Shares and is irrevocable. Unless the Tagged Shareholders agree otherwise, the Investor Shareholders must not complete the proposed Disposal in respect of which the Invitation to Tag relates if the Third Party Buyer does not agree to purchase the Tagged Shares of each Tagged Shareholder that has validly exercised its Tag Option.

14.4 Effect of exercise of Tag Option

If a Tagged Shareholder exercises its Tag Option:

- (a) the Tagged Shareholder must, if the proposed Disposal in respect of which the Invitation to Tag is given proceeds to completion, Dispose its Tagged Shares to the Third Party Buyer on the terms stated in the Invitation to Tag;
- (b) the Tagged Shareholder must do all things and execute such documentation as is reasonably necessary or is reasonably required by the Investor Shareholders' Representative to effect the proposed Disposal to the Third Party Buyer, subject to the sale agreement complying with the Tag Terms;
- (c) the Investor Shareholders must not complete the proposed Disposal in respect of which the Invitation to Tag relates unless, at the same time, the Third Party Buyer offers to buy all the Tagged Shares of each Tagged Shareholder that has validly exercised its Tag Option on the Tag Terms;
- (d) the Investor Shareholders' Representative may require each Tagged Shareholder that has validly exercised its Tag Option (and their Relevant Individual, if applicable) to give representations, warranties, indemnities and restrictive covenants under any agreements relating to the purchase of such Tagged Shares, the Business or the Group, **provided that:**
 - (i) such representations, warranties and indemnities are given on an equivalent basis to and subject to the same liability regime as those given by the Investor Shareholders, which must be:
 - (A) on a several (but not joint) basis;
 - (B) in respect of liability for warranties (other than warranties in relation to title and capacity), given by the selling Shareholders in their Relevant Proportion; and
 - (C) in respect of liability for warranties in relation to title and capacity, given by the selling Shareholders in respect of their Securities only;

- (ii) the liability of each Tagged Shareholder that has validly exercised its Tag Option (and its Relevant Individual, if applicable) arising from a breach of any such representations, warranties and indemnities is limited to the proportion of the consideration actually received by the Tagged Shareholder (and its Relevant Individual, if applicable);
 - (iii) the Investor Shareholders' Representative must use its reasonable endeavours to procure that warranty and indemnity insurance is obtained by the Third Party Buyer to minimise the exposure of all Shareholders participating in the Disposal on terms in line with prevailing market practice. Any cost associated with that warranty and indemnity insurance will be shared on a pro-rata basis by all Shareholders participating in the Disposal based on their Relevant Proportion, other than where such cost is borne by the Company, the Third Party Buyer or any of their respective Related Bodies Corporate; and
- (e) each Tagged Shareholder must, if the proposed Disposal in respect of which Invitation to Tag is given proceeds to completion, reimburse the Investor Shareholders' Representative and the Investor Shareholders, or enter into such arrangements as the Investor Shareholders' Representative may reasonably request to give effect to a reimbursement of, the Tagged Shareholder's Relevant Proportion of the Sale Costs.

14.5 **Power of attorney**

On default by a Tagged Shareholder of its obligations under this Clause 14, that Tagged Shareholder irrevocably appoints the Investor Shareholders' Representative and the Company, severally, as its attorney in accordance with Clause 27.1 to perform its obligations under this Clause 14.

15. **COMPULSORY ACQUISITION OF SMALL HOLDINGS**

15.1 **Small Holdings**

- (a) After the date that is three months after the end of the offer period under the Beam Takeover, the Board may at any time serve a written notice ("**Small Holding Disposal Notice**") on a Small Shareholder that it requires the Small Shareholder to Dispose of all of its Small Holding Securities on the terms in this Clause 15.1.
- (b) For the avoidance of doubt, under this Clause 15.1:
 - (i) Small Shareholders may be requested by the Board to Dispose of their Small Holding Securities at different times and in different manners subject to the price per Small Holdings Securities being the Fair Value of those Small Holding Securities at the date of the relevant Small Holding Disposal Notice and no Small Shareholder being required to Dispose of only some of its Securities; and
 - (ii) Small Holding Disposal Notices may be given at multiple times.

- (c) A Small Holding Disposal Notice must state:
 - (i) how the Board requires the Small Shareholder to Dispose of its Small Holding Securities, including whether the Small Holding Securities will be bought-back, redeemed, cancelled (including by way of capital reduction) and/or transferred to another Shareholder or third party nominated by the Board;
 - (ii) the Fair Value per ordinary share comprising of the Small Holding Securities the subject of the Small Holding Disposal Notice;
 - (iii) the date or dates on which the Disposal of the Small Shareholder's Small Holding Securities is proposed to be completed.
- (d) If a Small Holding Disposal Notice is given, each Small Shareholder to whom a Small Holding Disposal Notice is given must Dispose of its Small Holding Securities on the terms stated in the Small Holding Disposal Notice.
- (e) A Small Holding Disposal Notice is revocable and may be amended by the Board and by written notice to the relevant Small Shareholder without the consent of the Small Shareholder.
- (f) The Company and all Shareholders:
 - (i) must take all actions requested by the Board to give effect to the transactions contemplated by a Small Holding Disposal Notice; and
 - (ii) must enter into and execute all documents as required by the Board in connection with and to give effect to a Small Holding Disposal Notice.
- (g) Completion of the transactions the subject of a Small Holding Disposal Notice must occur on the date or dates specified in the relevant Small Holding Disposal Notice or any other date determined by the Board and notified to the relevant Small Shareholder.

15.2 **Power of attorney**

Each Shareholder irrevocable appoints the Investor Shareholders' Representative and the Company, severally, as its attorney in accordance with Clause 27.1 on default of its obligations under Clause 15.1.

15.3 **Authorisations**

The parties must do all things necessary to ensure that the Company may acquire any Securities as contemplated by this Clause 15.

16. EVENT OF DEFAULT

16.1 Notice of Event of Default

If an Event of Default occurs in relation to a Non-Investor Shareholder ("**Defaulting Shareholder**"):

- (a) the Defaulting Shareholder must immediately notify the Company and the Investor Shareholders' Representative in writing, providing details of the Event of Default; and
- (b) the Defaulting Shareholder has the obligations, and the Company and the Investor Shareholders' Representative have the rights, contained in Clause 16.2.

16.2 Right to purchase Default Sale Shares

- (a) If an Event of Default has occurred, the Company may give notice to the Defaulting Shareholder requiring the Defaulting Shareholder to Dispose of any or all of the Defaulting Shareholder's Securities ("**Default Sale Shares**") to:
 - (i) the Company by way of a purchase, buy-back, cancellation as part of a reduction of capital or redemption of the Securities (or any combination thereof); or
 - (ii) the Investor Shareholders in the proportions determined by the Investors Shareholders' Representative, by way of a sale.
- (b) The sale price payable for each Default Sale Share will be an amount equal to the lower of:
 - (i) 80% of the Market Value as at the date the Event of Default first occurs; and
 - (ii) the aggregate issue price of the Default Sale Shares,
as determined by the Board.
- (c) Upon receipt of a written notice under Clause 16.2(a), the Defaulting Shareholder must promptly and in any event within five Business Days:
 - (i) deliver to the Company:
 - (A) a duly signed share transfer form in respect of the Default Sale Shares;
 - (B) the share certificate(s) (or a deed of indemnity for any lost or destroyed certificates) in respect of the applicable Default Sale Shares; and
 - (C) a duly signed deed poll containing customary warranties in respect of the Defaulting Shareholder's ownership of the applicable Default Sale Shares,

in each case, in the form provided by, or acceptable to, the Company;
and

- (ii) complete and execute such other documents and take such other steps as the Company and the Investor Shareholders' Representative deem necessary or desirable to give effect to the purchase, transfer, buy-back or cancellation (as applicable), including all things required under any applicable law (including under Div 2 of Part 2J.1 of the Corporations Act), to approve or otherwise give effect to the purchase, transfer, buy-back or cancellation.
- (d) Without limiting Clause 17, the Defaulting Shareholder is deemed to appoint the Company as its agent for the purpose of effecting a sale of its Default Sale Shares pursuant to this Clause 16.2.

16.3 Power of attorney

Each Defaulting Shareholder irrevocably appoints the Investor Shareholders' Representative and the Company, severally, as its attorney in accordance with Clause 27.1 to perform its obligations under this Clause 16.

16.4 Suspension of rights

If an Event of Default occurs (or is occurring) in respect of a Shareholder then, from that date until such time as the Event of Default ceases to exist:

- (a) any Director appointed by the Defaulting Shareholder (including as part of a group of Shareholders including the Defaulting Shareholder) is not entitled to vote at a meeting of the Board or exercise any other rights granted to the Director under this deed or at law;
- (b) the Defaulting Shareholder is not entitled to vote at a meeting of Shareholders or exercise any other rights granted to a Shareholder under this deed or at law; and
- (c) in the case of an Event of Default under either paragraphs (b) or (c) of the definition of that term, any distributions or dividends paid by the Company that would be payable to the Defaulting Shareholder must be retained by the Company, unless the Board resolves otherwise (and for the avoidance of doubt, the nominee Director of the Defaulting Shareholder will be conflicted from any such decision).

16.5 Other remedies

The rights and remedies contained in this Clause are in addition to and not to the exclusion of any other rights or remedies that a party may have against a party in default of this deed.

17. SALE AGENT

17.1 Transfer of Sale Agent Shares to Investor Shareholders

- (a) Within 30 days of the earlier of the date upon which the Company issues Securities to the Sale Agent or registers the Sale Agent as a holder of Securities (the "**Admission Date**"), the Sale Agent must transfer all of its Securities (each a "**Sale Agent Share**") to the Investor Shareholders for the Transfer Payment and on and subject to the terms and conditions of this deed ("**Mandatory Transfer**").
- (b) The Investor Shareholders' Representative may allocate the number of Sale Agent Shares amongst the Investor Shareholders as it may determine.
- (c) The Sale Agent is hereby deemed to appoint the Company as its agent for the purposes of effecting the Mandatory Transfer under this Clause 17.

17.2 Completion

- (a) Completion of the Mandatory Transfer will take place on a date agreed between the Sale Agent and the Investor Shareholders' Representative, and must be a date that is no less than 15 days and no more than 30 days after the Sale Agent's Admission Date ("**Mandatory Transfer Completion Date**").
- (b) On the Mandatory Transfer Completion Date:
 - (i) the Investor Shareholders must pay to the Sale Agent the Transfer Payment in immediately available funds without any set off, deduction or withholding; and
 - (ii) the Sale Agent must complete, execute and deliver all share transfers and provide the share certificate(s) (or a deed of indemnity for any lost or destroyed certificates) in respect of the applicable Securities to transfer the Sale Agent Shares to the Investor Shareholders, and take such other steps as the Company and the Investor Shareholders deem necessary or desirable to give effect to the Mandatory Transfer, including all things required under any applicable law.

18. NOMINEE ARRANGEMENTS

18.1 Interpretation

In this Clause the following definitions apply unless the context otherwise requires:

"**Expense**" means any liability, cost, expense, loss or damage.

"**Nominee Indemnity Provision**" means clauses set out in the Nominee Deed in relation to the matters set out in Clauses 18.10(d) and 18.10(e) of this deed.

"**Obligations**" means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Nominee under or in respect of this deed or the Nominee Deed.

"Overhead Cost" means overhead expenses, including rent, office maintenance and salaries.

"Relevant Trust" has the meaning given in Clause 18.10(b).

18.2 **Intended operation of this Clause**

- (a) The parties confirm that the principle to which this Clause 18 is intended to give effect is that the voting, economic and other interests of a Non-Investor Shareholder under this deed and in respect of the Non-Investor Shareholder's holding of Securities should, assuming that the Nominee and Non-Investor Shareholder act in accordance with this deed and the Nominee Deed, be neither enhanced nor impaired as a consequence of appointing the Nominee as bare trustee in respect of the Non-Investor Shareholder's Securities. For the avoidance of doubt, no shares held by an Investor Shareholder will be held through the Nominee.
- (b) Each party must take all actions within its power and authority, including giving relevant instructions to the Nominee, and in case of a Beneficial Holder, exercising its rights in its capacity as appointer of the Nominee as bare trustee for it, to give effect to the principle in Clause 18.2(a).
- (c) Clauses 18.4 to 18.8 (inclusive) are to be interpreted subject to, and in a manner consistent with, the principle outlined in Clause 18.2(a).

18.3 **Public company status and number of shareholders**

Despite any other provision in this deed:

- (a) the Company must not take any action (including to issue, redeem, or buy-back Shares), if, following such action, the Company would not continue to qualify as a public company limited by shares as defined under section 112 of the Corporations Act, or would have more than 50 members; and
- (b) a Shareholder must not (nor may it attempt to) Dispose all or any of its Securities, and must ensure that its interest in Securities held through a holding trust or other interposed vehicle is not Disposed, if, following such Disposal, the Company would have more than 50 members.

18.4 **General**

- (a) The Company will appoint a Nominee to hold the legal title to certain Securities.
- (b) Unless otherwise determined by the Board, each Non-Investor Shareholder will hold its Securities through the Nominee.
- (c) The parties acknowledge that following appointment of a Nominee, certain parties to this deed:
 - (i) have rights and obligations under this deed that are in effect equivalent to those of Shareholders; but

- (ii) do not hold legal title to Securities and are instead Beneficial Holders in relation to Securities held by the Nominee as bare trustee on their behalf as contemplated by the Nominee Deed,

and the provisions in this Clause 17 apply in these cases.

- (d) To the extent that the provisions of this Clause 17 require amendment following appointment of a Nominee (in accordance with the principle outlined in Clause 18.2(a)), the Board may amend this Clause 17 (and make any additional necessary consequential changes to this deed) if the amendment has been approved by Shareholders by Simple Majority Resolution.

18.5 **Beneficial Holders**

- (a) Where a Shareholder is a Beneficial Holder, then for the purposes of any references in this deed to the Shareholder's Securities, or to Securities held by the Shareholder (or any similar expression), the Shareholder is to be regarded as holding its Beneficial Shares. For the avoidance of doubt (but without limitation):
 - (i) in the context of any requirement that an act be approved by Shareholders holding at least a given percentage of all Securities, Shareholders who are Beneficial Holders are to be treated as holding their Beneficial Shares; and
 - (ii) a requirement that a Shareholder maintain a minimum shareholding applies in relation to a Shareholder who is a Beneficial Holder by reference to the number of its Beneficial Shares;
 - (iii) the number of Securities held by Shareholders for the purposes of determining:
 - (A) their participation entitlements under Clause 9; and
 - (B) how many Securities they must or may (as applicable) transfer under Clause 12,include the Beneficial Shares held by the Beneficial Holder.
- (b) The Nominee is not itself to be regarded for the purposes of this deed as a 'Shareholder' in respect of, or to otherwise hold, Securities which it holds as bare trustee for Beneficial Holders.
- (c) Clauses 18.5(a) and 18.5(b) do not apply in relation to Clause 7. The parties recognise that the Nominee, as registered owner of the Securities it holds on behalf of the Beneficial Holders, is the person legally entitled to dividends and voting rights in respect of those Securities and that the Nominee is to be regarded as the relevant 'Shareholder' (to the exclusion of the relevant Beneficial Holders) for the purposes of Clause 7. However, the parties acknowledge that:

- (i) instructions may be given by each Beneficial Holder to the Nominee under the Nominee Deed in relation to voting and other dealings in respect of the Beneficial Holder's Beneficial Shares; and
 - (ii) directions may be given by each Beneficial Holder to the Nominee in relation to dividends as provided in Clause 18.8 below.
- (d) Obligations on Shareholders who are Beneficial Holders to exercise voting rights or take other steps as registered holder of Securities are to be interpreted as obligations to ensure that the Nominee takes the relevant steps (at the Beneficial Holder's direction, or by the Company on behalf of the Beneficial Holder, acting under power of attorney, or otherwise).
- (e) The Nominee agrees that it will comply with the terms of the Nominee Deed in relation to each Beneficial Holder's Beneficial Shares for the benefit of the relevant Beneficial Holder, as though each Beneficial Holder was a party to a separate Nominee Deed in place of the Company.

18.6 Dealings in Securities

- (a) Clause 10 applies to a Shareholder who is a Beneficial Holder so that (for the avoidance of doubt) restrictions on Disposing of the Shareholder's Securities include any dealings in its beneficial interest in its Beneficial Shares and any dealings in the legal title to those Securities by the Nominee (at the Beneficial Holder's direction, or by the Company on behalf of the Beneficial Holder acting under power of attorney, or otherwise).
- (b) Where this deed contemplates the sale, purchase or transfer of some or all of a Shareholder's Securities, the relevant provisions apply in relation to a Shareholder who is a Beneficial Holder so that references to the sale, purchase or transfer of the Shareholder's Securities are to be construed as references to:
- (i) the sale, purchase or transfer by the Shareholder of its beneficial interest in its Beneficial Shares; and
 - (ii) (without limiting Clause 18.7 below in circumstances where the Nominee is to retain legal title to the relevant Securities) the Shareholder procuring the concurrent transfer of legal title in those Beneficial Shares by the Nominee,
- and obligations on Shareholders who are Beneficial Holders to offer Securities for sale, purchase, or transfer are to be construed in a corresponding manner.
- (c) In the context of a transferor who is a Beneficial Holder, the relevant Securities transfer form must be executed by the Nominee as registered holder.
- (d) Where this deed permits any party to issue, transfer or sell Securities to any person, that includes permission to issue, transfer or sell Securities to the Nominee as bare trustee for the relevant person.

- (e) The restrictions on transfer in this deed do not prevent the transfer of bare legal title in Securities held by the Nominee as bare trustee for Beneficial Holders to a replacement trustee, as contemplated by the Nominee Deed.
- (f) Each Non-Investor Shareholder irrevocably appoints the Investor Shareholders' Representative and the Company, severally, as its attorney in accordance with Clause 27.1 on default by it of performance of its obligations under this Clause 18.6.

18.7 **Legal title to remain with Nominee**

- (a) A Shareholder who is a Beneficial Holder must not without the consent of the Board direct the Nominee to transfer (or otherwise procure the transfer of) legal title to any of its Beneficial Shares to itself.
- (b) The Nominee must not without the consent of the Board act on a direction to the Nominee to transfer (or otherwise procure the transfer of) legal title to any Beneficial Shares to a Beneficial Holder.
- (c) Unless the Board agrees otherwise in writing, the Nominee may transfer Beneficial Shares to a Permitted Transferee of a Beneficial Holder under Clause 10.2 on the basis that the Nominee is directed to hold legal title to the relevant Securities as bare trustee on behalf of the Permitted Transferee (i.e. the Shareholder may only transfer the beneficial interest in its Beneficial Shares without a transfer of legal title).
- (d) Each party who is a Beneficial Holder irrevocably directs the other parties that if the Beneficial Holder becomes entitled to receive any additional Securities, or the Nominee becomes entitled to receive any additional Securities on behalf of a Beneficial Holder, whether by way of issue or transfer (and whether under this deed or otherwise), then unless the Company has consented to another holding arrangement in relation to the relevant transaction, the issue or transfer must be made in favour of the Nominee on the basis that the Securities are to be held by the Nominee as bare trustee for the relevant Beneficial Holder.
- (e) In relation to issues of Securities:
 - (i) an offer to a Shareholder who is a Beneficial Holder, or the Nominee, to participate in an issue of Securities or other equity securities on the basis that legal title to the relevant Securities or other equity securities will be issued to the Nominee as bare trustee for the Beneficial Holder will not be regarded for that reason alone as being on different terms from the terms offered to other Shareholders in circumstances where other Shareholders will receive legal and beneficial ownership; and
 - (ii) Clause 9 applies in relation to an issue of Securities to the Nominee as bare trustee for a Beneficial Holder by reference to the ability of the Company to make an offer of the beneficial interest in the Securities to the relevant Beneficial Holder.

- (f) Each party who is a Beneficial Holder must give, and the Nominee must ensure that each party who is a Beneficial Holder gives, all necessary directions to the Nominee to ensure compliance with this Clause 18.7.
- (g) Each Non-Investor Shareholder irrevocably appoints the Investor Shareholders' Representative and the Company, severally, as its attorney in accordance with Clause 27.1 on default by it of performance of its obligations under this Clause 18.7.

18.8 Dividends

- (a) The parties acknowledge that the Nominee Deed entitles each Shareholder who is a Beneficial Holder to act as the Nominee's attorney in relation to the matters stated in the Nominee Deed, including giving directions to the Company in respect of the payment of dividends.
- (b) Each Shareholder who is a Beneficial Holder hereby directs, and the Nominee directs, the Company to pay dividends in respect of Securities which are that Shareholder's Beneficial Shares directly to the Shareholder as Beneficial Holder. This Clause does not affect the right of any party to change the direction from time to time.

18.9 Indemnity and liability of Nominee

- (a) Pursuant to the terms of the Nominee Deed, the Nominee must, to the maximum extent permitted by law, and notwithstanding any other provision of this deed, act on the direction of the Beneficial Holders under a power of attorney or otherwise, to the intent that each Beneficial Holder exercises day-to-day control over the operation of the trust under which its Beneficial Shares are held.
- (b) Each party who is a Beneficial Holder agrees to be bound by the terms of the Nominee Deed which contemplate that the Beneficial Holder:
 - (i) indemnifies the Nominee for or in respect of any Expense which the Nominee pays, suffers, incurs or is liable for arising out of or in connection with; and
 - (ii) covenants with the Nominee not to claim, sue or take any action against the Nominee in relation to,

anything done by the Nominee at the direction of or on behalf of the Beneficial Holder, or by reason of the Beneficial Holder's Beneficial Shares being registered in the name of the Nominee.
- (c) The indemnity and covenant in Clause 18.9(b) does not apply to:
 - (i) any Expense which arises as a result of the Nominee's (or any of its officers', employees', or agents') fraud, negligence, dishonesty, wilful misconduct, breach of any of its obligations under this deed or the Nominee Deed or breach of trust;

- (ii) the Overhead Costs of the Nominee, fees of a Related Body Corporate of the Nominee as custodian of the Nominee and fees of a sub-custodian, nominee or other delegate of such a custodian of the Nominee; or
 - (iii) the extent that the Nominee is entitled to recover and is actually indemnified for any such Expenses or Overhead Costs by the Company under the terms of the Nominee Deed or from the assets of the relevant trust under the terms of the Nominee Deed.
- (d) Each party acknowledges that the Nominee is obliged to act in accordance with the directions of the Beneficial Holders in relation to their respective Beneficial Shares. Any breach of this deed that arises out of the Nominee complying with a direction given by a Beneficial Holder in relation to that Beneficial Holder's Beneficial Shares ("**Directed Breach**") is to be construed for all purposes as a breach by the relevant Beneficial Holder and not by the Nominee, and, without limitation:
- (i) the Nominee is released from any claim, action, demand, suit or proceeding for damages, debt, specific performance or any other remedy in respect of any Directed Breach; and
 - (ii) each party (other than the Nominee) covenants not to claim, sue or take any action against the Nominee in respect of any Directed Breach.
- (e) Each indemnity given by a Beneficial Holder in this Clause 18.9:
- (i) is an additional, separate and independent obligation of the Beneficial Holder and no one indemnity limits the generality of any other indemnity; and
 - (ii) survives termination of this deed and the Nominee Deed.

18.10 **Limitation of Nominee's liability**

- (a) This limitation of the Nominee's liability applies despite any other provisions of this deed and extends to all Obligations of the Nominee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) Subject to Clauses 18.10(h) and 18.10(i), the Nominee will be bound by this deed only in its capacity as trustee of each trust created under the Nominee Deed (each a "**Relevant Trust**") and in no other capacity.
- (c) Subject to Clauses 18.10(h) and 18.10(i), the parties (other than the Nominee) acknowledge that the Nominee incurs the Obligations solely in its capacity as trustee of each Relevant Trust and that the Nominee will cease to have any Obligation under this deed which arises after the time the Nominee ceases to be a legal holder of the relevant Beneficial Shares as trustee of the Relevant Trust.
- (d) Subject to Clauses 18.10(h) and 18.10(i), the Nominee will not be liable to pay or satisfy any Obligations except to the extent that the Nominee is actually indemnified under the Nominee Indemnity Provisions, or to the extent that at

the relevant time the Nominee would, if the Nominee exercised its entitlement to be indemnified in respect of that liability under the Nominee Indemnity Provisions, be indemnified under the Nominee Indemnity Provisions.

- (e) Subject to Clauses 18.10(g) and 18.10(i), the parties (other than the Nominee) may enforce their rights against the Nominee arising from the non-performance of the Obligations only to the extent of the Nominee's right to be indemnified under the Nominee Indemnity Provisions.
- (f) Subject to Clauses 18.10(h) and 18.10(i), if a party (other than the Nominee) does not recover all money owing to it arising from the non-performance of the Obligations, it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Nominee in its personal capacity or
 - (ii) applying to have the Nominee put into administration or wound up or applying to have a receiver or similar person appointed to the Nominee or proving in the administration or winding up of the Nominee.
- (g) Subject to Clauses 18.10(h) and 18.10(i), each party (other than the Nominee) waives its rights and releases the Nominee from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which it may suffer as a result of any:
 - (A) breach by the Nominee of any of its Obligations;
 - (B) or non-performance by the Nominee of the Obligations; and
 - (ii) which cannot be paid or satisfied out of the proceeds of the indemnities given under the Nominee Indemnity Provisions.
- (h) The parties acknowledge that the whole of this deed is subject to this Clause 18.10 and that the Nominee shall in no circumstances be required to satisfy any liability of the Nominee arising under, or for non-performance or breach of any Obligations out of any funds, property or assets other than the proceeds of the indemnities given under the Nominee Indemnity Provisions as and when they are available to the Nominee to be applied in exoneration for such liability **provided that**, subject to Clause 18.10(i), if the liability of the Nominee arising under, or for non-performance or breach of any Obligations is not fully satisfied out of the proceeds of the indemnities given under the Nominee Indemnity Provisions due to the negligence, breach of any obligations under the Nominee Deed or breach of trust (excluding any breach that arises as a result of any fraud, dishonesty or wilful misconduct) by the Nominee or any of its officers, employees or agents in the performance of the Nominee's duties as trustee of the Relevant Trusts, the Nominee will be liable to pay out of its own funds, property and assets the unsatisfied amount of that liability, but will not be liable to pay an amount that is greater than the amount that the Nominee would have been able to recover under the Nominee Indemnity Provisions in relation to the relevant liability if its right to be indemnified under the Nominee Indemnity Provisions had not been prejudiced.

- (i) Clauses 18.10(b) to 18.10(h) do not apply to any damages suffered by or amounts owing to another party which result from a breach or non-performance of an Obligation by the Nominee to the extent that those damages or amounts owing are not satisfied because the right of the Nominee to be indemnified under the Nominee Indemnity Provisions is prejudiced as a result of any fraud, dishonesty, or wilful misconduct by the Nominee or any of its officers, employees or agents in the performance of the Nominee's duties as trustee of the Relevant Trusts.
- (j) The parties (other than the Nominee) agree that no act or omission of the Nominee (including any related failure to satisfy any Obligations) will constitute fraud, negligence, breach of trust, breach of any obligations under the Nominee Deed, dishonesty or wilful misconduct of the Nominee or of any of its officers, employees or agents for the purposes of this Clause 18.10 to the extent to which the act or omission was caused or contributed to by any failure of a party to this deed (other than the Nominee) or any other person (other than an officer, employee or agent of the Nominee) to fulfil its obligations relating to the Relevant Trusts or by any other act or omission of a party to this deed (other than the Nominee) or any other person (other than an officer, employee, or agent of the Nominee).
- (k) No attorney, agent, or other person appointed in accordance with this deed has authority to act on behalf of the Nominee in a way which exposes the Nominee to any personal liability (except in accordance with the provisions of Clause 18.10) and no act or omission of such a person will be considered fraud, negligence, dishonesty, wilful misconduct, breach of any obligations under the Nominee Deed or breach of trust by the Nominee or an officer, agent or employee of the Nominee for the purposes of this Clause 18.10.

18.11 Indemnity from Beneficial Holders

- (a) If the Company suffers, incurs or is liable to the Nominee for any Expenses arising out of or in connection with any Securities held by the Nominee on behalf of a Beneficial Holder, subject to Clause 18.11(b), the relevant Beneficial Holder must indemnify the Company in respect of those Expenses.
- (b) The Company agrees with each Beneficial Holder that it will meet the Nominee's out-of-pocket expenses and any internal costs of the Nominee relating to actions and directions by the Beneficial Holder in relation to its Beneficial Shares in the ordinary course. This does not apply in relation to Expenses that would have been incurred in comparable circumstances by the Beneficial Holder had it been the registered holder of the relevant Securities.
- (c) For the avoidance of doubt, Clause 18.11(b) does not apply in relation to:
 - (i) any Taxes or duties in relation to any Securities or dealings in Securities;
or
 - (ii) any expenses or liabilities arising in connection with any action or direction by a Beneficial Holder which is in breach of any legal or

contractual obligation (including a breach of this deed or the Nominee Deed),

nor is it intended to require the Company to meet Expenses incurred as a result of actions or directions by a Beneficial Holder that are unreasonable or otherwise outside the ordinary course (for example persistent requests for copies of the register of Beneficial Holders or other documents beyond what would reasonably be expected).

19. **CONFIDENTIAL INFORMATION**

19.1 **Confidentiality obligations**

Subject to Clauses 19.2 and 19.3, each person to whom Confidential Information is disclosed ("**Recipient**") must:

- (a) use the Confidential Information only for the purposes of the Business or in connection with the exercise of its rights or performance of its obligations under this deed and including using such information to make decisions regarding its investment in the Company (including through its Directors);
- (b) keep the Confidential Information confidential and not disclose it or allow it to be disclosed to a third party; and
- (c) take or cause to be taken reasonable precautions necessary to maintain the confidentiality of the Confidential Information.

19.2 **Permitted disclosure**

- (a) A Recipient may disclose Confidential Information to:
 - (i) its Relevant Individual (if applicable) or an Affiliate of that Recipient;
 - (ii) its Representatives who have a need to know (and only to the extent that each has a need to know) for the purpose of assisting the Recipient and provided they are aware that the Confidential Information must be kept confidential and are subject to appropriate confidentiality obligations;
 - (iii) in respect of the Investor Shareholders' Representative or an Investor Shareholder:
 - (A) to its limited partners and any existing or prospective investors and their respective directors, officers and employees and professional advisers, and its and their respective employees, directors, officers, consultants, agents, financial and professional advisers, insurers and current and prospective financiers (debt and equity);
 - (B) to an existing or proposed debt or equity financier (or its advisers) to the Company, any of its Related Bodies Corporate or the Investor Shareholders' Representative, and to any of their respective directors, employees and professional advisers,

provided in each case that they are aware that the Confidential Information must be kept confidential and are subject to appropriate confidentiality obligations;

- (C) in connection with or as part of an IPO; or
 - (D) to a prospective buyer of Securities or a buyer of the Business who gives an appropriate confidentiality deed poll for the benefit of the Company; or
- (iv) with the prior written consent of the Board, unless the Confidential Information relates only to certain Shareholder(s) (or an Affiliate), in which case with the prior written consent of the party to whom the Confidential Information relates,

and **provided that** the Recipient must not disclose any Confidential Information to any person (other than its Relevant Individual (if applicable)) who is Involved within the Restrained Area in any capacity in any business or activity which offers the same or substantially similar products or services as those offered by the Business of any Group Company, but which will not prevent disclosure to such person where that person is a Third Party Buyer under this deed.

- (b) Where the Recipient discloses Confidential Information under Clause 19.2(a):
- (i) it must ensure that the person to whom it discloses Confidential Information complies with the terms of this Clause 19 as if it were the Recipient; and
 - (ii) the Recipient is responsible to each other party for any act or omission of the person to whom it discloses Confidential Information that would have breached this deed if the act or omission had been by the Recipient.

19.3 Other exceptions

The obligations of confidentiality under this Clause 19 do not extend to information that:

- (a) is disclosed to a party to this deed, but at the time of disclosure is rightfully known to or in the possession or control of the party and not subject to an obligation of confidentiality on the party;
- (b) is public knowledge (but not because of a breach of this deed or any other obligation of confidence); or
- (c) must be disclosed by law or order of any court, tribunal, authority or regulatory body or in connection with the enforcement of this deed or by the rules of a relevant stock exchange (**provided that** the requirement to disclose did not result from a voluntary act on behalf of the person who is seeking to disclose), in which case, if practicable to do so, it shall give as much notice as is reasonable in all the circumstances to, and shall consult (to the fullest extent practicable in the circumstances) with, the other parties.

19.4 **Ceasing to hold Securities**

- (a) If a Shareholder ceases to hold Securities, it must on request from the Company destroy or deliver to the Company (at the Shareholder's election) all documents or other materials containing or referring to the Confidential Information that are in its power or control, including any information disclosed by it under Clause 19.2(a), subject to Clause 19.4(b).
- (b) Clause 19.4(a) does not apply to the extent that a Shareholder (or its Affiliate or Representative to whom Confidential Information has been disclosed under Clause 19.4(a)) is required by law or order of any court, tribunal, authority or regulatory body or in connection with the enforcement of this deed or by the rules of a relevant stock exchange, or professional indemnity insurance policy or any applicable professional standards, to retain any Confidential Information, or to that Confidential Information that such Shareholder reasonably retains under its *bona fide* and pre-existing internal document retention policies or to that Confidential Information that the Shareholder cannot return, destroy, delete or erase because it is stored electronically on off-site servers as a result of automatic data back-up in accordance with the normal practices of the Shareholder.
- (c) The rights and obligations of a Shareholder under this Clause 19 continue to apply to a Shareholder even after it ceases to hold Securities.

19.5 **Public announcements**

A party must not make or authorise a press release or other public statement relating to the subject matter or terms of this deed unless:

- (a) it has the approval of the Board; or
- (b) it is required by law or order of any court, tribunal, authority or regulatory body or in connection with the enforcement of this deed or the listing rules of a relevant stock exchange, in which case, if practicable to do so, it shall give as much notice as is reasonable in all the circumstances to, and shall consult (to the fullest extent practicable in the circumstances) with, the Board.

19.6 **Damages not an adequate remedy**

Without prejudice to any other rights or remedies, the Shareholders acknowledge that damages may not be an adequate remedy for any breach of this Clause 19.

20. **GST**

- (a) Any consideration or amount payable under this deed, including any non-monetary consideration (as reduced in accordance with Clause 20(e)(i) if required) ("**Consideration**") is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this deed, an additional amount ("**Additional Amount**") is payable by the party providing consideration for the Supply ("**Recipient**") equal to the amount of

GST payable on that Supply as calculated by the party making the Supply ("**Supplier**") in accordance with the GST Law.

- (c) The Additional Amount payable under Clause 20(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice within the same month where reasonably practicable and, in any event, no later than 14 days after the time of payment of the Additional Amount.
- (d) If for any reason (including, without limitation, the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under Clause 20(b):
 - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within the same month where reasonably practicable and, in any event, no later than 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within the same month where reasonably practicable and, in any event, no later than 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this deed:
 - (i) if an amount payable under or in connection with this deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise ("**Amount Incurred**"), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred before the Additional Amount is calculated; and
 - (ii) no Additional Amount is payable under Clause 20(b) in respect of a Supply to which section 84-5 of the GST Law applies.
- (f) Any reference in this Clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.

- (g) Any term in this Clause that is capitalised and not defined in this deed has the same meaning as in the GST Law.

21. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS

21.1 Capacity representations and warranties

Each party severally represents and warrants for the benefit of the Company and each other Shareholder that:

- (a) it has full power and authority to enter into and perform its obligations under this deed;
- (b) it has taken all necessary action to authorise the execution, delivery and the performance of this deed;
- (c) this deed constitutes its legal, valid and binding obligations, enforceable in accordance with the deed's terms;
- (d) no representation, warranty, promise or undertaking except those expressly set out in this deed has induced or influenced the party to enter into, or agree to any terms or conditions of, this deed or has been relied on in any way as being accurate by the party or has been warranted by any person (including the Company, any Shareholders and any of their respective officers, representatives or agents) as being true or accurate; and
- (e) it has not relied on any Forward Looking Statement in relation to the Securities, the Group or any of the transactions contemplated by this deed, and acknowledges that no person represents (or has at any time represented) that any such Forward Looking Statements will be achieved or are accurate or are made on reasonable grounds.

21.2 Trustee representations and warranties

Each Shareholder who is a trustee of a trust ("**Relevant Trust**") represents and warrants for the benefit of the Company and each other Shareholder that, as at the date of this deed:

- (a) no action has been taken or is now proposed to be taken to terminate or dissolve the Relevant Trust;
- (b) it has full and valid power and authority under the terms of the Relevant Trust to enter into this deed and to carry out the transactions contemplated by this deed;
- (c) it has in full force and effect the authorisations necessary for it to enter into this deed and perform its obligations under it and allow them to be enforced;
- (d) it enters into this deed and the transactions contemplated by this deed for the proper administration of the Relevant Trust and for the benefit of all the beneficiaries of the Relevant Trust;

- (e) it is the sole trustee of the Relevant Trust and no action has been taken or is now proposed to be taken to remove it as trustee of the Relevant Trust;
- (f) it has a right, including after any set off, to be fully indemnified out of the assets of the Relevant Trust in respect of obligations incurred by it under this deed;
- (g) it is not in breach of any of its obligations as trustee of a trust, whether under the trust deed or otherwise; and
- (h) it is not in default under the terms of the Relevant Trust.

21.3 **No representation about acquisition of investment**

Each party to this deed (other than the Company):

- (a) acknowledges that:
 - (i) the future values of the Securities are unknown and cannot be predicted with certainty and the value of the equity interests in the Company may increase or decrease over time;
 - (ii) it will have no entitlement to compensation or damages or to make any other Claim as a result of any failure of the Securities to generate economic returns for it or in respect of any diminution in value in any equity interests in the Company, including if occurring as a result of the termination of the employment with the Group of any person (whether or not in breach of contract);
 - (iii) it is solely responsible for any Taxes which may become payable by it in connection with or as a result of holding the Securities; and
 - (iv) none of the Investor Shareholders, the Company nor any of their respective Affiliates makes:
 - (A) any representation or warranty to any other person in relation to any acquisition by the Group, the value of the Securities or other securities in any Group Company at any time, the proposed business strategy of any Group Company, the Business performance or the potential exit strategy or returns achievable on an Exit Event; or
 - (B) any recommendation on the suitability of an acquisition by any Group Company or on the suitability of an investment in the Company by any other Shareholder.

21.4 **Independent investigations, assessment and advice**

- (a) Each party to this deed (other than the Company):
 - (i) acknowledges and agrees that it has entered into this deed on the basis of its own independent investigation and assessment and after making its own enquiries; and

- (ii) confirms that it has received independent legal, accounting and tax advice in relation to the terms and conditions of this deed.
- (b) To the maximum extent permitted by law, the Company, the Investor Shareholders' Representative and their Affiliates disclaim all liability in relation to the matters referred to in Clause 21.3 and no party to this deed may take any action against the Company, the Investor Shareholders' Representative or any of those Affiliates for any liability suffered or incurred as a result of any party's decision to invest in the Company, in relation to any matter referred to in Clause 21.3 or as a result of the Investor Shareholders' Representative lawfully performing its obligations and exercising its rights under this deed.

21.5 **Continuing obligations**

The representations, warranties and acknowledgements given under this Clause 21 are continuing obligations for the term of this deed.

22. **TERM**

22.1 **Commencement**

Subject to Clause 22.2, this deed remains in effect until:

- (a) with respect to a Shareholder, the Shareholder has transferred all of their Securities in a manner contemplated by this deed;
- (b) the parties agree to terminate this deed;
- (c) the Company goes into liquidation;
- (d) completion of an IPO occurs; or
- (e) all Securities on issue are held by one person.

22.2 **Certain provisions continue**

The termination of this deed with respect to a party does not affect:

- (a) any obligation of that party which accrued prior to that termination and which remains unsatisfied; and
- (b) Clause 1, 19 or 21 or any other provision of this deed which is expressed to come into effect on, or to continue in effect after, termination of this deed.

23. **LIMITATION OF LIABILITY - TRUSTEE**

- (a) This Clause 23 applies to each party that enters into this deed in a capacity as a trustee ("**Trustee**") of a trust ("**Trust**").
- (b) The parties acknowledge and agree that each Trustee enters into and performs this deed and the transactions contemplated by it in its capacity as trustee of the applicable Trust and in no other capacity, including in respect of any past and

future conduct (including omissions) relating to this deed or the transactions contemplated by it.

- (c) A liability arising under or in connection with this deed is limited to and can be enforced against the relevant Trustee only to the extent to which it can be satisfied out of the property of the relevant Trust out of which the relevant Trustee is actually indemnified for the liability.
- (d) If those assets are insufficient, the other parties will not seek to recover any shortfall by bring proceedings against the relevant Trustee personally and may not seek the appointment of a liquidator, administrator, receiver or similar person to the relevant Trustee or prove in any liquidation, administration or arrangement of or affecting the relevant Trustee.
- (e) Each other party waives its rights and releases the relevant Trustee from any personal liability whatsoever in respect of any loss or damage which cannot be paid or satisfied out of the assets of the relevant Trust.
- (f) This limitation of liability applies despite any other provision of this deed or any other document and extends to all liabilities and obligations of the relevant Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (g) No party to this deed may sue the relevant Trustee in any capacity other than as trustee of the relevant Trust. This Clause shall not apply to any obligation or liability of the relevant Trustee to the extent that it is not satisfied out of the assets of the relevant Trust because under the trust deed establishing the relevant Trust or by operation of law there is a reduction in the extent of the relevant Trustee's indemnification out of the assets of the relevant Trust as a result of the relevant Trustee's fraud, gross negligence, breach of trust or dishonesty.
- (h) Under or in connection with this deed, no party to this deed may:
 - (i) bring proceedings against the relevant Trustee that are inconsistent with the limitations set out in this Clause 23; or
 - (ii) take steps to have the relevant Trustee placed into any form of insolvency administration. The preceding sentence does not preclude appointing a receiver in respect of the assets of the relevant Trust.
- (i) No attorney, agent, receiver or receiver and manager appointed in accordance with this deed has authority to act on behalf of a Trustee in a way which exposes that Trustee to any personal liability.
- (j) A Trustee is not obliged to do or refrain from doing anything under this deed (including, without limitation, incur any liability) unless that Trustee's liability is limited in the same manner as set out in this Clause 23.
- (k) Notwithstanding the other provisions of this Clause 23 a Trustee is liable under this deed to the extent that it is precluded from being indemnified out of the assets of the relevant trust in respect of that liability or the amount of such an indemnity are limited as a result of a fraudulent act or omission of the Trustee.

- (l) Each Trustee represents and warrants in favour of each other party that as at the date of this deed or the date of accession to this deed by that Trustee (as the case may be):
 - (i) the Trust was validly created and in existence;
 - (ii) it was validly appointed as trustee of the Trust and is the only trustee of the Trust;
 - (iii) so far as it is aware, no action has been taken to replace or remove it as trustee of the Trust or to terminate the Trust;
 - (iv) it has the power under the terms of the relevant trust deed to enter into and perform its obligations under this deed; and
 - (v) it has the right to be indemnified out of the assets of the Trust other than to the extent of fraud, negligence or breach of trust on its part.

24. **ACCESSION DEED POLL**

24.1 **New Shareholder**

The Company may only issue Securities to a person who is not a party to this deed if the person ("**New Shareholder**") has executed and delivered to the Company an Accession Deed Poll (except for an issue in connection with an IPO or an issue pursuant to the Management Equity Plan).

24.2 **Transferees**

A Shareholder who wishes to Dispose of any of its Securities must ensure that any proposed transferee executes and delivers an Accession Deed Poll to the Company (except in the case of an IPO or where the proposed transferee is already a Shareholder) prior to such Disposal.

25. **NOTICES AND OTHER COMMUNICATIONS**

- (a) A notice, consent or other communication under this deed:
 - (i) must be in legible writing and in English;
 - (ii) must be addressed to the party to whom it is to be given and to the postal address or email address as notified by that party for the purposes of this Clause;
 - (iii) subject to Clause 25(c), must be signed by the sender (if an individual) or an authorised representative of the sender;
 - (iv) must be either:
 - (A) delivered by hand or sent by pre-paid ordinary mail (by airmail if sent to or from a place outside Australia) to the party's address;
 - or

- (B) sent by email to the party's email address; and
 - (v) is deemed to be received by the party in accordance with Clause 25(b).
 - (b) A notice, consent or other communication under this deed is deemed to be received:
 - (i) if delivered by hand, when delivered to the party;
 - (ii) if sent by post, on the 3rd Business Day after the date of postage, or if to or from a place outside Australia, on the 7th Business Day after the date of postage; or
 - (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 5 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,
- whichever happens first,
- but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (receiving party's time) it is deemed to be received at 9.00 am on the following Business Day.
- (c) Notices sent by email need not be marked for attention in a particular way and are taken to be signed by the named sender.

26. GENERAL

26.1 Variation and waiver

- (a) Subject to applicable laws and Clause 26.1(b), this deed may be varied by the Board with approval of Shareholders by Simple Majority Resolution. Each party is bound by any variation of this deed made pursuant to this Clause and notified to the party.
- (b) Where a variation would materially and adversely affect the rights of the Non-Investor Shareholders in a manner that would be disproportionate to the effect of the variation on the rights of the Investor Shareholders, the variation must be approved by Non-Investor Shareholders holding a majority of the ordinary shares of the Company that are held by Non-Investor Shareholders.
- (c) A provision of this deed, or a right created under it, may not be waived except in writing, signed by the party or parties to be bound.

26.2 **No merger**

The warranties, undertakings and indemnities in this deed do not merge on termination of this deed.

26.3 **Further steps**

Each party agrees, at its own expense, to do anything reasonably requested by another party to give effect to the provisions of this deed and the transactions contemplated by it.

26.4 **Entire agreement**

This deed and the Constitution constitute the entire agreement of the parties about the subject matter and supersede all previous agreements, understandings and negotiations on that subject matter.

26.5 **Assignment**

- (a) Rights arising out of or under this deed are not assignable by a party without the prior written consent of the other parties.
- (b) A breach of this Clause 26.5 by a Shareholder is an Event of Default in respect of that Shareholder.
- (c) Clause 26.5(b) does not affect the construction of any other part of this deed.

26.6 **Counterparts**

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

27. **POWERS OF ATTORNEY**

27.1 **Powers of attorney**

- (a) Each appointment of an attorney by a Shareholder under Clauses 2.2(b)(i), 2.3, 10.5, 12.4, 13.3, 14.5, 15.2, 16.3, 18.6(f) and 18.7(g) ("**Appointor**") is made on the following terms:
 - (i) the Appointor irrevocably appoints the Investor Shareholders' Representative and the Company, severally, as its attorney to give effect to any of the relevant clauses, including to take any of the following actions:
 - (A) to complete and execute such instruments and resolutions for and on its behalf as the attorney thinks necessary to give effect to any of the transactions contemplated by the relevant clause;

- (B) to call for, agree to short notice being provided in respect of, speak at and attend general meetings of, the Company (including any class meeting);
- (C) to vote or grant a proxy in favour of any person to vote (or appoint an authorised representative to vote) on behalf of the Appointor (to the exclusion of the Appointor) at any meeting or class meeting of holders of Securities (or any class of them);
- (D) to instruct and direct the Nominee or any party that is a bare trustee holding Securities on trust for the Appointor, to take all actions appropriate to implement any transaction or carry out any other matter under or contemplated by this deed, including to instruct such person to execute, under hand or under seal, and deliver (conditionally or unconditionally) any appropriate documents and to dispose of any Securities; and
- (E) to execute circulating shareholder resolutions on behalf of the Appointor,

in each case on the Appointor's behalf;

- (ii) the Appointor agrees to ratify and confirm whatever the attorney lawfully does, or causes to be done, under the appointment;
 - (iii) the Appointor agrees to indemnify the attorney against all Claims, demands and costs arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under that appointment except in respect of Claims, demands and costs arising as a result of that attorney's fraud, negligence or wilful default; and
 - (iv) the Appointor agrees to deliver to the Company on demand any power of attorney, instrument of transfer or other instruments as the Company may require for the purposes of any of the transactions contemplated by the relevant clause.
- (b) Whenever an Appointor appoints an attorney under Clauses 12.4, 13.3, 14.5, 15.2 and 16.3, it hereby appoints the Company as its agent as follows:
- (i) the Company will hold the purchase moneys on trust for the Appointor;
 - (ii) receipt by the Company of the purchase moneys will be good discharge of the buyer's obligation to the Appointor and the buyer will not be bound to see to the application of it; and
 - (iii) the Company must pay the purchase moneys to the Appointor on surrender of the relevant share certificates or other instruments of ownership (as appropriate for Securities other than shares),

and if the relevant default relates to the provision of share certificates, the Appointor indemnifies the buyer against any Claims, demands and costs arising in any way in connection with the non-provision of those share certificates.

27.2 **Validity of acts**

Each Appointor:

- (a) declares that all acts and things done by an attorney appointed under this Clause 27 in exercising powers under the power of attorney in Clause 27.1 will be as good and valid as if they had been done by that Appointor and ratifies and confirms whatever the attorney lawfully does, or causes to be done, under the appointment in Clause 27.1;
- (b) agrees that it will not, for so long as the power of attorney in this Clause 27 is in effect:
 - (i) grant any power of attorney or other instrument conferring on persons other than the attorneys appointed in this Clause 27 rights which contradict or are otherwise inconsistent with some or all of the rights granted under the power of attorney in this Clause 27; or
 - (ii) personally take any action which would result in the suspension of the power of attorney in this Clause 27 or otherwise contradict or be inconsistent with the power of attorney in this Clause 27, including attending any meeting and voting at that meeting if an attorney appointed under Clause 27.1 is present and intends to vote at the meeting pursuant to a lawful exercise of the attorney's powers; and
- (c) without prejudice to the other provisions of this Clause 27, must deliver to the Company and to each Director on demand any power of attorney, instrument of transfer or other document which the Company or a Director requires for the purposes of any transaction or action contemplated by Clause 27.1.

27.3 **Waiver and release**

Each party:

- (a) releases and discharges each attorney appointed under Clause 27.1 from any and all claims and liabilities, in law or equity, that it ever had, now has, would but for this clause have had or may have in the future (whether known at the date of this deed or not) in respect of, or in any way in connection with, the exercise by the attorney of its powers under this Clause 27;
- (b) agrees that this Clause 27.3 may be pleaded as a complete bar to any claim or action brought by it against an attorney appointed under Clause 27.1 in respect of, or in any way in connection with, the exercise by the attorney of its powers under this Clause 27; and
- (c) covenants never to sue or assert any claim or cause of action against any attorney appointed under Clause 27.1 with respect to, or in any way in connection with, the exercise by the attorney of its powers under this Clause 27.

27.4 Irrevocable

Each Appointor declares that the power of attorney in Clause 27.1 is given for valuable consideration (including the mutual promises in this deed) and is irrevocable while the relevant Appointor holds any Shares. For the avoidance of doubt, each Appointor agrees that if some or all of the Appointor's Shares are disposed of in accordance with this deed (or an Appointor directs the Nominee to do so), the appointment by the Appointor of the attorneys remains effective in respect of the Appointor and the remaining Shares held by the Appointor.

27.5 Conflict of interest

Each attorney may exercise a power under the power of attorney in this Clause 27 even if:

- (a) it involves a conflict of duty; or
- (b) any attorney, appointee of the attorney as a director of any Group Member, party, and/or Representative of a party has a personal interest in the doing of that act.

27.6 Benefits

Each attorney is expressly authorised to do any act as a result of which a benefit is conferred on it, any appointee of the attorney, a director of a Group Company, any Group Company, any party and/or Representative of a party.

27.7 Survival

Clauses 27.2, 27.3, 27.6 and 27.7 survive termination of this deed (for all parties or for any specific party) indefinitely.

28. SHAREHOLDER'S RELATIONSHIP

28.1 Shareholder not liable for another party

Each Shareholder is responsible for its obligations under this deed and is not liable for any obligation of another party.

28.2 Relationship between Shareholders

Except where this deed expressly states otherwise, this deed does not create any relationship between the Shareholders under which a Shareholder:

- (a) is liable generally for the acts or omissions of another Shareholder; or
- (b) may share profits.

28.3 **Authority of Shareholders**

A Shareholder:

- (a) may not hold itself out as a partner of, or principal or agent or trustee of another Shareholder;
- (b) except where this deed expressly states otherwise, does not have authority to act for, or to create or assume any responsibility or obligation on behalf of another Shareholder; and
- (c) the rights, duties, obligations and liabilities of a Shareholder is in every case several, and not joint nor joint and several and, in any event, does not constitute a partnership between the Shareholders.

28.4 **No fiduciary duties**

Nothing in this deed gives rise to or is intended to give rise to any fiduciary duties between Shareholders or between a Shareholder and the Company.

28.5 **No responsibility for tax**

No party is responsible for the other party's obligations under the income tax laws of any applicable jurisdiction.

28.6 **No partnership**

Nothing in this deed is intended, or shall be deemed, to establish a partnership between the parties.

28.7 **Management services agreement**

- (a) A Group Company may, subject to Clause 28.7(b), enter into a management services agreement with the Investor Shareholders' Representative (or its Affiliate) pursuant to which the Group Company will pay fees for advisory or management services and reimburse costs.
- (b) Any management services agreement entered into under Clause 28.7(a) must be on arm's length terms or otherwise approved to the extent required under the Corporations Act.

29. **GOVERNING LAW**

29.1 **Governing law**

This deed is governed by the law in force in New South Wales.

29.2 **Jurisdiction**

Each party submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action

being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**SCHEDULE 1
INITIAL INVESTOR SHAREHOLDERS**

Name	Notice details	Securities
Genesis Healthcare Holdings Pty Ltd (ACN 634 487 684) as trustee for Beam Co-investor Trust (ABN 46 302 218 645)	Address: Email: [•] Attention: [•]	[•] ordinary shares
Franklin Park Co-Investment Fund VI, L.P.	Address: Email: [•] Attention: [•]	[•] ordinary shares
LFPE Co-Invest II SLP	Address: Email: [•] Attention: [•]	[•] ordinary shares
Asia Opportunities (Singapore) Pte. Limited	Address: Email: [•] Attention: [•]	[•] ordinary shares
ADL ANZ Opportunities I Pte. Limited	Address: Email: [•] Attention: [•]	[•] ordinary shares
Genesis Capital Ultimate GP Pty Ltd (ACN 634 339 549) as general partner of Genesis Capital Management Partnership I, LP (ILP 1900016), the general partner of Genesis Capital Fund I, LP (ILP 2100002)	Address: Email: [•] Attention: [•]	[•] ordinary shares

SCHEDULE 2 DICTIONARY

1. DICTONARY

In this deed:

"10% Shareholder" means a Non-Investor Shareholder who has a Shareholding of no less than 10%, and any other Non-Investor Shareholder approved by the Investor Shareholders in writing to the Company to be a 10% Shareholder.

"Accession Deed Poll" means:

- (a) in respect of a New Shareholder that is a Rollover Shareholder, a deed poll in the form of Schedule 4 or in such other form as determined by the Investor Shareholders' Representative from time to time; and
- (b) in respect of any other New Shareholder, a deed poll in the form of Schedule 3 or in such other form as determined by the Investor Shareholders' Representative from time to time.

"Accounting Standards" means:

- (a) accounting standards approved under the Corporations Act and its requirements about the preparation and contents of account; and
- (b) Australia's equivalent to the International Financial Reporting Standards as approved by the Australia Accounting Standards Board.

"Acquisition" means any *bona fide*, Board approved acquisition of, or merger with, a company, business or assets, by a Group Company.

"Additional Amount" has the meaning given in Clause 20(b).

"Additional Investor Shareholder Entity" has the meaning given in Clause 2.1(b).

"Admission Date" has the meaning given in Clause 16.1(a).

"Advisers" has the meaning given in Clause 11.1(b)(ii).

"Affiliate" means:

- (a) with respect to any person:
 - (i) any person approved by the Board;
 - (ii) any other person which, directly or indirectly, Controls, is Controlled by, or is under common Control with, such first person; and
 - (iii) in respect of a person that is an individual, also includes:
 - (A) any Family Company or Family Trust of that person; and

- (B) any self-managed superannuation fund for that individual, the trustee of which is that individual, that individual and their spouse, or a Family Company or Family Trust of that individual; and
- (b) in respect of the Investor Shareholders' Representative, also includes any Genesis Fund,

provided that:

- (c) no Investor Shareholder shall constitute, or be deemed to constitute, an Affiliate of another Investor Shareholder solely as a result of both being Investor Shareholders;
- (d) no Non-Investor Shareholder shall constitute, or be deemed to constitute, an Affiliate of another Non-Investor Shareholder solely as a result of both being Non-Investor Shareholders;
- (e) no Group Company shall constitute nor be deemed to constitute an Affiliate of any Investor Shareholders and/or their Affiliates (on the one hand) nor any Non-Investor Shareholders and/or their Affiliates (on the other hand); and
- (f) for the avoidance of doubt and notwithstanding anything else in this deed, any portfolio company of the Genesis Funds shall not be an Affiliate of any Investor Shareholder (nor its Permitted Transferees).

"**Amount Incurred**" has the meaning given in Clause 20(e).

"**Appointor**" has the meaning given in Clause 27.1(a).

"**Associate(s)**" means, with respect to a Non-Investor Shareholder:

- (a) its Affiliates;
- (b) its Relatives;
- (c) Relatives of its Affiliates;
- (d) Affiliates of its Relatives;
- (e) Associates of its Associates;
- (f) any other Shareholder in respect of whom it is an Associate of that Shareholder; and
- (g) any other Non-Investor Shareholder with whom that Shareholder has agreed to act in concert with for the purposes of appointing a Director to the Board.

"**Auditor**" means the auditor of the Group approved by the Board from time to time.

"**Beam BidCo**" means Beam Dental Bidco Pty Ltd (ACN 676 303 254).

"**Beam Bid Documents**" means each bidder's statement by Beam BidCo relating to the offers made, or to be made, under the Beam Takeover.

"**Beam Takeover**" means the off-market takeover offer by Beam BidCo to acquire all of the shares in PSQ which is set out in the Beam Bid Documents.

"**Beneficial Holder**" means a person on whose behalf the Nominee holds Securities as bare trustee.

"**Beneficial Shares**" in relation to a Beneficial Holder, means the Securities held by the Nominee as bare trustee for that Beneficial Holder.

"**Board**" means all or some of the Directors acting as the board of directors of the Company.

"**Board Meeting**" has the meaning given in Clause 5.1(b).

"**Budget**" means a budget, including a consolidated profit and loss account, balance sheet and cash flow statement for the Group.

"**Business**" means the business of the Group.

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in New South Wales.

"**Business Plan**" means the three year programme current from time to time for the conduct of the Business during the current and next two Financial Years, including the Budget for the current and next two Financial Years.

"**CEO**" means the person appointed as the chief executive officer of the Group from time to time.

"**CFO**" means the person appointed as the chief finance officer of the Group from time to time.

"**Chairperson**" means the person appointed as chairperson of the Board under Clause 4.4.

"**Claim**" means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

"**Class M Share**" means a Security issued under the terms of a Management Equity Plan.

"**Class M Shareholder**" means a holder of Class M Shares or other Securities issued under the Management Equity Plan (but only with respect to their holding of such Class M Shares or other Securities) that is:

- (a) a Manager;
- (b) an Affiliate of a Manager; or

(c) a person that the Board agrees in writing to treat as a "Class M Shareholder".

"Confidential Information" means:

- (a) all confidential information exchanged between the parties relating to the Business or other affairs of the Group or the Shareholders;
- (b) any information belonging to or about the Group, or a Shareholder or its Affiliates;
- (c) any information relating to a Transaction Document or any transaction contemplated by a Transaction Document;
- (d) all data bases, source codes, methodologies, manuals, artwork, advertising manuals, trade secrets and all financial, accounting, marketing and technical information, customer, client and supplier lists, know-how, technology, operating procedures and other information, used by or relating to the Group and its transactions and affairs;
- (e) all notes and reports incorporating or derived from the material referred to in paragraphs (a) to (c); and
- (f) all copies of the material referred to in paragraphs (a) to (d),

but excludes any information that:

- (g) is in, or becomes part of, the public domain other than through breach of this deed or an obligation of confidence owed to a Group Company;
- (h) was already known to the relevant party at the time of disclosure by the Company or a Shareholder, other than as a result of a breach of an obligation of confidentiality; or
- (i) the relevant party acquires from a source other than the Company or a Shareholder, where the source is entitled to disclose it.

"Consideration" has the meaning given in Clause 20(a).

"Constitution" means the constitution of the Company from time to time.

"Control" has the meaning in section 50AA of the Corporations Act, and **"Controlled"** has a corresponding meaning except that, in addition, an entity controls a second entity if the first entity would be taken to control the second entity but for section 50AA(4) of the Corporations Act. Without limiting the preceding sentence, an entity also Controls a Fund if it has the power, or controls (directly or indirectly) an entity with the power, to replace the trustee or legal representative of the Fund.

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

"Debt Financing" means any *bona fide*, Board approved debt financing of one or more Group Companies (including any bilateral or syndicated facility, loan, bond, note issuance or private placement or convertible, exchangeable, subordinated or hybrid

instrument), in each case, as amended, restated, supplemented, novated, extended, refinanced or replaced from time to time.

"**Defaulting Sale Shares**" has the meaning given in Clause 16.2(a).

"**Defaulting Shareholder**" has the meaning given in Clause 16.1.

"**Directors**" means all or some of the directors of the Company from time to time.

"**Dispose**" in relation to a person and any property means:

- (a) to sell, offer for sale, transfer, assign, surrender, gift, create an Encumbrance or option over, declare oneself a trustee of or part with the benefit of or otherwise dispose of that property (or any direct or indirect legal or beneficial interest in or over any rights in respect of any part of it);
- (b) to do anything which has the effect of placing a person in substantially the same position as if the person has done any of the things specified in paragraph (a); or
- (c) to attempt to do any of the things specified in paragraph (a) or (b),

and "**Disposal**" has a corresponding meaning.

"**Drag Notice**" has the meaning given in Clause 12.2.

"**Drag Price**" has the meaning given in Clause 12.2(c).

"**Drag Proportion**" has the meaning given in Clause 12.2(b).

"**Dragged Shareholder**" has the meaning given in Clause 12.1.

"**Drag Terms**" has the meaning given in Clause 12.2(d).

"**Encumbrance**" means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect or any agreement to create any of them.

"**Event of Default**" means, in relation to a Non-Investor Shareholder:

- (a) that Shareholder or its Relevant Individual (if applicable) becomes the subject of an Insolvency Event;
- (b) that Shareholder or its Relevant Individual (if applicable) breaches a material provision of this deed which cannot be remedied or which remains unremedied for the period prescribed by the Board (which may not be less than 10 Business Days) following notification of the breach to that Shareholder; or
- (c) either:
 - (i) there is a change in Control in relation to that Shareholder and a person who has Control as a result of that change was not a Permitted

Transferee of that Shareholder immediately prior to the change in Control; or

- (ii) that Shareholder ceases to be a Permitted Transferee and does not comply with the provisions of Clause 10.3.

"Exit Event" means:

- (a) an IPO; or
- (b) a Share Sale.

"Exit Notice" has the meaning given in Clause 11.2(a).

"Exit Process" has the meaning given in Clause 11.1(b).

"Fair Value" means, for the purposes of Clause 15.1, the Market Value, or any other amount per Security agreed between the Board and the relevant Small Shareholder.

"Family Company" means a body corporate which:

- (a) the individual (either alone or with their spouse or, if applicable, Relevant Individual) Controls (directly or indirectly) and where all of the shares in the body corporate are owned, legally and beneficially, by the individual, their Relevant Individual and/or Relatives of the individual and/or Relevant Individual and/or trustees of a Family Trust of the individual; or
- (b) is otherwise associated with the individual and approved by the Board.

"Family Trust" means a trust which:

- (a) the individual and/or their Relevant Individual Controls (either alone or with their spouse) (directly or indirectly) and where all the beneficiaries or potential beneficiaries are the individual, their Relevant Individual and/or Relatives of the individual and/or charities; or
- (b) is otherwise associated with the individual and approved by the Board.

"Financial Year" means the 12-month period starting on 1 July and ending on 30 June each year (or other dates as the Board approves).

"Forward Looking Statement" means any forward looking statement, estimate, projection or forecast communicated to a Shareholder from time to time (including prior to that person becoming a Shareholder).

"Fund" means a unit trust, discretionary trust, investment trust, managed investment scheme, limited partnership, general partnership or any other collective investment company, entity or vehicle.

"Genesis Fund" means any fund managed, sponsored or advised by the Investor Shareholders' Representative or any of its Affiliates;

"Governmental Body" means (a) a federal, national or regional government and any political subdivision thereof, whether state or local; (b) any agency, authority, instrumentality, regulatory body, court, central bank, municipality or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government; (c) a government-owned/government-controlled (wholly or partly) association, organisation, business or enterprise; or (d) a political party. It includes ASIC and ASX (and any other stock exchange).

"Government Official" means (a) any officer, employee, representative of, or any person acting in an official capacity for or on behalf of, any Governmental Body (including, without limitation, an employee of a government-owned/government-controlled (wholly or partly) association, organisation, business or enterprise) or public international or supra-national organisation; (b) any candidate for public or political office; (c) a legislative, administrative, or judicial official, regardless of whether elected or appointed; or (d) an individual who holds any other official, ceremonial, or other appointed or inherited position with a government or any of its agencies.

"Group" means the Company and each of its Subsidiaries and other Controlled entities from time to time.

"Group Company" means a member of the Group from time to time.

"GST" has the same meaning as in the GST Law.

"GST Group" has the same meaning as in the GST Law.

"GST Law" has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and the *A New Tax System (Goods and Services Tax) Regulations 1999 (Cth)*.

"Initial Acceptance Period" has the meaning given in Clause 9.2(a)(v).

"Insolvency Event" means:

- (a) a "controller" (as defined in section 9 of the Corporations Act), manager, trustee, administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up a corporation; or
 - (iii) proposing or implementing a scheme of arrangement;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or their estate;

- (e) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors or any similar proceeding or arrangement by which the asset of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (f) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or
- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

"Investor Shareholder" means each Initial Investor Shareholder and any of their Permitted Transferees that hold Securities from time to time and any Third Party to whom an Investor Shareholder Disposes Securities from time to time pursuant to an Investor Exit Event that is a Share Sale.

"Investor Shareholder's Sale Shares" has the meaning given in Clause 14.2(b).

"Investor Shareholders' Representative" means Genesis Capital Manager I Pty Ltd.

"Invitation to Tag" has the meaning given in Clause 14.2.

"Involved" includes direct or indirect involvement as a principal, agent, partner, employee, shareholder, unitholder, director, trustee, beneficiary, manager, contractor, subcontractor, consultant, adviser or financier.

"IPO" means an initial public offering of shares in the Company, shares in any Subsidiary or shares in a company of which the Company is or will be a wholly owned subsidiary in conjunction with an application for the quotation of those shares on the Securities Exchange.

"Issue Notice" has the meaning given in Clause 9.2(a).

"Management Equity Plan" means any management equity plan adopted by the Board (with Major Shareholder Approval), from time to time under which the Company may issue Class M Shares or other Securities to Managers.

"Manager" means a person that is:

- (a) invited by the Board to participate in a Management Equity Plan; and
- (b) an employee, executive director or non-executive director of any Group Company at the time the Manager (or any Affiliate of the Manager) becomes a Class M Shareholder.

"Mandatory Transfer" has the meaning given in Clause 17.1(a).

"Mandatory Transfer Completion Date" has the meaning given in Clause 16.2(a).

"**Market Value**" means the market value as determined by the Board in good faith.

"**New Shareholder**" has the meaning given in Clause 24.1.

"**Nominee**" means an independent third party trustee company appointed by the Company to hold Securities on bare trust pursuant to the terms of the Nominee Deed and Clause 17.

"**Nominee Deed**" means the nominee deed to be entered into between the Company and the Nominee.

"**Non-contributing Shareholder**" has the meaning given in Clause 9.2(c).

"**Non-Investor Shareholder**" means a Shareholder that is not an Investor Shareholder (and, for the avoidance of doubt, includes a Rollover Shareholder).

"**Offer Date**" the date on which the first offer is made under the Beam Takeover.

"**Officer**" means directors, officers, commissioners, chairmen, presidents and any members of the senior management team of the Group.

"**Permitted Transferee**" means, in respect of a Shareholder:

- (a) an Affiliate of the Shareholder; and
- (b) in relation to a Shareholder who is a trustee, custodian, responsible entity or general partner of a trust or partnership, also includes any person who is a replacement trustee, custodian, responsible entity or general partner of the same trust or partnership,

and, for the avoidance of doubt, where an 'Affiliate' of the Shareholder is a Family Trust, the manager, trustee, responsible entity, general partner or operator of that trust and the beneficiaries of the Family Trust will also be deemed a Permitted Transferee provided the applicable Securities are 100% beneficially held by the Family Trust.

"**PSQ**" means Pacific Smiles Group Limited (ACN 103 087 449).

"**Recipient**" has the meaning given in Clause 20(b).

"**Related Body Corporate**" has the meaning given in the Corporations Act, interpreted so that 'subsidiary' has the meaning given to that term in this deed.

"**Related Party**" has the meaning given in the Corporations Act.

"**Related Party Transaction**" means an agreement or arrangement between the Company or another Group Company and:

- (a) a Director or their Affiliate; or
- (b) a Shareholder or its Affiliate,

but excluding:

- (c) a deed of indemnity, insurance and access (or similar document) on customary terms and conditions between a Director and the Company or another Group Company; and
- (d) any agreement or arrangement in relation to the Disposal of Securities in accordance with the terms of this deed.

"**Relatives**" means a spouse, former spouse, mother, father, brother, sister or child.

"**Relevant Proportion**" means when used in relation to:

- (a) all Shareholders, the proportions which their respective Shareholdings bear to all of the issued ordinary shares of the Company; and
- (b) less than all the Shareholders, the proportions which their respective Shareholdings bear to their aggregate holdings of issued ordinary shares of the Company.

"**Representative**" means, in relation to an entity, an employee, officer, director or adviser of that entity.

"**Representative Member**" has the same meaning as in the GST Law.

"**Rollover Shareholder**" means a person holding the beneficial interest to any Securities who is a party to this deed and is not an Investor Shareholder or the Sale Agent or the Nominee, including any Shareholder who:

- (a) executes and delivers an Accession Deed Poll to the Company; or
- (b) has an Accession Deed Poll delivered to the Company on that Shareholder's behalf by its attorney appointed under the Beam Takeover.

"**Sale Agent**" means a person who has executed an Accession Deed Poll and agrees that with effect from the date of the Accession Deed Poll it will be bound by this deed and have rights under this deed as if that entity were named as a party to this deed as a "Sale Agent".

"**Sale Costs**" means all costs and expenses reasonably incurred by the Investor Shareholders' Representative or the Investor Shareholders in connection with a Disposal pursuant to Clause 12 or 14, including any legal fees and expenses, all accounting fees and expenses and all finders, brokerage or investment banking fees, expenses or commission.

"**Securities Exchange**" means the Australian Securities Exchange or any other securities or stock exchange approved by the Board.

"**Security**" has the meaning in section 92(3) of the Corporations Act and includes ordinary shares and Class M Shares and/or any other securities issued by the Company from time to time.

"**Shareholder**" means, solely for the purposes of this deed, a holder of Securities in the Company.

"Shareholding" means a Shareholder's percentage holding of ordinary shares in the Company.

"Share Sale" means a sale of at least 50% of the Securities held by the Investor Shareholders, to a Third Party.

"Simple Majority Resolution" means:

- (a) in the case of a resolution of members, the affirmative vote of Shareholders that together hold more than 50% of the total votes of all Shareholders present (in person or by proxy) at the meeting of Shareholders or sign the relevant resolution (as the case may be) and who are entitled to vote on the resolution concerned; and
- (b) in the case of a resolution of Directors, the affirmative vote of Directors that together hold more than 50% of the total votes of all Directors who attend the relevant Board Meeting or sign the relevant written resolution (as the case may be) and who are entitled to vote on the resolution concerned.

"Small Holding" means a shareholding in the Company of less than 125,000 ordinary shares and, in relation to a Beneficial Holder holding through the Nominee, includes those Beneficial Holders who hold less than 125,000 ordinary shares in the Company.

"Small Holding Disposal Notice" has the meaning given in Clause 15.1(a).

"Small Holding Securities" means the securities that constitute a Small Holding.

"Small Shareholder" means a Shareholder which holds a Small Holding.

"Subsidiary" means each subsidiary of the Company, as that term is defined in Part 1.2 Division 6 of the Corporations Act.

"Supplier" has the meaning given in Clause 20(b).

"Supply" has the same meaning as in the GST Law.

"Tag Option" has the meaning given in Clause 14.2(d).

"Tag Price Minimum" has the meaning given in Clause 14.2(c).

"Tag Proportion" has the meaning given in Clause Clause 14.2(b).

"Tag Terms" has the meaning given in Clause 14.2(d).

"Tag Terms Minimum" has the meaning given in Clause 14.2(c).

"Tagged Shareholder" has the meaning given in Clause 14.1.

"Tagged Shares" has the meaning given in Clause 14.2(d).

"Taxes" means taxes, levies, imposts, charges and duties imposed by any authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them.

"Third Party" means, in respect of a Shareholder, a party other than the Shareholder (or its Permitted Transferees) or an Affiliate of the Shareholder (or its Permitted Transferees).

"Third Party Buyer" means a buyer (or a proposed buyer) of Securities who is a Third Party in relation to the seller (or proposed seller) of those Securities.

"Transaction Documents" means:

- (a) this deed;
- (b) the Constitution; and
- (c) any other agreement or document that the parties agree is a Transaction Document.

"Transfer Payment" means an amount equal to the Transfer Price multiplied by the number of Securities held by the Sale Agent immediately prior to the Mandatory Transfer Completion Date.

"Transfer Price" means the final cash price offered per Security by Beam BidCo in the Beam Takeover.

"Trust" has the meaning given in Clause 23(a).

"Trustee" has the meaning given in Clause 23(a).

2. INTERPRETATION

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

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and *vice versa*;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, Governmental Body, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;

- (iii) a party includes its successors and permitted assigns;
- (iv) a document includes all amendments or supplements to, or replacements or novations of, that document;
- (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
- (vi) this deed includes all schedules and attachments to it;
- (vii) dollars, \$, A\$ or AUD is a reference to the lawful currency of Australia;
- (viii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced; and
- (ix) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
- (g) an agreement on the part of two or more persons binds them severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) in determining the time of day, where relevant to this deed, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it; and
- (k) if there is any conflict between the body of this deed and its schedules or attachments the terms of the main body of this deed will prevail.

**SCHEDULE 3
ACCESSION DEED POLL**

Date:

PARTIES

- 1 [Insert name of acceding party] of [insert address] ("Acceding Party")
[2 [Insert name of discontinuing party] of [insert address] ("Discontinuing Party")]

THE PARTIES agree in favour of and for the benefit of each and all of the following:

- (A) the parties to the shareholders' deed ("**Shareholders' Deed**") dated [•] 2024 made among Beam Dental Holdings Ltd (ACN 676 301 456) ("**Company**") and the Investor Shareholders (as defined in the Shareholders' Deed); and
- (B) all persons[, other than the Discontinuing Party,] who are or subsequently become Shareholders of the Company (the parties referred to in (A) and (B) collectively, the "**Continuing Parties**").

1. DEFINED TERMS AND INTERPRETATION

1.1 Defined terms

Words and expressions used in this deed poll have the same meaning as those used in the Shareholders' Deed (as amended, varied, novated or supplemented from time to time), unless the context otherwise requires.

1.2 Interpretation

Clauses 1 and 2 of Schedule 2 of the Shareholders' Deed apply in the interpretation of this deed poll.

2. ACCESSION

- (a) Subject to the terms of this deed poll, the Acceding Party accedes to the Shareholders' Deed as if it were an original party to the Shareholders' Deed as a[/n] [Investor Shareholder / Non-Investor Shareholder / Nominee] on and from the date that the Acceding Party is registered as a holder of Securities ("**Accession Date**").
- (b) The Acceding Party acknowledges that they have received a copy of the Shareholders' Deed together with all other information they require in connection with this deed poll and the Shareholders' Deed.
- (c) [Subject to Clauses 3 and 4, the Discontinuing Party ceases to be a party to the Shareholders' Deed on and from the Accession Date.]

3. **PARTIES TO BE BOUND**

- (a) The Acceding Party undertakes to be bound by all the terms of the Shareholders' Deed from the Accession Date as if the definition of "Shareholder" and "[Investor Shareholder / Non-Investor Shareholder]" included the Acceding Party.
- (b) [Without limiting Clause 3(a), the Acceding Party is bound by all the terms of the Shareholders' Deed from the Accession Date as if each reference to the Discontinuing Party in the Shareholders' Deed were a reference to the Acceding Party and not to the Discontinuing Party.]

4. **[ACCEDING PARTY NOT SUBJECT TO PRE-ACCESSION LIABILITIES]**

[The Discontinuing Party indemnifies the Acceding Party for any liabilities of the Discontinuing Party arising from or in connection with the Shareholders' Deed which accrued prior to the Accession Date or which relate to any act or omission prior to the Accession Date.]

5. **[NO FURTHER RIGHTS AND RELEASE FROM OBLIGATIONS]**

[With effect from the Accession Date, the Discontinuing Party:

- (a) agrees and acknowledges that it has no further rights against any of the Continuing Parties under the Shareholders' Deed other than rights that arise before the Accession Date; and
- (b) releases each Continuing Party from all obligations and liabilities under the Shareholders' Deed other than obligations and liabilities that arise before the Accession Date.]

6. **REPRESENTATIONS AND WARRANTIES**

The Acceding Party [and the Discontinuing Party each] represent[s] and warrant[s] the following to each other party and to each Continuing Party:

- (a) **registration:** if it is a body corporate, it is duly registered and validly existing under the laws of the country of its registration;
- (b) **power and authority:** it has the power and authority to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by the Shareholders' Deed;
- (c) **action:** it has taken all necessary action to authorise the entry into and performance of, this deed poll and to carry out the transactions contemplated by the Shareholders' Deed;
- (d) **binding obligation:** this deed poll constitutes legal, valid and binding obligations on it;

- (e) **no contravention:** neither the execution and performance by it of this deed poll nor any transaction contemplated under the Shareholders' Deed will violate in any respect any provision of:
 - (i) its constituent documents; or
 - (ii) any other applicable law, document, agreement or other arrangement binding upon it or its assets; and
- (f) **not insolvent:** it is not subject to any dissolution, liquidation, winding up or other termination event, nor any pending or threatened bankruptcy, insolvency or liquidation proceedings against it.

7. GENERAL

7.1 Address of Acceding Party for notices

For the purposes of the Shareholders' Deed the address of the Acceding Party to which all notices must be delivered in accordance with Clause 25 of the Shareholders' Deed is:

Acceding Party

[insert Acceding party's name]

Address: **[insert address]**

Email: **[insert email address]**

Attention: **[insert name]**

7.2 Governing law

This deed poll is governed by the law in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

7.3 Further steps

Each party agrees, at its own expense, to do anything reasonably requested by another party or any Continuing Party to give effect to the provisions of this deed poll and the transactions contemplated by it.

7.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

7.5 **Counterparts**

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

7.6 **Liability for expenses**

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this deed poll.

7.7 **Amendment**

This deed poll can only be amended or replaced by another document executed by the parties and each Continuing Party.

7.8 **[Service of process]**

[Note: This section to be inserted if the Acceding Party is not incorporated in Australia.]

[[Insert Acceding party's name] irrevocably appoints [insert local agent] as its agent for the service of process in Australia in relation to any matter arising out of this deed poll and the Shareholders' Deed. If [insert name of local agent] ceases to be able to act as such or have an address in Australia, [insert Acceding party's name] agrees to appoint a new process agent in Australia and deliver to the other parties within 20 Business Days a copy of a written acceptance of appointment by the process agent, upon receipt of which the new appointment becomes effective for the purpose of this deed poll and the Shareholders' Deed. [Insert Acceding party's name] must inform the other parties in writing of any change in the address of its process agent within 20 Business Days of the change.]

[new page]

Attachment A to Accession Deed Poll - Shareholders' Deed

[Annex copy of Shareholders' Deed]

[new page]

Execution page to Accession Deed Poll - Shareholders' Deed

EXECUTED as a DEED POLL

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**SCHEDULE 4
SCRIP ELECTION DEED POLL**

Date:

PARTIES

[*Insert name of acceding party*] of [*insert address*] ("**Acceding Party**")

THE PARTIES agree in favour of and for the benefit of each and all the following:

- (C) the parties to the Shareholders' Deed; and
 - (D) the parties to the Nominee Deed,
- (each a "**Beneficiary**" and together the "**Beneficiaries**")

1. DEFINED TERMS AND INTERPRETATION

1.1 Defined terms

The following definitions apply in this deed poll.

"**Accession Date**" has the meaning given to that term in clause 2 of this deed poll.

"**Appointing Beneficiary**" has the meaning given to that term in the Nominee Deed.

"**Bidco**" means Beam Dental Bidco Pty Limited (ACN 676 303 254).

"**Bidder's Statement**" means the bidder's statement issued by Bidco in respect of the Takeover Bid, dated [*insert date*], (as amended, varied or supplemented from time to time).

"**Company**" means Beam Dental Holdings Limited (ACN 676 301 456).

"**Nominee Deed**" means the Nominee Deed dated [*insert date*] between Perpetual, the Company and the Appointing Beneficiaries from time to time.

"**Pacific Smiles**" means Pacific Smiles Group Limited (ACN 103 087 449).

"**Perpetual**" means Perpetual Corporate Trust Limited (ACN 000 341 533).

"**Offer**" means the offer for shares in Pacific Smiles contained in section 12 of the Bidder's Statement (as amended, varied or supplemented from time to time by any other Takeover Bid Documents).

"**Shareholders' Deed**" means the Shareholders Deed dated [*insert date*] between (among others) the Company, each Investor Shareholder (from time to time), and each Non-Investor Shareholder (from time to time).

"Takeover Bid" means the off-market takeover bid by the Company through its wholly owned subsidiary, Bidco, to acquire all of the shares in Pacific Smiles as set out in the Takeover Bid Documents.

"Takeover Bid Documents" means:

- (a) the Bidder's Statement;
- (b) any variation of the Offer; and
- (c) any further replacement or supplementary bidder's statement lodged by Bidco in connection with the Takeover Bid.

1.2 **Defined terms incorporated by reference**

Words and expressions used but not defined in this deed poll, have the same meaning as those used in the Shareholders' Deed (as amended, varied, novated or supplemented from time to time), unless the context otherwise requires.

1.3 **Interpretation**

Clauses 1 and 2 of Schedule 2 of the Shareholders' Deed apply in the interpretation of this deed poll.

2. **ACCESSION TO SHAREHOLDERS' DEED AND NOMINEE DEED**

- (d) Subject to the terms of this deed poll, the Acceding Party accedes to:
 - (i) the Shareholders' Deed as if it were an original party to the Shareholders' Deed as a Non-Investor Shareholder; and
 - (ii) the Nominee Deed as if it were an original party to the Nominee Deed as an Appointing Beneficiary,on and from the date that Bidco issues Securities to, or for the benefit of, the Acceding Party pursuant to the terms of the Offer ("**Accession Date**").
- (e) The Acceding Party acknowledges that they have received a copy of the Shareholders' Deed and the Nominee Deed together with all other information they require in connection with this deed poll, the Shareholders' Deed and the Nominee Deed.

3. **PARTIES TO BE BOUND**

The Acceding Party undertakes to be bound by:

- (f) all the terms of the Shareholders' Deed from the Accession Date as if the definition of "Shareholder" and "Non-Investor Shareholder" in the Shareholders' Deed included the Acceding Party; and
- (g) all the terms of the Nominee Deed from the Accession Date as if the definition of "Appointing Beneficiary" in the Nominee Deed included the Acceding Party.

4. REPRESENTATIONS AND WARRANTIES

The Acceding Party represents and warrants the following to each Beneficiary:

- (h) **registration:** if it is a body corporate, it is duly registered and validly existing under the laws of the country of its registration;
- (i) **power and authority:** it has the power and authority to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by the Shareholders' Deed and the Nominee Deed;
- (j) **action:** it has taken all necessary action to authorise the entry into and performance of, this deed poll and to carry out the transactions contemplated by the Shareholders' Deed and the Nominee Deed;
- (k) **binding obligation:** this deed poll constitutes legal, valid and binding obligations on it;
- (l) **no contravention:** neither the execution and performance by it of this deed poll nor any transaction contemplated under the Shareholders' Deed and the Nominee Deed, will violate in any respect any provision of:
 - (i) its constituent documents; or
 - (ii) any other applicable law, document, agreement or other arrangement binding upon it or its assets; and
- (m) **not insolvent:** it is not subject to any dissolution, liquidation, winding up or other termination event, nor any pending or threatened bankruptcy, insolvency or liquidation proceedings against it.

5. GENERAL

5.1 Address of Acceding Party for notices

For the purposes of the Shareholders' Deed and the Nominee Deed, the address of the Acceding Party to which all notices must be delivered in accordance with clause 25 of the Shareholders' Deed and clause 15 of the Nominee Deed is:

Acceding Party

[insert Acceding party's name]

Address: **[insert address]**

Email: **[insert email address]**

Attention: **[insert name]**

5.2 Governing law

This deed poll is governed by the law in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and courts

of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

5.3 Further steps

The Acceding Party agrees, at its own expense, to do anything reasonably requested by any Beneficiary to give effect to the provisions of this deed poll and the transactions contemplated by it.

5.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (n) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (o) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (p) the exercise of a right does not prevent any further exercise of that right or of any other right.

7.6 Liability for expenses

The Acceding Party must pay its own expenses incurred in negotiating, executing, stamping and registering this deed poll.

7.7 Amendment

This deed poll can only be amended or replaced by another document executed by the Acceding Party and each Beneficiary.

7.8 [Service of process

[Note: This section to be inserted if the Acceding Party is not incorporated in Australia.]

[[Insert Acceding party's name] irrevocably appoints ***[insert local agent]*** as its agent for the service of process in Australia in relation to any matter arising out of this deed poll, the Shareholders' Deed and the Nominee Deed. If ***[insert name of local agent]*** ceases to be able to act as such or have an address in Australia, ***[insert Acceding party's name]*** agrees to appoint a new process agent in Australia and deliver to the other parties within 20 Business Days a copy of a written acceptance of appointment by the process agent, upon receipt of which the new appointment becomes effective for the purpose of this deed poll, the Shareholders' Deed and the Nominee Deed. ***[Insert Acceding party's name]*** must inform the other parties in writing of any change in the address of its process agent within 20 Business Days of the change.]

Execution Page – Scrip Election Deed Poll

EXECUTED as a DEED POLL

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EXECUTION PAGE

EXECUTED as a **DEED**

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BEAM DENTAL HOLDINGS LTD ACN 676 301 456 ("COMPANY")
AS A PUBLIC COMPANY LIMITED BY SHARES

CONSTITUTION

CONTENTS

Rule	Page
1. Dictionary	1
2. Shareholders' Deed Applies.....	1
3. Share Capital	2
4. Calls, Forfeiture, Indemnities, Lien and Surrender	5
5. Transfer and Transmission of Shares	11
6. General Meetings	14
7. Directors	23
8. Executive Officers	34
9. Seals.....	35
10. Dividends and Reserves	36
11. Winding Up	40
12. Minutes and Records	41
13. Indemnity and Insurance	43
14. Notices.....	44
15. General	47
Schedule 1 Dictionary.....	48

1. **DICTIONARY**

- (a) A capitalised term or expression which is defined in the Dictionary in Schedule 1 has the meaning given to it in the Dictionary.
- (b) The interpretation rule in Schedule 1 sets out the rules of interpretation which apply to this constitution and clarifies the effect of the Corporations Act on this constitution.
- (c) In this constitution, unless the contrary intention appears:
 - (i) a word or expression defined in the Shareholders' Deed (but not defined in this constitution) has the same meaning when used in this constitution; and
 - (ii) a word or expression defined in the Shareholders' Deed and also defined in this constitution has the meaning given to it by the defined term in this constitution.

2. **SHAREHOLDERS' DEED APPLIES**

2.1 **Relationship between constitution and Shareholders' Deed**

Upon adoption of the Shareholders' Deed, this constitution has effect subject to the Shareholders' Deed. To the extent that this constitution and the Shareholders' Deed deal with the same or a similar topic differently, the Shareholders' Deed prevails and the members must do everything within their power to amend this constitution to remove any such difference.

2.2 **Director acting in compliance with Shareholders' Deed**

Where rule 2.1 applies and a director acts in accordance with the Shareholders' Deed:

- (a) the fact that the director has acted in accordance with the Shareholders' Deed:
 - (i) is taken to be an act that is in the best interest of the Company as a whole; and
 - (ii) is not taken to be a breach of any duty owned by that director to the Company or a breach of this constitution;
- (b) neither the Company nor the members may take any steps to pursue the director for a breach of duty if the only basis for the breach is the conduct in accordance with the Shareholders' Deed; and
- (c) if, contrary to rule 2.2(a), the conduct is a breach of duty or a breach of this constitution, to the extent permitted by law, each member must take all steps necessary to:
 - (i) consent to, excuse, ratify or authorise the breach; and

- (ii) otherwise release the director from any liability arising from the breach of duty or a breach of this constitution.

3. **SHARE CAPITAL**

3.1 **Shares**

- (a) Subject to this constitution and the Shareholders' Deed, the directors have the right to issue shares or grant options over shares to any person and they may do so on the conditions they think fit.
- (b) Shares referred to in rule 3.1(a) may have preferred, deferred or other special rights or special restrictions about dividends, voting, return of capital, participation in the property of the Company on a winding up or otherwise, as the directors think fit.
- (c) This rule must not be construed so as to adversely affect any special rights of holders of any shares or class of shares.

3.2 **Certificates**

- (a) Each member is entitled without payment to receive a certificate for shares issued as required under the Corporations Act.
- (b) The directors may order lost, damaged or defaced share certificates be cancelled and, if necessary, replaced by new share certificates.

3.3 **Class M Shares**

- (a) Class M Shares shall be issued in connection with any management equity plan adopted by the Company.
- (b) Each Class M Share when issued will rank equally in all respects with each other Class M Share.
- (c) *No general meetings or voting:* The Class M Shares do not confer the right to receive notice of, or to attend and vote at, general meetings of the Company.
- (d) *No dividends:* The Class M Shares do not confer any dividend rights.
- (e) *Other rights:* All other terms of the Class M Shares shall be specified in the documents establishing the management equity plan adopted by the Company, and shall otherwise include those provided for under the Corporations Act.

3.4 **Variation of rights**

- (a) Subject to this constitution and the Shareholders' Deed, and to the extent permitted by law, the directors have the right to vary any of the rights attaching to the shares at any time by resolution of the board of directors.
- (b) Notwithstanding any other provisions in this constitution, any Class M Share acquired by an Investor Shareholder or a Permitted Transferee of an Investor

Shareholder, or by a Non-Investor Shareholder or a Permitted Transferee of a Non-Investor Shareholder, will automatically be re-classified as an ordinary share and any such re-classification will not require the consent of any shareholder.

3.5 Preference shares

Subject to section 254A(2) of the Corporations Act, the Company may issue preference shares from time to time. Preference shares have the following rights and restrictions:

- (a) *repayment of capital*: the right in priority to any other class of shares to repayment of the amount paid on the preference share:
 - (i) in a winding up or reduction of capital; and
 - (ii) in the case of a redeemable preference share, on redemption;
- (b) *dividends*: the right to payment of a cumulative preferential dividend in priority to the payment of a dividend on any other class of shares, accruing from day to day and payable on the amount paid on the preference share at the time and at the rate, which may be fixed or variable, specified or determined under the terms of issue;
- (c) *accrued dividends*: the right in priority to any other class of shares to the amount of any dividend accrued but unpaid on the preference share:
 - (i) in a winding up or reduction of capital; and
 - (ii) in the case of a redeemable preference share, on redemption;
- (d) *participation in surplus assets and profits*: no rights to participate in the profits or property of the Company other than as set out in this rule 3.5 whether on a winding up, reduction of capital or, in the case of a redeemable preference share, on redemption;
- (e) *attending general meetings and receiving documents*: the same right as the holder of an ordinary share to:
 - (i) receive notice of a general meeting;
 - (ii) attend the general meeting; and
 - (iii) receive notices, reports and accounts;
- (f) *voting*: the right to vote in the following circumstances and in no other circumstances:
 - (i) on a proposal to wind up the Company or reduce the share capital of the Company or on a proposal for the disposal of the whole of the Company's property, business and undertaking;

- (ii) while a dividend or part of a dividend in respect of the preference share is unpaid;
 - (iii) on a resolution to approve the terms of any buy-back agreement;
 - (iv) on a proposal that affects rights attached to the preference share; or
 - (v) during the winding up of the Company;
- (g) *redemption*: in the case of a redeemable preference share, the right to require the Company to redeem the preference share at the time and place specified under the terms of issue; and
- (h) *restrictions*: any other restrictions specified in the terms of issue.

3.6 **Joint holders of shares**

Where two or more persons are registered as the holders of a share, they hold it as joint tenants with rights of survivorship subject to the following provisions:

- (a) the Company is not bound to register more than three of those persons as joint holders of the share;
- (b) each of those persons and their respective legal personal representatives are liable severally as well as jointly for all payments, including calls, which are required to be made in respect of the share;
- (c) subject to rule 3.6(b), on the death of any one of them, the Company is entitled to recognise the survivor or survivors as the only person or persons who have any title to the share;
- (d) any one of those persons may give effective receipts for any dividend, interest or other distribution or payment in respect of the share;
- (e) any one of them may appoint a proxy under rule 6.9 in respect of the share;
- (f) where the Corporations Act requires the number of members to be counted, they are to be counted as one member; and
- (g) the Company is not bound to issue more than one certificate for the share and delivery of a certificate to any one of those persons is sufficient delivery to all of them.

3.7 **Equitable interests in shares**

- (a) The Company may treat the registered holder of a share as the absolute owner of that share.
- (b) The Company is not bound by or compelled in any way to recognise an equitable, contingent, future, partial or other right or interest in a share or unit of a share, even if the Company has notice of that right or interest.

- (c) With the consent of the directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.
- (d) Nothing in rule 3.7(c) limits rule 3.7(a).

4. **CALLS, FORFEITURE, INDEMNITIES, LIEN AND SURRENDER**

4.1 **Calls**

- (a) Subject to this constitution, the Shareholders' Deed and the terms on which any shares are issued, the directors may make calls on the members for any money unpaid on their shares which is not by the terms of issue of those shares made payable at fixed times.
- (b) Subject to the Shareholders' Deed:
 - (i) when the directors issue shares they may differentiate between the holders as to the amount of calls to be paid and the times of payment;
 - (ii) the directors may require a call to be paid by instalments;
 - (iii) on receipt of at least 14 days' notice, a member on whom a call is made in accordance with this constitution must pay to the Company the amount called on that member's shares at the time or times and place specified;
 - (iv) a call is to be taken as having been made when the resolution of the directors authorising the call was passed;
 - (v) the directors may revoke a call, postpone a call or extend the time for payment;
 - (vi) a call is not invalidated by the non-receipt of a notice of a call or the accidental omission to give notice of a call to any member;
 - (vii) if a sum called on a share is not paid in full by the day appointed for payment, unless otherwise determined by the directors, the person from whom the sum is due must pay:
 - (A) interest on the unpaid amount from the date appointed for payment of the sum to the date of actual payment, at a rate determined under rule 4.9; and
 - (B) any costs, expenses or damages incurred by the Company in relation to the non-payment or late payment of the sum;
 - (viii) any sum unpaid on a share that, by the terms of issue of the share, becomes payable on issue or at a fixed date:
 - (A) is to be treated for the purposes of this constitution as if that sum was payable under a call duly made and notified; and

- (B) must be paid on the date on which it is payable under the terms of issue of the share; and
- (ix) the directors may, to the extent permitted by law, waive or compromise all or any part of any payment due to the Company under the terms of issue of a share or under this rule 4.1.

4.2 Proceedings for recovery of calls

- (a) In an action or other proceedings for the recovery of a call, or interest or costs or expenses incurred in relation to the non-payment or late payment of a call, proof that:
 - (i) the name of the defendant is entered in the register as the holder or one of the holders of the share in respect of which the call is claimed;
 - (ii) the resolution making the call is recorded in the minute book; and
 - (iii) notice of the call was given to the defendant in accordance with this constitution,is conclusive evidence of the debt and it is not necessary to prove the appointment of the directors who made the call or any other matter.
- (b) In rule 4.2(a), "defendant" includes a person against whom a set-off or counter-claim is alleged by the Company and "proceedings for the recovery of a call" is to be construed accordingly.

4.3 Payments in advance of calls

- (a) The directors may accept from a member the whole or any part of the amount unpaid on a share even though no part of that amount has been called.
- (b) The directors may authorise payment by the Company of interest on the whole or any part of an amount accepted under rule 4.3(a), until the amount becomes payable, at a rate agreed between the directors and the member paying the amount.
- (c) The directors may repay to a member all or any part of the amount accepted under rule 4.3(a) on or before the date on which the call for such amount is due to be paid.

4.4 Forfeiture of partly paid shares

- (a) If a member fails to pay the whole of a call or instalment of a call by the time appointed for payment of the call or instalment, the directors may serve a notice on that member requiring payment of the unpaid amount, together with any interest that has accrued and all costs, expenses or damages that may have been incurred by the Company by reason of the non-payment or late payment of the call or instalment.

- (b) A notice under rule 4.4(a) must name a place and a day for payment. The day must be at least 10 Business Days after the date of service of the notice.
- (c) The notice must state that the shares on which the call was made are liable to be forfeited if the whole amount payable is not paid by the time and at the place specified in the notice.
- (d) If a member does not comply with a notice under rule 4.4(a), the shares to which the notice relates may be forfeited by a resolution of the directors. Forfeiture includes all dividends, interest and other amounts payable by the Company on the forfeited shares and not actually paid before the forfeiture.
- (e) Where a share has been forfeited:
 - (i) notice of the resolution must be given to the member in whose name the share was registered immediately before the forfeiture; and
 - (ii) an entry of the forfeiture, with the date, must be made in the register of members.
- (f) Failure to give the notice or to make the entry required under rule 4.4(e) does not invalidate the forfeiture.
- (g) The directors may:
 - (i) sell or otherwise dispose of a share which has been forfeited on the terms and in the manner the directors think appropriate;
 - (ii) at any time before a sale or disposal, cancel the forfeiture of a share on the terms the directors think appropriate; and
 - (iii) reissue a share which has been forfeited, with or without any money paid on the share by any former holder being credited as paid and on the other terms and in the manner the directors think appropriate.
- (h) A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay, and must immediately pay, to the Company:
 - (i) all calls, instalments, interest, costs, expenses and damages owing in respect of the shares at the time of the forfeiture; and
 - (ii) interest on so much of the amount payable under rule 4.4(h)(i) as is unpaid from time to time, from the date of the forfeiture to the date of actual payment, at a rate determined under rule 4.9.
- (i) Subject to this constitution, the forfeiture of a share extinguishes all interest in, and all claims and demands against the Company in respect of, the forfeited share and all other rights incident to the share.
- (j) The directors may:

- (i) exempt a share from all or any part of this rule 4.4; and
 - (ii) waive or compromise all or any part of any payment due to the Company under this rule 4.4.
- (k) The Company may by ordinary resolution passed at a general meeting cancel a share which has been forfeited under the terms on which the share is on issue.
- (l) A certificate in writing from the Company signed by a director or secretary that a share was forfeited on a specified date is sufficient evidence of the forfeiture of that share and the right and title of the Company to sell, dispose or reissue that share.

4.5 Indemnity for payments by the Company

- (a) A member or, if the member is dead, the member's legal personal representative, must indemnify the Company against any liability which the Company has under any law to make a payment for or on account of that member including in respect of:
- (i) shares held by that member, solely or jointly;
 - (ii) a transfer or transmission of shares by that member; or
 - (iii) dividends, bonuses or other money due or payable or which may become due or payable to that member.
- (b) Rule 4.5(a) includes, without limitation, a payment arising from:
- (i) the death of that member;
 - (ii) the non-payment of any income tax, capital gains tax, wealth tax or other tax by that member or the legal personal representative of that member; or
 - (iii) the non-payment of any estate, probate, succession, death, stamp or other duty by that member or the legal personal representative of that member.
- (c) The member or, if the member is dead, the member's legal personal representative, must pay to the Company immediately on demand:
- (i) the amount required to reimburse the Company for a payment described in rule 4.5(a); and
 - (ii) interest on any part of that amount which is unpaid from the date the Company makes the payment until the date the Company is reimbursed in full for that payment, at a rate determined under rule 4.9.
- (d) The Company may refuse to register a transfer or transmission of any shares by a member or the member's legal personal representative until all money payable to the Company under rule 4.5(a) has been paid. The Company may recover an

amount due and payable under rule 4.5(a) from the member or the member's legal personal representative, including by deducting all or any part of that amount from any amount payable by the Company to that member or that member's legal personal representative on account of that member.

- (e) This rule 4.5 is in addition to any right or remedy the Company may have under the law which requires it to make the payment.
- (f) The directors may:
 - (i) exempt a share from all or any part of this rule 4.5; and
 - (ii) waive or compromise all or any part of any payment due to the Company under this rule 4.5.

4.6 **Lien on shares**

- (a) To the extent permitted by law, the Company has a first and paramount lien on:
 - (i) each partly paid share for all due and unpaid calls and instalments in respect of that share;
 - (ii) each share registered in the name of a holder for all money presently payable by the holder or the holder's estate to the Company; and
 - (iii) each share for any amounts the Company may be required by law to pay, and has paid, in respect of that share.
- (b) The Company's lien on a share extends to all dividends payable in respect of the share and to the proceeds of sale of the share.
- (c) The directors may sell a share on which the Company has a lien in any manner they think fit where:
 - (i) an amount in respect of which a lien exists under this rule 4.6 is presently payable;
 - (ii) the Company has, not less than 14 Business Days before the date of the sale, given to the registered holder of the share a notice in writing setting out the amount in respect of which a lien exists under this rule 4.6 and is presently payable, and demanding payment of that amount; and
 - (iii) as at the date of the sale, the amount remains unpaid.
- (d) The directors may do all things necessary or desirable to protect any lien, charge or other right to which the Company may be entitled under any law or under this constitution.
- (e) Registration by the Company of a transfer of shares on which the Company has a lien releases the Company's lien in so far as it relates to sums owing by the transferor or any predecessor in title, without giving notice of its claim to the transferee.

- (f) The directors may:
 - (i) exempt a share from all or any part of this rule 4.6; and
 - (ii) waive or compromise all or any part of any payment due to the Company under this rule 4.6.

4.7 **Surrender of shares**

- (a) The directors may accept a surrender of a share by way of compromise of any claim as to whether or not that share has been validly issued or in any other case where the surrender is within the powers of the Company.
- (b) Any share surrendered under rule 4.7(a) may be sold, reissued or otherwise disposed of in the same manner as a forfeited share.

4.8 **General provisions applicable to a sale, reissue or other disposal of shares**

- (a) A reference in this rule 4.8 to a disposal of shares under this constitution is a reference to:
 - (i) any sale, reissue or other disposal of a forfeited share under rule 4.4(g) or a surrendered share under rule 4.7; and
 - (ii) any sale of a share on which the Company has a lien under rule 4.6(c).
- (b) Where any shares are disposed of under this constitution, the directors may:
 - (i) receive the purchase money or consideration given for the shares on the disposal;
 - (ii) effect a transfer of the shares and, if necessary, execute, or appoint a person to execute, on behalf of the former holder an instrument of transfer of the shares or any other instrument for the purpose of giving effect to the disposal; and
 - (iii) register as the holder of the shares the person to whom the shares have been disposed of.
- (c) The title of a person to whom shares are disposed of under this constitution is not affected by an irregularity or invalidity in connection with that disposal.
- (d) The remedy of any person aggrieved by a disposal of shares under this constitution is limited to damages only and is against the Company exclusively.
- (e) The proceeds of a disposal of shares under this constitution must be applied in the payment of:
 - (i) *first*, the expenses of the disposal;
 - (ii) *secondly*, all amounts presently payable by the former holder whose shares have been disposed of; and

- (iii) *finally*, but subject to any lien under rule 4.6 for money not presently payable, any remaining proceeds must be paid to the former holder as soon as practicable. The former holder must first deliver to the Company the certificate for the shares that have been disposed of or any other proof of title as the directors may accept.
- (f) Until the proceeds of a disposal of a share sold by the Company are claimed or otherwise disposed of according to law, the directors may invest the proceeds in any other way for the benefit of the Company.
- (g) The Company is not required to pay interest on money payable to a former holder under this rule 4.8.
- (h) A statement in writing signed by a director or secretary of the Company to the effect that a share in the Company has been:
 - (i) duly forfeited under rule 4.4(d);
 - (ii) duly sold, reissued or otherwise disposed of under rules 4.4(g) or 4.7; or
 - (iii) duly sold under rule 4.6(c),
 on a date stated in the statement is conclusive evidence of the facts stated in the statement as against all persons claiming to be entitled to the share and of the right of the Company to forfeit, sell, reissue or otherwise dispose of the share.

4.9 **Interest payable by member**

- (a) For the purposes of rule 4.5(c)(ii), the rate of interest payable to the Company is:
 - (i) if the directors have fixed a rate, that rate; or
 - (ii) in any other case, 10 per cent. per annum.
- (b) Interest payable under rule 4.5(c)(ii) accrues daily and may be capitalised monthly or at other intervals as the directors think fit.

5. **TRANSFER AND TRANSMISSION OF SHARES**

5.1 **Transfer of shares**

- (a) Subject to this constitution, the Shareholders' Deed and the rights or restrictions attached to any shares or class of shares, a member may transfer all or any of the member's shares by an instrument in writing in any usual form or in any other form that the directors approve.
- (b) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.
- (c) The Company must not charge a fee for the registration of a transfer of shares.

- (d) An instrument of transfer referred to in rule 5.1(a) must be signed by or on behalf of both the transferor and the transferee unless the transfer:
 - (i) relates only to fully paid shares and signature by the transferee has been dispensed with by the directors; or
 - (ii) is a sufficient transfer of marketable securities for the purposes of the Corporations Act.
- (e) An instrument of transfer referred to in rule 5.1(a) must be duly stamped if required by law to be stamped.
- (f) An instrument of transfer referred to in rule 5.1(a) must be lodged for registration at the registered office of the Company, or at such other place as the directors determine, accompanied by any evidence which the directors require to prove the title of the transferor or the transferor's right to the shares including the share certificate, if any, and to prove the right of the transferee to be registered as the owner of the shares.
- (g) Subject to the powers vested in the directors under rules 5.2, where the Company receives an instrument of transfer complying with rules 5.1(d), 5.1(e) and 5.1(f), the Company must register the transferee named in the instrument as the holder of the shares to which it relates.
- (h) The Company may retain any registered instrument of transfer received by the Company under rule 5.1(f) for any period as the directors think fit.
- (i) Except in the case of fraud, the Company must return any instrument of transfer received under rule 5.1(f) which the directors decline to register to the person who deposited it with the Company.
- (j) The directors may, to the extent permitted by law, waive all or any of the requirements of this rule 5.1.

5.2 Power to decline registration of transfers

- (a) Subject to rule 5.2(b), the directors must decline to register any transfer of shares, unless that transfer is permitted by the Shareholders' Deed.
- (b) Notwithstanding rule 5.2(a) or any other provision in this constitution, the directors must not decline to register any transfer of shares where such transfer is made to:
 - (i) a person entitled to the benefit of a Security Interest (whether or not as agent, trustee or nominee for a person entitled to the benefit of the Security Interest); or
 - (ii) a person who purchases the shares from the holder of those shares or a person entitled to the benefit of the Security Interest (or a person acting as agent, trustee or nominee on its behalf) in accordance with the Shareholders' Deed,

pursuant to, or in connection with, the purchase of the shares or enforcement of that Security Interest in respect of the shares and provided that the person who is to be registered as the holder of such shares has agreed to be bound by the Shareholders' Deed under a deed of accession under the Shareholders' Deed provided to the Company and, for the avoidance of doubt, any such person (including any agent, trustee or nominee for a person entitled to the benefit of the Security Interest) may be registered as the holder of such shares pursuant to, or in connection with, such enforcement.

5.3 **Transmission of shares**

- (a) In the case of the death of a member, the only persons the Company will recognise as having any title to the member's shares or any benefits accruing in respect of those shares are:
 - (i) the legal personal representative of the deceased, where the deceased was a sole holder; and
 - (ii) the survivor or survivors, where the deceased was a joint holder.
- (b) Nothing in rule 5.3(a) releases the estate of a deceased member from any liability in respect of a share, whether that share was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a share as a result of a Transmission Event may elect:
 - (i) to be registered as the holder of the share by signing and serving on the Company a notice in writing stating that election; or
 - (ii) to have some other person nominated by that person registered as the transferee of the share by executing or otherwise effecting a transfer of the share to that other person,after producing any evidence the directors require to prove that person's entitlement to the share, including the certificate for the share.
- (d) The provisions of this constitution relating to the right to transfer, and the registration of transfers of, shares apply, so far as they can and with the changes as are necessary, to any transfer under rule 5.2 and 5.3 as if the relevant Transmission Event had not occurred and the transfer were executed or effected by the registered holder of the share.
- (e) If two or more persons become jointly entitled to a share under a Transmission Event, on registration as the holders of the share, those persons are taken to hold the share as joint tenants subject to this rule 5.3.
- (f) Despite rule 5.3(a), the directors may register a transfer of shares signed by a member before a Transmission Event even though the Company has notice of the Transmission Event.

6. GENERAL MEETINGS

6.1 Convening of general meetings

- (a) A general meeting may be convened by:
 - (i) the directors by resolution of the board;
 - (ii) the directors upon request by members in accordance with section 249D of the Corporations Act; or
 - (iii) members or the court in accordance with sections 249E, 249F and 249G of the Corporations Act.
- (b) A general meeting requested by members in accordance with section 249D of the Corporations Act must be convened by the directors in accordance with section 249D of the Corporations Act.
- (c) Subject to rule 6.1(e), the directors may postpone, cancel or change the venue for a general meeting by giving notice not later than five Business Days before the time at which the general meeting was to be held to each person who is at the date of the notice:
 - (i) a member;
 - (ii) a director; or
 - (iii) an auditor of the Company.
- (d) A notice postponing or changing the venue for a general meeting must specify the date, time and place of the general meeting.
- (e) A general meeting convened under section 249D of the Corporations Act may not be postponed beyond the date by which section 249D requires it to be held and may not be cancelled without the consent of the member or members who requested it.

6.2 Notice of general meetings

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, notice of a general meeting must be given within the time limits prescribed by the Corporations Act and in the manner authorised by rule 14.1 to each person who is at the date of the notice:
 - (i) a member;
 - (ii) a director; or
 - (iii) an auditor of the Company.

- (b) A notice of a general meeting must specify the date, time and place of the meeting and state the general nature of the business to be transacted at the meeting and any other matters required under the Corporations Act.
- (c) A person may waive notice of any general meeting by notice in writing to the Company.
- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 6.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
 - (i) the non-receipt or failure occurred by accident or error; or
 - (ii) before or after the meeting, the person:
 - (A) has waived or waives notice of that meeting under rule 6.2(c); or
 - (B) has notified or notifies the Company of the person's agreement to that act, matter, thing or resolution by notice in writing to the Company.
- (e) A person's attendance at a general meeting:
 - (i) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (ii) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

6.3 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) Subject to the Shareholders' Deed, a quorum consists of:
 - (i) if the number of members entitled to vote is two or more, two of those members; or
 - (ii) if only one member is entitled to vote, that member,

present at the meeting.

- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) where the meeting was convened by, or at the request of, a member or members, the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to the day, and at the time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
 - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

6.4 Chair of general meetings

- (a) The chair of directors must preside as chair at each general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) If at a general meeting:
 - (i) there is no chair of directors;
 - (ii) the chair of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (iii) the chair of directors is present within that time but is not willing to act as chair of the meeting,

the directors present may elect a person present to chair the meeting.

- (c) Subject to rules 6.4(a) and 6.4(b), if at a general meeting:
 - (i) a chair has not been previously elected by the directors; or
 - (ii) a previously elected chair is not available or is not willing to act as a chair of the meeting (or part of the meeting),

the members present must elect as chair of the meeting another person who is present and willing to act.

6.5 Use of technology at general meetings

- (a) Subject to the Corporations Act and this constitution, the contemporaneous linking together by a form of technology of a number of members sufficient to constitute a quorum constitutes a general meeting.

- (b) Where a general meeting is held at two or more venues using any form of technology:
 - (i) a member participating in the meeting is taken to be present in person at the meeting;
 - (ii) the provisions of this constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to general meetings held using that technology; and
 - (iii) the meeting is to be taken to be held at the place determined by the chair **provided that** at least one of the members present at the meeting was at the place for the duration of the general meeting.
- (c) If the technology used in rule 6.5(b) encounters a technical difficulty, whether before or during the general meeting, which results in a member not being able to participate in the meeting, the chair may, subject to the Corporations Act and rule 6.3:
 - (i) allow the meeting to continue; or
 - (ii) adjourn the meeting either for a reasonable period of time as may be required to fix the technology or to such other date, time and location as the chair of the meeting considers appropriate.
- (d) For the avoidance of doubt, where the chair has allowed the general meeting to continue in accordance with rule 6.5(c)(i), any resolution passed at that meeting is valid.

6.6 Conduct of general meetings

- (a) Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair of the meeting, whose decision is final.
- (b) The chair of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) It is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

6.7 Decisions at general meetings

- (a) Except in the case of any resolution which as a matter of law requires a special resolution, or as otherwise provided in the Shareholders' Deed, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and any such decision is for all purposes a decision of the members.
- (b) In the case of an equality of votes on a proposed resolution:

- (i) the chair of the meeting does not have a second or casting vote; and
 - (ii) the proposed resolution is taken as having been lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before a vote by show of hands is taken or before or immediately after the declaration of the result of the show of hands:
- (i) by the chair of the meeting;
 - (ii) by at least five members present and entitled to vote on the relevant resolution; or
 - (iii) by a member or members present at the meeting and representing at least 5 per cent. of the votes that may be cast on the resolution on a poll.
- (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it will be taken when and in the manner the chair of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (g) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (h) The demand for a poll may be withdrawn.

6.8 **Voting rights**

- (a) Subject to this constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
- (i) on a show of hands, every member present has one vote;
 - (ii) on a poll, every member present has:
 - (A) one vote for each fully paid share held by the member and in respect of which the member is entitled to vote; and
 - (B) a fraction of a vote for each partly paid share held by the member and in respect of which the member is entitled to vote, equivalent to the proportion which the amount paid on the share bears to the

total amounts paid and payable on the share (excluding amounts credited on the share); and

- (iii) for the purposes of rule 6.8(a)(ii)(B), an amount paid on a share in advance of a call is to be ignored.
- (b) Where a person present at a general meeting represents personally or by proxy, attorney or Representative more than one member the following rules apply to a vote taken on a show of hands:
 - (i) the person is entitled to one vote only despite the number of members the person represents; and
 - (ii) the person's vote will be taken as having been cast for all the members the person represents.
- (c) A joint holder may vote at any meeting in person or by proxy, attorney or Representative as if that person was the sole holder. If more than one joint holder tenders a vote, only the vote of the holder whose name appears first in the register of members counts.
- (d) The parent or guardian of an infant member may vote at a general meeting on evidence being produced of the relationship or of the appointment of the guardian as the directors may require and any vote so tendered by a parent or guardian of an infant member must be accepted to the exclusion of the vote of the infant member.
- (e) A person entitled to a share as a result of a Transmission Event may vote at a general meeting in respect of that share in the same manner as if that person were the registered holder of the share if, before the meeting, the directors have:
 - (i) admitted that person's right to vote at that meeting in respect of the share; or
 - (ii) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under rule 5.3(c),and any vote tendered by that person must be accepted to the exclusion of the vote of the registered holder of the share.
- (f) Where a member holds any share on which any call due and payable to the Company has not been duly paid:
 - (i) that member is only entitled to be present at a general meeting and vote if other shares are held by that member on which no call is then due and payable; and
 - (ii) upon a poll, that member is not entitled to vote in respect of that share but may vote in respect of any other shares held upon which no call is then due and payable.

- (g) An objection to the qualification of a person to vote at a general meeting:
 - (i) must be raised before or immediately after the result of the motion on which the vote objected to is given or tendered; and
 - (ii) must be referred to the chair of the meeting, whose decision is final.
- (h) A vote not disallowed by the chair of a meeting under rule 6.8(g) is valid for all purposes.

6.9 **Representation at general meetings**

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (i) in person or, where a member is a body corporate, by its Representative;
 - (ii) by proxy or, if the member is entitled to cast two or more votes at the meeting, by not more than two proxies; or
 - (iii) by not more than two attorneys.
- (b) If the Shareholders' Deed is in force, the members of the Company have granted the attorney appointments contemplated by the Shareholders' Deed and the Nominee Deed.
- (c) A proxy, attorney or Representative may be a member of the Company but does not have to be a member.
- (d) Subject to the Shareholders' Deed and the Nominee Deed, a proxy, attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (e) Unless otherwise provided in the Corporations Act or in the appointment, an appointment of a proxy, attorney or Representative will be taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this constitution;
 - (ii) to speak to any proposed resolution on which the proxy, attorney or Representative may vote;
 - (iii) to demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;

- (iv) even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and
- (v) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re- scheduled or adjourned meeting or at the new venue.
- (f) The chair of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chair that the person has been validly appointed as a proxy, attorney or Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting. The chair may delegate his or her powers under this rule 6.9(f) to any person.
- (g) Where a member appoints two proxies or attorneys to vote at the same general meeting and the authority of one is not conditional on the other failing to attend or vote, the following rules apply:
 - (i) where the appointment does not specify the proportion or number of the member's votes each proxy or attorney may exercise, each proxy or attorney may exercise half of the member's votes;
 - (ii) on a show of hands, neither proxy or attorney may vote; and
 - (iii) on a poll, each proxy or attorney may only exercise the voting rights the proxy or attorney represents.
- (h) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (i) Unless appointed under the Shareholders' Deed or the Nominee Deed, a proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received:
 - (i) at the registered office of the Company, the fax number at its registered office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting; and

- (ii) by the time specified in the notice of meeting.
- (j) Unless the Company has received written notice of the matter by the time and at the place or in the manner set out in rules 6.9(i)(i) and 6.9(i)(ii), a vote cast by a proxy or attorney is valid even if, before the proxy or attorney votes:
 - (i) a Transmission Event occurs in relation to the appointer;
 - (ii) the member revokes the proxy's or attorney's appointment;
 - (iii) the member revokes the authority under which a third party appointed the proxy or attorney; or
 - (iv) the member transfers the share in respect of which the proxy or attorney was appointed.
- (k) Subject to the Shareholders' Deed and the Nominee Deed, the authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while the member is present at the meeting.
- (l) The Company must include with a notice of meeting a proxy form which must provide for the appointer:
 - (i) to vote for or against each resolution; and
 - (ii) to appoint proxies of the appointer's choice, but may specify who is to be appointed as proxy if the appointer does not choose.

6.10 Resolutions without meetings

- (a) Subject to rule 6.10(c) but without limiting any approvals or resolutions pursuant to the Shareholders' Deed, the Company may pass a resolution without a general meeting being held, if all of the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) For the purposes of rule 6.10(a):
 - (i) the document may be sent to members in any manner described in rule 14;
 - (ii) the resolution is passed when the last member signs;
 - (iii) separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy;
 - (iv) a signature of a member transmitted to the Company by facsimile or email is sufficient evidence of signature; and
 - (v) where a share is held jointly, each joint member must sign.

- (c) Rule 6.10(a) does not apply to a resolution required under the Corporations Act to be passed at a general meeting.
- (d) Where a document is signed in accordance with rule 6.10(a) the document is to be taken as a minute of the passing of the resolution.

6.11 Resolutions of single member company

If the Company has only one member, the Company may pass a resolution by the member recording it and signing the record. That record is to be taken as a minute of the passing of that resolution.

7. DIRECTORS

7.1 Appointment and removal of directors

- (a) Subject to the Shareholders' Deed, there must be:
 - (i) at least three directors; and
 - (ii) subject to rule 7.1(d), not more than 10 directors.
- (b) The directors in office on the date that this constitution was adopted by the Company continue in office but on the terms and conditions set out in this constitution.
- (c) Subject to the Shareholders' Deed, the Company may by resolution increase or reduce the maximum number of directors.
- (d) If the Shareholders' Deed is in force, then without limiting rule 7.2, a director may only be appointed or removed in accordance with the applicable provisions of the Shareholders' Deed. Otherwise:
 - (i) the Company may by resolution appoint or remove a director; and
 - (ii) the directors may appoint any natural person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but the total number of directors must not at any time exceed the maximum number allowed under this constitution or the Shareholders' Deed.
- (e) Subject to rule 7.1, the Shareholders' Deed and to the terms of any agreement entered into between the Company and the relevant director, a director holds office until the director dies or is removed from office pursuant to rule 7.1(d)(i).

7.2 Vacation of office

Subject to the Shareholders' Deed, the office of a director becomes vacant:

- (a) in circumstances prescribed by the Corporations Act;
- (b) in circumstances prescribed by the Shareholders' Deed; and

- (c) if the director:
 - (i) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
 - (ii) if the director is convicted of an indictable offence (which does not result in disqualification under the Corporations Act), unless the directors otherwise resolve to confirm the director's appointment; or
 - (iii) resigns by notice in writing to the Company.

7.3 **Remuneration of directors**

Subject to the Shareholders' Deed:

- (a) directors are entitled to be paid all reasonable and substantiated travelling and other expenses properly incurred by them in connection with the affairs of the Company, including attending and returning from general meetings of the Company or meetings of the directors or of committees of the directors; and
- (b) a director is entitled to remuneration out of the funds of the Company as determined by the directors.

7.4 **Director need not be a member**

- (a) A director is not required to hold any shares in the Company to qualify for appointment.
- (b) A director is entitled to attend and speak at general meetings even if he or she is not a member of the Company.

7.5 **Interested directors**

- (a) If:
 - (i) the Shareholders' Deed is in force; and
 - (ii) the Shareholders' Deed includes provisions governing the rights and obligations of interested or conflicted directors,then:
 - (iii) those provisions will apply as if set out in this rule 7.5; and
 - (iv) the remainder of this rule 7.5 will continue to apply to the extent that it is not inconsistent with the terms of the Shareholders' Deed.
- (b) A director may hold any other office or place of profit, other than auditor, in the Company or a related body corporate in conjunction with his or her directorship. A director may be appointed to that office or place of profit on the terms as to remuneration, tenure of office and otherwise as the directors think fit.

- (c) A director of the Company may be a director or other officer of:
- (i) a related body corporate;
 - (ii) a body corporate promoted by the Company; or
 - (iii) a body corporate in which the Company is interested, as shareholder or otherwise,
- or be otherwise interested in any of those bodies corporate. A director is not accountable to the Company for any remuneration or other benefits received by the director as a director or officer of that body corporate or from having an interest in that body corporate **provided that** the director discloses the interest giving rise to those benefits in accordance with the Corporations Act.
- (d) The directors may exercise the voting rights conferred by shares in any body corporate held or owned by the Company as the directors think fit. This includes voting in favour of any resolution appointing a director as a director or other officer of that body corporate, or voting for the payment of remuneration to the directors or other officers of that body corporate. A director may, if permitted by law, vote in favour of the exercise of those voting rights even if he or she is, or may be about to be appointed, a director or other officer of that other body corporate.
- (e) Subject to the Shareholders' Deed, a director is not disqualified merely because of being a director from contracting with the Company in any respect including, without limitation:
- (i) holding any office or place of profit with a shareholder or an affiliate of a shareholder;
 - (ii) selling any property to, or purchasing any property from, the Company;
 - (iii) lending any money to, or borrowing any money from, the Company with or without interest and with or without security;
 - (iv) guaranteeing the repayment of any money borrowed by the Company for a commission or profit;
 - (v) underwriting or guaranteeing the subscription for securities in the Company or in a related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a shareholder or otherwise, for a commission or profit; or
 - (vi) being employed by the Company or acting in any professional capacity, other than auditor, on behalf of the Company.
- (f) No contract made by a director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any director may be in any way interested is avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.

- (g) No director contracting with the Company or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under a contract or arrangement of that kind merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (h) Subject to rules 7.5(i) and 7.5(j) and the Shareholders' Deed, a director who is in any way interested in a contract or arrangement or proposed contract or arrangement may, despite that interest:
 - (i) be counted in determining whether or not a quorum is present at any meeting of directors considering that contract or arrangement or proposed contract or arrangement;
 - (ii) vote in respect of the contract or arrangement or proposed contract or arrangement or any matter arising out of those things; and
 - (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement.
- (i) Rule 7.5(h) does not apply if, and to the extent that, it would be contrary to the Corporations Act.
- (j) The directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the directors to be related to or associated with the director, may have in any matter concerning the Company or a related body corporate. Any regulations made under this rule 7.5(j) bind all directors and apply in addition to any obligations imposed on the directors by the Corporations Act to disclose interests to the Company.

7.6 Powers and duties of directors

- (a) Subject to the Shareholders' Deed, the directors are responsible for managing the business of the Company and may exercise to the exclusion of the Company in general meeting all the powers of the Company which are not required, by the Corporations Act or this constitution or the Shareholders' Deed, to be exercised by the Company in general meeting.
- (b) Without limiting rule 7.6(a) and subject to the Shareholders' Deed, the directors may exercise all the powers of the Company to borrow or otherwise raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures, give any indemnities or guarantees, or give any other security for a debt, liability or obligation of the Company or of any other person.
- (c) The directors may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments or other documents must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Company.

- (d) The directors may pay out of the Company's funds all expenses of the promotion, formation and registration of the Company and the vesting in it of the assets acquired by it.
- (e) Subject to the Shareholders' Deed, the directors may:
 - (i) appoint or employ any person to be an officer, agent or attorney of the Company for the purposes, for the period and on the conditions as they think fit;
 - (ii) resolve to delegate any of their powers to an officer, agent or attorney and the officer, agent or attorney must exercise the powers delegated in accordance with any directions of the directors;
 - (iii) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
 - (iv) subject to any contract between the Company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the Company at any time, with or without cause.
- (f) A power of attorney may contain provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.

7.7 Proceedings of directors

- (a) The directors may hold meetings for the despatch of business and adjourn and otherwise regulate their meetings as required by the Shareholders' Deed and, in other cases, as they think fit.
- (b) Subject to the Corporations Act, the contemporaneous linking together by a form of technology of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors held using a form of technology.
- (c) A meeting by telephone or other electronic means is taken to be held at the place where the chair of the meeting is or at such other place the chair of the meeting decides on, as long as at least one of the directors involved was at the place for the duration of the meeting.
- (d) A director taking part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs whereby one or more director has ceased to participate, the chair may adjourn the meeting until the difficulty is remedied or may, provided a quorum of directors remains present, continue with the meeting.

7.8 Meetings of directors

- (a) If the Shareholders' Deed is in force and contains provisions relating to the convening of meetings of directors, then:
 - (i) those provisions will apply as if set out in this rule 7.8; and
 - (ii) the remainder of this rule 7.8 will continue to apply to the extent that it is not inconsistent with the terms of the Shareholders' Deed.
- (b) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (c) A secretary must, on the requisition of a director, convene a meeting of the directors.
- (d) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice:
 - (i) a director, other than a director on leave of absence approved by the directors; or
 - (ii) an alternate director appointed under rule 7.13 by a director on leave of absence approved by the directors.
- (e) A notice of a meeting of directors:
 - (i) must specify the date, time and place of the meeting (and if the meeting is to be held in two or more places the technology that will be used to facilitate this);
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may be given in person or by post, or, subject to the Corporations Act, by a form of technology; and
 - (iv) is taken to have been given to an alternate director if it is given to the director who appointed that alternate director.
- (f) A director or alternate director may waive notice of a meeting of directors by notifying the Company to that effect in person or by post, or by a form of technology.
- (g) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
 - (i) the non-receipt or failure occurred by accident or error;

- (ii) before or after the meeting, the director or an alternate director appointed by the director:
 - (A) waives notice of that meeting under rule 7.8(f); or
 - (B) notifies the Company of his or her agreement to that act, matter, thing or resolution personally or by post, or by a form of technology; or
 - (iii) the director or an alternate director appointed by the director attended the meeting.
- (h) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, an alternate director or a director on leave of absence approved by the directors does not invalidate any act, matter or thing done or resolution passed at the meeting if:
- (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the alternate director or the director who appointed the alternate director:
 - (A) waives notice of that meeting under rule 7.8(f); or
 - (B) notifies the Company of his or her agreement to that act, matter, thing or resolution personally or by post, or by a form of technology; or
 - (iii) the alternate director or the director who appointed the alternate director attended the meeting.
- (i) Attendance by a person at a meeting of directors waives any objection that person and:
- (i) if the person is a director, an alternate director appointed by that person; or
 - (ii) if the person is an alternate director, the director who appointed that person as alternate director,
- may have to a failure to give notice of the meeting.

7.9 **Quorum at meetings of directors**

- (a) No business may be transacted at a meeting of directors unless there is a quorum of directors at the time the business is dealt with.

- (b) If the Shareholders' Deed is in force, a quorum for a meeting of directors is as set out in the applicable provisions of the Shareholders' Deed. Otherwise, a quorum consists of:
 - (i) if the directors have fixed a number for the quorum, that number of directors; and
 - (ii) in the case of a company with a single director, that director; or
 - (iii) in any other case, two directors.
- (c) If there is a vacancy in the office of a director, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining director or directors may act only in an emergency or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a general meeting of the Company.

7.10 Chair and deputy chair of directors

- (a) The directors may elect one of the directors to the office of chair of directors and may determine the period for which that director is to be chair of directors.
- (b) The chair of directors must preside as chair at each meeting of directors, if present within 10 minutes after the time appointed for the holding of the meeting and willing to act.
- (c) If at a meeting of directors:
 - (i) there is no chair of directors;
 - (ii) the chair of directors is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chair of directors is present within that time but is not willing to act as chair of the meeting or of part of the meeting,the directors present must elect one of themselves to be chair of the meeting or part of the meeting.
- (d) Subject to rules 7.10(b) and 7.10(c), if at a meeting of directors:
 - (i) there is no deputy chair of directors;
 - (ii) the deputy chair of directors is not present within 10 minutes after the time appointed for the holding of the meeting or of part of the meeting; or
 - (iii) the deputy chair of directors is present within that time but is not willing to act as chair of the meeting or part of the meeting,

the directors present must elect one of themselves to be chair of the meeting or part of the meeting.

7.11 Decisions of directors

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) If the Shareholders' Deed is in force, questions arising at a meeting of directors must be decided in accordance with the applicable provisions of the Shareholders' Deed (including in respect of any reserved matters). Otherwise, questions arising at a meeting of directors are to be decided by a majority of votes cast by the directors present and entitled to vote on the relevant matter, and a decision of that kind is for all purposes a determination of the directors.
- (c) In the case of an equality of votes on a proposed resolution:
 - (i) the chair of the meeting does not have a second or casting vote; and
 - (ii) the proposed resolution is to be taken as having been lost.

7.12 Written resolutions

- (a) An act, matter or thing is taken to have been done or a resolution passed by a meeting of the directors, if a document containing a statement to that effect is assented to in accordance with the applicable provisions of the Shareholders' Deed as a written resolution of directors or, without limiting this rule 7.12(a), by all of the directors other than:
 - (i) a director on leave of absence approved by the directors;
 - (ii) a director who disqualifies himself or herself from considering the act, matter or thing in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
 - (iii) a director who the directors reasonably believe is not entitled to do the act, matter or thing or to vote on the resolution in question,

and the directors who assent to the document would have constituted a quorum at a meeting held to consider that act, matter, thing or resolution and the proposed resolutions was circulated to all directors.

- (b) The act, matter or thing is taken to have been done or the resolution passed when the document is assented to by the last of the directors required to assent under rule 7.12(a).
- (c) Two or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document.
- (d) A director may signify assent to a document by signing the document or by notifying the Company of the director's assent in person or by post, fax,

telephone or other method of written, audio or audio visual communication or other form of technology.

- (e) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (f) Where a document is assented to in accordance with this rule 7.12, the document is to be taken as a minute of a meeting of directors.

7.13 **Alternate directors**

- (a) If:
 - (i) the Shareholders' Deed is in force; and
 - (ii) the Shareholders' Deed includes provisions governing the appointment and rights and obligations of alternate directors,then:
 - (iii) those provisions will apply as if set out in this rule 7.13; and
 - (iv) the remainder of this rule 7.13 will continue to apply to the extent that it is not inconsistent with the terms of the Shareholders' Deed.
- (b) A director may, with the approval of the directors, appoint a person to be the director's alternate director for a period which the director thinks fit.
- (c) An alternate director may be a member or a director of the Company but need not be a member or a director.
- (d) One person may act as alternate director to more than one director.
- (e) An alternate director is entitled, if the appointer does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointer.
- (f) An alternate director is entitled to a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (g) In the absence of the appointer, an alternate director may exercise any powers that the appointer may exercise and the exercise of that power by the alternate director is to be taken to be the exercise of the power by the appointer.
- (h) The office of an alternate director is vacated if and when the appointer vacates office as a director.
- (i) The appointment of an alternate director may be terminated at any time by the appointer even though the period of the appointment of the alternate director has not expired.

- (j) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment and does not take effect unless and until the Company has received notice in writing of the appointment or termination.
- (k) An alternate director is not to be taken into account in determining the minimum or maximum number of directors allowed under this constitution.
- (l) In determining whether a quorum is present at a meeting of directors, a director or an alternate director who attends the meeting is to be counted once only.
- (m) An alternate director is entitled to be paid the remuneration which the directors think fit, either in addition to or in reduction of the remuneration payable to the director for whom the alternate director acts as alternate.
- (n) An alternate director is not entitled to be remunerated by the Company for his or her services as alternate director except as provided in rule 7.13(m).
- (o) An alternate director, while acting as a director, is responsible to the Company for his or her own acts and defaults and is not to be taken to be the agent of the director by whom he or she was appointed.

7.14 Committees of directors

- (a) Subject to the Shareholders' Deed:
 - (i) the directors may resolve to delegate any of their powers to a committee or committees consisting of such number of directors as they think fit;
 - (ii) a committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors; and
 - (iii) the provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with the changes as are necessary, to meetings and resolutions of a committee of directors.

7.15 Delegation to individual directors

- (a) The directors may resolve to delegate any of their powers to one director.
- (b) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

7.16 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director;

- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

8. EXECUTIVE OFFICERS

8.1 Managing directors

- (a) Subject to the Shareholders' Deed, the directors may appoint one or more of the directors to the office of managing director.
- (b) Subject to the Shareholders' Deed, a managing director's appointment as managing director automatically terminates if the managing director ceases to be a director.

8.2 Deputy managing directors

- (a) The directors may appoint one or more of the directors to the office of deputy managing director.
- (b) A deputy managing director's appointment as deputy managing director automatically terminates if the deputy managing director ceases to be a director.

8.3 Executive directors

- (a) A reference in this rule 8.3 to an executive director is a reference to a director who is also an officer of the Company or of a related body corporate in a capacity other than director, managing director or deputy managing director.
- (b) The directors may confer on an executive director any title they think fit.
- (c) Unless the directors decide otherwise, the terms on which an executive director is appointed will provide that the executive director's appointment:
 - (i) as a director automatically terminates if the executive director ceases to be an officer of the Company or of a related body corporate in a capacity other than director; or
 - (ii) as an officer of the Company or of a related body corporate in a capacity other than director automatically terminates if the executive director ceases to be a director.

8.4 Secretaries

- (a) The directors must appoint at least one secretary and may appoint additional secretaries.
- (b) The directors may appoint one or more assistant secretaries.
- (c) Any director may also be the secretary or a secretary of the Company.

8.5 Provisions applicable to all executive officers

- (a) A reference in this rule 8.5 to an executive officer is a reference to a managing director, deputy managing director, executive director, secretary or assistant secretary appointed under this rule 8.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions the directors think fit.
- (c) The remuneration payable by the Company to an executive officer who is also a director must not include a commission on operating revenue or a percentage of operating revenue.
- (d) Subject to any contract between the Company and the relevant executive officer, an executive officer of the Company may be removed or dismissed by the directors at any time, with or without cause.
- (e) The directors may:
 - (i) confer on an executive officer the powers, discretions and duties as they think fit, and may resolve to delegate any powers, discretions and duties vested in or exercisable by the directors;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
 - (iii) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (f) An executive officer is not required to hold any shares to qualify for appointment.
- (g) An act done by a person acting as an executive officer is not invalidated by reason only of:
 - (i) a defect in the person's appointment as an executive officer; or
 - (ii) the person being disqualified to be an executive officer,if that circumstance was not known by the person when the act was done.

9. SEALS

9.1 Adoption of common Seal

- (a) The directors may determine that the Company have a common Seal or that the Company no longer have a common Seal, and may revoke a determination made under this rule 9.1(a).
- (b) Rules 9.2, 9.3 and 9.4 only apply if the Company has a common Seal.

9.2 **Safe custody of Seal**

The directors must provide for the safe custody of the Seal.

9.3 **Use of Seal**

- (a) The Seal must be used only by the authority of the directors or a committee of the directors authorised by the directors to authorise the use of the Seal.
- (b) The authority to use the Seal may be given before or after the Seal is used.
- (c) Subject to rule 9.3(b) and rule 9.4, until the directors otherwise determine, the fixing of the Seal to a document must be witnessed by a director and by another director, a secretary or another person appointed by the directors to witness that document or a class of documents in which that document is included.

9.4 **Sealing and signing of certificates**

The directors may determine either generally or in a particular case that the Seal and the signature of any director, secretary or other person is to be printed on or affixed to any certificates for securities in the Company by some mechanical or other means.

10. **DIVIDENDS AND RESERVES**

10.1 **Dividends**

- (a) Subject to the Corporations Act, the Shareholders' Deed and this constitution, the directors may pay any interim and final dividends as, in their judgment, the financial position of the Company justifies.
- (b) The directors may pay any dividend required to be paid under the terms of issue of a share.
- (c) The payment of a dividend does not require confirmation by a general meeting.
- (d) Subject to any rights or restrictions attached to a share or class of shares:
 - (i) all dividends in respect of a share must be paid in the proportion which the amount paid on the share bears to the total amounts paid and payable on the share (excluding amounts credited on the share);
 - (ii) all dividends must be apportioned and paid proportionately to the amount paid during any portion or portions of the period in respect of which the dividend is paid;
 - (iii) for the purposes of rules 10.1(d)(i) and 10.1(d)(ii), an amount paid on a share in advance of a call is to be ignored; and
 - (iv) interest is not payable by the Company in respect of any dividend.
- (e) The directors may fix a record date in respect of a dividend.

- (f) A dividend in respect of a share must be paid to the person who is registered, or entitled under rule 5.1(g) to be registered, as the holder of the share:
 - (i) where the directors have fixed a record date in respect of the dividend, on that date; or
 - (ii) where the directors have not fixed a record date in respect of that dividend, on the date the dividend is paid,

and a transfer of a share that is not registered, or left with the Company for registration in accordance with rule 5.1(f), on or before that date is not effective, as against the Company, to pass any right to the dividend.

- (g) The directors when fixing the amount and time for payment of a dividend may:
 - (i) direct payment of the dividend wholly or partly by the distribution of specific assets, including fully paid shares or other securities of the Company or of another body corporate, either generally or to specific shareholders; and
 - (ii) direct that the dividend be paid to particular shareholders wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining shareholders wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.
- (h) The directors may deduct from any dividend payable to a member all sums of money presently payable by the member to the Company and apply the amount deducted in or towards satisfaction of the money owing.
- (i) Where a person is entitled to a share as a result of a Transmission Event, the directors may, but are not obliged to, retain any dividends payable on that share until that person becomes registered as the holder of the share or transfers it.
- (j) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque and sent by post:
 - (i) to the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register; or
 - (ii) to such other address as the holder or joint holders in writing directs or direct.

This rule 10.1(j) does not adversely affect any other method of payment the directors may adopt.

- (k) A cheque sent under rule 10.1(j) may be made payable to bearer or to the order of the member to whom it is sent or any other person the member directs in writing and is sent at the member's risk.

- (l) For the avoidance of doubt, this rule 10.1 does not prohibit the directors from determining that dividends be paid on shares of one class but not another class and at different rates for different classes of shares.

10.2 Capitalisation of profits

- (a) Subject to the Shareholders' Deed and any rights or restrictions attached to any shares or class of shares, the directors may capitalise and distribute among such of the members as would be entitled to receive dividends and in the same proportions, any amount:
 - (i) forming part of the undivided profits of the Company;
 - (ii) representing profits arising from an ascertained accretion to capital or from a revaluation of the assets of the Company;
 - (iii) arising from the realisation of any assets of the Company; or
 - (iv) otherwise available for distribution as a dividend.
- (b) The directors may resolve that all or any part of the capitalised amount is to be applied:
 - (i) in paying up in full any unissued shares in or other securities of the Company;
 - (ii) in paying up any amounts unpaid on shares or other securities held by the members;
 - (iii) partly as specified in rule 10.2(b)(i) and partly as specified in rule 10.2(b)(ii); or
 - (iv) in any other way permitted by the Corporations Act,and that application must be accepted by the members entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.
- (c) Rules 10.1(d), 10.1(e) and 10.1(f) apply, so far as they can and with any necessary changes, to a capitalisation of an amount under this rule 10.2 as if references in those rules to a dividend and to the date a dividend is paid were references to a capitalisation of an amount and to the date the directors resolve to capitalise the amount under this rule 10.2 respectively.

10.3 Ancillary powers

- (a) Subject to the Shareholders' Deed, the directors may do any of the following things to give effect to a resolution for the satisfaction of a dividend in the manner set out in rule 10.1(g)(i) or by the capitalisation of an amount under rule 10.2:
 - (i) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation and, in particular, where shares or other

securities in the Company are or would otherwise be issuable in fractions:

- (A) determine that fractions are to be disregarded or are to be rounded down to the nearest whole number;
 - (B) determine that fractions are to be rounded up to the nearest whole number; or
 - (C) make cash payments in respect of the fractional entitlement;
- (ii) fix the value for distribution of any specific assets;
 - (iii) pay cash or issue shares or other securities to any members in order to adjust the rights of all parties;
 - (iv) vest any specific assets, cash, shares or other securities in a trustee on such trusts for the persons entitled to the dividend or capitalised amount as may seem expedient to the directors; and
 - (v) authorise any person to make, on behalf of all the members entitled to any further shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another body corporate providing, as appropriate:
 - (A) for the issue to them of further shares or other securities as fully paid; or
 - (B) for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under an authority referred to in this rule 10.3(a)(v) is effective and binding on all members concerned.

- (b) If the Company distributes to a member shares or other securities in the Company or another body corporate or a trust, the member appoints the Company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a member of that other body corporate.

10.4 Reserves

- (a) Subject to this constitution, the directors may set aside out of the profits of the Company reserves or provisions for any purpose as they think fit.
- (b) The setting aside of an amount as a reserve or provision does not require the directors to keep the amount separate from other assets of the Company or prevent the amount being used in the business of the Company, invested as the directors think fit or subsequently distributed to members.

10.5 **Capital reductions**

Subject to the Shareholders' Deed, the Company may reduce its share capital by any of the means authorised by the Corporations Act, subject to the provisions of that law. Subject to the Shareholders' Deed, the Company may reduce its share capital in any way that is not otherwise authorised by law, including by way of an in specie distribution of the assets of the Company (including any shares, options or other securities in another body corporate), if the reduction:

- (a) is fair and reasonable to the members of the Company as a whole;
- (b) does not materially prejudice the Company's ability to pay its creditors; and
- (c) is approved by members in accordance with section 256C of the Corporations Act.

10.6 **Shares in another body corporate**

Where the Company, pursuant to a reduction of its share capital in accordance with rule 10.5, distributes shares, options or other securities in another body corporate to members:

- (a) the members of the Company will be deemed to have agreed to become members of that body corporate; and
- (b) each of the members appoints the Company or any of the directors as its agent to execute any transfer or other document required to effect the distribution of shares, options or other securities to that member.

11. **WINDING UP**

11.1 **Distribution of surplus**

Subject to this constitution, the Shareholders' Deed and to the rights or restrictions attached to any shares or class of shares:

- (a) if the Company is wound up and the property of the Company is more than sufficient:
 - (i) to pay all of the debts and liabilities of the Company; and
 - (ii) the costs, charges and expenses of the winding up,the excess must be divided among the members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;
- (b) for the purpose of calculating the excess referred to in rule 11.1(a), any amount unpaid on a share is to be treated as property of the Company;

- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under rule 11.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under rule 11.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the Company.

11.2 **Division of property**

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution:
 - (i) divide among the members the whole or any part of the property of the Company; and
 - (ii) determine how the division is to be carried out as between the members or different classes of members.
- (b) A division under rule 11.2(a) may be otherwise than in accordance with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under rule 11.2(a) is otherwise than in accordance with the legal rights of the members, a member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Corporations Act.
- (d) If any of the property to be divided under rule 11.2(a) includes securities with a liability to calls, a person entitled under the division to any of the securities may within 10 Business Days after the passing of the special resolution referred to in that rule, by notice in writing direct the liquidator to sell the person's proportion of the securities and to account for the net proceeds and the liquidator must, if practicable, act accordingly.
- (e) Nothing in this rule 11.2 adversely affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (f) Rule 10.3 applies, so far as it can and with necessary changes, to a division by a liquidator under rule 11.2(a) as if references in rule 10.3(a) to the directors and to a distribution or capitalisation were references to the liquidator and to the division under rule 11.2(a) respectively.

12. **MINUTES AND RECORDS**

12.1 **Minutes**

The directors must cause minutes of:

- (a) all proceedings and resolutions of general meetings;

- (b) proceedings and resolutions of meetings of the directors and of committees of the directors; and
- (c) resolutions passed by directors without a meeting,

to be recorded and entered in books kept for that purpose, within one month after the meeting is held or the resolution is passed.

12.2 Proxies

The directors must ensure that the Company records in the minutes of a meeting in respect of each resolution in the notice of meeting:

- (a) the total number of proxy votes exercisable by all validly appointed proxies; and
- (b) how many proxy votes were for, against or abstained from the resolution or allowed the proxy to vote at the proxy's discretion.

12.3 Polls

If a poll is taken on a resolution, in addition to the information in rules 12.1 and 12.2, the minutes must also record the total number of votes cast on the poll, and the number of votes for, against and abstaining from that resolution.

12.4 Signing of minutes

- (a) Minutes of a meeting must be signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.
- (b) Minutes of the passing of a resolution without a meeting or the making of a declaration must be signed by a director within a reasonable time after the resolution is passed.

12.5 Minutes as evidence

A minute that is recorded and signed in accordance with rules 12.1 and 12.4 is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

12.6 Inspection of records

- (a) Subject to the Corporations Act, the directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the Company or any of them will be open to the inspection of members other than directors.
- (b) A member other than a director does not have the right to inspect any books, records or documents of the Company except as provided by law or authorised by the directors.

- (c) Each member must provide the Company with such information as is required for the Company to administer all registers required to be kept by the Company in accordance with the Corporations Act. If events occur which would cause any information contained in a register maintained by the Company to be inaccurate, the member must notify the Company in writing of the change within 10 Business Days of such change occurring.

13. INDEMNITY AND INSURANCE

13.1 Persons to whom rules 13.2 and 13.4 apply

Rules 13.2 and 13.4 apply:

- (a) to each person who is or has been a director, alternate director or executive officer (within the meaning of rule 8.3(a)) of the Company;
- (b) to such other officers or former officers of the Company or of its related bodies corporate as the directors in each case determine; and
- (c) if the directors so determine, to any auditor or former auditor of the Company or of its related bodies corporate.

13.2 Indemnity

The Company must indemnify to the extent permitted by law, each person to whom this rule 13.2 applies for all losses or liabilities incurred by the person as an officer or, if the directors so determine, an auditor of the Company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

13.3 Extent of Indemnity

The indemnity in rule 13.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 13.2 applies even though that person may have ceased to be an officer or auditor of the Company or of a related body corporate;
- (b) applies to losses and liabilities incurred both before and after the date of adoption of that rule;
- (c) operates only to the extent that the loss or liability is not covered by insurance; and
- (d) is enforceable without the person to whom this rule 13 applies first having to incur any expense or make any payment.

13.4 Insurance

The Company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or

- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 13 applies against any liability incurred by the person as an officer or auditor of the Company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs.

13.5 **Advances**

The Company may, to the extent permitted by law, make a payment (either by way of advance, loan or otherwise) to a person to whom this rule 13.5 applies for the legal costs and expenses incurred by him or her in defending proceedings for a liability incurred in his or her capacity as a director or secretary **provided that** the legal costs and expenses are not of a kind that the Company is prohibited from indemnifying a person against under law at the time that payment is made and the director or secretary is obliged to repay the legal costs and expenses to the extent that they become legal costs and expenses of a kind that the Company is prohibited from indemnifying a person against under law.

13.6 **Savings**

Nothing in rule 13.2 or 13.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the Company to indemnify or provide insurance for any person to whom those rules do not apply.

13.7 **Deed**

Without limiting a person's right under this rule 13, the Company may enter into a deed agreeing with the person to give effect to the rights of the person conferred by this rule 13 or the exercise of a discretion under this rule 13, on such terms and conditions as the directors think fit, as long as they are not inconsistent with this rule 13.

14. **NOTICES**

14.1 **Notices by the Company to members**

- (a) A notice may be given by the Company to a member:
 - (i) by serving it personally at, or by sending it by post in a prepaid envelope to, the member's address as shown in the register of members or such other address, or by email to such email address as the member has supplied to the Company for the giving of notices; or
 - (ii) if the member does not have a registered address and has not supplied another address to the Company for the giving of notices, by exhibiting it at the registered office of the Company.
- (b) A notice may be given by the Company to the joint holders of a share in the manner authorised by rule 14.1(a):

- (i) in the case of a notice for the purpose of a resolution under rule 6.10(a), to each joint holder; and
 - (ii) in all other cases, to the joint holder first named in the register of members in respect of the share.
- (c) A notice may be given by the Company to a person entitled to a share as a result of a Transmission Event by serving it or sending it in the manner authorised by rule 14.1(a)(i) addressed to the name or title of the person, at or to the address, fax number or email address supplied to the Company for the giving of notices to that person, or if no address, fax number or email address has been supplied, at or to the address, fax number or email address to which the notice might have been sent if the relevant Transmission Event had not occurred.
- (d) The fact that a person has supplied an email address for the giving of notices does not require the Company to give any notice to that person by email.
- (e) A notice given to a member in accordance with rules 14.1(a) or 14.1(b) is, despite the occurrence of a Transmission Event and whether or not the Company has notice of that occurrence:
- (i) duly given in respect of any shares registered in that person's name, whether solely or jointly with another person; and
 - (ii) sufficient service on any person entitled to the shares as a result of the Transmission Event.
- (f) A notice given to a person who is entitled to a share as a result of a Transmission Event is sufficient service on the member in whose name the share is registered.
- (g) Any person who, because of a transfer of shares, becomes entitled to shares registered in the name of a member is bound by every notice which, before that person's name and address is entered in the register of members in respect of those shares, is given to the member in accordance with this rule 14.1.
- (h) A certificate signed by a director or secretary of the Company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

14.2 Notices by the Company to directors

Subject to this constitution, a notice may be given by the Company to any director or alternate director either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's or alternate director's usual residential or business address, or such other address, or by email to such email address as the director or alternate director has supplied to the Company for the giving of notices.

14.3 Notices by members or directors to the Company

Subject to this constitution, a notice may be given by a member, director or alternate director to the Company by serving it on the Company at, or by sending it by post in a

prepaid envelope to, the registered office of the Company or by email to a nominated email address at the registered office of the Company.

14.4 Notices to members outside Australia

A notice to be sent to a member outside Australia and its external territories must be sent by airmail or email, or in another way that ensures it will be received quickly.

14.5 Time of service

- (a) Where a notice is served personally, service of the notice is taken to be effected when delivered.
- (b) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (i) if to a place within Australia, on the day after the date of postage; or
 - (ii) if to a place outside Australia, on the seventh Business Day after the date of postage.
- (c) Where a notice is sent by email, service of the notice is taken to be effected:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) five hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first, but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (recipient's time) it is deemed to be received at 9.00am on the following Business Day.
- (d) Where the Company gives a notice under rule 14.1(a)(ii) by exhibiting it at the registered office of the Company, service of the notice is to be taken to be effected when the notice was first so exhibited.

14.6 Other communications and documents

Rules 14.1 to 14.5 (inclusive) apply, so far as they can and with necessary changes, to the service of any communication or document.

14.7 Notices in writing

A reference in this constitution to a notice in writing includes a notice given by email or another form of written communication.

15. **GENERAL**

15.1 **Currency**

An amount payable to the holder of a share, whether by way of or on account of dividend, return of capital, participation in the property of the Company on a winding up or otherwise, may be paid, with the agreement of the holder or pursuant to the terms of issue of the share, in the currency of a country other than Australia and the directors may fix a date up to 30 days before the payment date as the date on which any applicable exchange rate will be determined for that purpose.

15.2 **Submission to jurisdiction**

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the registered office of the Company is located, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

15.3 **Prohibition and enforceability**

- (a) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place is, in that place, ineffective only to the extent to which it is void, illegal or unenforceable.
- (b) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

SCHEDULE 1 DICTIONARY

1. DICTIONARY

In this constitution:

"**Business Day**" means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in New South Wales.

"**Class M Share**" means a share in the capital of the Company which is designated as a Class M Share and has the rights set out in rule 3.3.

"**Company**" means Beam Dental Holdings Ltd (ACN 676 301 456).

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

"**Investor Shareholder**" has the meaning given in the Shareholders' Deed.

"**Nominee Deed**" has the meaning given in the Shareholders' Deed.

"**Non-Investor Shareholder**" has the meaning given in the Shareholders' Deed.

"**Permitted Transferee**" has the meaning given in the Shareholders' Deed.

"**Representative**", in relation to a body corporate, means a representative of the body corporate appointed under section 250D of the Corporations Act.

"**Seal**" means any common seal, duplicate seal, share seal or certificate seal of the Company.

"**Security Interest**" means a charge, mortgage, pledge, security interest under the *Personal Property Securities Act 2009* (Cth) or other encumbrance.

"**Shareholders' Deed**" means the Shareholders' deed of the Company as amended from time to time.

"**Transmission Event**" means:

- (a) in respect of a member of the Company who is an individual:
 - (i) the death of the member;
 - (ii) the bankruptcy of the member; or
 - (iii) the member becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and
- (b) in respect of a member of the Company who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member by operation of law.

2. INTERPRETATION

2.1 General

- (a) A reference in this constitution to a partly paid share is a reference to a share on which there is an amount unpaid.
- (b) A reference in this constitution to a call or an amount called in respect of a share includes a reference to a sum that, by the terms of issue of the share, becomes payable on issue or at a fixed date.
- (c) A member is to be taken to be present at a general meeting if the member is present in person or by proxy, attorney or Representative.
- (d) Where a provision of this constitution establishes an office of chair, the chair may be referred to as a chairman or chairwoman, as the case requires.
- (e) A reference in this constitution in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (f) In this constitution, headings, bold type and underlinings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
 - (i) words importing the singular include the plural and *vice versa*;
 - (ii) words importing a gender include every other gender;
 - (iii) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor intended to be interpreted as words of limitation;
 - (iv) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (v) a reference to a person includes that person's successors and legal personal representatives;
 - (vi) a rule, term, party or schedule is a reference to a rule or term of, or party or schedule to this constitution;
 - (vii) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
 - (viii) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2.2 Application of the Corporations Act

- (a) This constitution is to be interpreted subject to the Corporations Act.
- (b) In this constitution, unless the contrary intention appears:
 - (i) a word or expression defined or given a meaning in the Corporations Act has the same meaning when used in this constitution in a similar context; and
 - (ii) "section" means a section in the Corporations Act.

2.3 Exercise of powers

- (a) The Company may exercise in any manner permitted by the Corporations Act any power which, under the Corporations Act, a company limited by shares may exercise if authorised by its constitution.
- (b) Where this constitution provides that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provisions with respect to different matters or different classes of matters.
- (e) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
 - (i) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) subject to any contract between the Company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (iii) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (f) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

- (g) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where this constitution confers power on a person or body to delegate a function or power:
 - (i) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (ii) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (iii) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
 - (iv) the delegation may include the power to delegate;
 - (v) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
 - (vi) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

2.4 **Replaceable rules do not apply**

The replaceable rules applicable to a public company contained in the Corporations Act from time to time do not apply to the Company.

PERPETUAL CORPORATE TRUST LIMITED
AS NOMINEE

BEAM DENTAL HOLDINGS LTD
AS COMPANY

NOMINEE DEED

CONTENTS

Clause	Page
1. Interpretation	2
2. Declaration of Trust.....	7
3. Instructions to the Nominee	9
4. Register of Separate Trusts.....	9
5. Undertaking by the Company.....	11
6. Corporate Actions.....	11
7. Authorised Persons.....	13
8. Term, Removal and Retirement	14
9. Limitation of Liability and Indemnities	15
10. Nominee Role.....	18
11. Fees.....	18
12. Duration of Separate Trusts.....	18
13. Conversion and Termination	19
14. GST	19
15. Notices.....	20
16. Amendment and Assignment	22
17. General	22
Schedule 1 Form of Instruction.....	24
Schedule 2 Accession Deed Poll.....	25
Schedule 3 Scrip Election Deed Poll	28

THIS DEED is made on [•] 2024

BETWEEN:

- (1) **PERPETUAL CORPORATE TRUST LIMITED** ACN 000 341 533 whose registered office is at Level 18, 123 Pitt Street, Sydney NSW 2000 (the "**Nominee**");
- (2) **BEAM DENTAL HOLDINGS LTD (ACN 676 301 456)** of Level 9, 309 Kent Street, Sydney NSW 2000 (the "**Company**"); and
- (3) **EACH APPOINTING BENEFICIARY FROM TIME TO TIME**, who becomes a party to this document in accordance with Clause 1.5(b) or by way of Accession Deed Poll or Scrip Election Deed Poll.

RECITALS:

- (A) At the request of the Company, the Nominee has agreed to act as nominee and to hold each Appointing Beneficiary's Separate Trust Property in each case by way of separate bare trust for the Appointing Beneficiary who is absolutely entitled to and has a vested and indefeasible interest in the Appointing Beneficiary's Separate Trust Property.
- (B) The Nominee agrees to act as nominee severally for each Appointing Beneficiary in respect of the Appointing Beneficiary's Separate Trust Property, in each case on the terms and conditions set out in this document.
- (C) In consideration for the Nominee providing those nominee services, the Company has agreed to indemnify the Nominee and to pay its fees and expenses on the terms and conditions set out in this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

"**Accession Deed Poll**" means a deed substantially in the form set out in Schedule 2 or such other form approved in writing by the Company and the Nominee.

"**Accretions**" means, in respect of each Separate Trust, all accretions, rights and benefits attaching to the Separate Trust Property (including all rights to receive dividends and any other distributions and to receive or subscribe for shares, stock, units, notes, options or other securities, declared, paid or issued by the Company but excluding amounts or other property that are paid or delivered by the Company directly to the Appointing Beneficiary under this document or paid or delivered to the Appointing Beneficiary as if it were the legal holder of the Separate Trust Property).

"**Additional Amount**" has the meaning given to it in Clause 14(a)(i).

"**Appointing Beneficiary**" means any person who has appointed the Nominee to hold Shares on bare trust for it from time to time, including pursuant to Clause 1.6.

"Authorised Person" means any other person nominated by an Appointing Beneficiary, as authorised to make any written communication or take any other action on behalf of that Appointing Beneficiary under this document.

"Beneficiary Notice of Termination" has its meaning given to it in Clause 8.1(b).

"Beneficial Shares" means in relation to an Appointing Beneficiary, the Shares held by the Nominee as bare trustee for that Appointing Beneficiary.

"Bidco" means Beam Dental Bidco Pty Limited (ACN 1676 303 254)

"Bidder's Statement" means the bidder's statement issued by Bidco relating to the Offer dated [insert date] made in respect of the Takeover Bid.

"Board" means the board of directors of the Company as constituted from time to time.

"Business Day" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, New South Wales.

"Company Notice of Termination" has its meaning given to it in Clause 8.1(a).

"Constitution" means the constitution of the Company, as amended from time to time after the date of this document.

"Directed Breach" has the meaning given to it in Clause 9.1.

"Effective Date" means, in relation to each Separate Trust, the date and time at which the Nominee first becomes the registered holder of any Shares on bare trust for the relevant Appointing Beneficiary.

"Exit" means an Exit Event as defined in the Shareholders' Deed.

"Fee Letter" means the fee letter between the Company and the Nominee dated on or about the date of this document.

"GST Law" has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Instruction" means a written instruction to the Nominee (with a copy to the Company) in respect of or in connection with the Separate Trust Property which is signed by an Appointing Beneficiary, or an Authorised Person on behalf of an Appointing Beneficiary, and which also satisfies each of the following matters:

- (a) is substantially in the form of Schedule 1 of this document;
- (b) the instruction states that it is an 'Instruction' for the purposes of this document; and
- (c) where the instruction includes a requirement for the Nominee to execute a document, it includes appropriate details of the terms and purpose of the relevant document,

and **provided that** the Nominee in its discretion is entitled to treat any such instruction as an Instruction even if it does not satisfy one or more of the above matters.

"**Liability**" means, in relation to a person, any liability or obligation however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"**Loss**" includes any loss, damage, Liability, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"**Notice of Retirement**" has its meaning given to it in Clause 8.1(c).

"**Offer**" means the offer for shares in Pacific Smiles Group Limited contained in section 12 of the Bidder's Statement (as amended, varied or supplemented from time to time by any other Takeover Bid Documents).

"**Scrip Election Deed Poll**" means a deed substantially in the form set out in Schedule 3 or such other form approved in writing by the Company and the Nominee.

"**Separate Trust**" means each bare trust established in accordance with Clause 2.2.

"**Separate Trust Property**" means, in relation to each Separate Trust, all of the property of that trust, including the Shares held by the Nominee for and on behalf of the Appointing Beneficiary of that Separate Trust, as shown in the Trusts Register, and all Accretions to those Shares or to any other property comprised in the trust.

"**Share**" means an issued share or security of any class in the capital of the Company.

"**Shareholder**" means a person that is a registered holder of a Share from time to time.

"**Supplier**" has the meaning given to it in Clause 14(a)(i).

"**Takeover Bid**" means the off-market takeover bid by the Company through its wholly owned subsidiary Bidco to acquire all of the shares in Pacific Smiles Group Limited as set out in the Takeover Bid Documents.

"**Takeover Bid Documents**" means:

- (a) the Bidder's Statement;
- (b) any variation of the Offer; and
- (c) any further replacement or supplementary bidder's statement lodged by Bidco in connection with the Takeover Bid.

"**Tax Act**" means the Income Tax Assessment Act 1997 (Cth) and the Income Tax Assessment Act 1936 (Cth).

"**Trusts Register**" means the register of Separate Trusts established by the Company and maintained by the Nominee in accordance with Clause 4.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party, and includes a person who becomes a party to this document under an Accession Deed Poll or Scrip Election Deed Poll;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and *vice versa*.
- (c) A recital, schedule, annexure or a description of the parties form a part of this document.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) The expression "**this deed**" and "**this document**" includes the agreement, arrangement, understanding or transaction recorded in this document.
- (h) A reference to "**absolutely entitled**" means absolutely entitled within the meaning of the Tax Act.
- (i) The word "**dividend**" includes a bonus or other distribution in cash or kind.
- (j) The expressions "**officer**" and "**related body corporate**" have the same meanings as in the Corporations Act.

- (k) A reference to "**information**" is to information of any kind in any form or medium, whether formal or informal, written or unwritten.
- (l) Words that are defined in the GST Law, but are not defined in Clause 1.1 have the same meaning given in the GST Law.
- (m) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable to pay and input tax credits to which the representative member is entitled.

1.3 **Non Business Days**

If the day on or by which a person must do something under this document is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 **The rule about contra proferentem**

This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision of it or because that party relies on a provision of this document to protect itself.

1.5 **Nominee Deed binding**

- (a) This document binds the Nominee, the Company and, in the case of each Separate Trust, the Appointing Beneficiary and any other person with an interest in the Separate Trust and any person claiming through the Appointing Beneficiary as if each of them had been a party to this document.
- (b) The Company will procure that each Appointing Beneficiary agrees to be bound by this document as an Appointing Beneficiary:
 - (i) by that Appointing Beneficiary or an attorney of the Appointing Beneficiary (including an attorney appointed under the Offer) executing and delivering to the Company and the Nominee;
 - (A) in respect of an Appointing Beneficiary that acquires or is entitled to Shares as a result of the Offer, the Scrip Election Deed Poll; or
 - (B) an Accession Deed Poll; or
 - (ii) by virtue of any provision of the Offer which provides that by making an election to receive Shares as consideration under the Offer, that person will be taken to have agreed to become a party to, and be bound by, this document.

1.6 **Acquire Takeover Bid Shares**

The Company directs, on behalf of, and as attorney for each relevant Appointing Beneficiary, the Nominee to acquire the Shares which that Appointing Beneficiary is entitled to receive pursuant to the Takeover Bid, and the Nominee agrees to follow that direction.

2. **DECLARATION OF TRUST**

2.1 **Nominee and custody services**

- (a) The Nominee agrees to act as bare trustee of each Separate Trust on the terms and conditions of this document.
- (b) The Nominee represents and warrants to the Company and to each Appointing Beneficiary that it holds an Australian financial services licence authorising it, among other things, to provide the custodial or depository services provided in this document for each Separate Trust.

2.2 **Declaration of Separate Trusts**

- (a) The Nominee declares that, in respect of each Appointing Beneficiary, it holds all of the Separate Trust Property of that Appointing Beneficiary's Separate Trust on a separate bare trust for that Appointing Beneficiary who has a vested and indefeasible interest in, and is absolutely entitled to, the Separate Trust Property.
- (b) For the avoidance of doubt, each Appointing Beneficiary has a vested and indefeasible interest in, and is absolutely entitled to the capital, assets and any income of its respective Separate Trust and is the sole beneficiary of the Separate Trust in relation to its Separate Trust Property.

2.3 **Separate Trust Property in each Separate Trust to be treated separately**

The Nominee must at all times treat the Separate Trust Property of a Separate Trust separately from the Separate Trust Property of each other Separate Trust and, in particular:

- (a) the Separate Trust Property of a Separate Trust will be separately identified and recorded in the Trusts Register and in any books of the Nominee (or in books maintained by the Company in connection with the nominee arrangements); and
- (b) none of the assets of a Separate Trust will be co-mingled at any time with the assets of any other Separate Trust.

2.4 **Nominee's and Appointing Beneficiary's obligations**

- (a) The Nominee must, on the Instruction of the relevant Appointing Beneficiary and at the cost of the relevant Appointing Beneficiary:
 - (i) transfer to the Appointing Beneficiary or otherwise deal with the Nominee's legal right, title and interest in any or all of that Appointing

Beneficiary's Separate Trust Property including any Accretions as the Appointing Beneficiary (or its Authorised Person) may from time to time direct; and

- (ii) take all steps, execute all documents and do all things necessary to vest the Nominee's legal right, title and interest in any or all of that Appointing Beneficiary's Separate Trust Property (including any Accretions) in the Appointing Beneficiary or any other person as the Appointing Beneficiary (or its Authorised Person) may from time to time direct,

provided that the Nominee will not be held liable for any failure to comply with these obligations to the extent that such failure is due to any act, refusal to act or omission by that Appointing Beneficiary, its Authorised Person or any other person (including any failure to provide any information that is properly required by the Nominee or any competent authority) or is due to the operation of law.

2.5 **Appointing Beneficiary's attorneys**

- (a) The Nominee and each Appointing Beneficiary acknowledge that the Appointing Beneficiary has appointed certain attorneys with authority to give Instructions to the Nominee on behalf of the Appointing Beneficiary in certain circumstances, including the Company as attorney for the Appointing Beneficiary.
- (b) Each Appointing Beneficiary directs the Nominee to comply with, and the Nominee must comply with, any Instruction given on behalf of an Appointing Beneficiary by an attorney (including the Company) which the Appointing Beneficiary has appointed.

2.6 **Appointing Beneficiary's reservation of rights**

Nothing in this document entitles the Nominee to the beneficial ownership of any Separate Trust Property, or operates to deprive an Appointing Beneficiary of the rights of beneficial ownership (including the right of possession) of, and absolute entitlement to, that Appointing Beneficiary's Separate Trust Property. The Nominee declares that it has no beneficial interest whatsoever in the Separate Trust Property of any Appointing Beneficiary.

2.7 **Limitations on the Nominee**

The Nominee has no powers, duties, discretions or liabilities under a Separate Trust except those expressly set out in this document.

2.8 **Nominee may appoint attorneys or proxies**

The Nominee may appoint any one or more persons as its attorney or proxy (jointly, or severally if more than one) with the power to execute documents on behalf of the Nominee for the day-to-day administration of a Separate Trust or as proxy to represent the Nominee at any meeting which the Nominee is instructed to attend in accordance with Clause 6.5.

3. INSTRUCTIONS TO THE NOMINEE

3.1 No obligation to verify

The Nominee has no obligation to verify the purpose, merits or propriety of an Instruction or any document the subject of an Instruction and it is entitled to rely solely on the relevant Appointing Beneficiary or its Authorised Person in respect of all matters relating to an Instruction and any transaction the subject of an Instruction.

3.2 Requests for further details

The Nominee is entitled to request further details from the relevant Appointing Beneficiary or its Authorised Person in respect of any Instruction, and is entitled to a reasonable period to consider any matter related to or arising from an Instruction, but this does not impose any obligation on the Nominee to do so, and does not otherwise limit the effect of this Clause 3.

3.3 Notification of failure to act on Instruction

- (a) If the Nominee considers that it is unable to wholly or partially act on an Instruction of an Appointing Beneficiary or its Authorised Person, it must promptly (and in any event, within two Business Days) notify the relevant Appointing Beneficiary or its Authorised Person (as applicable) of that position and the reasons why it is unable to act.
- (b) Upon receipt of such notice, the relevant Appointing Beneficiary or the Authorised Person (as applicable) may either:
 - (i) withdraw the specific Instruction with which the Nominee is unable to comply in accordance with this document; or
 - (ii) re-issue or clarify the Instruction, in which case the Instruction will not operate until it has been re-issued or clarified (and this clause will apply to that revised Instruction, as required).

4. REGISTER OF SEPARATE TRUSTS

4.1 Register of Appointing Beneficiaries

- (a) The Company must, at its sole cost and expense, establish a Trusts Register.
- (b) The Company undertakes to record in the Trusts Register in respect of each Separate Trust:
 - (i) the name, address and description of the Appointing Beneficiary for that Separate Trust (or the Appointing Beneficiary's nominee or custodian (if any));
 - (ii) the number, class of Beneficial Shares and identifying designation of Shares that are held on trust for that Appointing Beneficiary;

- (iii) the date(s) at which the name of the Appointing Beneficiary was first noted in the Trusts Register in respect of the Separate Trust Property held on bare trust for that Appointing Beneficiary; and
 - (iv) any other details reasonably considered necessary by the Nominee or the Company.
- (c) The Company must provide the Nominee information in order to enable the Nominee to alter and update the Trusts Register to reflect any changes which are necessary to reflect information provided to the Company and are relevant to the particulars listed in Clause 4.1(b), including as a result of the termination of any Separate Trust.

4.2 Trusts Register

- (a) The Company must provide, or must procure that its registrar provides:
 - (i) a copy of the Trusts Register to the Nominee on, or as soon as practicable, after the date of this document;
 - (ii) information relevant to the particulars listed in Clause 4.1(b), as and when any information in the Trusts Register is required to be updated, amended or replaced; and
 - (iii) information relevant to the particulars listed in Clause 4.1(b), within ten Business Days of being requested to do so by the Nominee.
- (b) The Nominee must provide a copy of the Trusts Register within five Business Days of being requested to do so by the Company.

4.3 Nominee reliance on the Trusts Register

Unless contrary information is provided to the Nominee under this document, the Nominee is entitled to assume without inquiry that the information in the Trusts Register is correct and the Nominee has no liability to any Appointing Beneficiary for any Loss which arises from the Trusts Register.

4.4 No certificate

No certificates will be issued to an Appointing Beneficiary in respect of the number of Shares held under a Separate Trust for that Appointing Beneficiary.

4.5 Cessation of notation as an Appointing Beneficiary

Upon termination of a Separate Trust in respect of an Appointing Beneficiary, the Appointing Beneficiary will cease to be noted in the Trusts Register as the beneficiary of the Shares held under that Separate Trust.

5. **UNDERTAKING BY THE COMPANY**

The Company undertakes to the Nominee that it will:

- (a) promptly provide the Nominee with all necessary information and assistance as the Nominee may reasonably require to enable the Nominee to comply with its obligations under this document;
- (b) without limitation to Clause 5(a), provide the Nominee with written notice of any of the following events (as soon as practicable, but in any case no later than five Business Days after becoming aware of any such events):
 - (i) any event that will result in a change in the beneficial ownership of a Share; and
 - (ii) any transfer or purported transfer of the beneficial interest in a Share by an Appointing Beneficiary,

and, on request, provide the Nominee with any information reasonably required by the Nominee in relation to any such event or events.

6. **CORPORATE ACTIONS**

6.1 **Dividends**

- (a) The Company must pay all dividends or other distributions in respect of any property comprised in an Appointing Beneficiary's Separate Trust directly to the Appointing Beneficiary.
- (b) The Company undertakes to the Nominee that it will procure that a distribution or dividend that would otherwise be paid to the Nominee as Shareholder will be paid to the Appointing Beneficiary in place of the Nominee at the same time as it makes or pays any distribution or dividend of any kind whatsoever to Shareholders.

6.2 **Proceeds from the sale of Shares**

The Company will procure that the proceeds (whether in the form of money or otherwise) from the sale of any Shares comprised in the Separate Trust Property of any Appointing Beneficiary that would otherwise be paid or distributed to the Nominee as Shareholder will be paid or distributed to that Appointing Beneficiary in place of the Nominee when the Company remits any proceeds from the disposal of those Shares.

6.3 **Notices of meetings**

The Company undertakes to the Nominee that it will send to each Appointing Beneficiary a copy of any notice of the meeting or a notice for Shareholder approval or consent pursuant to the Constitution or other documents governing the Company at the same time as it sends such notice to Shareholders.

6.4 **Shareholder communications**

The Company undertakes to the Nominee that it will send to each Appointing Beneficiary all notices, documents, communications or information provided to Shareholders under the Constitution or other documents governing the Company at the same time as it sends such notice to Shareholders.

6.5 **Shareholders Meetings**

To the extent reasonably practicable, the Nominee must:

- (a) attend any meetings of shareholders which the Nominee is directed by an Instruction to attend and which the Nominee is entitled to attend (**provided that** in the absence of an Instruction from an Appointing Beneficiary, the Nominee will not attend the relevant meeting on behalf of that Appointing Beneficiary);
- (a) in respect of Shares held on behalf of an Appointing Beneficiary, vote at any meeting of Shareholders in accordance with any Instruction to vote at that meeting given to the Nominee by or on behalf of that Appointing Beneficiary and at which the Nominee is entitled to vote in respect of those Shares (and in the absence of an Instruction relating to a meeting, the Nominee will not vote at that meeting);
- (b) if the Nominee has been directed by an Instruction by more than one Appointing Beneficiary to vote at a meeting of shareholders (and is entitled to vote) and those Appointing Beneficiaries between them would have been entitled to demand a poll had they been the registered holder of the relevant Shares, demand a poll (and not withdraw such demand) for each resolution that the Nominee is directed by Instruction to cast a vote on; and
- (c) if required by an Instruction given by or on behalf of an Appointing Beneficiary, execute all proxies, powers of attorney and other documents which it is necessary to execute to enable the relevant Appointing Beneficiary or its Authorised Persons to vote in the place of the Nominee at a meeting of shareholders in respect of that Appointing Beneficiary's Separate Trust Property.

6.6 **Appointment of attorney**

- (a) The Nominee hereby appoints each Appointing Beneficiary as its attorney to exercise the votes attached to the Shares held on bare trust for that Appointing Beneficiary under a Separate Trust in relation to all or any of the resolutions specified in any notice of meeting or notice for Shareholder approval or consent pursuant to any documents governing the Company and any attorney, and any sub-attorney appointed by an attorney, will (without limiting any other provision of this document relating to the Nominee's limitation of liability and indemnity) be subject to Clauses 6.6(f) and 9. Each attorney may appoint a sub-attorney in writing, and each Appointing Beneficiary confirms, and the Nominee acknowledges, that each Appointing Beneficiary has appointed the Company as its sub-attorney in certain circumstances.

- (b) The appointment of an Appointing Beneficiary as the Nominee's attorney as referred to in this Clause 6.6 extends to entitle the Appointing Beneficiary or its proxies or sub-attorneys (as the case may be) to attend, speak and vote, and to demand a poll or join in demanding a poll, at the relevant meeting of shareholders and to consent to short notice of such meeting and any resolution to be considered at a meeting.
- (c) The Nominee may but is not required to attend at any meetings of shareholders and must not cast a vote on any resolution in respect of the Company, except as required by Clause 6.5 or through its attorneys appointed under this Clause 6.6.
- (d) The Company's decision as to the validity of an appointment of an attorney referred to in this Clause 6.6 will be final and binding.
- (e) The Nominee has no responsibility or liability whatsoever for any act or omission of any Appointing Beneficiary that it appoints as an attorney under this Clause 6.6, or for any sub-attorney that any Appointing Beneficiary has in turn appointed.
- (f) The Nominee is not, for any reason whatsoever, liable to the Company, an Appointing Beneficiary or any other person for any Loss arising out of or in connection with any appointment pursuant to this Clause 6.6, any meetings of shareholders (or proposed meetings), requisition, execution of any documents, any voting or abstention, including if the meetings of shareholders of the Company is not quorate or properly formed.

6.7 **No meetings of Appointing Beneficiaries**

For the avoidance of doubt, there will be no meetings of the Appointing Beneficiaries of the Separate Trusts.

7. **AUTHORISED PERSONS**

7.1 **Authorised Persons**

An Appointing Beneficiary may notify the Nominee (with a copy to the Company) of persons who are Authorised Persons for the purposes of the rights and obligations of that Appointing Beneficiary under this document (including, but not limited to, the service of an Instruction under Clause 3.1).

7.2 **Variation of Authorised Person**

An Appointing Beneficiary may in its absolute discretion vary its Authorised Persons by written notice to the Nominee and the Company (other than an appointment of an attorney under documents governing the Company).

7.3 **Nominee's actions**

The Nominee must accept all communications or actions concerning this document made by the Authorised Persons of an Appointing Beneficiary, **provided that** those communications or actions are in accordance with this document. The Nominee is not obliged to take any action if the communication or action is not made by an Authorised

Person, nor to enquire as to the identity of any person if it reasonably believes the person to be an Authorised Person.

7.4 **Nominee's reliance on an Instruction**

If the Nominee receives an Instruction from an Authorised Person of an Appointing Beneficiary in accordance with this document in circumstances where it is reasonable for the Nominee to assume it was from an Authorised Person of the Appointing Beneficiary, the Nominee is not liable for any properly performed action or omission of the Nominee in reliance on that Instruction.

8. **TERM, REMOVAL AND RETIREMENT**

8.1 **Termination**

- (a) The Company may remove the Nominee at any time in accordance with this document by providing 90 days' written notice to the Nominee (or such lesser notice period agreed by the Nominee) ("**Company Notice of Termination**").
- (b) The Appointing Beneficiary may remove the Nominee as bare trustee for that Appointing Beneficiary only, at any time in accordance with this document by providing 90 days' written notice to the Nominee and to the Company (or such lesser notice period agreed by the Nominee and the Company) ("**Beneficiary Notice of Termination**").
- (c) The Nominee may retire at any time by providing 90 days' written notice to the Company and the Appointing Beneficiaries (or such lesser notice period agreed by the Company) ("**Notice of Retirement**").
- (d) Subject to Clause 8.1(b), the Nominee may only retire or be removed as trustee of all (but not some) of the Separate Trusts.

8.2 **New Nominee**

- (a) If the Nominee retires or is removed under Clause 8.1, the Company may appoint a replacement trustee to act as the Nominee for each relevant Separate Trust. If no such person is nominated by the Company by the end of the Company Notice of Termination, Beneficiary Notice of Termination or Notice of Retirement (as the case may be) period, the Appointing Beneficiary (in the case of a termination under Clause 8.1(b)) or otherwise the Nominee may, acting reasonably, propose a person as a replacement nominee to act as the Nominee for each relevant Separate Trust (in each case, the "**Replacement Nominee**").
- (b) Where a Replacement Nominee is appointed under Clause 8.2(a), the Company and Nominee must do all things reasonably necessary to facilitate the appointment of the Replacement Nominee.
- (c) The removal or retirement of the Nominee and the appointment of the Replacement Nominee is not complete until the new Replacement Nominee executes a deed by which it agrees to act as bare trustee of each Separate Trust, and to provide the nominee and custody services provided in this document in

respect of each Separate Trust, for the benefit of the Appointing Beneficiaries on the terms and conditions of this document in place of the Nominee as outgoing bare trustee.

8.3 **Release**

Upon the removal or retirement of the Nominee under Clause 8.1, the Nominee is released from all obligations in relation to the relevant Separate Trusts arising after the time it retires, except that the Nominee is still obliged to comply with Clause 8.2(b) including by delivering all books and records relating to the relevant Separate Trusts in its possession at the relevant time to the Replacement Nominee.

8.4 **Costs of replacing the Nominee**

All reasonable costs incurred by the Nominee and all costs of any Replacement Nominee and the Company in connection with the retirement or removal and replacement of the Nominee must be borne by the Company, other than a removal pursuant to a Beneficiary Notice of Termination, in which case such costs must be borne by the relevant Appointing Beneficiary.

9. **LIMITATION OF LIABILITY AND INDEMNITIES**

9.1 **No Liability of Nominee for certain breaches**

- (a) Each party acknowledges that, subject to the terms of this document, the Nominee is obliged to act in accordance with the directions of the Appointing Beneficiaries in relation to their respective Beneficial Shares.
- (b) Each party agrees that any breach of this document which arises as a result of the Nominee complying with a direction given by an Appointing Beneficiary ("**Directed Breach**") is to be construed for all purposes as a breach by the relevant Appointing Beneficiary for which the Appointing Beneficiary is personally liable (including in accordance with this document) and not by the Nominee, and, except to the extent that the same arises as a direct result of the fraud, dishonesty or wilful misconduct of the Nominee or those acting on its behalf, and without limiting the foregoing:
 - (i) the Nominee is released from any claim or Liability in respect of any Directed Breach; and
 - (ii) each party (other than the Nominee) covenants not to claim, sue or take any action against the Nominee in respect of any Directed Breach.

9.2 **Limitation of Nominee's liability**

- (a) Subject to Clause 9.2(d), each party acknowledges that the Nominee will be bound by the terms of this document in its capacity as bare trustee of the Separate Trusts and in no other capacity.
- (b) Any Liability of the Nominee arising under or in connection with this document is limited to, and can be enforced against the Nominee only to the extent to which under Clause 9.3 or 9.4, any governing document of the Company, or by

operation of law, the Nominee is actually indemnified for the Liability. This limitation of the Nominee's Liability applies despite any other provision of this document and extends to all Liabilities of the Nominee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.

- (c) No party may sue the Nominee in any capacity other than as trustee of a Separate Trust, including seeking the appointment of a receiver (except in relation to property of a Separate Trust), a liquidator, an administrator, or any similar person to the Nominee nor may any party prove in any liquidation, administration or arrangement of or affecting the Nominee (except in relation to property of the relevant Separate Trust).
- (d) The provisions of Clauses 9.1 and 9.2(a) to 9.2(c) do not apply to any Liability of the Nominee to the extent that it is not satisfied under this document or by operation of law or there is a reduction in the extent of the Nominee's indemnification out of the assets of the relevant Separate Trust, in each case as a result of the Nominee's fraud, negligence or wilful default.
- (e) No attorney, agent, receiver or receiver and manager appointed in accordance with this document has authority to act on behalf of the Nominee in a way which exposes the Nominee to any personal Liability.

9.3 **Indemnity from Appointing Beneficiary to Nominee**

- (a) Each Appointing Beneficiary:
 - (i) indemnifies the Nominee for or in respect of any Liability or Loss which the Nominee pays, suffers, incurs or is liable for arising out of or in connection with; and
 - (ii) covenants with the Nominee not to claim, sue or take any action against the Nominee in relation to,

anything done by the Nominee at the direction of or on behalf of the Appointing Beneficiary, or by reason of the Appointing Beneficiary's Separate Trust Property being registered in the name of the Nominee, other than:
 - (iii) Liabilities or Losses arising of the Nominee's (or any of its officers', employees' or agents') fraud, negligence, dishonesty, wilful misconduct, breach of any of its obligations under any governing document of the Company or this document or breach of trust; or
 - (iv) overhead costs (including rent, office maintenance and salaries) of the Nominee, fees of a related body corporate of the Nominee acting as custodian of the Nominee and fees of a sub custodian, nominee or other delegate of such a custodian of the Nominee; or
 - (v) to the extent the Nominee is entitled to recover and is actually indemnified for any such amounts in paragraphs (iii) or (iv) above by the Company under this document or by operation of law.

- (b) Each indemnity given by an Appointing Beneficiary referred to in this Clause 9.3:
 - (i) is an additional, separate and independent obligation of the Appointing Beneficiary and no one indemnity limits the generality of any other indemnity; and
 - (ii) survives termination of this document.

9.4 **Company reimbursement to Nominee**

The Company will meet the Nominee's out-of-pocket expenses and any internal costs of the Nominee relating to actions and directions by the Appointing Beneficiary in relation to its Separate Trust Property in the ordinary course. This does not apply in relation to:

- (a) the following costs in respect of that Appointing Beneficiary for which the Nominee is otherwise liable:
 - (i) advisory costs for tax, legal or other professional advice given to an Appointing Beneficiary in connection with an Exit or other relevant transaction, as applicable, which is not advice for the benefit of other parties;
 - (ii) Tax; nor
 - (iii) a Liability arising out of any claim, action or proceeding of any nature in connection with an Exit or other relevant transaction, as applicable, unless approved by the Board;
- (b) Liabilities suffered or incurred by the Nominee arising in connection with any action, omission or Instruction by that Appointing Beneficiary which is in breach of any legal or contractual obligation of that Appointing Beneficiary (including any breach of this document or governing document of the Company);
- (c) Liabilities incurred by the Nominee as a result of any action, omission or Instruction by that Appointing Beneficiary that is unreasonable or otherwise outside the ordinary course;
- (d) Liabilities incurred by the Nominee that would have been incurred in comparable circumstances by the Appointing Beneficiary had it been the registered holder of the relevant Shares;
- (e) all calls, demands and other Liabilities which the Nominee is liable to pay in respect of that Appointing Beneficiary's Separate Trust Property;
- (f) any other cost, expense or Liability which this document or governing document of the Company provides will be paid by, or are otherwise the responsibility of, the Appointing Beneficiary.

10. **NOMINEE ROLE**

In acting as trustee of a Separate Trust, the Nominee agrees that:

- (a) the Nominee has and must maintain adequate arrangements to enable it to provide the services under the document in any contingency for which it should reasonably plan;
- (b) it has information and cybersecurity policies in place that are designed and functioning in a manner to protect client/customer information and that are consistent with the prevailing best practices used in the Nominee's industry. The Nominee acknowledges and agrees that any information provided to the Nominee by or on behalf of the Company or any Appointing Beneficiary will be subject to such policies;
- (c) the Nominee must not use the name, logo, trademark or service mark of the Company or its affiliates without the Company's prior written consent. Additionally, the Nominee must not issue any press release or make any other public statement regarding this document or the contemplated arrangement hereunder without the prior written consent of the Company;
- (d) the Nominee will keep any information of a confidential nature in confidence, apart from any disclosure as required by law; and
- (e) the Nominee will not appoint any other person to hold an Appointing Beneficiary's Separate Trust Property.

11. **FEES**

In consideration for the Nominee providing the services specified in this document, the Company agrees to pay to the Nominee the fees and expenses set out in the Fee Letter.

12. **DURATION OF SEPARATE TRUSTS**

12.1 **Commencement date**

Each Separate Trust commences on the Effective Date.

12.2 **Termination and termination date**

A Separate Trust will terminate on the earlier of:

- (a) the date on which the Appointing Beneficiary is registered on the register of members held by the Company as the legal owner of any Shares which are Separate Trust Property of that Appointing Beneficiary's Separate Trust;
- (b) the date on which the Nominee ceases to be registered on the register of members held by the Company as the legal owner of all of the Shares which are Separate Trust Property of that Appointing Beneficiary's Separate Trust;
- (c) if the Company is wound-up, the date on which that proportion of the proceeds of realisation payable in respect of the Separate Trust Property held in an

Appointing Beneficiary's Separate Trust is distributed to that Appointing Beneficiary or, if no proceeds of realisation are to be distributed to that Appointing Beneficiary, the date on which the Company is wound-up;

- (d) the date on which the Separate Trust is terminated by the operation of Clause 13(a) or 8.1(b);
- (e) the date on which the Separate Trust is terminated by the operation of any applicable laws; and
- (f) the date that is eighty (80) years from the day before the Effective Date of the Separate Trust.

12.3 **Termination of document for an Appointing Beneficiary**

This document will terminate for an Appointing Beneficiary when each Separate Trust of that Appointing Beneficiary is terminated in accordance with Clause 12.2.

13. **CONVERSION AND TERMINATION**

- (a) If the Company applies to the Australian Securities and Investments Commission to change its type to a proprietary company at a time when it has more than 50 non-employee Appointing Beneficiaries:
 - (i) the bare trustee arrangements contemplated under this document will terminate on the date on which the change of company type takes effect ("**Conversion Termination Date**"); and
 - (ii) the Nominee must as soon as reasonably possible (and, in any event, before the Conversion Termination Date), transfer legal title in respect of the Separate Trust Property held by it to the relevant Appointing Beneficiaries who must be registered in the register of members of the Company as legal holders of such Separate Trust Property.
- (b) The provisions of Clause 13(a) must not be amended or varied unless such amendment or variation has been approved by resolution by at least 75 per cent of the votes cast by Appointing Beneficiaries where:
 - (i) only Appointing Beneficiaries can vote on the resolution;
 - (ii) each Appointing Beneficiary is entitled to cast a vote for each Share held on trust for, or on behalf of it, under this document; and
 - (iii) Part 2G.2 of the Corporations Act applies as if each Appointing Beneficiary were a member of the Company.

14. **GST**

- (a) If GST is or will be payable on a supply made under or in connection with this document, to the extent that the consideration otherwise provided for that supply under this document is not stated to be inclusive of GST on that supply:

- (i) the consideration otherwise provided for that supply under this document is increased by that amount of that GST as calculated by the party making the supply ("**Supplier**") in accordance with GST Law ("**Additional Amount**"); and
 - (ii) the recipient must make payment of the Additional Amount as and when the consideration otherwise provided for, or any part of it, must be paid or provided or, if the consideration has already been paid or provided, within seven days of receiving a tax invoice from the Supplier.
- (b) If the amount of GST on a supply is or should be different from the Additional Amount already recovered by the Supplier, as appropriate, the Supplier within 14 days of becoming aware of the adjustment event:
 - (i) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving seven days' written notice; or
 - (ii) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply to the extent that the Supplier is entitled to a refund or credit from the Commissioner of Taxation; and
 - (iii) must issue an adjustment note or tax invoice reflecting any adjustment event in relation to the supply to the recipient within 28 days of the adjustment event.
- (c) The right of the Supplier to recover any amount in respect of GST under this document is subject to the issuing of the relevant tax invoice or adjustment note to the recipient.
- (d) Any costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this document must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

15. NOTICES

15.1 Notices

- (a) A notice, demand, consent or communication under this document ("**Notice**") must be:
 - (i) in writing, in English and signed by a person duly authorised by the sender; and
 - (ii) hand delivered or sent by prepaid post or email to the recipient's address for Notices specified in this clause, as varied by any Notice given by the recipient to the sender.

- (b) A notice, consent or other communication that complies with this clause takes effect when received (or at a later time specified in it), and is taken to be received:
- (i) if hand delivered, on delivery;
 - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
 - (iii) if sent by email, when sent by the sender unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee,

but if the delivery by hand or transmission by email does not take place on a Business Day or takes place after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

- (c) A person's addresses are those set out below, or as the person otherwise notifies the sender (including through an Accession Deed Poll or Scrip Election Deed Poll):

The Company

Address: Level 9, 309 Kent Street, Sydney NSW 2000
Attention: [insert]
Email: [insert]

The Nominee

Address: Level 18, 123 Pitt Street, Sydney NSW 2000
Attention: Head of Custody
Email: CCSCustody@perpetual.com.au

15.2 Appointment of Company as agent for notice

- (a) The Company is hereby appointed as agent for each Appointing Beneficiary to receive notices out of or in connection with the subject matter of this document and any such notice served on the Company is taken to be served on the Appointing Beneficiary.
- (b) The Company and the Nominee agree that:
- (i) the Nominee is not obligated to seek any Instructions, directions, consents or approvals directly from any Appointing Beneficiary directly but may do so through the Company; and
 - (ii) the Company will take reasonable steps to ensure that any Instruction, direction, consent or approval of any Appointing Beneficiary will be provided through the Company to the Nominee.

16. AMENDMENT AND ASSIGNMENT

16.1 Amendment

This document can only be amended or replaced with, subject to Clause 13(b), the written approval of the Nominee and the Company, and no amendment or replacement is effective to the extent that it results in any Separate Trust created under this document ceasing to be a bare trust.

16.2 Assignment

A party may only assign, encumber or otherwise deal with its rights under this document with the written consent of the Nominee and the Company.

17. GENERAL

17.1 Governing law

- (a) This document is governed by the law in force in the State of New South Wales.
- (b) Each party submits to the jurisdiction of the courts of the State of New South Wales and of any court that may hear appeals therefrom for any proceedings in connection with this document.

17.2 Giving effect to documents

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

17.3 Variation of rights

The exercise of a right partially or on one occasion does not prevent any further exercise of that right in accordance with the terms of this document. Neither a forbearance to exercise a right nor a delay in the exercise of a right operates as an election between rights or a variation of the terms of this document.

17.4 Operation of this document

- (a) Subject to Clause 17.4(b), this document, the Constitution and any other document which governs or contemplates the arrangements contained in this document, contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

17.5 Counterparts

This document may be executed in counterparts.

**SCHEDULE 1
FORM OF INSTRUCTION**

Date: [insert]

Perpetual Corporate Trust Limited
Level 18, 123 Pitt Street, Sydney NSW 2000

Attention: Head of Custody

Dear Sir

Instruction regarding Beam Dental Holdings Ltd

This letter is an Instruction for the purposes of Clause 3 of the Nominee Deed between Perpetual Corporate Trust Limited ("**Nominee**") and Beam Dental Holdings Ltd ("**Company**") dated [insert] 2024 ("**Nominee Deed**").

Unless otherwise defined, capitalised terms used in this Instruction have the meaning given to them in the Nominee Deed.

In my capacity as an Appointing Beneficiary, I [insert name] provide the following instruction to the Nominee:

(a) [insert]; and

(b) [insert],

(the "**Direction**").

The Appointing Beneficiary confirms that:

1. it is an Appointing Beneficiary pursuant to the Nominee Deed as at the date of this Instruction;
2. this letter is an Instruction given pursuant to the terms of the Nominee Deed;
3. this Instruction is binding on the Nominee;
4. it will ensure that the Nominee is able to comply with the Direction and/or the transaction contemplated by the Direction, and where necessary provide further Instructions to the Nominee to comply with the Direction;
5. by acting on this Instruction the Nominee is not doing, or refraining from doing, any act that would be inconsistent with the Appointing Beneficiary being absolutely entitled to its Separate Trust against the Nominee; and
6. this Instruction is irrevocable unless a further written notice is provided to the Nominee.

Executed by [insert]:

**SCHEDULE 2
ACCESSION DEED POLL**

THIS DEED is made on _____ 2024

BETWEEN:

- (1) [Name of Party] ABN/ACN/ARBN [number] whose registered office is at [address] ("**Acceding Party**").

1. Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply.

"**Accession Date**" has the meaning given to it in Clause 2.1.

"**Continuing Party**" means each party (whether an original party or a party by accession) to the Nominee Deed.

"**Nominee Deed**" means the Nominee Deed dated [insert date] between Perpetual Corporate Trust Limited (ACN 000 341 533), Beam Dental Holdings Ltd (ACN 676 301 456) and the Appointing Beneficiaries (as that term is defined in that document) from time to time, as amended from time to time.

1.2 Interpretation

Clauses 1.2 to 1.4 of the Nominee Deed apply to this document as if set out in full in this document.

1.3 Incorporated definitions

Unless the contrary intention appears, a term which has a defined meaning in the Nominee Deed, has the same meaning when used in this document.

2. Accession

2.1 Accession

The Acceding Party accedes to the Nominee Deed as an Appointing Beneficiary on and from [insert relevant date] ("**Accession Date**").

2.2 Rights and obligations of Acceding Party

Upon accession to the Nominee Deed, the Acceding Party is bound by all the terms of the Nominee Deed from the Accession Date as if the Acceding Party was, from the Accession Date, a party to the Nominee Deed with all the rights and obligations of an Appointing Beneficiary.

3. **Representations and warranties**

The Acceding Party represents and warrants to each Continuing Party:

- (a) ("**status**") if it is not an individual, it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) ("**power**") it has power to enter into this document and the Nominee Deed, to comply with its obligations under this document and the Nominee Deed and exercise its rights under this document and the Nominee Deed;
- (c) ("**no contravention**") the entry by it into, its compliance with its obligations and the exercise of its rights under, this document and the Nominee Deed does not and will not conflict with:
 - (i) if it is with an individual, its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) ("**authorisations**") it has in full force and effect each authorisation necessary for it to enter into this document and the Nominee Deed, to comply with its obligations, and to allow this document and the Nominee Deed to be enforced;
- (e) ("**validity of obligations**") its obligations under this document and the Nominee Deed are valid and binding and are enforceable against it in accordance with its terms; and
- (f) ("**not insolvent**") it is not subject to any dissolution, liquidation, winding up or other termination event, nor any pending or threatened bankruptcy, insolvency or liquidation proceedings against it.

4. **Notices**

4.1 **Address of Acceding Party for notices**

For the purposes of the Nominee Deed the address of the Acceding Party to which all notices must be delivered is:

Acceding Party

[insert Acceding Party's name]:

Address: [insert address]
Email: [insert email address]
Attention: [insert name]

5. **General**

5.1 **Variation and waiver**

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

5.2 **Amendment**

This document may be amended only by a document signed by the Acceding Party, the Nominee and the Company.

5.3 **Assignment**

The Acceding Party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the written consent of the Nominee and the Company.

5.4 **Giving effect to documents**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

5.5 **Severability**

Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

6. **Governing law and jurisdiction**

The law in force in New South Wales governs this document. The Acceding Party submits to the non-exclusive jurisdiction of the courts of that place.

EXECUTED as a **DEED POLL**

[Signing pages deliberately omitted]

**SCHEDULE 3
SCRIP ELECTION DEED POLL**

Date:

PARTIES

[*Insert name of acceding party*] of [*insert address*] ("**Acceding Party**")

THE PARTIES agree in favour of and for the benefit of each and all the following:

- (D) the parties to the Shareholders' Deed; and
 - (E) the parties to the Nominee Deed,
- (each a "**Beneficiary**" and together the "**Beneficiaries**")

1. DEFINED TERMS AND INTERPRETATION

1.1 Defined terms

The following definitions apply in this deed poll.

"**Accession Date**" has the meaning given to that term in clause 2 of this deed poll.

"**Appointing Beneficiary**" has the meaning given to that term in the Nominee Deed.

"**Bidco**" means Beam Dental Bidco Pty Limited (ACN 676 303 254).

"**Bidder's Statement**" means the bidder's statement issued by Bidco in respect of the Takeover Bid, dated [*insert date*], (as amended, varied or supplemented from time to time).

"**Company**" means Beam Dental Holdings Limited (ACN 676 301 456).

"**Nominee Deed**" means the Nominee Deed dated [*insert date*] between Perpetual, the Company and the Appointing Beneficiaries from time to time.

"**Pacific Smiles**" means Pacific Smiles Group Limited (ACN 103 087 449).

"**Perpetual**" means Perpetual Corporate Trust Limited (ACN 000 341 533).

"**Offer**" means the offer for shares in Pacific Smiles contained in section 12 of the Bidder's Statement (as amended, varied or supplemented from time to time by any other Takeover Bid Documents).

"**Shareholders' Deed**" means the Shareholders Deed dated [*insert date*] between (among others) the Company, each Investor Shareholder (from time to time), and each Non-Investor Shareholder (from time to time).

"**Takeover Bid**" means the off-market takeover bid by the Company through its wholly owned subsidiary, Bidco, to acquire all of the shares in Pacific Smiles as set out in the Takeover Bid Documents.

"Takeover Bid Documents" means:

- (a) the Bidder's Statement;
- (b) any variation of the Offer; and
- (c) any further replacement or supplementary bidder's statement lodged by Bidco in connection with the Takeover Bid.

1.2 **Defined terms incorporated by reference**

Words and expressions used but not defined in this deed poll, have the same meaning as those used in the Shareholders' Deed (as amended, varied, novated or supplemented from time to time), unless the context otherwise requires.

1.3 **Interpretation**

Clauses 1 and 2 of Schedule 2 of the Shareholders' Deed apply in the interpretation of this deed poll.

2. **ACCESSION TO SHAREHOLDERS' DEED AND NOMINEE DEED**

- (a) Subject to the terms of this deed poll, the Acceding Party accedes to:
 - (i) the Shareholders' Deed as if it were an original party to the Shareholders' Deed as a Non-Investor Shareholder; and
 - (ii) the Nominee Deed as if it were an original party to the Nominee Deed as an Appointing Beneficiary,

on and from the date that Bidco issues Securities to, or for the benefit of, the Acceding Party pursuant to the terms of the Offer ("**Accession Date**").

- (b) The Acceding Party acknowledges that they have received a copy of the Shareholders' Deed and the Nominee Deed together with all other information they require in connection with this deed poll, the Shareholders' Deed and the Nominee Deed.

3. **PARTIES TO BE BOUND**

The Acceding Party undertakes to be bound by:

- (a) all the terms of the Shareholders' Deed from the Accession Date as if the definition of "Shareholder" and "Non-Investor Shareholder" in the Shareholders' Deed included the Acceding Party; and
- (b) all the terms of the Nominee Deed from the Accession Date as if the definition of "Appointing Beneficiary" in the Nominee Deed included the Acceding Party.

4. **REPRESENTATIONS AND WARRANTIES**

The Acceding Party represents and warrants the following to each Beneficiary:

- (a) **registration:** if it is a body corporate, it is duly registered and validly existing under the laws of the country of its registration;
- (b) **power and authority:** it has the power and authority to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by the Shareholders' Deed and the Nominee Deed;
- (c) **action:** it has taken all necessary action to authorise the entry into and performance of, this deed poll and to carry out the transactions contemplated by the Shareholders' Deed and the Nominee Deed;
- (d) **binding obligation:** this deed poll constitutes legal, valid and binding obligations on it;
- (e) **no contravention:** neither the execution and performance by it of this deed poll nor any transaction contemplated under the Shareholders' Deed and the Nominee Deed, will violate in any respect any provision of:
 - (i) its constituent documents; or
 - (ii) any other applicable law, document, agreement or other arrangement binding upon it or its assets; and
- (f) **not insolvent:** it is not subject to any dissolution, liquidation, winding up or other termination event, nor any pending or threatened bankruptcy, insolvency or liquidation proceedings against it.

5. GENERAL

5.1 Address of Acceding Party for notices

For the purposes of the Shareholders' Deed and the Nominee Deed, the address of the Acceding Party to which all notices must be delivered in accordance with clause 25 of the Shareholders' Deed and clause 15 of the Nominee Deed is:

Acceding Party

[insert Acceding party's name]

Address: **[insert address]**

Email: **[insert email address]**

Attention: **[insert name]**

5.2 Governing law

This deed poll is governed by the law in force in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being

brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

5.3 Further steps

The Acceding Party agrees, at its own expense, to do anything reasonably requested by any Beneficiary to give effect to the provisions of this deed poll and the transactions contemplated by it.

5.4 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

7.6 Liability for expenses

The Acceding Party must pay its own expenses incurred in negotiating, executing, stamping and registering this deed poll.

7.7 Amendment

This deed poll can only be amended or replaced by another document executed by the Acceding Party and each Beneficiary.

7.8 [Service of process

[Note: This section to be inserted if the Acceding Party is not incorporated in Australia.]

[[***Insert Acceding party's name***] irrevocably appoints [***insert local agent***] as its agent for the service of process in Australia in relation to any matter arising out of this deed poll, the Shareholders' Deed and the Nominee Deed. If [***insert name of local agent***] ceases to be able to act as such or have an address in Australia, [***insert Acceding party's name***] agrees to appoint a new process agent in Australia and deliver to the other parties within 20 Business Days a copy of a written acceptance of appointment by the process agent, upon receipt of which the new appointment becomes effective for the purpose of this deed poll, the Shareholders' Deed and the Nominee Deed. [***Insert Acceding party's name***] must inform the other parties in writing of any change in the address of its process agent within 20 Business Days of the change.]

Execution Page – Scrip Election Deed Poll

EXECUTED as a DEED POLL

[Signing blocks deliberately omitted]

EXECUTED as a **DEED**.

[Signing pages deliberately omitted]

Corporate directory

Beam Dental Bidco Pty Limited
ACN 676 303 254

Registered office

Level 9, 309 Kent Street
Sydney NSW 2000
Australia

Website <https://genesiscapital.com.au/>

Postal address

Level 9, 309 Kent Street
Sydney NSW 2000
Australia

Legal adviser

Clifford Chance

Level 24, Brookfield Place
10 Carrington Street
Sydney NSW 2000
Australia

Financial adviser

Jarden

Level 54, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia

Share registry for Offer

Automic Group

Level 5, 126 Phillip Street
Sydney NSW 2000
Australia

Offer Information Line

1300 101 297 (for calls made within Australia) or

+61 2 9068 1929 (for calls made from outside Australia)

Between **9:30am** and 7:00pm (Sydney, Australia time) Monday to Friday.