

Deed of Company Arrangement

BETWEEN

Ellume Limited (Administrators Appointed)
ACN 141 767 660

AND

John Park and Joanne Dunn as administrators
of Ellume Limited (Administrators Appointed)
ACN 141 767 660

AND

Hough Consolidated Pty Ltd
ACN 657 651 280

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Date 22 December 2022

Parties

Ellume Limited (Administrators Appointed) ACN 141 767 660

of c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000

(Deed Company)

John Park and Joanne Dunn, each in their capacity as joint and several administrators of the Deed Company

of c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000

(Deed Administrators)

Hough Consolidated Pty Ltd ACN 657 651 280

of c/- McCullough Robertson Lawyers, Level 11, 66 Eagle Street, Brisbane QLD 4000

(Deed Proponent)

Background

- A. On the Appointment Date, John Park and Joanne Dunn of FTI Consulting were appointed as joint and several administrators of the Deed Company pursuant to section 436A of the Corporations Act.
- B. At the meeting of Eligible Employee Creditors of the Company held on 20 December 2022 prior to the Second Meeting and convened under Section 444DA(2)(a) of the Corporations Act, the Eligible Employee Creditors of the Company passed a resolution agreeing to the non-inclusion of a provision in this Deed which, absent the resolution, would be required by section 444DA(1) of the Corporations Act.
- C. At a meeting held on 20 December 2022 and convened pursuant to section 439A of the Corporations Act (**Second Meeting**), the Creditors of the Deed Company resolved that the Deed Company enter into a deed of company arrangement substantially in the form of the DOCA Proposal under section 444B(2)(b) of the Corporations Act (**Section 439C Resolution**).
- D. The Deed Company, the Deed Administrators and the Deed Proponent have agreed to execute this Deed to give effect to the Section 439C Resolution.
- E. The Deed Administrators have consented to be the administrators of this Deed.
- F. Subject to the terms of this Deed, this Deed:
 - (a) binds all Creditors of the Deed Company, in accordance with section 444D of the Corporations Act, and also binds the Deed Company and its Officers and Members in accordance with section 444G of the Corporations Act; and
 - (b) will result in the transfer of all of the Ellume Shares in accordance with clause 6.3.

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed:

Accounts Receivable means amounts payable to the Deed Company for work or services provided by the Deed Company to customers up to Completion and which were invoiced by the Deed Company on or before Completion.

Accrued Revenue means the amount of the proceeds received by the Deed Company in respect of work or services provided by the Deed Company to customers up to Completion which have not been invoiced at Completion.

Administration Debt means any:

- (a) debt referred to in sections 443A(1) or 443B(2) of the Corporations Act which was incurred by the Administrators during the Administration Period;
- (b) liability to the Commissioner of Taxation referred to in section 443BA(1); and
- (c) other debts or liabilities referred to in section 443D(aa) of the Corporations Act, in respect of which the Administrators are entitled to be indemnified under section 443D of the Corporations Act.

Administration Period means in respect of the Deed Company, the period of time commencing on the Appointment Date and concluding on the Commencement Date.

Administrators means, jointly and severally, John Park and Joanne Dunn in their capacities as administrators of the Deed Company and any successor to that office appointed pursuant to this Deed and/or the Corporations Act.

Appointment Date means 31 August 2022, being the date on which the Administrators of the Deed Company were appointed pursuant to section 436A of the Corporations Act.

ASIC means the Australian Securities and Investments Commission.

ASIC Relief means such exemptions and modifications from Chapter 6 of the Corporations Act granted by ASIC pursuant to section 655A of the Corporations Act as are necessary to permit the transfer of the Ellume Shares to the Purchaser.

Business Day means a day other than a Saturday, Sunday or public holiday and on which banks are open for business generally in Brisbane, Queensland, Australia.

Ceasing Leases means the:

- (a) lease between the Deed Company as lessee and YWCA Australia ACN 111 663 873 as lessor in relation to part of 936 Stanley Street, East Brisbane QLD 4169 more particularly described as Lot 223 on RP 11455; and
- (b) lease dated 12 July 2022 between the Deed Company as lessee and Darrouzet Investments Pty Ltd ACN 136 760 364 as lessor in relation to 57 Didsbury Street, East Brisbane QLD 4169, more particularly described as Lot 1 on RP 166321.

Ceasing Leases Notice means the notice substantially in the form set out in Schedule 2 confirming that the Ceasing Leases have been terminated or otherwise that counterparties to the Ceasing Leases have been notified that the Deed Company will

cease to comply with, and will not perform its obligations under, and treat the Ceasing Leases as at an end.

Claim means any claim, cost, damages, debt, income, expense, tax, royalty, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceedings, penalty (civil, criminal or otherwise), order or judgment of any kind however calculated or caused, howsoever arising in law or equity or under statute against the Deed Company, and whether direct or indirect, future, contingent, consequential, incidental or economic, the agreement, circumstances or event giving rise to which occurred or arose before the Appointment Date, and includes:

- (a) any claim of any kind whatsoever under a Ceasing Lease including any claim for damages or loss in connection with the Deed Company's failure to comply with or perform or termination of, a Ceasing Lease;
- (b) any claim that in a winding up of the Deed Company would be a subordinated claim for purposes of section 563A of the Corporations Act;
- (c) any residual unsecured claim held by a Secured Creditor following realisation of its Security; and
- (d) without limiting (a) above, any warrant, option or similar instrument issued by the Deed Company in respect of any of the Ellume Shares,

save that a Claim does not include an Excluded Claim.

Commencement Date means the date this Deed is executed by all Parties.

Completion means the date after the CP Satisfaction Date and at a time that each of the Completion Steps have occurred.

Completion Steps has the meaning given to that term in clause 6.2(b).

Conditions means the conditions precedent contained in clause 5.1.

Continuing Employees means those Employees who were employed by the Deed Company (or an Ellume Subsidiary) as at the Commencement Date and who remain Employees as at Completion.

Continuing Directors means Jackson Hough, and at least two other directors nominated by the Deed Proponent in writing prior to Completion.

Contribution Amount means the amount of US\$38,000,000 inclusive of any applicable taxes.

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

Costs includes costs, charges, fees, government charges, taxes and expenses, including those incurred in connection with advisers, incurred in connection with the performance of the Administrators' and Deed Administrators' duties, obligations and responsibilities under the Corporations Act and this Deed during the Administration Period and the Deed Period and includes any Administration Debt.

Court has the meaning given to that term in section 58AA of the Corporations Act.

CP Satisfaction Date means 10 March 2023 unless extended to a date no later than the Long Stop Date by the Deed Proponent and the Deed Administrators, acting reasonably.

Creditor means any person who has a Claim against the Deed Company.

DOCA Proposal means the proposal for a deed of company arrangement annexed to this Deed as Schedule 3.

Deed means this deed of company arrangement as constituted pursuant to Part 5.3A of the Corporations Act as varied from time to time (unless the context otherwise requires) including any schedule or annexure to it.

Deed Administrators means, jointly and severally, John Park and Joanne Dunn in their capacities as administrators of this Deed and any successor to that office appointed pursuant to the Corporations Act.

Deed Administrators' Costs means costs, charges and expenses, including those incurred in connection with advisers, incurred in connection with the performance of the Deed Administrators' duties, obligations and responsibilities under the Corporations Act and this Deed during the Administration Period and the Deed Period.

Deed Period means the period commencing on the Commencement Date and ending on the Termination Date.

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

Electing Noteholder means each of the Noteholders recorded in Schedule 4 and any other Noteholder notified to the Deed Administrators by the Deed Proponent.

Ellume Shares means all shares on issue (including ordinary shares, preference shares or otherwise) in the Deed Company as at the Appointment Date.

Ellume Subsidiaries means the subsidiaries of the Deed Company listed in Schedule 1 to this Deed, none of which are subject to any form of external administration process.

Employee means any person who was an employee of the Deed Company at or prior to the Appointment Date and any person whose debt or claim would, in a winding up of the company, be payable in priority to other unsecured debts and claims in accordance with paragraphs 556(1)(e), (g) or (h) or sections 560 or 561 of the Corporations Act.

End Date means, unless otherwise agreed between the Parties, three Business Days after the date each of the Conditions are satisfied or waived (as applicable) in accordance with this Deed.

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

Excluded Claim means any:

- (a) Claim of Continuing Employees in their respective capacity as an Employee;
- (b) Claim of a Creditor who is an Ellume Subsidiary;
- (c) Claim (as that term is defined, but for the exception of Excluded Claim) in respect of which the Creditor:
 - (i) has agreed in writing with the Administrators or Deed Administrators to not participate in distributions in the Trust Fund; or
 - (ii) is an Electing Noteholder.

Excluded Creditor means any Creditor with an Excluded Claim.

Existing Directors and Secretary means Paul Darrouzet, Gary Hewett, Geoffrey Ronald Pearce, Sean Andrew Parsons and Mark Eric Harding Anning.

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

IPO means the Deed Company carrying out an initial public offering of its Shares and being admitted to the official list of ASX or another recognised stock exchange.

Implementation Deed means the Implementation Deed dated 6 December 2022 between the Administrators, the Deed Company and the Deed Proponent, and any variation to the Implementation Deed agreed between the Administrators, the Deed Company and the Deed Proponent.

Interim Funding Amount means the amounts advanced by the Deed Proponent to the Administrators in accordance with the funding deed in letter format entered into by the Deed Proponent and the Administrators on 6 December 2022, and any variation to the funding deed agreed between the Deed Proponent and Administrators.

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

Insolvency Practice Schedule means Schedule 2 of the Corporations Act.

Legal Personal Representative means a trustee or executor appointed to a Deed Administrator upon death, incapacity, insanity or any combination of them.

Long Stop Date means 28 April 2023.

Noteholder means a holder of a convertible note issued by the Deed Company.

Members has the meaning given to that term in the Corporations Act.

Notes means a convertible note issued by the Deed Company.

Noteholder Existing Rights means all existing rights of the Noteholder to redeem or convert the Notes.

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

Parties means the Deed Company, the Deed Administrators and the Deed Proponent and **Party** means any one of them.

Payment Direction means a written payment direction in a form agreed between the Deed Administrators, the Deed Company and the Deed Proponent which contains details of the bank account for payment of the Contribution Amount and provides for:

- (a) deduction of the Interim Funding Amount from the Contribution Amount, in satisfaction of the obligation of the Deed Administrators to repay the Interim Funding Amount to the Deed Proponent; and
- (b) confirmation that the Deed Proponent accepts that deduction as discharging any rights that it has to recover the Interim Funding Amount from the Trust.

Prepaid Expenses means the amount of the unexpired term or proportionate term of expenses of the Deed Company that the Administrators or Deed Administrators have paid prior to Completion where the period of work or services extends beyond Completion.

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

Proportionate Post Wages means:

- (a) the proportionate amount incurred by the Deed Administrator up to Completion from the subsequent wage payment, inclusive of superannuation and any workers compensation or similar amounts of Continuing Employees after Completion and paid by the Deed Company; and

- (b) the respective payroll tax calculated from the proportionate wages as provided in paragraph (a) above.

Purchaser means the Deed Proponent and/or any other entity or person nominated by the Deed Proponent as a purchaser of any of the Ellume Shares.

QIAGEN means each of QIAGEN GmbH and QIAGEN NV KvK.

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

Remuneration means the remuneration payable to the Administrators and Deed Administrators for acting as:

- (a) the administrators of the Deed Company under Part 5.3A of the Corporations Act; and
- (b) the Deed Administrators of the Deed Company under this Deed.

Richlands Facility means the premises located at 9-19 Macgregor Place, Richlands in the State of Queensland.

Richlands Landlord means Elcorp Services Pty Ltd ACN 069 142 847 and Treffiletti Siblings Pty Ltd ACN 627 266 586 as trustee under instrument 719121809.

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

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

Section 444GA Order means an order of a Court granting leave to the Deed Administrators to transfer the Ellume Shares pursuant to section 444GA(1)(b) of the Corporations Act free from all Security.

Secured Creditor means any Creditor holding Security over all or any property of the Deed Company securing all or any part of the Creditor's Claim.

Security means a mortgage, charge, pledge, lien, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, and any other encumbrance, security agreement or arrangement in favour of any person, including any Security Interest (as that term is defined in section 12 of the *Personal Property Securities Act 2009* (Cth)).

Share Transfer has the meaning given to it in clause 6.3.

Short Term Funders means each of:

- (a) Evangayle Pty Ltd ACN 615 224 256 as trustee for the Jones Family Trust No 3;
- (b) Glencairn Bay Investments Pty Ltd ACN 629 479 269 as trustee for the Glencairn Bay Investment Trust;
- (c) MA & KA Investments Pty Ltd ACN 600 309 626 as trustee for the MA & KA Investment Trust; and
- (d) Brand Brothers Holdings Pty Ltd ACN 637 303 952 as trustee for the Brand Brothers Holdings Trust.

Specific Releases means the agreement of each Short Term Funder and each Trading Security Holder to release:

- (a) all Security granted to them by the Deed Company and any Subsidiaries (as applicable);

- (b) any guarantees provided by the Subsidiaries for any indebtedness of the Deed Company;
- (c) in relation to the Short Term Funders, any borrowings provided by the Short Term Funder to a Subsidiary; and
- (d) in relation to each Trading Security Holder, on terms that provide for continuing trading and which are otherwise acceptable to the Deed Proponent acting reasonably,

in each case on and from Completion.

Staff means each of:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]
- (g) [REDACTED]

Termination Date means the date that this Deed is terminated pursuant to clause 7.1 or 7.2.

Trading Security Holders means, unless otherwise agreed by the Deed Proponent and the Deed Administrators in writing, each of:

- (a) Robert Bosch (Australia) Proprietary Limited;
- (b) Atlas Copco Australia Pty Ltd;
- (c) Crown Equipment Pty. Limited;
- (d) Retracom Holdings Pty Ltd;
- (e) Life Research Pty Ltd;
- (f) Print Management Facilities Australia Pty Ltd; and
- (g) any other entity notified by the Deed Proponent to the Deed Company prior to Completion (but excluding the US Landlord and the Richlands Landlord).

Trust means the Ellume Creditor's Trust to be established under the Trust Deed.

Trust Creditor means a Creditor who has a Claim except to the extent that that Claim is an Excluded Claim.

Trust Deed means the creditors' trust deed to be entered into between the Deed Company, the Deed Administrators and the Trustees, substantially in the form contained in Annexure A, which creates the Trust.

Trust Fund has the meaning given to that term in the Trust Deed.

Trustees means the trustees of the Trust established under the Trust Deed, being John Park and Joanne Dunn jointly and severally and any successor to that office appointed pursuant to the terms of the Trust Deed or the *Trusts Act 1973* (Qld).

US Facility means the premises located at buildings 201, 202 and 203, 4910 Executive Court, South Frederick, MD 21703.

US Landlord means WVS Parcel 200A, LLC and WVS Parcel 204 A, LLC, each a Maryland limited liability company.

Working Capital Amounts has the meaning given to it in clause 6.8.

1.2 Interpretation

In this Deed the following rules of interpretation apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation 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 that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of or under or through a party to this Deed;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, schedule or annexure is a reference to a clause or term of, or schedule or annexure to this Deed;
 - (vi) this Deed includes all schedules and annexures to it;
 - (vii) a law includes:
 - (A) any constitutional provision, treaty, decree, statute, regulation, by-law, ordinance or instrument;
 - (B) any order, direction, determination, approval, requirement, licence or licence condition made, granted or imposed under any of them;
 - (C) any judgment; and
 - (D) any rule or principle of common law or equity,and is a reference to that law as amended, consolidated, replaced, overruled or applied to new or different facts;

- (viii) an agreement other than this Deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
- (ix) "AU\$" or "AUD" is to Australian dollars; and
- (x) "US\$" or "USD" is to United States dollars;
- (g) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (h) if the day on which any act is to be done under this Deed is a day other than a Business Day, that act must be done on or by the immediately succeeding Business Day except where this Deed expressly specifies otherwise.
- (i) all references to time are to time in Brisbane, Queensland, Australia;
- (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 and annexures the terms of the main body of this Deed will prevail.

1.3 Inconsistency

- (a) If there is any inconsistency between the provisions of this Deed and the Corporations Act, the Regulations, the Insolvency Practice Schedule, or the Insolvency Practice Rules, this Deed prevails to the extent permitted by law.
- (b) If there is any inconsistency between this Deed and the constitution of the Deed Company or any other obligations binding on the Deed Company, then this Deed prevails to the extent of that inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency.

1.4 Bar to claims

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

- (a) the Deed Company or the Deed Administrators against any person having or asserting a Claim released, discharged and extinguished by clause 12.3; and
- (b) the recipient of any release or covenant contained in this Deed,

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

1.5 Prescribed Provisions

The Prescribed Provisions are deemed to be incorporated in and form part of this Deed, save that to the extent of any inconsistency between the terms of this Deed and the Prescribed Provisions, the terms of this Deed will prevail.

1.6 Required provisions

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

2 Execution by all Parties

- (a) This Deed is subject to and conditional upon the execution of this Deed by each person named as a party to it.
- (b) If, as a result of clause 2(a), this Deed has not come into full force and effect on or prior to the expiration of 15 Business Days (or such further period as the Court allows) after the Section 439C Resolution is passed, then this Deed will terminate automatically.

3 Operation of this Deed

3.1 Commencement Date

Subject to clause 2(a), this Deed will commence and take effect on the Commencement Date.

3.2 Interim effect

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

3.3 Termination

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

4 Objective and effect

4.1 Objectives

Pursuant to section 435A(b) of the Corporations Act, this Deed seeks to achieve a better return to the Creditors of the Deed Company than would exist in a winding up and to maximise the chances of the Deed Company, or as much as possible of its business, continuing in existence.

4.2 Effect of the Deed on Officers of the Deed Company

- (a) The Directors of the Deed Company will remain in office throughout the Deed Period unless they resign or are removed by the Deed Administrators.
- (b) During the Deed Period, unless authorised in writing by the Deed Administrators, the Directors and Officers of the Deed Company cannot perform or exercise, and must not purport to perform or exercise, a right, function or power as a Director or Officer of the Deed Company.
- (c) For the avoidance of doubt, the Directors of the Deed Company will not pass a resolution to place the entity into voluntary administration or take any step to wind up the Deed Company except with the written approval of the Deed Administrators.
- (d) While they remain Directors of the Deed Company, the Directors of the Deed Company will not be relieved of their statutory duties as Directors of the Deed Company and for the avoidance of doubt, the Deed Administrators will not be responsible for such statutory obligations during the Deed Period.
- (e) During the Deed Period, the Directors of the Deed Company must:

- (i) co-operate with and assist the Deed Administrators in the performance by the Deed Administrators of their obligations under this Deed;
- (ii) carry out and perform such operations, functions, powers and other matters as may be delegated to them by the Deed Administrators; and
- (iii) perform their obligations pursuant to the Deed.

4.3 Effect of this Deed on Members

- (a) Until this Deed terminates, any Member, and any Creditor holding any Security over any Ellume Shares, must not without the prior written consent of the Deed Administrators deal with, or attempt to deal with any Ellume Shares or exercise shareholder rights over any Ellume Shares in a way that is contrary to this Deed or the purpose of the Deed.
- (b) The Deed Administrators must not, and must not allow:
 - (i) the Ellume Shares to be transferred or otherwise dealt with other than in accordance with a Section 444GA Order; or
 - (ii) further Ellume Shares of any class to be issued in the Deed Company.

5 Conditions to Completion

5.1 Conditions

Completion is conditional upon all of the following events taking place on or prior to the CP Satisfaction Date:

- (a) Execution and exchange of the Trust Deed by the Deed Administrators, the Trustees and the Deed Company.
- (b) Each of the Specific Releases being provided.
- (c) ASIC issuing the ASIC Relief.
- (d) The Deed Administrators obtaining the Section 444GA Order.
- (e) The Deed Proponent being reasonably satisfied that on Completion all Claims other than those subject to the Specific Releases, and expressed to be released under clause 12.3, will be fully and effectively released under all applicable laws.
- (f) The Deed Proponent being satisfied (acting reasonably) that:
 - (i) the Deed Company is not restricted under any existing contract to which it is a party from developing or producing dengue, malaria or HIV diagnostic products on and from Completion; and
 - (ii) no third party is entitled to acquire, or has acquired since the date of the Implementation Deed, any intellectual property rights developed by the Deed Company in connection with dengue, malaria or HIV diagnostic products.
- (g) The Deed Administrators executing the Ceasing Leases Notice.
- (h) The resignation or removal of the Existing Directors and Secretary and the appointment of the Continuing Directors;
- (i) The Staff and the Deed Company or its Subsidiary (as applicable) confirming that, upon Completion, the relevant Staff will continue to be employed by the Deed Company or its Subsidiary (as applicable) on terms acceptable to those

Staff and to the satisfaction of the Deed Proponent (acting reasonably), which terms must be no less favourable than each Staff member's terms and conditions of employment immediately prior to the entry into this Deed.

- (j) The US Landlord providing a binding commitment that it will not terminate the lease of the US Facility due to any fact, matter or circumstance arising prior to, or subsisting at, Completion.
- (k) The Richlands Landlord providing a binding commitment that it will not terminate the lease of the Richlands Facility due to any fact, matter or circumstance arising prior to, or subsisting at, Completion.

5.2 Obligation to satisfy Conditions and transparency

- (a) To the extent that it is within the relevant Party's control, that Party must (at its own cost) use reasonable endeavours to ensure that the Conditions are satisfied as soon as possible after the Commencement Date.
- (b) On and from the Commencement Date, the Parties must respond promptly to all reasonable requests for information from any other Party in relation to the status and expected timing for satisfaction of the Conditions.
- (c) Without limiting 5.2(a) and 5.2(b), as soon as possible following the Commencement Date, the Deed Administrators must finalise an application to the Federal Court of Australia seeking the Section 444GA Order.

5.3 Waiver of Conditions

- (a) The Condition in clauses 5.1(b), 5.1(e), 5.1(f), 5.1(g), 5.1(h), 5.1(i), 5.1(j) and 5.1(k) are for the benefit of the Deed Proponent and may only be waived in writing by the Deed Proponent.
- (b) The remaining Conditions are for the benefit of the Deed Company and the Deed Proponent and may only be waived in writing by each of them.

5.4 Consequence of non-satisfaction of the Conditions

- (a) Subject to clause 5.4(b), if:
 - (i) one or more of the Conditions is not satisfied or waived by the CP Satisfaction Date; or
 - (ii) the Deed Administrators and the Deed Proponent are of the opinion that one or more of the Conditions are incapable of being satisfied by the CP Satisfaction Date,then:
 - (iii) the Deed Proponent will cease to be bound by this Deed on and from the CP Satisfaction Date and will have no liability under it; and
 - (iv) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Deed Company.
- (b) In circumstances where the Deed Proponent has reason to believe that it will not be able to satisfy the Conditions or otherwise effect Completion before the CP Satisfaction Date, the Deed Proponent may request an extension of the CP Satisfaction Date from the Deed Administrators for consideration (in their sole discretion).

- (c) In circumstances where the extension in clause 5.4(b) is not provided, or in circumstances where it is but the Long Stop Date has passed and the Conditions remain unsatisfied:
 - (i) the Deed Proponent will cease to be bound by this Deed on and from that date and will have no liability under it; and
 - (ii) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Company.

6 Deed Period and Completion

6.1 Operation of the Deed Company during the Deed Period

- (a) During the Deed Period, the Parties agree that:
 - (i) the Deed Administrators will have stewardship and control of the Deed Company and will continue to manage the operations of the Deed Company; and
 - (ii) the Deed Proponent will not take part in the management or operations of the Deed Company, except in accordance with the terms of the Implementation Deed or as expressly consented to by the Deed Administrators in writing.
- (b) Upon Completion, management of the Deed Company will return to its Directors.

6.2 Completion and Completion steps

- (a) Completion must occur immediately after the CP Satisfaction Date, and in any event on or before the End Date.
- (b) On the Completion Date, Completion will occur in accordance with this clause 6 and the Parties must take the steps set out in clauses 6.3, 6.4, 6.5, 6.6 and 6.7 (**Completion Steps**).
- (c) The Completion Steps will be effected (or deemed to be effected) in the order set out below, or such other order as agreed by the Deed Administrators and Deed Proponent in writing.
- (d) The extinguishment and release of Claims pursuant to clause 12.3 will be deemed to occur on Completion immediately prior to the Completion Steps described in this clause 6.3
- (e) The Parties acknowledge and agree that the Completion Steps are inter-dependent. If one Completion Step does not occur, then the other Completion Steps are not to occur (and are to be taken as having not occurred). If any of the Completion Steps is not completed, the Parties must take such actions and steps as are necessary to put each of the Parties in the same position as if none of the Completion Steps had occurred.

6.3 Share transfer

First, following the CP Satisfaction Date, and in any event on or before the End Date, the Deed Administrators must, pursuant to the Section 444GA Order, transfer the Ellume Shares to the Purchaser(s), free from any Security, by:

- (a) delivering to the Purchaser(s) a duly completed share transfer form, executed on behalf of the Deed Company Members, for registration (**Share Transfer**);

- (b) each Purchaser duly executing the Share Transfer, attending to the stamping of the Share Transfer (if required) and delivering it to the Deed Administrators for registration; and
- (c) immediately following receipt of the executed Share Transfer from each Purchaser, entering, or procuring the entry of, the name of that Purchaser in the share register in respect of all Ellume Shares transferred to that Purchaser in accordance with this Deed.

6.4 Entry into the Trust Deed

On Completion, the Deed Administrators, the Trustees and the Deed Company must enter into the Trust Deed.

6.5 Payment of the Contribution Amount

On Completion, the Deed Proponent must, in accordance with the Payment Direction, pay the Contribution Amount to the Trustees to be administered under the Trust as the Trust Fund.

6.6 Ceasing Leases Notice

At Completion, the Deed Administrators or one of them must deliver the executed Ceasing Leases Notice to the Deed Proponent.

6.7 Reconstitution of board

Subject to receipt of signed consents to act and clause 5.1(h), the Deed Administrators must reconstitute the board of directors of the Deed Company in accordance with the Deed Proponent's directions, on and from Completion.

6.8 Payment of the Working Capital Amounts

- (a) The Parties acknowledge and agree that :
 - (i) at Completion, any cash on hand for the Deed Company at Completion; and
 - (ii) after Completion, the amount of the proceeds received by the Deed Company in respect of Accounts Receivable and Accrued Revenue generated by the Administrators or Deed Administrators from the trading on of the Deed Company between the Appointment Date and Completion,

(the amounts in clauses 6.8(a)(i) and 6.8(a)(ii) being the **Working Capital Amounts**), will be transferred to the Trust to form part of the Trust Fund to be administered under the Trust, acknowledging that at all times the Deed Company must act reasonably and assist the Trustees in the collection of Accounts Receivable.
- (b) Within 10 Business Days after Completion, the Deed Company will provide the Trustees and the Deed Proponent a detailed listing of the:
 - (i) Accounts Receivable of the Deed Company as at the date of Completion;
 - (ii) Accrued Revenue of the Deed Company as at the date of Completion;
 - (iii) reconciliation of amounts received by the Deed Company for the period from Completion to the date which the listing in clauses 6.8(b)(i) and 6.8(b)(ii) above is provided; and

- (iv) Prepaid Expenses.
- (c) The Deed Proponent must pay (or will procure that the Deed Company pays) an amount to the Trust Fund, calculated as the aggregate of:
 - (i) within 12 Business Days after Completion:
 - (A) any funds held by the Deed Company at Completion that have not been transferred to the Trust Deed as provided in clause 6.8(a); and
 - (B) Prepaid Expenses as detailed in clause 6.8(b)(iv); and
 - (ii) within 10 Business Days after receipt:
 - (A) the amount of the proceeds received by the Deed Company in respect of Accounts Receivable of the Deed Company as at the date of Completion as detailed in clause 6.8(b)(i); and
 - (B) the amount of the proceeds received by the Deed Company in respect of Accrued Revenue of the Deed Company as at the date of Completion as detailed in clause 6.8(b)(ii),acknowledging that at all times the Deed Company must act reasonably and assist the Trustees in the collection of Accounts Receivable.
- (d) The amount payable by the Deed Proponent as calculated in clause 6.8(c), can be adjusted by agreement between the Deed Proponent and Trustees (such agreement not to be unreasonably withheld) for the following:
 - (i) any Proportionate Post Wages paid by the Deed Company after the date of Completion; and
 - (ii) any respective amounts specifically relating to invoices included in clauses 6.8(b)(i) and 6.8(b)(ii) which have been received by the Trustee after Completion and before the Deed Proponent pays the amount as provided in clause 6.8(c).
- (e) After the Deed Proponent makes the payment calculated in accordance with clauses 6.8(c) and 6.8(d), any amounts the Trustees receive which have either been paid to the Trustee in accordance with clause 6.8(c) or for work or services wholly performed after Completion will be remitted to the Deed Company by the Trustees.
- (f) Subject only to clause 6.8(g) below, any debts or liabilities incurred by the Deed Company during the period of its administration which:
 - (i) the Administrators have personal liability under sections 443A or 443B of the Corporations Act; and
 - (ii) remains unpaid at Completion,will be satisfied from the Trust Fund in accordance with the Trust Deed.
- (g) Any debts or liabilities of a kind mentioned in clause 6.8(f) that are owed to an Excluded Creditor who is an Employee will be paid by the Deed Company following Completion.
- (h) The obligations of the Parties under this clause 6.8 survive termination of this deed (pursuant to clause 7.1) following Completion.

6.9 Trust Creditors' Available Assets

The only property that is available to pay the Trust Creditors' Claims is the assets of the Trust Fund.

6.10 Consistency with the Corporations Act

- (a) Notwithstanding any other provision of this Deed, for the purposes of section 444DA of the Corporations Act, any Employee will retain a priority until Completion in respect of the assets of the Deed Company under the Deed Administrators' control, and thereafter, in respect of the assets of the Trust Fund at least equal to that which they would have been entitled to if the property of the Deed Company had been applied in accordance with sections 556, 560 and 561 of the Corporations Act.
- (b) For the purposes of section 444DB of the Corporations Act, the Deed Administrators (including in their capacity as Trustees) must determine that a debt (or part thereof) by way of superannuation contribution (**Superannuation Debt**) is not admissible to proof as a Claim or a Claim against the Trust Fund if:
 - (i) that debt (or that part of the debt) by way of superannuation guarantee charge:
 - (A) has been paid; or
 - (B) is, or is to be admissible against the Deed Company; and
 - (ii) the Deed Administrators are satisfied that the superannuation guarantee charge is attributable to the Superannuation Debt.
- (c) If the Deed Administrators make a determination in accordance with clause 6.10(b) above, the Superannuation Debt is to be treated as extinguished as against the Deed Company.

6.11 Continuing Employees

The Deed Proponent will procure that on and from Completion, the Deed Company or the Ellume Subsidiary that is the employer of the Continuing Employees will remain responsible for, and will recognise, honour and pay, the entitlements of any Continuing Employee, including any entitlements that accrued prior to or after the Appointment Date.

6.12 QIAGEN

The Deed Company will use its commercial reasonable endeavours to renegotiate with QIAGEN the agreements between the Deed Company prior to Completion, on terms satisfactory to the Deed Proponent, acting reasonably.

6.13 Electing Noteholders

- (a) Each Electing Noteholder may, prior to the CP Satisfaction Date, for any part of or the whole of the Notes held by the Electing Noteholder, elect to vary the terms of the Notes to the effect that:
 - (i) all Noteholder Existing Rights are extinguished;
 - (ii) the Maturity Date (as defined in the relevant Note), is extended to 5 years after the date of this Deed;
 - (iii) the Note is to be redeemed by conversion to shares in the Deed Company in the event of an IPO. Those shares are to be issued pari passu with other Electing Noteholders, and the total shareholding of all

- Electing Noteholders to not exceed 5% of the total shares issued in the IPO; and
- (iv) include such other amendments satisfactory to the Deed Proponent, acting reasonably.
- (b) An Electing Noteholder shall not participate in the Trust Fund for the Notes the subject of the election, and are Excluded Creditors.

7 Termination

7.1 Termination after Completion

The Deed will terminate immediately after Completion, unless terminated earlier.

7.2 Termination on failure of Deed

This Deed automatically terminates in respect of the Deed Company upon the happening of any one of the following events:

- (a) the Conditions are not satisfied by the earlier of the CP Satisfaction Date and the Long Stop Date;
- (b) Completion does not occur on or before the End Date;
- (c) the Court makes an order terminating this Deed under section 445D of the Corporations Act; or
- (d) by a resolution of the Creditors passed at a meeting convened pursuant to Division 75-10 of the Insolvency Practice Schedule.

7.3 Notice of effectuation of Deed

Upon termination in accordance with the provisions of clause 7.1, the Deed Administrators or one of them must immediately certify, in writing that the terms of this Deed have been fulfilled and, as soon as practicable, must lodge with ASIC a notice substantially in the following form in respect of the Deed Company:

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

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

7.4 Effect of Termination

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

7.5 Consequences of Termination of the Deed for non-performance

Upon termination of the Deed under clause 7.2, unless the Deed Administrators consider it appropriate to convene a further meeting of Creditors pursuant to Division 75-10 of the Insolvency Practice Schedule to consider a variation of the Deed:

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

7.6 Survival of clauses

Despite any other provision of this Deed, clauses 1 (*Definitions and interpretation*), 7 (*Termination*), 10 (*Remuneration and indemnity*), 12 (*Moratorium and release*), 13 (*Tax*), 14 (*Notices*) and 15 (*General*) survive the termination of this Deed.

8 Deed Administrators' appointment

8.1 Appointment

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

8.2 Acceptance of appointment

The Deed Administrators:

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

8.3 Deed Administrators are agents

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

8.4 Management

The Deed Administrators will retain day to day management and control of the Deed Company until the Termination Date to the exclusion of the Directors of the Deed Company.

8.5 Joint and several

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

8.6 Deed Administrators' resignation

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

- (a) convene meetings of Creditors of the Deed Company in accordance with clause 9.4 for the purpose of nominating a replacement deed administrator;
- (b) assign to a replacement deed administrator nominated by the Creditors the Deed Administrators' rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 8.6(b).

9 Powers of the Deed Administrators

9.1 Powers

For the purposes of administering this Deed, the Deed Administrators have the following powers:

- (a) all the powers set out in paragraph 2 of Schedule 8A of the Regulations, provided that the Deed Administrators must not, without the prior written consent of the Deed Proponent:
 - (i) bring an application for the winding up of a Deed Company;
 - (ii) exercise any of the powers set out in items (za), (zb), (zc) or (ze) of paragraph 2 of Schedule 8A of the Regulations; or
 - (iii) except in the ordinary course of business of the Deed Company, exercise any of the powers set out in items (h) or (s) of paragraph 2 of Schedule 8A of the Regulations;
- (b) to remove from office a Director or company secretary of the Deed Company;
- (c) to appoint a person as a Director of the Deed Company, whether to fill a casual vacancy or not;
- (d) to perform any function and exercise any power that the Deed Company or any of their Officers could perform or exercise if the Deed Company was not subject to this Deed;
- (e) in accordance with the Section 444GA Order, to transfer the Ellume Shares;
- (f) to do anything that is incidental to exercising a power set out in this clause 9.1; and
- (g) to do anything else that is necessary or convenient for the purpose of administering this Deed.

9.2 Calling for proofs of debt

The Deed Administrators may exercise any of the powers conferred on the Trustees under the Trust Deed for the purpose of commencing the process for the adjudication of Claims under the Trust Deed, which exercise will be treated for all purposes under the Trust Deed as if those powers had been exercised by the Trustees after the commencement of the Trust.

9.3 Solicitors, advisers and consultants

- (a) The Deed Administrators may engage the services of their partners, employees, directors, officers, contractors, advisers, delegates, solicitors and consultants to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed, and the Deed Company will pay such Deed Administrators' Costs up to the maximum amount of the Deed Administrators' Costs.
- (b) The Deed Administrators may delegate their powers under this clause 9 including by way of appointing agents and authorising such agents to act on behalf of the Deed Administrators or the Deed Company.

9.4 Creditors' meetings

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

9.5 Reporting

Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators will advise all Creditors of the date of the termination of this Deed and may, in their absolute discretion, otherwise report to Creditors during the Deed Period at such times as the Deed Administrators consider appropriate and on matters which the Deed Administrators consider ought to be brought to the attention of Creditors.

9.6 Access to Records

The Deed Administrators, may at any time inspect and take copies of the books and records of the Deed Company at no cost, and the Deed Company authorise the Deed Administrators and Trustees and their staff to enter the Deed Company's premises on any Business Day between the hours of 9.00am and 5.00pm with no less than 24 hours' notice, for the purpose of conducting such an inspection and for the purpose of doing anything necessary or desirable in the exercise of their powers and discretions and the performance of their duties, obligations and responsibilities as Deed Administrators under this Deed, including to take photocopies or images of any books and records for that purpose.

10 Remuneration and indemnity

10.1 Remuneration

- (a) The Administrators and the Deed Administrators are entitled to:
 - (i) payment of Costs; and
 - (ii) receive in accordance with Division 60 of the Insolvency Practice Schedule their Remuneration on the basis of the time spent by the Administrators and Deed Administrators (as the case may be) themselves or any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates in the performance of services in connection with or in relation to the administration of the Deed Company under Part 5.3A of the Corporations Act and this Deed and such time will be charged at the Administrators' and Deed Administrators' standard rates, from time to time, for work of that nature by the firm of which the Administrators and Deed Administrators are partners or employees.
- (b) The Deed Administrators acknowledge that their Remuneration and Costs will only be paid from the Trust Fund.
- (c) The Administrators and the Deed Administrators' Remuneration and Costs referred to in this clause 10 and all other costs must be reimbursed and/or paid out of the Trust Fund. The Administrators' and the Deed Administrators (whether or not they are still acting in either capacity) can request the Trustees to draw such amounts from the Trust Fund from time to time.

10.2 No personal liability

Subject to the Corporations Act and to the extent permitted by law, in the performance or exercise, or purported performance or exercise, of any of the Deed Administrators' functions, powers and duties in the Deed Period, the Deed Administrators will not be personally liable for:

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

10.3 Indemnity

The Deed Administrators and Administrators (whether or not they are still acting in either capacity) are entitled to be indemnified by the Deed Company until Completion, and after Completion from the Trust Fund in respect of:

- (a) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments whatsoever arising out of or in any way connected to the administration of the Deed Company or their role as Administrators or Deed Administrators and incurred or sustained in good faith and without negligence;
- (b) any amount which the Administrators or Deed Administrators are, or but for the transactions contemplated by this Deed would be, entitled to be indemnified out of the assets of the Deed Company for, in accordance with the Corporations Act, at law or in equity, including any amounts payable pursuant to section 443A, section 443B or section 443BA of the Corporations Act;
- (c) any debts, liabilities, damages, losses and remuneration to which the statutory indemnity under section 443D of the Corporations Act applies;
- (d) any amount for which the Administrators and Deed Administrators are entitled to exercise a lien at law or in equity on the property of the Deed Company;
- (e) the Administrators' and Deed Administrators' Remuneration and Costs; and
- (f) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments arising out of or in the course of the Deed and incurred or sustained in good faith and without negligence.

10.4 Continuing indemnity

The indemnity in the Deed is a continuing indemnity and will endure for the benefit of the Legal Personal Representatives despite the removal of the Deed Administrators and the appointment of new Deed Administrators or the termination of the Deed for any reason whatsoever.

10.5 Indemnity not to be affected or prejudiced

The indemnities under clause 10.3 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Administrators or Deed Administrators and extends to cover any actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Administrators or Deed Administrators or defect in the approval or execution of the Deed or otherwise; or

- (b) affect or prejudice all or any rights that the Administrators or Deed Administrators may have against the Deed Company or any other person to be indemnified against the Costs and liabilities incurred by the Administrators or Deed Administrators in the performance of, or incidental to, any of the powers or authorities conferred on the Administrators or Deed Administrators by this Deed or otherwise.

10.6 Satisfaction of Claims

The Administrators and Deed Administrators are entitled to exercise the Administrators and Deed Administrators' right of indemnity conferred by clause 10.3 whether or not the Deed Administrators have paid or satisfied the Claims.

10.7 Administrators' and Deed Administrators' lien

Until Completion, the Deed Administrators and Administrators (whether or not they are still acting in either capacity) are entitled to exercise a lien over the Deed Company assets for all amounts in respect of which they are entitled to an indemnity from the Deed Company under clause 10.3 and otherwise at law and equity.

10.8 Priority

The Administrators' and Deed Administrators' right of indemnity under clause 10.3 and their lien under clause 10.7 have priority over the claims of any Creditor or all Creditors generally.

10.9 Statutory liability and indemnity

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

11 Application to Court

- (a) If any unforeseen circumstances arise that are not contemplated by the Deed, the Deed Administrators may, in their absolute discretion, if they think fit, apply to the Court for directions.
- (b) No person bound by the Deed (other than the Deed Administrators or the Deed Proponent) may make any application to the Court in relation to any matter arising under the Deed unless at least five Business Days' prior notice in writing has been given to the Deed Administrators. The notice must give particulars of the proposed application.

12 Moratorium and release

12.1 Binding effect

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

- (a) each Creditor;
- (b) each Member and Officer of the Deed Company; and
- (c) subject to clause 12.7, each Secured Creditor who voted in favour of the section 439C Resolution at the Second Meeting.

12.2 Moratorium

- (a) Subject to clause 12.2(b), during or after the Deed Period a Creditor may not, in relation to that Creditor's Claim:
- (i) make or proceed with an application for an order to wind up the Deed Company or for the appointment of a provisional liquidator or a court appointed receiver to the Deed Company and its property;
 - (ii) proceed with such an application (referred to in (i) above) made before this Deed became binding on such person;
 - (iii) begin, revive, continue or take any further steps in any action, suit, mediation or proceeding against the Deed Company or in relation to any of its property;
 - (iv) begin, revive or continue or take any further steps in respect of any Enforcement Process in relation to the Deed Company's property;
 - (v) commence, continue or take any additional step in any arbitration or Court proceeding against the Deed Company or to which the Deed Company is a party;
 - (vi) exercise any right of set-off or defence, cross-claim or cross action to which that Creditor would not have been entitled had the Deed Company been wound up on the Appointment Date;
 - (vii) take any action whatsoever to seek to recover any part of its Claim from the Deed Company; or
 - (viii) otherwise enforce any right it may have or acquire against the Deed Company,
- except to the extent of that Creditor's entitlement, if any, to participate in the Trust Fund in accordance with the terms of the Trust Deed.
- (b) Notwithstanding clause 12.2(a) or any other term of this Deed, the moratorium described in clause 12.2(a) does not restrict or otherwise prevent the Deed Proponent from taking enforcement action; which, for the avoidance of doubt, is expressly permitted.
- (c) For the purposes of this clause 12.2(a), "property" includes property used or occupied by, or in the possession of, the Deed Company except if the Administrators have issued a notice under section 443B of the Corporations Act in relation to that property.

12.3 Release upon Completion

Subject to clause 12.6, each Creditor agrees that on Completion, its Claims (other than any Excluded Claims) are extinguished and released.

12.4 Execution of all necessary documents

Each Creditor must, if required by the Deed Company or the Deed Administrators, execute and deliver to the Deed Administrators such form of acknowledgement or release of any Claim as reflects the release and discharge of that Claim pursuant to clause 12.3.

12.5 Bar to Creditors' Claims

Subject to section 444D of the Corporations Act, this Deed may be pleaded by the Deed Company or the Deed Administrators against any Creditor as an absolute bar and

defence to any Claim to the extent that the Deed Company's liability has been released and discharged in relation to that Claim pursuant to clause 12.3.

12.6 Conversion of Claims

- (a) Subject to clause 12.6(b), the Deed Administrators and the Creditors agree that, upon all Claims being released pursuant to clause 12.3, each Trust Creditor who had a Claim, will be entitled to make a claim against the Trust Fund, in accordance with the Trust Deed, which is equal in amount to their released Claim.
- (b) A Creditor is not entitled to make a claim against, participate in or receive any distribution from, the Trust Fund in respect of an Excluded Claim.

12.7 Secured Creditors

- (a) Other than as expressly provided for under this Deed, this Deed will not release:
 - (i) any Security held by Secured Creditors in respect of any Claim; and
 - (ii) any Security validly and effectively held by an owner or lessor in property of Deed Company.
- (b) Nothing in this Deed affects the liabilities of the Deed Company to the Secured Creditors or the contractual relations between them in respect of their Security to the extent permitted by section 444D(2) of the Corporations Act.
- (c) Subject to clause 12.7(d), each Secured Creditor who voted in favour of the Section 439C Resolution will be subject to the restrictions in clause 12.2.
- (d) The restrictions in clause 12.2 will cease to apply to a Secured Creditor who voted in favour of the Section 439C Resolution if this Deed terminates prior to Completion for any of the reasons set out in clause 7.2.

13 GST

13.1 Interpretation

The Parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 13 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 13;
- (c) unless otherwise expressly stated, all consideration to be provided under any other provision of this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 13;
- (d) a reference to the GST payable by an entity or the input tax credit entitlements of an entity will include a reference to the GST payable or input tax credit entitlements of the representative member of any GST group to which that entity may belong;
- (e) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts; and

- (f) if any value added tax, goods and services tax or other similar tax is payable pursuant to a law of another jurisdiction on any supply made under or in connection with this Deed, then the provisions of this clause 13 apply as if references to a word or expression defined in the GST Act were to the corresponding concepts in the law of that other jurisdiction.

13.2 Reimbursements and similar payments

Any reimbursement or similar payment required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates plus an amount calculated in accordance with clause 13.3 where applicable.

13.3 GST payable

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

13.4 Tax invoice

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

13.5 Variation to GST payable

If the GST payable in relation to a supply made under or in connection with this Deed varies from the additional amount paid by the Recipient under clause 13.3 then the Supplier must promptly issue an adjustment notice to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the additional amount payable under clause 13.3.

14 Notices

14.1 Notices

- (a) Unless expressly stated otherwise in this Deed and subject to clause 14.2, a notice, consent, approval, request, demand or other communication given under this Deed to or by a party to this Deed (**Notice**):
- (i) must be in legible writing and in English;
 - (ii) must be addressed to the party to whom it is to be given (**Addressee**) at the address or email address set out below or to any other address or email address as notified by the Addressee for the purposes of this clause:
 - (A) if to the Deed Company:

Address	c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000
Attention	John Park and Joanne Dunn
Email	john.park@fticonsulting.com joanne.dunn@fticonsulting.com

- (B) if to the Deed Administrators:
 - Address c/- FTI Consulting, Level 20, CP1,
345 Queen Street, Brisbane QLD 4000
 - Attention John Park and Joanne Dunn
 - Email john.park@fticonsulting.com
joanne.dunn@fticonsulting.com
 - (C) if to the Deed Proponent:
 - Address c/- McCullough Robertson Lawyers, Level 11,
66 Eagle Street, Brisbane QLD 4000
 - Attention David O'Farrell and Rachel Zagorskis
 - Email dofarrell@mccullough.com.au
rzagorskis@mccullough.com.au
- (iii) must be signed by or on behalf of the sender by the solicitor for, or any attorney, director, secretary or authorised agent of, the sender;
- (iv) must be either:
 - (A) delivered by hand or sent by pre-paid mail (by airmail if sent to or from a place outside Australia) to the Addressee; or
 - (B) sent by email to the Addressee's email address; and
- (v) is deemed to be received by the Addressee in accordance with clause 14.1(c).
- (b) If:
 - (i) a party changes its address and fails to notify the other parties of this change and the new address, delivery of Notices marked to the attention of the Addressee at that new address is deemed compliant with the notice obligations under this clause; and/or
 - (ii) an individual named in clause 14.1(a)(ii) ceases to work in the role specified or ceases to work for the Addressee and the Addressee fails to notify the other parties of an alternative individual, delivery of Notices marked to the attention of an individual in the same or equivalent role at the Addressee is deemed compliant with the notice obligations under this clause.
- (c) Without limiting any other means by which a party may be able to prove that a Notice has been received by the Addressee, a Notice is deemed to be received:
 - (i) if delivered by hand, when delivered to the Addressee;
 - (ii) if sent by post, on the 3rd Business Day after the date of posting, or if to or from a place outside Australia, on the 7th Business Day after the date of posting; or
 - (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or

- (B) 30 minutes 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 (Addressee's time) it is deemed to be received at 9.00am on the following Business Day.

14.2 Notices sent by email

- (a) Notices sent by email need not be marked for attention in the way stated in clause 14.1. However, the email must state the first and last name of the sender.
- (b) Notices sent by email are taken to be signed by the named sender.

15 General

15.1 Variation

- (a) Subject to the provisions of the Corporations Act, this Deed may only be varied:
- (i) by a resolution passed at a meeting of the Creditors convened in accordance with Division 75 of the Insolvency Practice Schedule, but only if the variation is not materially different from a proposed variation set out in a notice of meeting; and
- (ii) with written agreement of the Parties.
- (b) Nothing in any variation of this Deed will limit the operation of sections 445D and 445E of the Corporations Act.

15.2 Further assurances

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

15.3 Severability and enforceability

- (a) Any provision of this Deed which is prohibited or unenforceable is ineffective to the extent of the prohibition or unenforceability but the validity or enforceability of the remaining provisions of this Deed will not be affected.
- (b) Clause 15.3(a) does not apply where enforcement of the provision of this Deed in accordance with clause 15.3(a) would materially affect the nature or effect of the Parties' obligations under this Deed.

15.4 Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. A power or right may only be waived in writing, signed by the Parties to be bound by the waiver.

15.5 Creditor's power of attorney

Each Creditor irrevocably appoints each of the Deed Administrators jointly and severally as its attorney to execute any document to give effect to the releases in clause 12.3.

15.6 Costs

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

15.7 Stamp duty

The Deed Proponent must pay all stamp duties and any related interest, fines and penalties in respect of this Deed, and must indemnify each other Party against any liability arising from failure to comply with this clause 15.7.

15.8 Cumulative rights

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

15.9 Time

Time is of the essence of this Deed in all respects.

15.10 Consents

Unless this Deed expressly provides otherwise, a consent under this Deed may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

15.11 Entire agreement

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

15.12 Further cooperation

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

15.13 Relationship of the Parties

Except as expressly provided in this Deed:

- (a) nothing in this Deed is intended to constitute a fiduciary relationship, employment relationship or an agency, partnership or trust; and
- (b) no Party has authority to bind any other Party.

15.14 Assignment

Rights arising out of or under this Deed are not assignable by a Party, except if the assignor is required to make the assignment pursuant to clause 8.6(b) or makes the assignment with the prior written consent of the other Parties.

15.15 Counterparts

- (a) This Deed may be executed in any number of counterparts, each of which:
 - (i) may be executed electronically or in handwriting;

- (ii) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document; and
 - (iii) may be exchanged by email or other electronic means.
- (b) Without limiting clause 15.15(a), if the signatures on behalf of one party are on more than one copy of this Deed, this will be taken to be the same as, and have the same effect as, if all of those signatures were on the same counterpart of this Deed.

15.16 Governing law and jurisdiction

- (a) This Deed is governed by the laws of the State of Queensland, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts in and of Queensland, Australia and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed.
- (c) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (b) above.

Schedule 1 Ellume Subsidiaries

1. Ellume USA LLC, a limited liability company incorporated in the State of Delaware, USA
2. Ellume NZ Pty Limited (NZBN 9429046688392)

Schedule 2 Ceasing Leases Notice

By Email

[Address]

Dear Sirs

1. This notice is given for the purposes of the Deed of Company Arrangement made in relation to Ellume Limited (subject to deed of company arrangement) (**DOCA**). Terms not defined in this notice have the meanings set out in the DOCA.
2. This notice concerns the Ceasing Leases.
3. By this notice, we as Deed Administrators confirm to Hough Consolidated Pty Ltd ACN 657 651 280 for the purposes of the DOCA that the Ceasing Leases have been terminated or otherwise that counterparties to those Ceasing Leases have been notified that the Company will cease to comply with, and will not perform its obligations under, and treat each Ceasing Lease at an end.

Yours sincerely

[Deed Administrators' sign-off]

Schedule 3 DOCA Proposal

Please see attached 16 pages.

**Proposal for Deed of Company Arrangement in relation to
Ellume Limited (administrators appointed) (ACN 141 767 660)
Made by Hough Consolidated Pty Ltd (ACN 657 651 280)**

The terms of this proposal must be read in conjunction with certain defined terms as set out in the Dictionary at the end of the proposal. This proposal is final (and subject to the terms of an executed Deed of Company Arrangement).

Item	Subject	Material Term
1.	Company	Ellume Limited (Administrators Appointed) (ACN 141 767 660) (Company) is the entity that is proposed to be the subject of the DOCA.
2.	Administrators	John Park and Joanne Dunn of FTI Consulting.
3.	Appointment Date	31 August 2022.
4.	Proponent	The proponent of the DOCA is Hough Consolidated Pty Ltd (ACN 657 651 280) (Hough).
5.	Purpose of proposal	The purpose of this proposal is to articulate the material terms of the DOCA that Hough proposes in respect of the Company and which Hough requests the Administrators present to the meeting of Creditors of the Company that is to be convened and held pursuant to Part 5.3A of the Act. The proposed DOCA for the Company is intended to satisfy the objectives of Part 5.3A of the Act, including to maximise the chances of the Company, or as much as possible of its operations, continuing in existence, or to achieve better outcomes for the Company, compared to the expected outcome were the Company to be immediately wound up and assets liquidated.
6.	Key terms of the Deed of Company Arrangement	Except as indicated, all amounts are expressed in US\$. In accordance with this proposal, the DOCA will contain the following key terms: (1) All of the Existing Shares in the Company will be transferred by the Administrators to Hough or its nominee, free and clear of any encumbrances as part of inter-conditional steps to occur at completion as set out in Clause 12 below. (2) Each Electing Noteholder may, for any part of or the whole of the Notes held by the Electing Noteholder, elect to vary the terms of the Notes to the effect that: (a) all Noteholder Existing Rights are extinguished; (b) the Maturity Date (as defined in the relevant Note), is extended to 5 years after the date of the DOCA;

		(c) the Note is to be redeemed by conversion to shares in the Company in the event of an IPO. Those shares are to be issued pari passu with other Electing Shareholders, and the total shareholding of all Electing Noteholders to not exceed 5% of the total shares issued in the IPO; and (d) include such other amendments satisfactory to Hough, acting reasonably. An Electing Noteholder shall not participate in the Deed Fund for the Notes the subject of the election. (3) All other Notes (including the Notes of any Electing Noteholder who does not make an election under (2) above) will be redeemed and the Noteholders (other than the Electing Noteholders who make an election under (2) above) will participate in the Deed Fund for the amount of the Noteholder Pool. (4) Hough will contribute the Hough Contribution to the Deed Administrators to be available for distribution to Creditors under the Creditors' Trust as part of the Creditors' Trust Fund. (5) The Hough Contribution (other than the Interim Funding) will be paid in a single tranche as part of inter-conditional steps at completion of the DOCA (as further set out at item 12 below). If the DOCA terminates and does not Complete in accordance with its terms, then the Hough Contribution will no longer be payable. The only assets of the Company to be available for distribution to Admitted Creditors under the DOCA (and Creditors' Trust) will be the Hough Contribution and the Working Capital Amounts. (6) The Creditors' Trust Fund will be available for distribution to Creditors under the Creditors' Trust in accordance with the priority waterfall contained in Item 15 below. (7) Notwithstanding paragraph (6) above, Small Claim Creditors will be paid under the Creditors' Trust immediately following priority Creditors as determined by application of sections 556, 560 and 561 of the Act and prior to remaining Admitted Creditors that are not Small Claim Creditors as provided by Item 15 below. (8) The DOCA will be Completed upon, among other things, payment of the Hough Contribution to the Deed Administrators (which payment will be done as an inter-dependent step with other completion steps contained in the DOCA set out at Item 12 below). At that time, the Creditors' Trust will be formed (with the Creditors' Trust Fund paid to the trustees of the Creditors' Trust) and Admitted Creditors will have rights to receive distributions as beneficiaries under the terms of the Creditors' Trust (in the same order of priority as applies under the DOCA). (9) The Company will cease to comply with, and will not perform the Pre-Administration Leases and will treat the Pre-Administration Leases as coming to an end.
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		(10) The Company will use its commercial reasonable endeavours to renegotiate with QIAGEN the agreements between the Company and QIAGEN on terms satisfactory to Hough, acting reasonably. (11) All claims against the Company will be released upon Completion under the DOCA.
7.	Proposed Deed Administrators	John Park and Joanne Dunn of FTI Consulting. The Proposed Deed Administrators are also the proposed Trustees.
8.	Commencement date for the DOCA	The date of execution of the DOCA contemplated by this proposal.
9.	Property of the Company available for distribution	The property of the Company available for distribution to Creditors pursuant to the Creditors' Trust to pay their Admitted Claims will be the Creditors' Trust Fund (being the Deed Fund) as paid to the Trustees under the Creditors' Trust Deed and to be held on trust for the benefit of the beneficiaries of the Creditors' Trust.
10.	Moratorium under the DOCA	During the period of operation of the DOCA, the moratoria in sections 440A, 440D, 440F and 444E of the Act will apply to all Creditors and members of the Company.
11.	Release of claims	Upon and subject to Completion of the DOCA, all claims against the Company (except for those due to Excluded Creditors) will be released and extinguished in full, in consideration for the Admitted Creditors becoming beneficiaries under the Creditors' Trust.
12.	Completion under the DOCA – formation of Creditors' Trust	The DOCA will only complete upon the below steps occurring (all of which are inter-dependent). (1) Release by each of the Short Term Funders of all security granted to it as at the date of this proposal by the Company and any Subsidiaries. (2) Release by each of the Trading Security Holders of any security granted to the entity by any Company and any Subsidiaries, unless otherwise agreed between the parties in writing not less than 20 Business Days prior to Completion (or such other period as agreed by the Administrators). (3) Each such release under paragraph (2) to be on terms that provide for continuing trading and which are otherwise acceptable to Hough, acting reasonably. (4) The making of the ASIC Relief. (5) The making of the 444GA Orders. (6) The transfer of the Shares to Hough or its nominee. (7) The Proponent being satisfied (acting reasonably) that: a. the Company is not restricted under any existing contract to which it is a party from developing or

		producing dengue, malaria or HIV diagnostic products on and from Completion; and b. no third party is entitled to acquire, or has acquired since the date of this proposal, any intellectual property rights developed by the Company in connection with dengue, malaria or HIV diagnostic products. (8) The payment by Hough to the Deed Administrators of the Hough Contribution (subject to Item 12(10) below). (9) Execution of the Creditors' Trust Deed (which is to take effect on and from Completion). (10) The Interim Funding (and, if relevant, any part of the Security Funding) will be nominally repaid by the Administrators, or Deed Administrators, to Hough and reflected in the Hough Contribution. (11) Receipt by Hough from the Administrators of evidence in writing (in the form set out in Schedule 3) that all Pre-Administration Leases listed in Schedule 2 have been terminated or otherwise that counterparties to those Pre-Administration Leases have been notified that the Company will cease to comply with, and will not perform its obligations under, and treat the Pre-Administration Leases at an end. (12) The resignation or removal of the Exiting Directors and Secretary and the appointment of the Continuing Directors. (13) Retention of the Staff by the Company on terms acceptable to those Staff and to the satisfaction of Hough (acting reasonably) and which terms must be no less favourable than each Staff member's terms and conditions of employment immediately prior to the DOCA. (14) A binding commitment from the US Landlord to the effect that the US Landlord will not terminate the lease of the US Facility due to any fact, matter or circumstance arising prior to, or subsisting at, Completion. (15) A binding commitment from the Richlands Landlord to the effect that the Richlands Landlord will not terminate the lease of the Richlands Facility due to any fact, matter or circumstance arising prior to, or subsisting at, Completion. Only Hough may waive the Conditions at paragraphs (1), (2), (3), (6), (7), (11), (12) (13), (14) and (15) above. All other remaining conditions may only be waived on agreement in writing between the parties (such agreement not to be unreasonably withheld). Each of the parties will (at their own cost) do all things necessary and within their power to satisfy the Conditions (including, without limitation, obtaining and implementing the ASIC Relief and the
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		444GA Orders). Following completion of the steps immediately above, the following will occur (with these events to be interdependent): (1) the Creditors' Trust Deed will take effect pursuant to the terms of the Creditors' Trust Deed; (2) the Deed Administrators will transfer (and will cause the Company to transfer) the Deed Fund to the Trustees of the Creditors' Trust (on trust for the beneficiaries of that trust) to form part of the Creditors' Trust Fund; and (3) following steps (1) and (2) above, the DOCA will be fully Completed and the Deed Administrators will publish notice to that effect under section 445FA of the Act. Consequence of non-satisfaction of the Conditions (1) Subject to clause (2) below, if: (a) one or more of the Conditions is not satisfied or waived by the CP Satisfaction Date; or (b) the Deed Administrators and the Deed Proponent are of the opinion that one or more of the Conditions are incapable of being satisfied by the CP Satisfaction Date, then: (c) the Parties will cease to be bound by the DOCA on and from the CP Satisfaction Date and will have no liability under it; and (d) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Company. (2) In circumstances where the Deed Proponent has reason to believe that it will not be able to satisfy the Conditions or otherwise effect Completion before the CP Satisfaction Date, the Deed Proponent may request an extension of the CP Satisfaction Date from the Deed Administrators for consideration (in their sole discretion). (3) In circumstances where the extension in clause (2) is not provided, or in circumstances where it is but the Long Stop Date has expired and the Conditions remain unsatisfied: (a) the Parties will cease to be bound by the DOCA on and from that date and will have no liability under it; and (b) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Company.
13.	Directors and Secretary	During the Deed Period, the parties agree that the Administrators and Deed Administrators must, at the request of Hough, either procure the resignation of, or remove, the Exiting Directors and

		Secretary and procure the appointment of the Continuing Directors (subject to receiving signed consents to act) to be effective on Completion.
14.	Termination of DOCA	The DOCA will continue in operation until the DOCA is terminated: (1) upon its Completion as set out in this proposal (see clause 12 above); (2) by an order of the Court under section 445D of the Act; (3) by a resolution of the Creditors at a meeting convened under Division 75 of Schedule 2 to the Act; or (4) automatically, if a Condition is not satisfied (or becomes incapable of being satisfied) or waived by the parties by the CP Satisfaction Date or the Long Stop Date (as applicable).
15.	Order of distribution of the Creditors' Trust Fund	Subject to the below provisions, distributions from the Creditors' Trust Fund (under the Creditors' Trust, once formed) are to be made in respect of Admitted Claims as follows: (1) (Pool A) first, in notionally repaying the Interim Funding, and notionally repaying any part of the Security Funding in accordance with paragraph (10) of Item 12; (2) (Pool B) second, in payment of any balance owing in respect of the Security Funding; (3) (Pool C) third, the Administrators' remuneration and costs, the Deed Administrators' remuneration and costs, the Trustees' remuneration and costs, and any other amounts payable in accordance with the priorities set out in sections 556, 560 and 561 of the Act as though those priorities were applied in the Creditors' Trust Deed in full; (4) (Pool D) fourth, Small Claim Creditors in respect of any Small Claim Dividend. (5) (Pool E) fifth, QIAGEN in an amount up to the QIAGEN Dividend. (6) (Pool F) sixth, equally and rateably up to a specified amount of the balance of the Creditors' Trust Fund [after deduction of the amounts payable under each of the other Pools] to all Admitted Creditors who do not enjoy priority under section 556 of the Act, in accordance with section 555 of the Act (and the other applicable provisions of Part 5.6, Division 6 of the Act, including section 563A of that Act). (7) (Pool G) separately, equally and rateably up to the amount of, and out of, the Noteholder Pool, the participating Noteholders. Hough will not receive any distributions under the DOCA or the Creditors' Trust other than in respect of the repayment of the Interim Funding.
16.	Prescribed Provisions	Except to the extent that they are inconsistent with the terms of the DOCA, the provisions of Schedule 8A of the Regulations will apply to the DOCA as well as the Creditors' Trust Deed

17.	Priority to eligible employee creditors	The DOCA will contain a provision as contemplated by s444DA of the Act.
18.	Superannuation contribution debts	Pursuant to section 444DB of the Act, for the DOCA (and the Creditors' Trust), the Deed Administrators (and Trustees of the Creditors' Trust) must determine that the whole, or any particular part, of a debt by way of superannuation contribution is not admissible to proof if a debt by way of superannuation guarantee charge: (1) has been paid; (2) is, or is to be, admissible to proof; and the Deed Administrators (or Trustees of the Creditors' Trust, as applicable) are satisfied that the superannuation guarantee charge is attributable to the whole, or that part, of the first- mentioned debt.
19.	Secured Creditors, and owners/ lessors of property	Other than as expressly provided for under the DOCA, the DOCA will not release: (1) any security held by a Creditor in respect of any claim, and (2) any security interest validly and effectively held by an owner or lessor in property of the Company.
20.	Control of the Company	(1) During the period of operation of the DOCA, the Deed Administrators will have stewardship of the Company and will continue to manage the operations of the Company. (2) During the period of operation of the DOCA, Hough will not take part in the management or operations of the Company, except in accordance with the terms of the Implementation Deed. (3) Stewardship of the Company will return to its directors upon Completion.
21.	Working Capital Amounts and trading liabilities during administration	(1) If any Working Capital Amounts are received by the Administrators or Deed Administrators, or the Company following completion of the DOCA as contemplated by clause 12, those amounts must be transferred to the Trustees to form part of the Creditors' Trust Fund. (2) Subject only to paragraph (3) below, any debts or liabilities incurred by the Company during the period of its administration (a) for which the Administrators have personal liability under section 443A or 443B of the Act, and (b) that remain unpaid at the time of completion of the DOCA, will be satisfied from the Deed Fund and Creditors' Trust Fund. (3) Any debts or liabilities of a kind mentioned in paragraph (2) that are owed to an Excluded Creditor who is an eligible employee creditor will be paid by the Company following completion of the DOCA.
22.	Administrators' and Deed Administrators' remuneration	The Administrators, Deed Administrators and the Trustees of the Creditors' Trust will be remunerated out of the Deed Fund and the Creditors' Trust Fund for their services at their usual hourly rates in accordance with Division 60 of Schedule 2 to the Act.
23.	Company records	The Deed Administrators and Trustees of the Creditors' Trust will be entitled to retain copies of (or to retain access to) the Company's records following completion of the DOCA, as is necessary or

		reasonably desirable for them to properly complete their roles.
24.	Variation of DOCA	The DOCA may only be varied by a resolution passed at a meeting of the Creditors of the Company convened in accordance with Division 75 of Schedule 2 to the Act, but only if the variation is not materially different from a proposed variation set out in a notice of meeting.
25.	Advance of Interim Funding	(1) Hough has agreed to provide the Interim Funding to the Administrators. (2) The Interim Funding will be documented and advanced as soon as practicable in accordance with the Funding Letter. (3) The Interim Funding will be repaid from the Deed Fund. Repayment will be made by direction by the Deed Administrators to Hough on Completion that a portion of the Hough Contribution be paid to Hough in repayment of the Interim Funding. (4) If the DOCA is terminated otherwise than upon completion of the DOCA in accordance with its terms, the Interim Funding will be repaid by the Administrators (subject always to the Administrators having sufficient available cash to make such repayment) subject to the terms of the Funding Letter.
26.	Governing law	This proposal and any DOCA (together with any Creditors' Trust) are governed by the laws of the State of Queensland.
27.	Dictionary	In this proposal: 444GA orders means orders made by a court of competent jurisdiction pursuant to and for purposes of section 444GA of the Act in relation to the Company, authorising the Deed Administrators to transfer all Shares in the Company to Hough for a nil consideration, in terms otherwise reasonably acceptable to Hough. Act means the <i>Corporations Act 2001</i> (Cth). Admitted Claim means a claim against the Company as adjudicated by the Deed Administrators under the DOCA (or by the Trustees of the Creditors' Trust), but excluding Excluded Creditors. Admitted Creditor means a Creditor who has (or who is entitled to have) an Admitted Claim. Appointment Date has the same meaning as defined in clause 3 of this proposal. ASIC means the Australian Securities and Investments Commission. ASIC relief means relief granted by ASIC for the purposes of section 606 of the Act, in substance relieving Hough (and the Company, to the extent relevant) from the application of section 606 of the Act with respect to Hough's acquisition of the Shares as contemplated by this proposal, substantially on the conditions contemplated at Part G of ASIC Regulatory Guide 6, and in terms otherwise reasonably acceptable to Hough. claim means any claim, cost, damages, debt, income, expense, tax, royalty, liability, loss, obligation, allegation, suit, action, demand,

		cause of action, proceedings, penalty (civil, criminal or otherwise), order or judgment of any kind however calculated or caused, howsoever arising in law or equity or under statute against the Company, and whether direct or indirect, future, contingent, consequential, incidental or economic, the circumstances giving rise to which occurred or arose before the Appointment Date, and includes (without limitation): (1) any claim of any kind whatsoever under a Pre-Administration Lease including without limitation any claim for damages or loss in connection with the Company's failure to comply with or perform or termination of, a Pre-Administration Lease; (2) any claim that in a winding up of the Company would be a subordinated claim for purposes of section 563A of the Act; (3) any residual unsecured claim held by a Secured Creditor following realisation of its security; and (4) without limiting (1) above, any warrant, option or similar instrument issued by the Company in respect of any of its Shares. Conditions means each of paragraphs (1) to (15) in Item 12. Completion means the date upon which each of the Conditions has been satisfied or waived in accordance with the DOCA, and for the avoidance of doubt, is when the DOCA is "wholly effectuated" for the purposes of certification under Schedule 8A of the Act. Continuing Contracts means any contract of any kind whatsoever made by the Company with third parties prior to the Appointment Date, except for the Pre-Administration Leases. Continuing Directors means Jackson Hough, Jonathon Dooley and at least one other director nominated by Hough in writing prior to Completion. CP Satisfaction Date means 10 March 2023, unless otherwise extended by agreement of Hough and the Administrators. Creditor means a person who has a claim against the Company. Creditors' Trust means a trust to be entitled the "Ellume Creditors Trust" (or another title agreed by the Deed Administrators and Hough), pursuant to which: (1) the Deed Administrators as trustees will hold the Creditors' Trust Fund as the trust estate, on trust for the beneficiaries described below; (2) persons who were (immediately prior to the Completion of the DOCA) Admitted Creditors will be beneficiaries; (3) the beneficiaries will have interests in the trust estate commensurate with their entitlements to participate as Admitted Creditors under the DOCA Creditors' Trust Deed means the trust deed to be entered into between the Company, the Deed Administrators, the Trustees and the Hough in accordance with the DOCA, which creates the Creditors' Trust. Creditors' Trust Fund is the Deed Fund.
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		Deed Fund is the Hough Contribution and any Working Capital Amounts as at the relevant time. Deed Period means the period commencing on the Commencement Date and ending on the earlier of the Termination Date or Completion. DOCA means a Deed of Company Arrangement for the Company in accordance with Part 5.3A of the Act to be entered into between the Company, Hough and the Deed Administrators. Electing Noteholders means each of the Noteholders recorded in Schedule 4 and any other Noteholder notified to the Administrator by Hough. eligible employee creditor has the meaning given to that term in the Act. Excluded Creditors means any Creditor who has a claim against the Company: (1) because he/she is an eligible employee creditor, where such Creditor has continued his/her employment with the Company (or a Subsidiary) following completion of the DOCA; or (2) where such Creditor is a Subsidiary. Existing Shares means all Shares in the Company on issue on the Appointment Date. Exiting Directors and Secretary means Paul Darrouzet, Gary Hewett, Geoffrey Ronald Pearce, Sean Andrew Parsons and Mark Eric Harding Anning. Funding Letter means a funding deed in letter format to be entered into on or about the date of this proposal between the Proponent and the Administrators. Hough Contribution means the sum of \$38,000,000. Implementation Deed means a Deed to be entered into on or about the date of this proposal between the Proponent, the Company and the Administrators. Interim Funding means a loan in the sum of up to \$5,000,000, plus any other amounts advanced by Hough to the Administrators, on the terms set out in the Funding Letter. IPO means the Company carrying out an initial public offering of its Shares and being admitted to the official list of ASX or another recognised stock exchange. Long Stop Date means 28 April 2023, unless otherwise extended by agreement of Hough and the Administrators. Notes means a convertible note issued by the Company. Noteholder means a holder of Notes, but excluding QIAGEN. Noteholder Existing Rights means all existing rights of the Noteholder to redeem or convert the Notes. Noteholder Pool means an amount of \$12,500,000 to be paid as part of the Hough Contribution.
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		Pre-Administration Lease means the leases specified in Schedule 2 to this proposal, but for the avoidance of doubt does not mean a Continuing Contract. QIAGEN means each of QIAGEN GmbH and QIAGEN NV KvK QIAGEN Dividend means the amount of \$7,000,000. Regulations means <i>Corporations Regulations 2001</i> (Cth). Richlands Facility means the premises located at 9-19 Macgregor Place, Richlands in the State of Queensland. Richlands Landlord means Elcorp Services Pty Ltd ACN 069 142 847 and Treffiletti Siblings Pty Ltd ACN 627 266 586 as trustee under instrument 719121809. Secured Creditor means any Creditor who has valid and effective security from the Company for its claim against the Company. security means any security interest or encumbrance of any kind whatsoever, howsoever arising, and includes (without limitation) a security interest registrable under the <i>Personal Property Securities Act 2009</i> (Cth). Security Funding means an amount sufficient to pay out the claims of the Short Term Funders and the Trading Security Holders up to a limit of \$8,000,000. Shares means all shares in the Company of any kind whatsoever (and includes any preference shares, ordinary shares or otherwise). Short Term Funders means each of (1) Evangayle Pty Ltd ACN 615 224 256 as trustee for the Jones Family Trust No 3 (2) Glencairn Bay Investments Pty Ltd ACN 629 479 269 as trustee for the Glencairn Bay Investment Trust; (3) MA & KA Investments Pty Ltd ACN 600 309 626 as trustee for the MA & KA Investment Trust; and (4) Brand Brothers Holdings Pty Ltd ACN 637 303 952 as trustee for the Brand Brothers Holdings Trust. Small Claim means any Admitted Claim with a value of AU\$20,000 or less. Small Claim Creditor means a Creditor with a Small Claim. Small Claim Dividend means a payment from the Creditors' Trust Fund under the Creditors' Trust to each Small Claim Creditor, as beneficiaries, in the amount equal to 50% of that Small Claim Creditor's Small Claim, or where AU\$285,000 is insufficient to pay 50%, a lesser amount calculated on a pro rata basis. Staff means each of [REDACTED] [REDACTED] [REDACTED] Subsidiaries means the entities described in Schedule 1 to this proposal. Termination Date means the date that the DOCA is terminated pursuant to clause 14 above. Trading Security Holders means each of:
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		(1) Robert Bosch (Australia) Proprietary Limited; (2) Atlas Copco Australia Pty Ltd; (3) Crown Equipment Pty. Limited; (4) Retracom Holdings Pty Ltd; (5) Life Research Pty Ltd; (6) Print Management Facilities Australia Pty Ltd; and (7) any other entity notified by Hough to the Company prior to Completion (but excluding the US Landlord and the landlord of the Richlands Facility). Trustee means the Trustee of the Creditors' Trust. Working Capital Amounts means at the time of completion of the DOCA as contemplated in clause 12 above: (1) cash on hand for the Company or Administrators; (2) accounts receivable due to the Company in respect of work done or services provided by the Company on or before that time. US Facility means the premises located at buildings 201, 202 and 203, 4910 Executive Court, South Frederick, MD 21703. US Landlord means WVS Parcel 200A, LLC and WVS Parcel 204 A, LLC, each a Maryland limited liability company.
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Dated: 6 December 2022

Contacts:	David O'Farrell Partner McCullough Robertson Lawyers P 07 3233 8899 E dofarrell@mccullough.com.au	Rachel Zagorskis Senior Associate McCullough Robertson Lawyers P 07 3233 8704 E rzagorskis@mccullough.com.au
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Schedule 1 – Subsidiaries

- (1) Ellume USA LLC, a Delaware limited liability company
- (2) Ellume NZ Pty Ltd

Schedule 2 – Pre-Administration Leases

- (1) Lease between Ellume as Lessee and YWCA Australia ACN 111 663 873 as Lessor in relation to part of 936 Stanley Street, East Brisbane QLD 4169 more particularly described as Lot 223 on RP 11455.
- (2) Lease between Ellume as Lessee and Darrouzet Investments Pty Ltd ACN 136 760 364 as Lessor in relation to 57 Didsbury Street, East Brisbane QLD 4169 more particularly described as Lot 1 on RP 166321 dated 12 July 2022.

Schedule 3 – Notice from Deed Administrators

This notice is given for the purposes of the Deed of Company Arrangement made in relation to Ellume Limited (subject to deed of company arrangement) (**DOCA**). Terms defined in this notice have the meanings set out in the DOCA.

This notice concerns the Pre-Administration Leases under the DOCA.

By this notice, we as Deed Administrators confirm to Hough for the purposes of the DOCA that all Pre-Administration Leases known to the Administrators have been terminated or otherwise that counterparties to those Pre-Administration Leases have been notified that the Company will cease to comply with, and will not perform its obligations under, and treat the Pre-Administration Leases at an end.

Schedule 4 – Electing Noteholders

Noteholder group*	Noteholders	
Group A	PURE Asset Management Pty Ltd ATF The Income and Growth Fund	
Group B	Speagrass Capital Limited Investment Holdings Pty Ltd Zahama P/L	

*For identification purposes only

Schedule 4 Electing Noteholders

Noteholder Group*	Noteholders	
Group A	PURE Asset Management Pty Ltd ATF The Income and Growth Fund	
Group B	Speagrass Capital Limited Investment Holdings Pty Ltd Zahama P/L	

* For identification purposes only

Execution page

EXECUTED as a deed

Deed Company

Signed, sealed and delivered by Ellume Limited (Administrators Appointed) ACN 141 767 660 by its joint and several administrator in the presence of:


Signature of witness

Ashleigh Ubank
Name of witness


Signature of Deed Administrator

John Park
Name of Deed Administrator

Deed Administrators

Signed, sealed and delivered by **John Park** in
the presence of:



Signature of witness



Signature of **John Park**

Ashleigh Ubank

Name of witness

Signed, sealed and delivered by **Joanne Dunn**
in the presence of:



Signature of witness



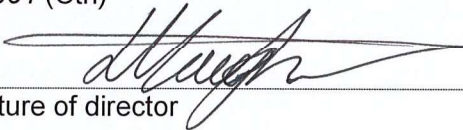
Signature of **Joanne Dunn**

Ashleigh Ubank

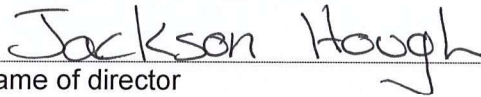
Name of witness

Deed Proponent

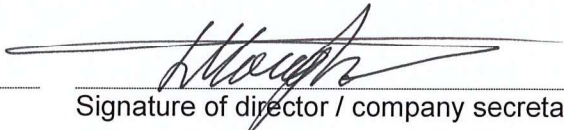
**Signed, sealed and delivered by Hough
Consolidated Pty Ltd ACN 657 651 280 in
accordance with section 127 of the *Corporations
Act 2001* (Cth)**



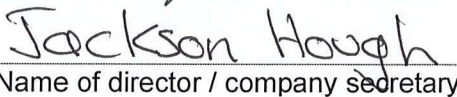
Signature of director



Name of director



Signature of director / company secretary



Name of director / company secretary

Annexure A Creditors' Trust Deed

Please see attached 28 pages.

Ellume Creditors' Trust Deed

BETWEEN

Ellume Limited (subject to deed of company arrangement) ACN 141 767 660

AND

John Park and Joanne Dunn as deed administrators of Ellume Limited (subject to deed of company arrangement)

AND

John Park and Joanne Dunn as trustees of Ellume Limited (subject to deed of company arrangement)

AND

Hough Consolidated Pty Ltd
ACN 657 651 280

MILLS OAKLEY

Level 7, 151 Clarence Street
SYDNEY NSW 2000
Telephone: +61 2 8289 5800
Facsimile: +61 2 9247 1315
DX 13025, SYDNEY MARKET STREET
www.millsoakley.com.au
Ref: LYRS/3633854

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Date ____ December 2022

Parties

Ellume Limited (subject to a deed of company arrangement) ACN 141 767 660

of c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000

(Deed Company)

John Park and Joanne Dunn in their capacity as joint and several deed administrators of the Deed Company

of c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000

(Deed Administrators)

John Park and Joanne Dunn in their capacity as joint and several trustees of the Deed Company

of c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000

(Trustees)

Hough Consolidated Pty Ltd ACN 657 651 280

of c/- McCullough Robertson Lawyers, Level 11, 66 Eagle Street, Brisbane QLD 4000

(Deed Proponent)

Background

- A. On the Appointment Date, John Park and Joanne Dunn were appointed as administrators of the Deed Company pursuant to Part 5.3A of the Corporations Act.
- B. At the meeting of Eligible Employee Creditors of the Company held on 20 December 2022 prior to the Second Meeting and convened under Section 444DA(2)(a) of the Corporations Act, the Eligible Employee Creditors of the Company passed a resolution agreeing to the non-inclusion of a provision in the DOCA which, absent the resolution, would be required by section 444DA(1) of the Corporations Act.
- C. At a meeting held on 20 December 2022 and convened pursuant to section 439A of the Corporations Act, the Creditors of the Deed Company resolved that the Deed Company enter into a deed of company arrangement substantially in the form proposed by the Deed Proponent under section 444B(2)(b) of the Corporations Act.
- D. On or about 22 December 2022, the Deed Administrators, the Deed Company and the Deed Proponent executed the DOCA pursuant to section 444B(2)(b) of the Corporations Act.
- E. The DOCA provides for the establishment of a Creditors' Trust for the benefit of the Trust Creditors. The Contribution Amount and any Working Capital Amounts will be transferred to the Trustees to settle the Trust in accordance with the DOCA.
- F. The Deed Company and the Trustees enter into this Deed as contemplated by the DOCA in order to facilitate a distribution by the Trustees to the Trust Creditors in their capacity as beneficiaries of the Trust Fund.

Operative provisions

1 Interpretation

1.1 Definitions

In this Deed, terms defined in the DOCA have the same meaning when used in this Deed unless otherwise defined in this Deed or otherwise required by the context or the subject matter, and:

Administrators means, jointly and severally, John Park and Joanne Dunn in their capacity as administrators of the Deed Company and any successor to that office appointed pursuant to the Corporations Act.

Administrators' Costs means all Administration Debts and all other costs, charges and expenses, including those incurred under s443A, in connection with advisers, incurred in connection with the performance of the Administrators' or the Deed Administrators' duties, obligations and responsibilities under the Corporations Act and the DOCA during the Administration Period or the Deed Period.

Administration Debt means any:

- (a) debt referred to in sections 443A(1) or 443B(2) of the Corporations Act which was incurred by the Administrators during the Administration Period;
- (b) liability to the Commissioner of Taxation referred to in section 443BA(1); and
- (c) other debts or liabilities referred to in section 443D(aa) of the Corporations Act, in respect of which the Administrators are entitled to be indemnified under section 443D of the Corporations Act.

Administrators' Remuneration means the remuneration payable to the Administrators and Deed Administrators for acting as:

- (a) the administrators of the Deed Company under Part 5.3A of the Corporations Act; and
- (b) the Deed Administrators of the Deed Company under the DOCA.

Administration Period has the meaning given to it in the DOCA.

Admitted Claim means the Claim of any Trust Creditor admitted by the Trustees after adjudication in accordance with clause 8.

Appointment Date has the same meaning as in the DOCA.

Claim has the meaning given in the DOCA.

Completion has the meaning given in the DOCA.

Contribution Amount has the meaning given in the DOCA.

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

Court has the meaning given to that term in section 58AA of the Corporations Act.

Deed means this creditors' trust deed.

Deed Administrators means, jointly and severally, John Park and Joanne Dunn in their capacities as administrators of the DOCA and any successor to that office appointed pursuant to the Corporations Act.

Deed Period has the meaning given to it in the DOCA.

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

Dividend means any amount paid to a Trust Creditor in respect of that Trust Creditors' Admitted Claim.

DOCA means the Deed of Company Arrangement, executed by the Deed Company, the Deed Administrators and the Deed Proponent on or about 22 December 2022.

Employee means any person who was an employee of the Deed Company at or prior to the Appointment Date and any person whose debt or claim would, in a winding up of the company, be payable in priority to other unsecured debts and claims in accordance with paragraphs 556 or sections 560 or 561 of the Corporations Act.

Employee Creditor means an Employee (other than a Continuing Employee) with a Priority Claim.

Final Dividend means the last Dividend payment to be made by the Trustees to any Trust Creditor under this Deed.

Interim Funding Letter means the funding deed in letter format entered into by the Deed Proponent and the Administrators on 6 December 2022, and any variation to the funding deed agreed between the Deed Proponent and the Administrators.

Noteholder has the meaning given in the DOCA.

Pool A Creditors means the Deed Proponent in respect of amounts owing by the Administrators to the Proponent under the Interim Funding Letter.

Pool A Amount means US\$5,000,000.

Pool B Creditors means each of the:

- (a) Short Term Funders; and
- (b) Trading Security Holders.

Pool B Amount means an amount of US\$8,000,000 less any amounts paid to any Short Term Funder and to any Trading Security Holder (other than in relation to a further supply) during the Administration Period or the Deed Period or otherwise out of the Pool A Amount.

Pool C Creditors means the Administrators, the Deed Administrators, the Trustees and all Trust Creditors who have an Admitted Claim who enjoy priority under section 556, 560 and 561 of the Act, and includes the Employee Creditors.

Pool D Creditors means Trust Creditors, other than Noteholders, with an Admitted Claim with a value of AU\$20,000 or less.

Pool D Amount means AU\$285,000.

Pool E Creditors means QIAGEN GmbH and QIAGEN NV KvK.

Pool E Amount means US\$7,000,000.

Pool F Creditors means all other Trust Creditors with an Admitted Claim who do not fall into any of Pool A to Pool E, or Pool G, or enjoy priority under section 556 of the Act, in accordance with section 555 of the Act (and the other applicable provisions of Part 5.6, Division 6 of the Act, including section 563A of that Act).

Pool F Amount means the amount available for distribution to creditors after payment of the Admitted Claims of the Pool E Creditors, less the Pool G Fund Amount.

Pool G Creditors means the Noteholders who are not Electing Noteholders under the DOCA.

Pool G Amount means US\$12,500,000.

Priority Claim means a Claim of an Employee that would have been entitled to priority over the Claims of other unsecured creditors, pursuant to section 556(1), section 560 or section 561 of the Corporations Act, if the Deed Company had been wound up and the winding up was taken to have commenced on the Appointment Date.

Short Term Funders has the meaning given in the DOCA.

Superannuation Debt means the whole, or any particular part, of a debt by way of superannuation contribution if a debt by way of superannuation guarantee charge:

- (a) has been paid;
- (b) is, or is to be, admissible to proof; and
- (c) the Trustees are satisfied that the superannuation guarantee charge is attributable to the whole, or that part, of the first-mentioned debt.

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

Trading Security Holders has the meaning given in the DOCA.

Trust means the trust created by this Deed.

Trust Creditor's Claim means a Claim of a Trust Creditor.

Trust Creditor has the meaning given in the DOCA.

Trust Fund means the fund contemplated by clause 3.

Trust Termination Date means the date on which the Trust terminates in accordance with clause 16.1 or clause 16.3.

Trustee Act means the *Trusts Act 1973* (Qld).

Trustees' Costs means the costs, charges and expenses, incurred by the Trustees in connection with the performance of their duties, obligations and responsibilities as trustees of the Trust, including those incurred in connection with advisers.

Trustees' Remuneration means the remuneration of the Trustee as provided for in clause 13.1.

Working Capital Amounts has the meaning given in the DOCA.

1.2 Interpretation

In this Deed the following rules of interpretation apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;

- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation 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 that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of or under or through a party to this Deed;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or annexure is a reference to a clause or term of, or party, schedule or annexure to this Deed;
 - (vi) this Deed includes all schedules and annexures to it;
 - (vii) a law includes:
 - (A) any constitutional provision, treaty, decree, statute, regulation, by-law, ordinance or instrument;
 - (B) any order, direction, determination, approval, requirement, licence or licence condition made, granted or imposed under any of them;
 - (C) any judgment; and
 - (D) any rule or principle of common law or equity,and is a reference to that law as amended, consolidated, replaced, overruled or applied to new or different facts;
 - (viii) an agreement other than this Deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
 - (ix) "AU\$" or "AUD" is to Australian dollars; and
 - (x) "US\$" or "USD" is to United States dollars;
- (g) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (h) if the day on which any act is to be done under this Deed is a day other than a Business Day, that act must be done on or by the immediately succeeding Business Day except where this Deed expressly specifies otherwise.
- (i) all references to time are to time in Brisbane, Queensland, Australia;
- (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 and annexures the terms of the main body of this Deed will prevail.

1.3 Inconsistency

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

- (b) If there is any inconsistency between the provisions of this Deed and the constitution of the Deed Company or any other obligations binding on the Deed Company, then the provisions of this Deed will prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which shall be borne by the Deed Company.

2 Commencement of this Deed

The Trust will come into effect and the Deed Administrators will act as Trustees pursuant to the terms of this Deed immediately upon Completion occurring.

3 The Trust Fund

3.1 Trust Fund

The Trust Fund will comprise:

- (a) the Contribution Amount, to be paid to the Trustees on Completion in accordance with clause 6.5 of the DOCA;
- (b) the Working Capital Amounts which is to be transferred to the Trustees after Completion in accordance with clause 6.8 of the DOCA; and
- (c) such interest as may be earned on the Trust Fund.

3.2 Payment of Working Capital Amounts

Following Completion, the Parties acknowledge and agree that they will perform and observe the terms and obligations at clause 6.8 of the DOCA in respect of the Working Capital Amounts as if those terms and obligations had been repeated in full in this Deed, including that at all times the Deed Company must act reasonably and assist the Trustees in the collection of Accounts Receivable.

4 Declaration of Trust

4.1 Declaration

The Trustees acknowledge and declare that they will hold the Trust Fund on trust for the Trust Creditors on the terms of this Deed.

4.2 Name of the Trust

The trust constituted by this Deed will be called the Ellume Creditors' Trust.

4.3 Objects of the Trust

The Trustees shall receive and hold the Trust Fund on trust for the benefit of the Trust Creditors and will distribute the Trust Fund in accordance with the terms of this Deed.

5 Distribution of the Trust Fund

5.1 Distribution of the Trust Fund

Provided that each Trust Creditor has an Admitted Claim, the Trust Fund will be available for distribution to the Trust Creditors as follows:

- (a) First, an amount up to the Pool A Amount, for distribution to Pool A Creditors, as follows:
 - (i) first, to the Deed Proponent in discharge of the Administrators' obligations under the Interim Funding Letter and in accordance with the DOCA;
 - (ii) second, to the Short Term Funders in discharge of the Administrators' obligations under the General Security Deed dated 8 September 2022 as amended, varied or modified from time to time including by Deed of Variation dated 28 November 2022 and by Further Deed of Variation dated on or about 22 December 2022 in the amount of AU\$4,000,000, plus interest and costs; and
 - (iii) third, only in relation to any surplus Pool A Amount, to the Trading Security Holders on a pro rata basis in accordance with the dollar value of the Admitted Claims of the Trading Security Holders.
- (b) Second, an amount up to the Pool B Amount for distribution to Pool B Creditors, as follows:
 - (i) firstly, to the Trading Security Holders in accordance with the dollar value of the Admitted Claims of the Trading Security Holders.
 - (ii) second, to any residual balance to the Short Term Funders in discharge of the Administrators' obligations as set out in paragraph 5.1(a)(ii) above; and
- (c) Third, for distribution to Pool C Creditors, as follows:
 - (i) first, to the Administrators or Deed Administrators for any amounts which they are entitled to be paid or indemnified for under the DOCA (even though they may have ceased to be Administrators or Deed Administrators), including for the avoidance of doubt, the Administrators' Costs and the Administrators' Remuneration;
 - (ii) second, to the Trustees in satisfaction of the Trustees' Remuneration and the Trustees' Costs (which may include an amount of the Trustees' Remuneration and the Trustees' Costs which are estimated to be incurred by the Trustees up to the Trust Termination Date); and
 - (iii) third, to Employee Creditors in full.
- (d) Fourth, an amount up to the Pool D Amount, for distribution to Pool D Creditors:
 - (i) in an amount equal to 50% of each Pool D Creditor's Admitted Claim; or
 - (ii) if the Pool D Fund Amount is insufficient to allow for a distribution on the basis set out in clause 5.1(d), on a pro rata basis in accordance with the dollar value of the Admitted Claims of the Pool D Creditors.
- (e) Fifth, an amount up to the Pool E Amount, for distribution to Pool E Creditors on a pro rata basis in accordance with the dollar value of the Admitted Claims of the Pool E Creditors.

- (f) Sixth, an amount up to the Pool F Amount, for distribution to the Pool F Creditors on a pro rata basis in accordance with the dollar value of the Admitted Claims of the Pool F Creditors.
- (g) Seventh, an amount up to the Pool G Amount, for distribution to the Pool G Creditors on a pro rata basis in accordance with the dollar value of the Admitted Claims of the Pool G Creditors.
- (h) Notwithstanding any other provision of this Deed, for the purposes of section 444DA of the Corporations Act and clause 5.1(c)(iii), any Priority Claims of Employee Creditors will retain a priority in respect of the assets of the Trust Fund at least equal to that which they would have been entitled to if the property of the relevant Deed Company had been applied in accordance with sections 556, 560 and 561 of the Corporations Act.
- (i) The Trustees may distribute the Trust Fund in one or more instalments at such times as determined by the Trustees in their absolute discretion, including making distributions (whether interim or final) under any subclause of this clause 5.1 in advance of any other subclause of this clause 5.1 on the basis that the Trustees have retained sufficient funds to ensure that any payments to be made under a subclause of this clause 5.1 with a higher priority may be made when the time comes to do so.
- (j) No distributions will be made in respect of a Claim of a Trust Creditor unless the Trust Creditor's Claim is an Admitted Claim, or is a distribution to Pool B Creditors.

5.2 Postponement

Should proceedings be brought by any person in respect of the distribution of the Trust Fund, the Trustees are entitled at their sole discretion to postpone the payment of any entitlement until determined by the Trustees.

5.3 Unclaimed Moneys

In the event that the Trustees, for any reason, are unable to locate a Trust Creditor, or if any cheque sent by the Trustees to a Trust Creditor has not been presented within 6 months, then:

- (a) the Trustees shall stop payment of that cheque;
- (b) the moneys represented by that stopped cheque or held by the Trustees on behalf of the Trust Creditor shall be paid to ASIC; and
- (c) the provisions of sections 544(1) and 544(3) of the Corporations Act will apply, with such modifications as are necessary to such payment, as if references in those sections to 'liquidator' were references to the 'Trustees'.

6 Trustees' duties and powers

6.1 Trustees' duties

The Trustees must:

- (a) collect, sell or otherwise realise the property held on trust (including, to avoid doubt, any causes of action forming part of the Trust Fund), to the extent and in a manner the Trustees believe is appropriate; and
- (b) distribute the Trust Fund in accordance with clause 5.

6.2 Trustees' powers

- (a) Without limiting the Trustees' powers under the Trustee Act or under any law with respect to trustees, for the purpose of performing their duties under this Deed, the Trustees have all of the rights, powers, discretions and remedies granted by law to the Trustees including the power to:
- (i) to the extent that they have not done so already in their capacity as Deed Administrators, determine the Claims of Creditors and admit or reject Claims to proof in accordance with the terms of this Deed;
 - (ii) administer and distribute the Trust Fund in accordance with the terms of this Deed;
 - (iii) sell, reinvest or otherwise deal with the assets of the Trust Fund;
 - (iv) perfect title in any assets of the Trust Fund;
 - (v) insure any assets of the Trust Fund;
 - (vi) at any time, call meetings of the Trust Creditors for the purpose of considering the variation or termination of this Deed in accordance with the provisions of this Deed;
 - (vii) fulfil the Trustees' obligations under this Deed;
 - (viii) enforce compliance with the terms of this Deed and the DOCA including to take such legal proceedings or other steps as the Trustees think fit to enforce these obligations;
 - (ix) make interim or other distributions of the Trust Fund in accordance with the terms of this Deed;
 - (x) appoint agents to do any business or attend to any matter or affairs of the Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;
 - (xi) appoint solicitors, accountants or other professionally qualified persons to assist the Trustees;
 - (xii) compromise any Claim on such terms as the Trustees see fit;
 - (xiii) accept the transfer of any shares, stocks, debentures, debenture stock, annuities, bonds, obligations or other securities of whatever nature that may at any time be transferred to the Trustees;
 - (xiv) to enter upon or take possession of the Trust Fund and to collect and distribute revenue or income from or interest on the Trust Fund and exercise any rights or powers to any part of the Trust Fund;
 - (xv) to bring, prosecute and defend any claim, action, suit or proceeding, which power includes the power to bring and defend any claim, counter-claim, set-off, action, suit or proceeding, to enforce any right, claim or cause of action that forms part of the Trust Fund, and to that end:
 - (A) to issue or accept service of any writ, summons or other legal process and to appear or be represented in any court and before all wardens, magistrates or judicial or other officers as the Trustees think fit and to commence or defend and conduct any action or other proceeding in any court of justice in relation to the Trust Fund and any claim, proceeding or action forming

- part of the Trust Fund and to prosecute, discontinue, compromise, stay, terminate or abandon that proceeding or action as the Trustees see fit;
 - (B) to appoint any solicitor and/or counsel to prosecute or defend in those proceedings as the Trustees see fit; and
 - (C) to take any other lawful ways and means for the recovery or getting in any of the Trust Fund;
 - (xvi) to convene and hold meetings of the Trust Creditors for any purpose as the Trustees see fit;
 - (xvii) to permit any person authorised by the Trustees to operate any account in the name of the Trust;
 - (xviii) to do all acts and execute in the name of and on behalf of the Trust all deeds, receipts and other documents;
 - (xix) to draw, accept, make or endorse any bill of exchange or promissory note in the name of or on behalf of the Trust;
 - (xx) subject to the Corporations Act, prove in the bankruptcy, winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Trust;
 - (xxi) to bring or defend an application for the vesting or winding up of the Trust;
 - (xxii) to report to the Trust Creditors from time to time;
 - (xxiii) do anything that is incidental to exercising a power set out in this Deed;
 - (xxiv) pay amounts from the Trust Fund for which an indemnity exists under clause 14; and
 - (xxv) do anything else that is necessary or convenient for administering the Trust.
- (b) Without limiting the Trustees' powers under any law with respect to trustees or otherwise, the Trustees may deal with the property comprising the Trust Fund in any manner as if the Trustees were the legal and beneficial owners of that property, and may also exercise any power in respect of the property comprising the Trust Fund and the Trustees' functions under this Deed as the Deed Administrators are or were entitled to exercise under the terms of the DOCA.
- (c) Without limiting subclauses 6.2(a) and 6.2(b):
 - (i) the Trustees also have, with respect to the property comprising the Trust Fund, all of the powers set out in paragraph 2 of Schedule 8A of the Regulations, with all modifications as are necessary to give effect to this Deed as if:
 - (A) the Trust were a company subject to a deed of company arrangement; and
 - (B) the Trustees were the deed administrators of that deed;
 - (ii) save to say that the Trustees will not be required to comply with clause 10 of Schedule 8A of the Regulations; and

- (iii) the Trustees may appoint any person to manage the property comprising the Trust Fund on terms determined by the Trustees.

6.3 Exercise of discretion and powers

- (a) The Trustees may exercise any discretion under this Deed in the Trustees' absolute and unfettered discretion.
- (b) The Trustees shall not be required to give any reason for the exercise of, or failure to exercise, any of the Trustees' powers.
- (c) None of the Trustees' powers shall limit the generality of any other of the Trustees' powers, and the Trustees shall have the power to do anything the Trustees consider incidental to any of the Trustees' powers.

7 Perpetuity period

Notwithstanding any other provision of this Deed, each:

- (a) interest in property; and
- (b) Trustee's power over or in connection with property,
created or granted by this Deed that, but for this provision, might vest, take effect, or be exercisable, after the expiry of 80 years commencing on the date of this Deed, but which has not vested or taken effect by that date,
- (c) will vest or take effect on the last day of that period; and
- (d) is exercisable only on or before the last day of that period.

8 Claims, Entitlements and Payments

8.1 Admissibility of Claims

- (a) Upon this Deed being settled, and in accordance with clause 12.6 of the DOCA, each Claim of a Trust Creditor against the Deed Company will convert to, and become, a claim against the Trust Fund under this Deed, equal in amount to the Trust Creditor's entitlement to a distribution in respect of the Trust Creditor's released Claim in accordance with clause 5.1.
- (b) Interest will not accrue or be payable on any Admitted Claim.

8.2 Trustees' discretion

The Trustees may, in their absolute discretion:

- (a) call for proofs of debt or Claim;
- (b) admit all or part of a Claim;
- (c) reject all or part of a Claim; or
- (d) pay any Admitted Claim,

in accordance with the provisions of this Deed.

8.3 Determination of Claims

- (a) Any costs or expenses incurred by a Trust Creditor in asserting a Claim under this Deed (including any application under clause 8.3(g)) will be borne by that Trust Creditor and will not form part of that Trust Creditor's Claim under this Deed.

- (b) Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Corporations Act apply to the admission of Claims under this Deed as if references to the 'liquidator' were references to the 'Trustees' and references to 'winding up' were references to this Deed, and with such other modifications as are necessary to give effect to this Deed, except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.
- (c) Regulations 5.6.37, 5.6.39 to 5.6.43 (inclusive), 5.6.44 to 5.6.53 (inclusive) and 5.6.55 to 5.6.72 (inclusive) of the Regulations shall apply to this Deed and to the Trustee as if the references to the 'liquidator' were references to the 'Trustees' and references to 'winding up' were references to this Deed, and with such other modifications as are necessary to give effect to this Deed, except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.
- (d) The Trustees may make interim distributions of Trust property under this Deed.
- (e) The Trustees may make any distribution by cheque or by electronic funds transfer to a bank account nominated by the relevant Trust Creditor.
- (f) The Trustees must declare and distribute trust property under this Deed as soon as practicable after the Trust comes into effect under clause 4.1. However, subject to clauses 8.3(b) and 8.3(c), the Trustees have an absolute and unfettered discretion as to the admission of Claims, and the amount and timing of the distribution of Trust property in payment of Admitted Claims.
- (g) Where the Trustees propose to reject a Claim (whether in part or in full) the Trustees shall send a notice to the Creditor informing the Creditor of the proposed rejection and giving the party 14 days within which to make an application to the Court to determine the questions relating to the Claim.
- (h) The Trustees are entitled to rely upon any steps and determinations made by the Deed Administrators for the purposes of this clause in respect of whether a Claim asserted for the purposes of claiming under this Deed is an Admitted Claim, together with any information and proofs or particulars of debt provided to the Administrators or Deed Administrators.

8.4 Superannuation Debts not admissible

A Superannuation Debt is not admissible to proof against the Trust Fund.

8.5 Abandonment of Claims

A Trust Creditor will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) in the Trust Fund:

- (a) which are not the subject of a proof lodged with the Deed Administrators or the Trustees in the form required by the Trustees prior to the declaration of a Final Dividend; or
- (b) which have been rejected by the Trustees and which are not the subject of any appeal or application to the Court within the time allowed under clause 8.3(g).

8.6 Discharge of Claims

- (a) All persons having a Claim must accept their Admitted Claims under this Deed (if any) in full satisfaction and complete discharge of all debts, liabilities or claims which they have or claim to have against the Trustees or the Trust Fund, and each of them will, if called upon to do so, execute and deliver to the Trustees, such forms of release of any such claim as the Trustees require.

- (b) The Trustees must take all steps reasonably required by the Deed Proponent to obtain such releases from any Trust Creditors nominated by the Deed Proponent

8.7 Extinguishment of Claims

On payment of the Final Dividend to the Trust Creditors from the Trust Fund:

- (a) all obligations of the Trustees to the Trust Creditors under the Trust will be fully and finally discharge; and
- (b) all Claims against the Trustees and the Trust Fund are extinguished.

8.8 Bar

After distribution of the Final Dividend from the Trust Fund, the Trustees may plead this Deed in bar to any Claim.

8.9 Excluded Claims

No Creditor is entitled to participate in or receive any distribution from the Trust Fund in respect of an Excluded Claim.

9 GST on Claims

9.1 Definitions

Words and expressions used in this clause 9 which are defined in the GST Act have the same meaning in this clause 9.

9.2 GST credits on Claims which have been or will be claimed by the Deed Company

To the extent that input tax credits on Admitted Claims have been or will be claimed by the Deed Company, the Parties agree and acknowledge that following the payment of distributions to those Trust Creditors by the Trustees from the Trust Fund, the Deed Company by its Directors will be responsible for making any adjustment required by the provisions of the GST Act insofar as those adjustments relate to those Admitted Claims and Practice Statement PS LA 2012/1 (GA) will be applied by the Deed Company to calculate the impact of those adjustments.

9.3 GST credits for Administration Debts and Deed Administrators' Costs

To the extent that:

- (a) an input tax credit is available in respect of an Administration Debt or a Deed Administrators' Cost; and
- (b) neither the Administrators nor the Deed Administrators are able to claim that input tax credit because it is attributable to a tax period that arises after the date on which the GST registration of the Administrators or the Deed Administrators ends,

then, the Parties agree and acknowledge that the Deed Company is responsible for claiming that input tax credit.

9.4 GST credits during operation of Trust

The Parties agree and acknowledge that to the extent that an input tax credit is available in respect of any Trustees' Cost which is incurred and paid for by the Trustees during the operation of the Trust, the Trustees (acting in their capacity as Trustees of the Trust) will be responsible for the claiming those input tax credits.

10 Books and records

10.1 Access by Trustees

The Trustees will have the power to access all books and records of the Deed Company for the purposes of fulfilling their obligations under this Deed.

10.2 Deed Company's obligation

The Deed Company must provide the Trustees with all requested access to the Deed Company's books and records in its possession for the purposes of the Trustees' compliance with their obligations under this Deed at no cost (including the right to take copies of such books and records).

11 Meetings of Trust Creditors

11.1 Convening meetings by Trustees

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

11.2 Convening meetings at the request of Trust Creditors

The Trustees must convene a meeting of Trust Creditors if so requested in writing by a Trust Creditor or Trust Creditors the value of whose Admitted Claims is not less than 25% of the value of the total of the Admitted Claims.

11.3 Manner of convening meetings

- (a) The Trustees may convene a meeting of Trust Creditors at any time in accordance with paragraph 75-10 of the Insolvency Practice Schedule and will be required to convene such a meeting when required to do so under paragraph 75-15 of the Insolvency Practice Schedule.
- (b) The Insolvency Practice Rules, Insolvency Practice Schedule and the Corporations Regulations applicable to creditors meetings in a liquidation will apply to any meeting of the Creditors of the Deed Company with such modifications as are necessary.

11.4 Right of Trust Creditors to attend meetings

Trust Creditors who have been paid the full amount of their entitlements under this Deed will no longer be entitled to attend and participate in meetings of Trust Creditors.

11.5 Instructions from Trust Creditors

In the exercise of the Trustees' powers, the Trustees:

- (a) may (if they see fit), but are not obliged to, seek from the Trust Creditors at a meeting convened in accordance with this clause 11, instructions, including (without limitation) approval in respect of variations to the terms of this Deed;
- (b) may, but shall not be obliged to, have regard to the instructions (if any) given by the Trust Creditors at a meeting so convened; and
- (c) in the absence of instructions given by the Trust Creditors at a meeting so convened, do what is, in the Trustees' opinion, in the best interests of Creditors.

11.6 Variation of Deed

This Deed may be varied:

- (a) with the consent of the Trustees by a resolution passed at a meeting of Trust Creditors by a majority of Trust Creditors (in value) attending the meeting, but only if the variation is not materially different from the proposed variation set out in the notice of that meeting and provided that the variation does not materially prejudice the interests of any class of Trust Creditors without the approval of a majority (in value) of that class of Trust Creditors attending the meeting; or
- (b) by the Court upon application of any of the Trust Creditors or the Trustees pursuant to the Trustee Act.

12 Limitation of Liability

12.1 Exclusion of liability

- (a) Each Trustee, including his or her partners and employees, is not personally liable for any loss, damages, costs or expenses which may be occasioned to any trust property under this Deed (including the Trust Fund) or to any person by:
 - (i) the exercise of any discretion or power conferred by this Deed or by law on the Trustees, or any delay or failure to exercise any of those discretions or powers;
 - (ii) any breach of duty or trust, unless it is proved to have been committed, made or omitted in fraudulent bad faith by the Trustees, partner or employee; or
 - (iii) any disclosure by the Trustees of any document, matter or thing relating to the Trust, the Trust Fund or any Trust Creditor.
- (b) The recourse of any person against the Trustees in their capacity as trustees of the Trust, insofar as it is not excluded by subclause 12.1(a) above, shall be limited to, and may only be satisfied from, the balance of the Trust Fund from time to time.
- (c) All persons claiming any interest in the Trust Fund must be treated as taking it with and subject to notice of the protection conferred by this clause 12.

12.2 Proceedings against co-trustee

The Trustees are not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.

12.3 Reliance on advice

Where the Trustees act in reliance upon the advice of any solicitor or barrister instructed on behalf of the Trust obtained in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Trust, the Trustees are not liable to any person in respect of any act done or omitted to be done by the Trustees in accordance with the advice.

12.4 Conflicts

All powers and discretions of the Trustee may be exercised notwithstanding that any person being a partner, employee or related party of the Trustee is a beneficiary or may have been a beneficiary or has a direct, indirect or personal interest (in whatever

capacity) in the manner of, or as a result of exercising such power or discretion or may benefit directly or indirectly as a result of any such power or discretion.

13 Remuneration

13.1 Remuneration of Trustees

The Trustees:

- (a) are to be remunerated at the usual rates charged by FTI Consulting from time to time in respect of any work done by the Trustees, and any partner or employee of the Trustees, in connection with:
 - (i) the exercise of their powers and discretions and performance of their duties, obligations and responsibilities as Administrators and/or Deed Administrators, even though that remuneration has not been approved by the Creditors pursuant to Division 60 Subdivision B of the Insolvency Practice Schedule;
 - (ii) the calling for and adjudicating upon proofs of Claims;
 - (iii) the distribution of the Trust Fund; and
 - (iv) the exercise of their powers and discretions and performance of their duties, obligations and responsibilities as Trustees under this Deed, and
- (b) acknowledge that the Trustees' Costs, including costs, charges and expenses (including those incurred in connection with advisers) incurred in connection with the foregoing, including any stamp duty payable by them in respect of this Deed, will be payable from the Trust Fund.
- (c) The Trustees' Remuneration and the Trustees' Costs referred to in this clause 13.1 and all other costs shall be reimbursed and/or paid out of the Trust Fund. The Trustees shall be entitled to draw such amounts from the Trust Fund from time to time. For the avoidance of doubt, where the Trustees are liable to pay GST in respect of any taxable supply (within the meaning of the GST Act) they make under this Deed, the Trustees are entitled to recover an additional amount equal to the amount of that GST liability from the Trust Fund.

13.2 Acknowledgement

The Parties acknowledge that the Trustee's Remuneration as referred to in clause 13.1(a) includes remuneration and costs incurred by the Trustees in connection with or as a result of their duties, obligations and responsibilities as Administrators and/or Deed Administrators.

14 Indemnity

14.1 Scope of indemnity

The Trustees are entitled to be indemnified out of the Trust Fund for all actions, suits, proceedings, accounts, claims and demands arising out of or relating to this Deed which may be commenced, incurred by or made on the Trustees by any person and against all costs, charges and expenses incurred by the Trustees in respect of them, provided that the Trustees shall not be entitled to an indemnity in respect of any liabilities or demands to the extent that the indemnification contravenes the Corporations Act or the Trustee Act.

14.2 Continuing indemnity

This indemnity will take effect on and from the date of this Deed and will be without limitation as to time and will operate notwithstanding the removal of the Trustees (or any of them) and the appointment of any new trustee or the termination of the Trust for any reason.

14.3 Indemnity not to be affected or prejudiced

The indemnity under this clause will not:

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

14.4 Trustees' lien

The Trustees will be entitled to exercise a lien over the Trust Fund for all amounts in respect of which they are entitled to an indemnity from the Trust Fund.

15 Trustees not obliged to take action

The Trustees will not be obliged to take any action under this Deed until such time as there are sufficient funds in hand and immediately available to them to pay the Trustees' Remuneration and Trustees' Costs.

16 Termination**16.1 Termination of the Trust**

This Trust will terminate and the Trustees will resign as soon as reasonably practicable, on the earlier of:

- (a) distribution of the Final Dividend from the Trust Fund; and
- (b) upon the expiry of the perpetuity period referred to in clause 7.

16.2 Meeting to consider variation or termination of the Trust

The Trustees must convene a meeting of Trust Creditors to consider a resolution to vary this Deed or terminate this Trust if:

- (a) at any time prior to the termination of this Trust, the Trustees determine that it is no longer practicable or desirable to continue to implement or carry out this Deed; or
- (b) the Court so orders.

16.3 Termination of the Trust by Court order or resolution of Trust Creditors

- (a) This Trust will terminate if:
 - (i) a Court so orders; or

- (ii) the Trust Creditors pass a resolution terminating this Trust at a meeting duly convened pursuant to clause 11 or clause 16.2.
- (b) In the event the Trust terminates under this clause, the Trustees will apply to the Court for directions to be formulated in their sole discretion, depending on the relevant circumstances that have arisen at the time.

16.4 Report to Trust Creditors

Upon a meeting being convened pursuant to clause 11 or clause 16.2, the Trustees must send to each Trust Creditor prior to the meeting a report as to the state of affairs of the Trust accompanied by such financial statements as the Trustees thinks fit. The report must include:

- (a) a statement explaining the circumstances which have caused the Trustees to convene the meeting pursuant to clause 16.2; and
- (b) a statement that the Trust will be terminated if the Trust Creditors so resolve.

16.5 Previous operation of this Deed preserved

The termination or avoidance, in whole or in part, of this Trust does not affect the efficacy of any act done prior to the termination or avoidance.

16.6 Survival of clauses

Despite any other provision of this Deed, clauses 1 (*Definitions and interpretation*), 9 (*GST on Claims*), 12 (*Limitation of Liability*), 13 (*Remuneration*), 14 (*Indemnity*), 15 (*Trustees not obliged to take action*) 16 (*Termination*), 18 (*Notices*) and 19 (*General*) survive the termination of this Deed.

17 Resignation

A Trustee may resign at any time by giving not less than 5 Business Days' prior written notice to the Deed Company, unless the resignation would result in there being no remaining Trustees, in which event the Trustees must:

- (a) convene a meeting of Trust Creditors in accordance with clause 11 for the purpose of nominating a replacement trustee;
- (b) assign to a replacement trustee nominated by the Trust Creditors the Trustees' rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 17(b).

18 Notices

18.1 Notices

- (a) Unless expressly stated otherwise in this Deed and subject to clause 18.2, a notice, consent, approval, request, demand or other communication given under this Deed to or by a party to this Deed (**Notice**):
 - (i) must be in legible writing and in English;
 - (ii) must be addressed to the party to whom it is to be given (**Addressee**) at the address or email address set out below or to any other address or email address as notified by the Addressee for the purposes of this clause:

- (A) if to the Deed Company:
 - Address c/- FTI Consulting, Level 20, CP1,
345 Queen Street, Brisbane QLD 4000
 - Attention John Park and Joanne Dunn
 - Email john.park@fticonsulting.com;
joanne.dunn@fticonsulting.com
- (B) if to the Deed Administrators:
 - Address c/- FTI Consulting, Level 20, CP1,
345 Queen Street, Brisbane QLD 4000
 - Attention John Park and Joanne Dunn
 - Email john.park@fticonsulting.com;
joanne.dunn@fticonsulting.com
- (C) if to the Trustees:
 - Address c/- FTI Consulting, Level 20, CP1,
345 Queen Street, Brisbane QLD 4000
 - Attention John Park and Joanne Dunn
 - Email john.park@fticonsulting.com;
joanne.dunn@fticonsulting.com
- (D) if to the Deed Proponent:
 - Address c/- McCullough Robertson Lawyers, Level 11,
66 Eagle Street, Brisbane QLD 4000
 - Attention David O'Farrell and Rachel Zagorskis
 - Email dofarrell@mccullough.com.au;
rzagorskis@mccullough.com.au
- (iii) must be signed by or on behalf of the sender by the solicitor for, or any attorney, director, secretary or authorised agent of, the sender;
- (iv) must be either:
 - (A) delivered by hand or sent by pre-paid mail (by airmail if sent to or from a place outside Australia) to the Addressee; or
 - (B) sent by email to the Addressee's email address; and
- (v) is deemed to be received by the Addressee in accordance with clause 18.1(c).
- (b) **If:**
 - (i) a party changes its address and fails to notify the other parties of this change and the new address, delivery of Notices marked to the attention of the Addressee at that new address is deemed compliant with the notice obligations under this clause; and/or

- (ii) an individual named in clause 18.1(a)(ii) ceases to work in the role specified or ceases to work for the Addressee and the Addressee fails to notify the other parties of an alternative individual, delivery of Notices marked to the attention of an individual in the same or equivalent role at the Addressee is deemed compliant with the notice obligations under this clause.
- (c) Without limiting any other means by which a party may be able to prove that a Notice has been received by the Addressee, a Notice is deemed to be received:
 - (i) if delivered by hand, when delivered to the Addressee;
 - (ii) if sent by post, on the 3rd Business Day after the date of posting, or if to or from a place outside Australia, on the 7th Business Day after the date of posting; or
 - (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 30 minutes 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 (Addressee's time) it is deemed to be received at 9.00am on the following Business Day.

18.2 Notices sent by email

- (a) Notices sent by email need not be marked for attention in the way stated in clause 18.1. However, the email must state the first and last name of the sender.
- (b) Notices sent by email are taken to be signed by the named sender.

19 General

19.1 Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. A power or right may only be waived in writing, signed by the Parties to be bound by the waiver.

19.2 Severability

If any provision in this Deed is invalid under the law of any jurisdiction:

- (a) it is to be read down, if possible, such that it is enforceable to the extent that it is not invalid; or
- (b) failing that, it is to be severed from this Deed to the extent of the invalidity, without affecting the remaining provisions of this Deed; and
- (c) it should not affect the validity or enforceability of that provision or the other provisions of this Deed in any other jurisdiction.

19.3 Stamp duty and GST

All stamp duty and GST payable on or in respect of this Deed or the transactions contained in this Deed may be paid out of the Trust Fund.

19.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this Deed.

19.5 Entire agreement

Save that this Deed should be read together with the DOCA, this Deed is the sole and entire memorandum and agreement between the Parties to this Deed regarding the matters the subject of it. It supersedes any prior understandings, deeds, agreements, conditions and representations relating to those matters whether oral or written, express or implied.

19.6 Further assurances

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

19.7 Creditor's Power of Attorney

Each Trust Creditor irrevocably appoints each of the Trustees jointly and severally as its attorney to execute any document to give effect to the releases in clause 8.6.

19.8 Relationship of the Parties

Except as expressly provided in this Deed:

- (a) nothing in this Deed is intended to constitute a fiduciary relationship, employment relationship or an agency, partnership or trust; and
- (b) no Party has authority to bind any other Party.

19.9 Assignment

Unless expressed otherwise, rights arising out of or under this Deed are not assignable by a party without the prior written consent of the other parties.

19.10 Counterparts

- (a) This Deed may be signed in any number of counterparts and exchanged by email or other electronic means, and all those counterparts taken together constitute one and the same instrument.
- (b) An executed counterpart sent by email or other electronic means to a party is deemed to be a validly executed and exchanged counterpart as if it were the original.

19.11 Governing law and jurisdiction

- (a) This Deed is governed by the laws of the State of Queensland, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts in and of Queensland, Australia and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed.
- (c) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (b) above.

Execution page

EXECUTED as a deed

Deed Company

Signed, sealed and delivered for and on behalf of **Ellume Limited (ACN 141 767 660) (Subject to Deed of Company Arrangement)** by one of its joint and several Deed Administrators in the presence of:

.....
Signature of witness

.....
Signature of Deed Administrator

.....
Name of witness

.....
Name of Deed Administrator

Deed Administrators

Signed, sealed and delivered by **John Park** in
the presence of:

.....
Signature of witness

.....
Signature of **John Park**

.....
Name of witness

Signed, sealed and delivered by **Joanne Dunn**
in the presence of:

.....
Signature of witness

.....
Signature of **Joanne Dunn**

.....
Name of witness

Trustees

Signed, sealed and delivered by **John Park** in
the presence of:

.....
Signature of witness

.....
Signature of **John Park**

.....
Name of witness

Signed, sealed and delivered by **Joanne Dunn**
in the presence of:

.....
Signature of witness

.....
Signature of **Joanne Dunn**

.....
Name of witness

Deed Proponent

Signed, sealed and delivered by **Hough Consolidated Pty Ltd ACN 657 651 280** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....
Signature of director

.....
Signature of director / company secretary

.....
Name of director

.....
Name of director