

# ASX Announcement

WOTIF.COM HOLDINGS LIMITED ABN 41 093 000 456



wotif group

DATE: MONDAY 7 JULY 2014

## WOTIF GROUP AND THE EXPEDIA GROUP ENTER INTO SCHEME IMPLEMENTATION AGREEMENT

Wotif.com Holdings Limited (ASX:WTF) (**Wotif Group**) announces today that it has entered into a Scheme Implementation Agreement (**SIA**) with the Expedia group (NASDAQ:EXPE) under which it is proposed that Expedia will acquire 100% of the fully-diluted share capital<sup>1</sup> in Wotif Group by way of a Scheme of Arrangement (**Scheme**).

If the Scheme is implemented, Wotif Group shareholders will receive total cash consideration of A\$3.30 per Wotif Group share comprising of:

- A\$3.06 cash per share; plus
- a A\$0.24 special dividend paid by Wotif Group on or before the Scheme Implementation Date (**Special Dividend**), which is expected to be fully-franked.

The total cash consideration of A\$3.30 per share, excluding the potential benefit of franking credits associated with the Special Dividend, values Wotif Group's fully diluted equity at approximately A\$703.1 million and represents a:

- **30.7% premium** to the volume weighted average price (VWAP) of Wotif shares during the five trading days leading up to and including 4 July 2014 of A\$2.53;
- **33.3% premium** to the 1-month VWAP of A\$2.48; and
- **30.7% premium** to the 3-month VWAP of A\$2.53.

Those shareholders who can capture the full benefit of the franking credits associated with the Special Dividend will receive an additional benefit valued at A\$0.10 per share, which in addition to the A\$3.30 in cash per share provides to those shareholders a total implied value of A\$3.40 per share. Whether a shareholder will be able to capture the full benefit of the franking credits will depend on their personal tax circumstances.

Subject to an independent expert determining that the Scheme is in the best interests of Wotif Group shareholders, the directors of Wotif Group (who, including Mr Graeme Wood, collectively represent approximately 20.2% of fully-diluted shares outstanding) unanimously recommend and intend to vote shares in their control in favour of the proposed Scheme, in the absence of a superior proposal.

Further, Mr Andrew Brice and his associated entities (who collectively represent approximately 15.5% of fully-diluted shares outstanding) intend to vote shares in their control in favour of the proposed scheme, in the absence of a superior proposal and subject to an independent expert determining that the Scheme is in the best interests of Wotif Group shareholders.

<sup>1</sup> Fully-diluted shares on issue expected to be approximately 213.1 million upon implementation of the Scheme.

The Directors of Wotif Group and Mr Brice together represent approximately 35.7% of the fully-diluted shares outstanding of Wotif Group.

The two founders of Wotif Group, Mr Graeme Wood and Mr Andrew Brice have both entered into separate option agreements with Expedia, that enable Expedia, subject to conditions, to acquire up to 19.9% of the outstanding shares of Wotif Group. Expedia will provide the full terms of these options with its substantial holder notice as filed with ASX.

The proposed Scheme follows a comprehensive strategic review undertaken by Wotif Group and its advisers to explore all potential opportunities to maximise shareholder value, which included engaging with multiple parties that expressed an interest in potentially acquiring the Company. Having now concluded that strategic review, the Board is confident the proposed Scheme is in the best interests of all shareholders.

Mr Dick McIlwain, Chairman of Wotif Group, said:

*"After careful consideration of all options available to maximise shareholder value, the Wotif Group Board has unanimously concluded that a sale of the Company at a significant premium to current market value, and on terms which we believe reflect fair value, is in the best interests of all shareholders.*

*As a board we have carefully assessed the changing dynamics of the markets in which we operate, and the uncertainties and risks that we would face if we were to continue as an independent company. With that in mind we believe that shareholder value will be maximised, and that Wotif Group will be best positioned for the future, through the proposed transaction. The Expedia group is well placed to leverage and support our strong brands, operations, people and customer relationships in an online travel market that is becoming increasingly global.*

*On behalf of the board, I want to recognise and thank the entire Wotif Group team for all of their hard work over the last 14 years - we are exceptionally proud of what they've accomplished in building a very successful online travel company in the region."*

## **FY2014 Trading Update**

Wotif Group is planning to release its full-year financial results for the 12 months ended 30 June 2014 in mid-August. In the interim the full year financial results will be finalised and audited by Wotif Group's auditors. Based on management accounts and current estimates, Wotif Group expects that its FY14 revenue will be approximately A\$149 million, EBITDA approximately A\$71 million, NPAT approximately A\$43 million and EPS approximately A\$0.20.

## **Details of the Scheme**

The Scheme is subject to certain customary conditions precedent including Wotif Group shareholder and court approval. The Scheme is not conditional on further due diligence.

The SIA contains customary terms for a transaction of this nature, including "no shop" and "no talk" provisions, a "matching right" for the buyer to match any superior proposal put forward by a third party, and a break fee (**Break Fee**) of 1% of transaction value payable by Wotif Group in certain circumstances. Payment of the Break Fee by Wotif Group is not subject to the outcome of the Scheme meeting, and the Break Fee is not payable in the event that Wotif Group directors withdraw their recommendation for the Scheme as a result of the Independent Expert finding that the Scheme is not in the best interests of Wotif Group shareholders. The SIA is attached.



## Indicative Timetable and Next Steps

A Scheme Booklet containing information relating to the proposed acquisition, an Independent Expert's Report opining on whether the proposed Scheme is in the best interests of Wotif Group shareholders, reasons for the Directors' recommendation, and details of the Scheme meeting is expected to be sent to Wotif Group shareholders in late August after its preparation and review by ASIC.

Set out below is an indicative timetable for the Scheme:

Event	Expected Date
Lodge Scheme Booklet and Independent Expert's Reports with ASIC for Review	Mid August 2014
First Court Hearing Date	Late August 2014
Dispatch of Scheme Booklet	Late August 2014
Scheme Meeting	Late September 2014
Second Court Hearing Date	Late September 2014
Effective Date	Early October 2014
Record Date	Early October 2014
Implementation Date	Early October 2014

## Advisers

Wotif Group is being advised by Goldman Sachs and Clayton Utz.

## For further information please contact:

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## About Wotif.com Holdings Limited

Wotif Group operates leading online travel brands in the Asia Pacific region: Wotif.com, lastminute.com.au, travel.com.au, Asia Web Direct, LateStays.com, GoDo.com.au and Arnold Travel Technology, and a network of other travel content and destination websites, such as Phuket.com and Bangkok.com. Wotif.com launched in 2000, and listed on the Australian Securities Exchange in June 2006 as Wotif.com Holdings Limited, trading under the ASX code "WTF". The Company has offices in Australia, including its head office in Brisbane, with additional offices in China, Indonesia, Malaysia, New Zealand, Singapore, Thailand, the United Kingdom and Vietnam. For more information, visit [www.wotifgroup.com](http://www.wotifgroup.com).

## About the Expedia group

The Expedia group is one of the world's largest travel companies, with an extensive brand portfolio that includes leading online travel brands, such as:

- [Expedia.com](http://Expedia.com)®, the world's largest full service online travel agency, with localized sites in 31 countries
- [Hotels.com](http://Hotels.com)®, the hotel specialist with sites in more than 60 countries
- [Hotwire](http://Hotwire.com)®, a leading discount travel site that offers opaque deals in 12 countries throughout North America, Europe and Asia
- [Egencia](http://Egencia.com)®, the world's fifth largest corporate travel management company
- [eLong](http://eLong.com)™, the second largest online travel company in China
- [Venere.com](http://Venere.com)™, the online hotel reservation specialist in Europe
- [trivago](http://trivago.com)®, a leading online hotel metasearch company with sites in 45 countries
- [Expedia Local Expert](http://Expedia Local Expert.com)®, a provider of online and in-market concierge services, activities and experiences in hundreds of destinations worldwide
- [Classic Vacations](http://Classic Vacations.com)®, a top luxury travel specialist
- [Expedia® CruiseShipCenters](http://Expedia CruiseShipCenters.com)®, one of North America's leading retail cruise vacation experts
- [CarRentals.com](http://CarRentals.com)™, the premier car rental booking company on the web.

The company delivers consumers value in leisure and business travel, drives incremental demand and direct bookings to travel suppliers, and provides advertisers the opportunity to reach a highly valuable audience of in-market consumers through [Expedia Media Solutions](http://Expedia Media Solutions). Expedia also powers bookings for some of the world's leading airlines and hotels, top consumer brands, high traffic websites, and thousands of active affiliates through [Expedia® Affiliate Network](http://Expedia Affiliate Network). For corporate and industry news and views, visit us at [www.expediainc.com](http://www.expediainc.com) or follow us on Twitter @expediainc.

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CST: 2029030-50*



# Scheme implementation agreement

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WTF

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Bidder

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Guarantor

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Our reference 12293/12261/80154501

**Contents**

**1. Definitions and interpretation ..... 1**

1.1 Definitions ..... 1

1.2 Best and reasonable endeavours ..... 10

1.3 Business Day ..... 10

1.4 Interpretation ..... 10

**2. Obligations in relation to Scheme ..... 11**

2.1 WTF to propose Scheme ..... 11

2.2 WTF and Bidder to Implement Scheme ..... 11

**3. Conditions precedent ..... 12**

3.1 Conditions ..... 12

3.2 General obligations in relation to Conditions ..... 15

3.3 Notice in relation to satisfaction of Conditions ..... 15

3.4 Waiver of Conditions ..... 15

3.5 Consultation on failure of Conditions ..... 16

3.6 Failure to agree ..... 16

**4. Implementation of Scheme ..... 17**

4.1 WTF's obligations ..... 17

4.2 Bidder's obligations ..... 20

4.3 Guarantor's obligations ..... 21

4.4 Dispute as to Explanatory Memorandum ..... 21

4.5 Payment of dividends ..... 22

4.6 Reconstitution of WTF Board ..... 22

4.7 Removal of WTF from official list of ASX ..... 22

4.8 Responsibility statement ..... 22

**5. Scheme Consideration ..... 22**

5.1 Consideration ..... 22

**6. Conduct of business and co-operation ..... 23**

6.1 Conduct of WTF's business ..... 23

6.2 Access ..... 24

**7. Recommendation, intentions and announcements ..... 25**

7.1 WTF Board Recommendation and Voting Intention ..... 25

7.2 Confirmation ..... 26

7.3 Announcement ..... 26

7.4 Further public announcements ..... 26

7.5 Promotion of Scheme ..... 26

**8. Exclusivity arrangements ..... 26**

8.1 Ceased discussions ..... 26

8.2 No shop ..... 27

8.3 No talk and no due diligence ..... 27

8.4 Notice of Competing Proposal ..... 27

8.5 Normal provision of information ..... 27

8.6 Matching Right ..... 28

8.7 Acknowledgment ..... 28

**9. Break Fee ..... 28**

9.1 Rationale ..... 28

9.2 Break Fee ..... 29

9.3 Break Fee payment ..... 29

9.4 Compliance with law ..... 30

9.5 WTF's limitation of liability ..... 30

9.6 No Break Fee if Scheme Effective ..... 30

9.7	Survival.....	30
<b>10.</b>	<b>Liability of directors and employees.....</b>	<b>31</b>
10.1	Liability of directors and employees .....	31
10.2	Directors' and officers' insurance.....	31
10.3	Obligations in relation to directors' and officers' insurance .....	31
10.4	Directors' and officers' indemnities .....	31
10.5	Benefit.....	31
<b>11.</b>	<b>Representations, warranties and indemnities .....</b>	<b>32</b>
11.1	Representations and warranties by Bidder .....	32
11.2	Bidder indemnity .....	33
11.3	Warranty certificate.....	33
11.4	Warranties by Guarantor .....	33
11.5	Representations and warranties by WTF .....	33
11.6	Qualification of WTF Warranties.....	36
11.7	WTF indemnity.....	36
11.8	WTF warranty certificate.....	36
11.9	Notifications .....	37
11.10	Status of representations and warranties .....	37
11.11	Status and enforcement of indemnities .....	37
<b>12.</b>	<b>Confidentiality and communications .....</b>	<b>37</b>
12.1	Confidentiality Deed.....	37
12.2	Survival of obligations.....	37
12.3	Disclosure on termination of agreement.....	37
<b>13.</b>	<b>Termination.....</b>	<b>37</b>
13.1	Termination.....	37
13.2	Effect of termination.....	39
13.3	Remedies.....	39
<b>14.</b>	<b>Guarantee and indemnity .....</b>	<b>40</b>
14.1	Guarantee .....	40
14.2	Indemnity .....	40
14.3	Nature and preservation of liability .....	40
14.4	Waiver of rights.....	40
14.5	Restrictions on Guarantor's dealings.....	40
<b>15.</b>	<b>Notices .....</b>	<b>40</b>
15.1	How notice to be given .....	40
15.2	When notice taken to be received .....	42
<b>16.</b>	<b>GST .....</b>	<b>43</b>
16.1	Interpretation.....	43
16.2	Reimbursements and similar payments .....	43
16.3	GST payable.....	43
<b>17.</b>	<b>Entire agreement.....</b>	<b>44</b>
<b>18.</b>	<b>General .....</b>	<b>44</b>
18.1	No representation or reliance .....	44
18.2	Amendments.....	44
18.3	Assignment .....	44
18.4	Consents.....	44
18.5	Costs.....	44
18.6	Counterparts .....	44
18.7	Further acts and documents.....	44
18.8	Remedies.....	45
18.9	No merger.....	45
18.10	Severance.....	45

18.11	Stamp duties .....	45
18.12	Waivers .....	45
18.13	Discretion in exercising rights .....	45
18.14	Partial exercising of rights .....	46
18.15	No liability for loss .....	46
18.16	Approvals and consents .....	46
18.17	Conflict of interest .....	46
18.18	Indemnities .....	46
18.19	Enforceability .....	46
18.20	Construction.....	46
<b>19.</b>	<b>Governing law, jurisdiction and service of process.....</b>	<b>46</b>
19.1	Governing law .....	46
19.2	Jurisdiction .....	46
19.3	Service of process .....	47
	<b>Schedule 1 Timetable .....</b>	<b>48</b>
	<b>Annexure A Scheme.....</b>	<b>50</b>
	<b>Annexure B Deed Poll .....</b>	<b>51</b>



## Scheme implementation agreement dated 5 July 2014

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- Parties**
- Wotif.com Holdings Limited ACN 093 000 456** of Level 1, 7 Baroona Road, Milton QLD 4064 (**WTF**)
- Emu Australia Investments Pty Limited ACN 600 494 086** of Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000 (**Bidder**)
- Expedia, Inc.** of 333 108<sup>th</sup> Avenue NE, Bellevue, WA 98004 (**Guarantor**)

### Background

- A. Bidder proposes that it will acquire all of the WTF Shares pursuant to a scheme of arrangement under section 411 of the Corporations Act between Bidder and the holders of WTF Shares.
- B. WTF has agreed to propose the Scheme and issue the Explanatory Memorandum at the request of Bidder and Guarantor, and WTF, Bidder and Guarantor have agreed to implement the Scheme on the terms and conditions of this agreement.
- C. The Guarantor has agreed to guarantee all of the obligations and liabilities of Bidder under each Transaction Document. The Guarantor is the ultimate holding company of Bidder.

### Operative provisions

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## 1. Definitions and interpretation

### 1.1 Definitions

In this agreement:

**ACCC** means the Australian Competition and Consumer Commission.

**Announcement** means an announcement by WTF in the form agreed by WTF and Bidder (acting reasonably), prior to signing of this agreement.

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

**Associate** has the meaning given in section 12 of the Corporations Act.

**ASX** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

**Beneficiary** means a present or former director or officer of the WTF Group in respect of whom the Policy applies.

**Bid Process** means the sale process undertaken by WTF Group through which it selected Bidder to consummate the Transaction.

**Bidder Board** means the board of directors of Bidder.

**Bidder Group** means Bidder and each of its Subsidiaries.

**Bidder Indemnified Parties** means Bidder and its Related Bodies Corporate and their respective Representatives.

**Bidder Information** means:

- (a) all information regarding Bidder and its Related Bodies Corporate and the Scheme Consideration that is required by the Corporations Act and the Regulatory Guides to be included in the Explanatory Memorandum including all the information that would be required under sections 636(1)(c), (f), (h), (i), (k), (l) and (m) of the Corporations Act to be included in a bidder's statement if Bidder were offering the Scheme Consideration as consideration under a takeover bid; and
- (b) any other information that the parties agree is Bidder Information for the purposes of this agreement, but does not include the WTF Information and the Independent Expert's Report.

**Bidder Warranties** means the warranties made by Bidder set out in clause 11.1.

**Break Fee** means an amount equal to 1% of the aggregate Scheme Consideration calculated as follows:

$$1\% \times (\text{Scheme Consideration} + \text{WTF Discretionary Special Dividend} + \text{WTF Final Dividend}) \times \text{Scheme Share Number.}$$

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Australia or the United States and on which banks are open for business generally in Brisbane and New York.

**Competing Proposal** means any proposal, agreement, arrangement or transaction, which, if entered into or completed, would mean a Third Party (either alone or together with any Associate) would:

- (a) directly or indirectly acquire a Relevant Interest in, or have the right to acquire, a legal, beneficial or economic interest in, or control of, more than 20% of WTF Shares;
- (b) acquire Control of WTF;
- (c) otherwise acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an exclusive economic interest in all or a material part of WTF's business or assets or the business or assets of the WTF Group;
- (d) otherwise acquire (whether directly or indirectly) WTF; or
- (e) enter into any agreement, arrangement or understanding requiring WTF to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of takeover bid, scheme of arrangement, security holder approved acquisition, capital reduction or buy back, sale or purchase of shares, securities or assets, global assignment of assets and liabilities, voting agreements or proxies, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), or other transaction or arrangement.

**Condition** means each condition specified in clause 3.1.

**Confidentiality Deed** means the Confidentiality Deed between Expedia, Inc. and WTF dated on or about 29 April 2014.

**Control** has the meaning given in section 50AA of the Corporations Act.

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

**Court** means the Federal Court, Queensland registry or such other court of competent jurisdiction as WTF notifies Bidder in writing.

**Deed Poll** means a deed poll to be executed by Bidder and the Guarantor in favour of the Scheme Shareholders, substantially in the form set out in Annexure B or in such other form as WTF and Bidder agree in writing.

**Effective** means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

**Effective Date** means the date on which the Scheme becomes Effective

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**End Date** means the latest to occur of:

- (a) 28 February 2015; and
- (b) such other date agreed in writing between WTF and Bidder.

**Excluded Shareholder** means the Bidder and any WTF Shareholder who is an associate of the Bidder.

**Exclusivity Period** means the period commencing on the date of this agreement and ending on the earliest of:

- (a) the End Date;
- (b) the date this agreement is terminated in accordance with its terms; and
- (c) the Implementation Date.

**Explanatory Memorandum** means the explanatory memorandum to be prepared by WTF pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this agreement and to be dispatched to the WTF Shareholders.

**fairly disclosed** means disclosed in sufficient detail so as to enable a reasonable and sophisticated buyer to identify the nature and scope, budgeted cost (if any) and the intended timing (where applicable) of the relevant matter, event or circumstance (for the avoidance of doubt, this definition does not require that Bidder be able to identify the budgeted cost where such budget has not been prepared and does not otherwise exist.)

**FIRB** means the Foreign Investment Review Board.

**First Court Date** means the first day of the hearing of an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Guarantor Board** means the board of directors of Guarantor.

**Guarantor Warranties** means the warranties set out in clause 11.1 (but on the basis that each reference to Bidder is taken to be a reference to the Guarantor).

**Implementation Date** means the date which is 3 Business Days after the Record Date or such other date as WTF and Bidder agree in writing.

**Impugned Break Fee** has the meaning given to that term in clause 9.4.

**Indemnified Loss** means, in relation to any fact, matter or circumstance, all losses, costs, damages, expenses and other liabilities arising out of or in connection with that fact, matter or circumstance including all legal and other professional expenses on a solicitor client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this agreement).

**Independent Expert** means a reputable independent expert to be engaged by WTF to express an opinion on whether the Scheme is in the best interests of the WTF Shareholders.

**Independent Expert's Report** means the report from the Independent Expert in respect of the Scheme, and any update of that report.

**Insolvency Event** means in relation to an entity:

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of the entity being appointed;
- (c) a court making an order for the winding up of the entity;
- (d) an administrator of the entity being appointed;
- (e) the entity ceasing, or threatening to cease, to carry on the business that it conducts as at the date of this agreement;
- (f) the entity being or becoming unable to pay its debts when they fall due;
- (g) the entity executing a deed of company arrangement;
- (h) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part, of the property of the entity;
- (i) the entity being deregistered as a company or otherwise dissolved; or
- (j) anything having a substantially similar effect to any event or circumstance referred to in subparagraphs (a) to (i) above happens in respect of the entity under the law of any jurisdiction.

**Listing Rules** means the official listing rules of the ASX.

**Material Contract** means a contract or commitment with payments by a member of the WTF Group over the 12 months period ending on 30 June 2014 in excess of \$2 million or for a term of one year or more, any joint venture or partnership agreement, or any other contract that is otherwise material to the business or operations of the WTF Group.

**Net Assets** means the net assets for the Bidder Group or the WTF Group (as applicable) calculated in accordance with the accounting policies and practices applied by the Bidder Group or the WTF Group (as applicable) in preparing the financial statements as at 31 December 2013, as stated and disclosed in those financial statements filed with the ASX.

**NZCC** means the New Zealand Commerce Commission.

**Option** means an option or performance right granted under the WTF Executive Share Options Plan to acquire a WTF Share subject to the terms of such plan.

**Policy** means the WTF Group directors and officers insurance policy in effect at the date of this agreement.

**Recommendation** has the meaning in clause 7.1(a)(i).

**Record Date** means 5.00 pm (Brisbane time) on the date which is 3 Business Days after the Effective Date or such other time and date agreed in writing between Bidder and WTF.

**Regulator's Draft** has the meaning given in clause 4.1(i).

**Regulatory Approval** means any approval of a Regulatory Authority to the Scheme or any aspect of it which the parties, acting reasonably, determine is necessary or desirable to implement the Scheme.

**Regulatory Authority** includes:

- (a) ASX, ACCC, ASIC and FIRB;
- (b) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (c) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

**Regulatory Guides** means all regulatory guides published by ASIC and in force at the date of this agreement.

**Regulatory Review Period** means the period from the date on which WTF provides the Regulator's Draft to ASIC in accordance with clause 4.1(l) to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

**Related Body Corporate** of a corporation means a related body corporate of that corporation within the meaning of section 50 of the Corporations Act.

**Relevant Interest** has the meaning given in the Corporations Act.

**Representatives** means, in relation to a party, all directors, officers, employees, professional advisers and agents of the party or of its Related Bodies Corporate.

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between WTF and the Scheme Shareholders substantially in the form set out in Annexure A or in such other form as WTF and Bidder agree in writing.

**Scheme Consideration** means, for each Scheme Share, \$3.30 less the aggregate amount of the WTF Discretionary Special Dividend and/or the WTF Final Dividend (if any) paid in respect of each WTF Share.

**Scheme Meeting** means the meeting of WTF Shareholders to be convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act.

**Scheme Share** means a WTF Share on issue as at the Record Date.

**Scheme Share Number** means the total number of Scheme Shares on issue as at the Record Date.

**Scheme Shareholder** means a person who holds WTF Shares as at the Record Date.

**Second Court Date** means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Security Interest** has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

**Specified Events** means an event, occurrence or matter that:

- (a) occurs after the date of this agreement;
- (b) occurs before the date of this agreement but is only announced or publicly disclosed after the date of this agreement; or
- (c) will occur after the date of this agreement and which has not been publicly announced prior to the date of this agreement.

**Standstill Obligations** means any undertaking given by a party to WTF that that party will not, directly or indirectly:

- (a) acquire, agree to acquire or make an invitation, offer or proposal to acquire any securities of WTF or any option or other right to acquire securities of WTF, including by way of issue;
- (b) enter into any arrangements in relation to WTF or any securities of WTF that would result in the party acquiring a Relevant Interest in, or becoming an Associate of a person that holds a Relevant Interest in, securities of WTF;
- (c) enter into any agreement or arrangement that confers rights in relation to securities of WTF affording the party or its Associates an economic exposure to WTF or to movements in the share price of those securities (including any cash-settled equity swap or contract for difference or other derivative);
- (d) enter into or publicly propose to enter into, directly or indirectly, any arrangement for a merger or business combination involving WTF or any Related Body Corporate of WTF;
- (e) other than in the ordinary course of business, acquire, agree to acquire or make an invitation, offer or proposal to acquire any assets of WTF or a Related Body Corporate of WTF;
- (f) solicit proxies from shareholders of WTF, or otherwise seek to influence or control the management or policies of WTF;
- (g) announce an intention to do any of the things referred to in paragraphs (a) to (f); or
- (h) advise, assist, induce or encourage any other person to do any of the things referred to in paragraphs (a) to (g).

**Subsidiary** means a subsidiary within the meaning given to that term in the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal of the kind referred to in any of paragraphs (a), (b), (c) or (d) of the definition of that term (and not resulting from a breach of any of WTF's obligations under clause 8) which in the determination of the WTF Board, acting in good faith, and after receiving advice from its external legal and external financial advisors, would, if it is completed, be more favourable to WTF Shareholders (as a whole) than the Transaction, taking into account all aspects of the Competing Proposal relative to the Transaction, including:

- (a) the value of the consideration payable to WTF Shareholders under the Competing Proposal (as compared to the consideration available under the Transaction);

- (b) the conditions of the Competing Proposal, the likelihood of those conditions being satisfied and the level of certainty in respect of the funding required for the Competing Proposal;
- (c) the identity, reputation and financial standing of the party making the Competing Proposal; and
- (d) the likely timing required to implement or complete the Competing Proposal.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax (including royalty withholding tax), impost or withholding obligation of whatever nature, whether direct or indirect, (including any tax payable under a country's foreign source income attribution or anti-tax-deferral rules) by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction but excluding any stamp duty payable on any transfer of the WTF Shares.

**Third Party** means a person other than Bidder, WTF, or their respective Related Bodies Corporate.

**Timetable** means the indicative timetable in relation to the Scheme set out in Schedule 1, or such other indicative timetable as WTF and Bidder agree in writing.

**Trading Day** has the meaning given to that term in the Listing Rules.

**Transaction** means the acquisition by Bidder of the Scheme Shares for the Scheme Consideration pursuant to the Scheme.

**Transaction Documents** means:

- (a) this agreement;
- (b) the Scheme; and
- (c) the Deed Poll.

**Voting Intention** has the meaning in clause 7.1(a)(ii).

**WTF Board** means the board of directors of WTF.

**WTF Director** means a director of WTF.

**WTF Discretionary Special Dividend** means a fully franked cash dividend, which together with any WTF Final Dividend does not exceed 24 cents per WTF Share, provided that the franking account of WTF will not be in deficit after the payment of any such dividends.

**WTF Due Diligence Material** means the information disclosed by or on behalf of WTF and its Subsidiaries to Bidder and its advisers prior to the Bidder signing this agreement in the Intralinks online data room established for the purposes of the Transaction.

**WTF Final Dividend** means a fully franked cash dividend, which together with the WTF Discretionary Special Dividend does not exceed 24 cents per WTF Share, to be paid by WTF between the date of this agreement and the Implementation Date in respect of the year ended 30 June 2014, provided that the franking account of WTF will not be in deficit after the payment of any such dividends.

**WTF Group** means WTF and each of its Subsidiaries.

**WTF Information** means all information included in the Explanatory Memorandum, other than Bidder Information and the Independent Expert's Report.

**WTF Indemnified Parties** means WTF and its Related Bodies Corporate and their respective Representatives.

**WTF Material Subsidiary** means any Subsidiary material to the WTF Group as a whole or any operating Subsidiary.

**WTF Prescribed Occurrence** means the occurrence of, or agreement to do, any of the following events:

- (a) WTF converts all or any of its securities into a larger or smaller number of securities;
- (b) WTF or another member of the WTF Group (other than a wholly-owned Subsidiary of WTF) resolves to reduce its capital in any way or resolves to buy-back, re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares
- (c) any member of the WTF Group issues shares, or grants an option over its shares or agrees to make such an issue or grant such an option other than in accordance with Options in existence as of 11:59pm on the day immediately preceding the date of this agreement;
- (d) any member of the WTF Group issues, or agrees to issue, convertible notes or any other security convertible into shares or debt securities;
- (e) any member of the WTF Group agrees to pay, declares or pays a dividend or any other form of distribution (whether in cash or in kind) of profits or return of capital to its members, other than:
  - (i) the declaration and payment by WTF of the WTF Discretionary Special Dividend or any WTF Final Dividend; or
  - (ii) the declaration and payment by a member of the WTF Group of a dividend where the recipient of that dividend is WTF or a wholly-owned Subsidiary of WTF;
- (f) any member of the WTF Group disposes of the whole, or a substantial part, of its business or property;
- (g) any member of the WTF Group creates any Encumbrance over, or declares itself the trustee of, the whole, or a substantial part, of its business or property;
- (h) an Insolvency Event occurs in relation to WTF or any WTF Material Subsidiary;
- (i) any member of the WTF Group acquires or disposes of, or agrees to acquire or dispose of, any assets, business or shares outside of the ordinary course of business of the WTF Group that (i) is material to the business or (ii) would require the approval of, or would customarily be referred to, the WTF Board under existing delegations and practices;
- (j) loss or revocation of any licence or authorisation held by a member of the WTF Group which is material to enable WTF to conduct its business;
- (k) WTF adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (l) any member of the WTF Group:
  - (i) enters, or proposes to enter, into or amends, in any material respect, any joint venture, partnership or similar agreement;



- (ii) enters, or proposes to enter, into or amends any other agreement with any person other than a member of the WTF Group involving or reasonably likely to involve expenditure or other commitment on the part of a member of the WTF Group in excess of \$2 million (other than in the ordinary course);
- (m) WTF or any of its Subsidiaries:
  - (i) other than as disclosed to Bidder in the WTF Due Diligence Materials, increases the remuneration of, or otherwise varies the employment arrangements with, any of its directors or employees (other than ordinary course increases, not to exceed the higher of \$10,000 per individual and, for no more than 5 individuals', 20% of the individual's respective remuneration as disclosed in the WTF Due Diligence Material, and \$2 million in the aggregate);
  - (ii) other than in respect of any Options as contemplated by this agreement, accelerates the rights of any of its directors or employees to compensation or benefits of any kind; or
  - (iii) other than as disclosed to Bidder in the WTF Due Diligence Materials, pays any of its directors or employees a termination or retention payment (other than in accordance with an existing contract in place as at the date of this agreement or other than payments to employees other than officers in an amount not to exceed \$15,000 per individual (plus up to \$30,000 for 2 individuals) and \$500,000 in the aggregate);
- (n) any member of the WTF Group (other than in the ordinary course):
  - (i) enters into any contract or commitment involving potential revenue or expenditure (including termination payments or break fees) of more than \$2 million over the term of the contract or commitment;
  - (ii) (without limiting the foregoing) enters into any contracts or commitments relating to the same matter or project involving revenue or expenditure of more than \$2 million in aggregate over the term of the contract or commitment;
  - (iii) terminates or amends in any material manner any Material Contract;
  - (iv) waives in writing any material Third Party default; or
  - (v) accepts as a settlement or compromise of a material matter (relating to an amount in excess of \$1 million) less than the full compensation due to a member of the WTF Group;
- (o) any member of the WTF Group raises or borrows any new financial indebtedness from a party other than a member of the WTF Group (for the avoidance of doubt, new financial indebtedness does not include WTF drawing down under its existing facilities as disclosed in the WTF Due Diligence Materials in the ordinary course in an aggregate amount not to exceed \$2 million);
- (p) WTF or another member of the WTF Group makes, changes or revokes any material tax election, changes any material method of Tax accounting or adopts any annual accounting period, settles any Tax proceeding for a material amount of taxes, prepares or files any material Tax return in a manner inconsistent with past practice, enters into any agreement with any taxing authority, files any amended Tax return or surrenders any claim for a material Tax refund;

- (q) any event outside the ordinary course of business of WTF in respect of capital expenditure to the extent it is material; and
- (r) any reconstruction or reorganisation of the WTF Group,  
other than an event;
- (s) contemplated or required to be undertaken or procured by the WTF Group pursuant to the Transaction Documents (including, but not limited to, the payment by WTF of the WTF Discretionary Special Dividend, any WTF Final Dividend and the vesting or exercise or cancellation of the Options);
- (t) to which Bidder has provided its prior written consent; or
- (u) fairly disclosed in the WTF Due Diligence Material or any announcement to the ASX made by WTF, since 30 June 2013 regarding the WTF Group prior to the parties entering into this agreement, except to the extent the parties otherwise agree.

**WTF Share Register** means the register of members of WTF maintained by or on behalf of WTF in accordance with section 168(1) of the Corporations Act.

**WTF Share Registry** means Computershare Investor Services Pty Limited (ACN 078 279 277).

**WTF Shareholder** means a person who is registered in the WTF Share Register as a holder of WTF Shares.

**WTF Shares** means fully paid ordinary shares in the capital of WTF.

**WTF Warranties** means the warranties made by WTF set out in clause 11.4.

## 1.2 Best and reasonable endeavours

Any provision of this agreement which requires a party to use best endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation:

- (i) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person in the form of an inducement to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing) or in circumstances that are commercially onerous or unreasonable in the context of this agreement; or
- (j) to commence any legal action or proceeding against any person,

except where that provision expressly specifies otherwise.

## 1.3 Business Day

If the day on which any act to be done under this agreement is a day other than a Business Day, that act must be done on the immediately preceding Business Day except where this agreement expressly specifies otherwise.

## 1.4 Interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to **\$** or **dollar** is to Australian currency;
- (k) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this agreement;
- (l) a reference to a date or time is to that date or time in Brisbane, Australia; and
- (m) this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

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## 2. Obligations in relation to Scheme

### 2.1 WTF to propose Scheme

WTF agrees to propose the Scheme on and subject to the terms and conditions of this agreement. Bidder agrees to assist WTF to propose the Scheme on and subject to the terms and conditions of this agreement.

### 2.2 WTF and Bidder to Implement Scheme

WTF and Bidder agree to implement the Scheme on and subject to the terms and conditions of this agreement and to use their best endeavours to do so as soon as practicable and in accordance with the Timetable.

### 3. Conditions precedent

#### 3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective, and the obligations of the parties under clause 4 are not binding, until each of the Conditions listed in the first column of the following table are either satisfied or waived in accordance with clause 3.4:

Condition	Right to benefit & waive	Responsibility to satisfy
(a) <b>(No restraint)</b> no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint preventing any of the transactions contemplated by this agreement is in effect as at 8.00 am on the Second Court Date;	Bidder and WTF	Bidder and WTF
(b) <b>(Regulatory Approvals):</b> <ul style="list-style-type: none"> <li data-bbox="475 981 986 1301">(i) <b>(ASIC and ASX consents)</b> before 8.00 am on the Second Court Date, ASIC and ASX issue or provide consents or approvals or have done such other acts which Bidder and WTF agree are reasonably necessary to implement the Scheme. If such consents, approvals or doing of other acts are subject to conditions those conditions must be acceptable to Bidder and WTF, acting reasonably;</li> <li data-bbox="475 1330 986 1592">(ii) <b>(ACCC clearance)</b> the ACCC has indicated to Bidder in writing that it does not intend to object to the Scheme or transactions contemplated by the Scheme as being likely to contravene section 50 of the Competition and Consumer Act, which is in a form that is acceptable to the Bidder (acting reasonably);</li> <li data-bbox="475 1621 986 1861">(iii) <b>(NZCC clearance)</b> the NZCC has given clearance under section 66 of the New Zealand Commerce Act 1986 in relation to the Scheme or transactions contemplated by the Scheme, which is in a form that is acceptable to the Bidder (acting reasonably);</li> <li data-bbox="475 1890 986 1995">(iv) <b>(FIRB Approvals):</b> if FIRB approval is required by law, that before 8.00am on the Second Court Date, one of the following has occurred:</li> </ul>	Bidder and WTF	Bidder and WTF

Condition	Right to benefit & waive	Responsibility to satisfy
<p>A. FIRB has provided written notice issued by or on behalf of the Treasurer of the Commonwealth of Australia stating that there are no objections under the Australian Government's foreign investment policy to the Scheme;</p> <p>B. the period provided under the <i>Foreign Acquisitions and Takeovers Act 1975 (Cwlth) (FATA)</i> prohibiting the Scheme from proceeding under the Transaction Documents has expired, without an order prohibiting the Scheme being made under FATA; or</p> <p>(i) if an interim order is made under FATA to prohibit the Scheme from proceeding under the Transaction Documents, the subsequent period for making a final order under FATA has elapsed, without any such final order being made,</p> <p>If FIRB gives its approval subject to conditions those conditions must be acceptable to Bidder and WTF, acting reasonably;</p> <p>(v) <b>(all other Regulatory Approvals)</b> before 8.00 am on the Second Court Date, the Bidder obtains any other necessary Regulatory Approvals;</p>		
<p>(c) <b>(WTF Prescribed Occurrence)</b> no WTF Prescribed Occurrence has occurred or becomes known to Bidder after the date of this agreement and before 8.00 am on the Second Court Date;</p>	Bidder	WTF
<p>(d) <b>(WTF Warranties)</b> before 8.00 am on the Second Court Date, the WTF Warranties:</p> <p>(i) that are qualified as to materiality, are true and correct; and</p> <p>(ii) that are not so qualified, are true and correct in all material respects,</p> <p>as at the time they are given;</p>	Bidder	WTF

Condition	Right to benefit & waive	Responsibility to satisfy
<p>(e) <b>(Bidder Warranties)</b> before 8.00 am on the Second Court Date, the Bidder Warranties:</p> <ul style="list-style-type: none"> <li>(i) that are qualified as to materiality, are true and correct; and</li> <li>(ii) that are not so qualified, are true and correct in all material respects,</li> </ul> <p>as at the time they are given;</p>	WTF	Bidder
<p>(f) <b>(Guarantor Warranties)</b>; before 8.00 am on the Second Court Date, the Guarantor Warranties:</p> <ul style="list-style-type: none"> <li>(i) that are qualified as to materiality, are true and correct; and</li> <li>(ii) that are not so qualified, are true and correct in all material respects,</li> </ul> <p>as at the time they are given;</p>	WTF	Guarantor
<p>(g) <b>(Shareholder approval)</b> WTF Shareholders (other than Excluded Shareholders) approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;</p>	None	WTF
<p>(h) <b>(Court approval)</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;</p>	None	WTF
<p>(i) <b>(Independent Expert's Report)</b> before the date the Explanatory Memorandum is lodged with ASIC, the Independent Expert issues a report that concludes that the Scheme is in the best interests of Scheme Shareholders;</p>	WTF	WTF
<p>(j) <b>(execution of Deed Poll)</b> before the date of sending the Explanatory Memorandum to relevant WTF Shareholders, Bidder validly signs, seals and delivers the Deed Poll;</p>	WTF	Bidder
<p>(k) <b>(Options)</b> all outstanding Options are:</p> <ul style="list-style-type: none"> <li>(i) only to the extent the exercise price of an Option equals or is less than the Scheme Consideration, vested and converted into WTF Shares on or prior to 5.00pm on the Record Date; or</li> <li>(ii) cancelled, or agreements to acquire or cancel them (effective as of 8:00am on the Second Court Date) have been executed by each of the holders of Options and WTF, before 8.00am on the Second Court Date.</li> </ul>	Bidder	WTF

### 3.2 General obligations in relation to Conditions

Without prejudice to any other obligations of the parties under this agreement, in respect of any given Condition:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition, that party must use its best endeavours to procure that that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
- (b) if both parties are specified in the third column of a table in clause 3.1 opposite that Condition, both parties must, to the extent that it is within their respective control or influence, use their best endeavours to procure that that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require); and
- (c) each party must, to the extent that it is within its respective control or influence, use its best endeavours to procure that there is no occurrence that would prevent the Condition being satisfied and no party shall take any action that will or is likely to hinder or prevent the satisfaction of the Condition except to the extent that such action is required to be done or procured pursuant to the Transaction Documents or is required by law.

### 3.3 Notice in relation to satisfaction of Conditions

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of:
  - (i) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; or
  - (ii) any fact or circumstance that it becomes aware of which results in, or may result in, that Condition becoming incapable of satisfaction or may result in that Condition not being satisfied in accordance with its terms; and
- (c) in relation to any Condition, immediately notify the other party in writing of a breach or non-fulfilment of a Condition or any occurrence or event that will prevent a Condition from being satisfied and where a party is entitled to waive that Condition upon receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clause 3.4 as soon as reasonably practicable, (in any event before 5.00 pm on the Business Day before the Second Court Date) as to whether the party waives the breach or non-fulfilment of the Condition resulting from the occurrence or event.

### 3.4 Waiver of Conditions

- (a) A Condition is only for the benefit of:
  - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, that party; or

- (ii) if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, both parties.
- (b) A Condition may be waived and may only be waived:
  - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, by that party by written notice to the other party; or
  - (ii) if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, by written agreement between the parties.
- (c) A party entitled to waive or to agree to waive a Condition under this clause 3.4 may do so in its absolute discretion subject to the provision of written notice to the other party.
- (d) A party that waives or agrees to waive a Condition is not prevented from bringing a claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

### 3.5 Consultation on failure of Conditions

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition;
- (b) there is an act, failure to act or occurrence which will, or which either party becomes aware will prevent a Condition being satisfied by the time or date specified in this agreement for the satisfaction of the Condition (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement); or
- (c) the Scheme has not become Effective by the End Date,

then the parties must consult in good faith with a view to determining whether:

- (d) the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

### 3.6 Failure to agree

- (a) If the parties are unable to reach agreement under clause 3.5 within 5 Business Days of the relevant event in paragraphs (a) to (c) of clause 3.5 (or any shorter period ending at 5.00pm on the day before the Second Court Date):



- (i) subject to clause 3.6(a)(ii), either party may terminate this agreement (and such termination will be in accordance with termination event (i) in the table in clause 13.1(b)); or
  - (ii) if a Condition may be waived and exists for the benefit of one party only, that party only may waive that Condition or terminate this agreement (and such termination will be in accordance with termination event (i) in the table in clause 13.1(b)),
  - (iii) in each case before 8.00am on the Second Court Date.
- (b) A party will not be entitled to terminate this agreement pursuant to this clause 3.6 if the relevant Condition has not been satisfied or agreement cannot be reached as a result of:
- (i) a breach of this agreement by that party; or
  - (ii) a deliberate act or omission of that party for the purpose of frustrating satisfaction of the Condition.

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## 4. Implementation of Scheme

### 4.1 WTF's obligations

WTF must take all steps reasonably necessary to implement the Scheme as soon as is reasonably practicable after the date of this agreement and so as to complete the Transaction substantially in accordance with the Timetable, and in particular WTF must:

- (a) **(Explanatory Memorandum)** as soon as practicable after the date of this agreement, prepare the Explanatory Memorandum (excluding Bidder Information, and the Independent Expert's Report) in accordance with all applicable laws and in particular the requirements of the Corporations Act, the Corporations Regulations, the Listing Rules and the Regulatory Guides;
- (b) **(Review of Bidder Information)** as soon as practicable after receiving a draft of Bidder Information pursuant to clause 4.2(a), review and provide comments on the form and content of Bidder Information to Bidder;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Explanatory Memorandum;
- (d) **(Provide draft Explanatory Memorandum to Bidder)** provide drafts of Explanatory Memorandum to Bidder, consult with Bidder in relation to the content of those drafts (acting reasonably and in good faith) take into account any reasonable comments from Bidder and its Representatives on those drafts;
- (e) **(Provide draft Independent Expert's Report)** provide a draft of the Independent Expert's Report to Bidder no later than 2 Business Days prior to provision of the Regulator's Draft to ASIC;
- (f) **(Directors' Recommendation)** state in the Explanatory Memorandum and the Announcement (on the basis of statements made to WTF by each WTF Director) the Recommendation and Voting Intention of each of the WTF Directors in accordance with clause 7.1;
- (g) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Explanatory Memorandum (other than in relation to the Bidder Information and the Independent Expert's Report);

- (h) **(Approval of draft Explanatory Memorandum)** procure that a meeting of the WTF Board is convened to approve the draft Explanatory Memorandum to be provided to ASIC for its review;
- (i) **(Keep Bidder informed)** from the First Court Date until the Implementation Date, promptly inform Bidder if it becomes aware that the Explanatory Memorandum contains a statement which is misleading or deceptive in a material respect or contains a material omission;
- (j) **(Share Registry)** obtain and provide to Bidder the monthly WTF Share Registry Analytics Reports and otherwise advise Bidder of any material changes to the composition of the WTF Share Register of which WTF becomes aware;
- (k) **(ASIC review)** as soon as reasonably practicable provide an advanced draft of the Explanatory Memorandum (**Regulator's Draft**) to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Bidder and:
  - (i) liaise with ASIC as necessary during the Regulatory Review Period; and
  - (ii) promptly notify, and consult with, Bidder in relation to any matters raised by ASIC in connection with the Explanatory Memorandum or the Scheme and any presentation or submission to, or at any proposed meeting with, ASIC, and co-operate and consult with Bidder to resolve any such matters;
- (l) **(Section 411(17)(b) statement)** apply to ASIC for the production of:
  - (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
  - (ii) a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (m) **(Court documents)** consult with Bidder in relation to the content of the documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith comments on, and suggested amendments to, those documents from Bidder and its Representatives;
- (n) **(First Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing WTF to convene the Scheme Meeting;
- (o) **(Approval of Explanatory Memorandum)** procure that a meeting of the WTF Board is convened to approve the Explanatory Memorandum for registration with ASIC and despatch to WTF Shareholders;
- (p) **(Register Explanatory Memorandum)** request to ASIC that the explanatory statement included in the Explanatory Memorandum in relation to the Scheme be registered in accordance with section 412(6) of the Corporations Act;
- (q) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, dispatching the Explanatory Memorandum to WTF Shareholders and convening and holding the Scheme Meeting;
- (r) **(Obtain Bidder's consent)** before dispatch of the Explanatory Memorandum to WTF Shareholders, obtain the written consent of Bidder to inclusion of Bidder

Information in the Explanatory Memorandum in the form and context in which it appears (such consent not to be unreasonably withheld or delayed);

- (s) **(Send Explanatory Memorandum)** send the Explanatory Memorandum to WTF Shareholders as soon as practicable after the Court orders WTF to convene the Scheme Meeting;
- (t) **(Update Explanatory Memorandum)** if it becomes aware of information after the date of dispatch of the Explanatory Memorandum, which is required to be disclosed to WTF Shareholders under any applicable law (including as may be necessary to ensure that the Explanatory Memorandum is not false, misleading or deceptive in any material respect), as expeditiously as practicable:
  - (i) inform WTF Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law; and
  - (ii) to the extent it is reasonably practicable to do so, provide Bidder with drafts of any documents that it proposes to issue to WTF Shareholders, consult with Bidder in relation to the content of those drafts and (acting reasonably and in good faith) take into account any comments from Bidder and its Representatives on those drafts;
- (u) **(Material Contracts)** provide all necessary assistance as reasonably required by the Bidder to obtain a waiver or consent from each person who is entitled to exercise any right under any provision of any Material Contract relating to the WTF Group's business that entitles the person to terminate, modify or enforce any restrictive covenants under, the contract as a result of the announcement or implementation of the Scheme, and use its best endeavours, in co-operation with Bidder, to resolve any matters raised by any applicable counterparty to such Material Contract;
- (v) **(Scheme Meeting)** convene the Scheme Meeting in accordance with any such orders made by the Court and seek the approval of WTF Shareholders for the Scheme and, for this purpose, the WTF Directors must participate in reasonable efforts to promote the merits of the Scheme, including meeting with key WTF Shareholders at the reasonable request of Bidder. WTF may adjourn or otherwise change the timing of the Scheme Meeting (or actually do so) where the WTF Board considers it is appropriate to do so in the best interests of the WTF Shareholders (acting reasonably and after first consulting in good faith with Bidder);
- (w) **(Court approval application)** if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act and subject to all other Conditions (other than the Condition in clause 3.1(j)) being satisfied or waived in accordance with this agreement, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (x) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(h)) have been satisfied or waived in accordance with this agreement. WTF must provide a draft of that certificate to Bidder by 8.00 am on the Second Court Date;
- (y) **(Special Dividend)** if the Scheme is approved by the Court, declare, fund and pay the WTF Discretionary Special Dividend on or before the Implementation Date;
- (z) **(Implementation of Scheme)** if the Scheme is approved by the Court:
  - (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act before 5:00pm

on the Business Day on which such office copy is received (or such later date as is agreed between the parties in writing);

- (ii) close the WTF Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
  - (iii) provide to Bidder all information about the Scheme Shareholders that Bidder reasonably requires in order for Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme;
  - (iv) promptly execute proper instruments for the transfer of, and register all transfers of, Scheme Shares to Bidder in accordance with the Scheme;
  - (v) subject to Bidder satisfying its obligations under clause 5, on the Implementation Date (or as soon as practicable thereafter) register all transfers of Scheme Shares to Bidder in accordance with the Scheme; and
  - (vi) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (aa) **(ASX listing)** must use its best endeavours to ensure that WTF continues to be listed on ASX, and that the WTF Shares continue to be quoted on ASX, until the close of business on the Implementation Date, including by making appropriate applications to ASX and ASIC; and
- (bb) **(Other things necessary)** promptly do all other things reasonably within its power to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

## 4.2 Bidder's obligations

Bidder must take all steps reasonably necessary to assist WTF to implement the Scheme as soon as is reasonably practicable and so as to complete the Transaction substantially in accordance with the Timetable, and in particular Bidder must:

- (a) **(Draft of Bidder Information)** provide to WTF a draft of Bidder Information as soon as reasonably practicable after the date of this agreement and consult with WTF in relation to the content of drafts of Bidder Information and (acting reasonably and in good faith) take into account any comments from WTF and its Representatives on those drafts;
- (b) **(Final form of Bidder Information)** provide to WTF the Bidder Information in a form appropriate for inclusion in the Explanatory Memorandum;
- (c) **(Approval of Bidder Information)** as soon as reasonably practicable after receipt from WTF of the draft of those parts of the Explanatory Memorandum containing Bidder Information that WTF proposes to dispatch to WTF Shareholders, confirm in writing to WTF that Bidder Information in the form and context in which it appears in the draft Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission and is in a form appropriate for dispatch to the WTF Shareholders (subject to the approval of the Court);
- (d) **(Keep WTF informed)** promptly inform WTF if it becomes aware from the First Court Date until the Implementation Date that Bidder Information in the form and context in which it appears in the Explanatory Memorandum is or has become misleading or deceptive in any material respect or contains any material omission, and provide such further or new information as is required to ensure that such

information is no longer misleading or deceptive in any material respect or contains any material omission;

- (e) **(Deed Poll)** no later than the Business Day prior to the First Court Date, enter into the Deed Poll and deliver the executed Deed Poll to WTF;
- (f) **(Representation)** ensure it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel and, if requested by the Court, Bidder will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme;
- (g) **(Certificate)** at or before the hearing on the Second Court Date, provide to the Court a certificate (or such other evidence as the court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(h)) have been satisfied or waived in accordance with this agreement. Bidder must provide a draft of that certificate to WTF by 5:00 pm on the Business Day prior to the Second Court Date;
- (h) **(Scheme Consideration)** if the Scheme becomes Effective, provide (or procure the provision of) the Scheme Consideration on the Implementation Date in accordance with clause 5 and the terms of the Scheme and the Deed Poll; and
- (i) **(Other things necessary)** promptly do all other things reasonably within its power to lawfully give effect to the Scheme.

#### 4.3 Guarantor's obligations

Guarantor must (and must procure that Bidder) take all steps reasonably necessary to assist WTF to implement the Scheme as soon as is reasonably practicable and so as to complete the Transaction substantially in accordance with the Timetable, and in particular Guarantor must:

- (a) **(Deed Poll)** no later than the Business Day prior to the First Court Date, enter into the Deed Poll and deliver the executed Deed Poll to WTF;
- (b) **(Scheme Consideration)** if the Scheme becomes Effective, procure that all obligations of Bidder to pay the Scheme Consideration on the Implementation Date in accordance with clause 5 and the terms of the Scheme and the Deed Poll are met;
- (c) **(Other things necessary)** promptly do all other things reasonably within its power to lawfully give effect to the Scheme and comply with its obligations under the Transaction Documents.

#### 4.4 Dispute as to Explanatory Memorandum

If, after a reasonable period of consultation, the parties, each acting reasonably and in good faith, are unable to agree on the form or content of the Explanatory Memorandum, then:

- (a) if the disagreement relates to the form or content of Bidder Information (or any information solely derived from, or prepared solely in reliance on, Bidder Information), WTF will, acting in good faith, make such amendments to that information in the Explanatory Memorandum as Bidder may reasonably require; and
- (b) if the disagreement relates to the form or content of the WTF Information (or any information solely derived from, or prepared solely in reliance on, information provided by or on behalf of WTF, or extracted from announcements made by WTF

to ASX regarding the WTF Group), WTF will, acting in good faith, decide the final form of that information in the Explanatory Memorandum.

#### **4.5 Payment of dividends**

Notwithstanding any other provision of this agreement, WTF may in its discretion declare and pay the WTF Discretionary Special Dividend and the WTF Final Dividend to the WTF Shareholders. The record date for the WTF Discretionary Special Dividend must occur before the Record Date.

#### **4.6 Reconstitution of WTF Board**

On the Implementation Date, but subject to Bidder having provided the Scheme Consideration in accordance with clause 5, WTF must:

- (a) cause the appointment to the WTF Board and to the boards of each Subsidiary of WTF of such number of persons as nominated by Bidder, subject to those persons being appointed having provided a consent to act as directors of the relevant companies; and
- (b) procure that all WTF Directors and the directors of each subsidiary of WTF (other than, in each case, those appointed pursuant to clause 4.6(a)) resign from the WTF Board and the board of each subsidiary of WTF.

#### **4.7 Removal of WTF from official list of ASX**

If directed by Bidder, WTF must take all steps necessary for WTF to be removed from the official list of ASX on the day immediately following the Implementation Date, including lodging a request for removal with ASX prior to the Implementation Date and WTF and/or Bidder satisfying any conditions reasonably required by ASX for it to act on that request.

#### **4.8 Responsibility statement**

The Explanatory Memorandum will contain a responsibility statement to the effect that:

- (a) Bidder and the Guarantor are responsible for Bidder Information contained in the Explanatory Memorandum;
- (b) WTF is responsible for the WTF Information contained in the Explanatory Memorandum; and
- (c) the Independent Expert has provided and is responsible for the Independent Expert's Report.

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## **5. Scheme Consideration**

### **5.1 Consideration**

Bidder covenants in favour of WTF (in WTF's own right and separately as trustee for each of the Scheme Shareholders) that, in consideration for the transfer to Bidder of Scheme Shares held by Scheme Shareholders under the terms of the Scheme, Bidder will accept the transfer and provide the Scheme Consideration to the Scheme Shareholders in accordance with the terms of the Scheme.

## 6. Conduct of business and co-operation

### 6.1 Conduct of WTF's business

- (a) From the date of this agreement up to and including the Implementation Date, WTF must:
- (i) procure that each member of the WTF Group:
    - A. conducts its businesses and operations in the ordinary and usual course and substantially consistent (subject to any material applicable laws, regulations and licence conditions) with the manner in which each such business and operation is conducted prior to the date of this agreement, including to use all reasonable endeavours to in all material respects:
      - 1) preserve intact its current business organisation;
      - 2) keep available the service of substantially all of its current officers and employees;
      - 3) preserve its relationship with customers, suppliers licensors, licensees, Regulatory Authorities and others having business dealings with it;
      - 4) maintain its business and assets, including maintaining at least its current level of insurance over its business and assets, provided such level of insurance continues to be generally available and at a cost not materially greater than the cost of insurance over its business and assets prior to the date of this agreement; and
    - B. conducts its businesses and operations in accordance with all applicable laws and regulations in all material respects;
  - (ii) comply in all material respects with all Material Contracts to which a member of the WTF Group is a party;
  - (iii) not to enter into any agreement or arrangement that would restrict the ability of any member of the Bidder or Guarantor group following the Implementation Date to operate in any line of business or in any geographic region;
  - (iv) ensure that no WTF Prescribed Occurrence occurs;
  - (v) not waive, and must use reasonable endeavours to enforce, any Standstill Obligations which were agreed by WTF (and have not expired by the passage of time in accordance with its terms) with a Third Party prior to the date of this agreement;
  - (vi) use reasonable endeavours to enforce any obligations owed by a Third Party to WTF to return, delete or destroy any WTF Due Diligence Materials provided by WTF to that Third Party;
  - (vii) not undertake or continue to undertake any material upgrades to technology hardware;
  - (viii) not undertake any brand marketing campaign other than the current brand marketing campaign disclosed to Bidder in the WTF Due Diligence

Materials and only to the extent that campaign does not involve the commitment of funds, in the aggregate, in excess of the \$2.5 million budgeted amount disclosed in the WTF Due Diligence Materials;

- (ix) ensure that no member of the WTF Group enters into a new enterprise agreement under the Fair Work Act 2009 (Cth) or agrees to a material variation of any of the enterprise agreements which currently apply to employees of the WTF Group (other than an enterprise agreement substantially in the form of, and on terms consistent with, the draft enterprise agreement disclosed in the WTF Due Diligence Materials) without first consulting with Bidder regarding the terms of the enterprise agreement being proposed to employees and taking into account in good faith any objections or concerns Bidder may have regarding these terms;
  - (x) not vary or renegotiate the contract dated 17 July 2012 between Amadeus IT Pacific Pty Ltd (ACN 080 674 255), ACN 079 010 722 Ltd (ACN 079 010 772), and Lastminute.com.au Pty Ltd (ACN 091 825 142);
  - (xi) not modify any existing loyalty programme or introduce any new loyalty programme; and
  - (xii) not sign any new global hotel supply agreement with an aggregator or wholesaler which cannot be terminated on 30 days' notice or less notice.
- (b) The obligations of WTF under clause 6.1(a) do not apply to any action undertaken by WTF:
- (i) in relation to any matter required to be done or procured by WTF or another member of the WTF Group pursuant to, or which is otherwise expressly permitted by, the Transaction Documents;
  - (ii) for which Bidder has provided its prior written consent (such consent not to be unreasonably withheld or delayed);
  - (iii) which arises as a result of court or Regulatory Authority order, injunction or undertaking or otherwise required in order to comply with applicable law; or
  - (iv) which is in accordance with contractual obligations that existed at the date of this agreement, provided that, except in the case of paragraphs (vi) to (ix) above, such obligations have been fairly disclosed in the WTF Due Diligence Material or any announcement to or filing with ASX or ASIC since 30 June 2013 and otherwise at least two Business Days prior to the date of this agreement.
- (c) For the avoidance of doubt and subject to clause 8, nothing in this clause 6.1 restricts the ability of WTF to respond to a Competing Proposal.

## 6.2 Access

- (a) In the period from the date of this agreement to the Implementation Date, and for so long as the WTF Board considers the Transaction to be in the best interests of WTF Shareholders and continues to publicly recommend that WTF Shareholders vote in favour of the resolution to be proposed at the Scheme Meeting to approve the Scheme, WTF will use reasonable endeavours to:
- (i) procure that members of WTF's executive management team and the Company's Representatives meet with representatives of Bidder as reasonably required and on reasonable notice to assist with, among other things:



- A. keeping Bidder reasonably informed of the matters contemplated by clause 6.2(a)(ii) below; and
  - B. providing Bidder with access to people it has requested under clause 6.2(a)(iii) below;
- (ii) keep Bidder reasonably informed of all material developments relating to the WTF Group (including its financial performance);
  - (iii) within 5 days of a request in writing by Bidder, provide Bidder (and its Representatives) with reasonable access to executives and senior management of the WTF Group, for the purpose of or in connection with planning the transition of the WTF Group and other matters relating to the conduct of the WTF Group following the Implementation Date and otherwise facilitating the Proposed Transaction; and
- (b) Nothing in this clause 6.2 obliges WTF to provide to Bidder or its Representatives any information:
    - (ii) concerning the WTF Directors' consideration of the Scheme; or
    - (iii) which would breach an obligation of confidentiality to any person or any applicable laws; or
    - (iv) or do any thing that would be reasonably likely to constitute a breach of any WTF Director's fiduciary or statutory duties or a breach of laws or the ASX listing rules.

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## 7. Recommendation, intentions and announcements

### 7.1 WTF Board Recommendation and Voting Intention

- (a) WTF must ensure that the Announcement and the Explanatory Memorandum state that each WTF Director recommends that WTF Shareholders vote in favour of the Scheme Resolutions (**Recommendation**) which Recommendation must not be qualified in any way other than by words to the effect of "in the absence of a Superior Proposal" and "subject to the Independent Expert concluding that the Scheme is in the best interests of WTF Shareholders".
- (b) Bidder acknowledges that each WTF Director may, subject to the terms of this agreement, publicly (or otherwise) withdraw, change or in any way qualify their Recommendation if:
  - (i) a Superior Proposal is made; or
  - (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Scheme is not in the best interests of the WTF Shareholders.
- (c) WTF and Bidder acknowledge that each WTF Director has indicated to WTF that they intend to cause any WTF Shares in which they have a Relevant Interest to be voted in favour of the Scheme Resolutions (**Voting Intention**), subject to:
  - (iii) there being no Superior Proposal; and
  - (i) the Independent Expert concluding that the Scheme is in the best interests of WTF Shareholders,

and that the Explanatory Memorandum will state that Voting Intention to the extent to which it is current as at the date of the Explanatory Memorandum.

- (d) Bidder acknowledges that each WTF Director may, subject to the terms of this agreement, publicly (or otherwise) withdraw, change or in any way qualify their Voting Intention.

## 7.2 Confirmation

WTF represents and warrants to Bidder that each WTF Director has confirmed their agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clause 7.1

## 7.3 Announcement

Immediately after the execution of this agreement WTF must issue the Announcement to the ASX.

## 7.4 Further public announcements

Any further public announcements by WTF or Bidder in relation to, or in connection with, the Transaction or any other transaction related to this agreement or the Scheme may only be made in a form approved by each party in writing (acting reasonably). Where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with the Transaction or any other transaction related to this agreement or the Scheme, it may do so to the extent legally required and only then after it has given the other party as much notice as possible and has consulted to the fullest extent possible in the circumstances with the other party.

## 7.5 Promotion of Scheme

During the Exclusivity Period, WTF must procure that the senior executives of WTF or its Related Bodies Corporate as reasonably requested by Bidder participate in efforts to promote the merits of the Scheme, including:

- (a) meeting with key WTF Shareholders;
- (b) communicating with WTF's employees, customers and suppliers and the employees, customers and suppliers of WTF's Related Bodies Corporate; and
- (c) communicating with the public to promote the merits of the Scheme, subject only to:
  - (i) the Independent Expert not having concluded in the Independent Expert's Report that the Scheme is not in the best interests of WTF Shareholders; and
  - (ii) there being no Superior Proposal.

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## 8. Exclusivity arrangements

### 8.1 Ceased discussions

WTF represents and warrants that at the time of signing this agreement:

- (a) it has ceased or will immediately cease negotiations or discussions in respect of any Competing Proposal with any person.
- (b) that each person who has received confidential information as part of the Bid Process has entered into a Standstill Obligation with WTF on terms which are no more favourable to that person than the terms of the Standstill Obligation in clause 8 of the Confidentiality Deed subject only to timing differences;

- (c) that it has ensured that any electronic data room access granted to any Third Party prior to the date of this agreement in connection with a Competing Proposal is withdrawn (except as permitted by clause 8.3).

## 8.2 No shop

During the Exclusivity Period, WTF must not, and must ensure that its Representatives and its Related Bodies Corporate and each of their respective Representatives do not directly or indirectly solicit, invite, initiate or encourage any Competing Proposal or any inquiry, expression of interest, offer or proposal, negotiations or discussions by or with any Third Party in relation to, or that may reasonably be expected to encourage or lead to the making of, an actual or potential Competing Proposal or communicate any intention to any person to do any of those things.

## 8.3 No talk and no due diligence

During the Exclusivity Period, WTF must not, and must ensure that its Representatives and its Related Bodies Corporate do not directly or indirectly:

- (a) enter into, continue, facilitate or participate in any negotiations or discussions with, or accept or enter into, or offer to accept or enter into, any agreement, arrangement or understanding with, any Third Party in relation to, or that may be reasonably expected to lead to, a Competing Proposal; or
- (b) make available to any Third Party, or permit any Third Party to receive, any non-public information relating to any member of the WTF Group (including in relation to the Transaction or Bidder) that could assist a Third Party in formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
- (c) communicate to any person an intention to do anything referred to in this clause 8.3,

unless and only to the extent that the WTF Board determines, in good faith, after taking advice from the WTF Board's external legal and financial advisors that such Competing Proposal is or could reasonably be considered to become a Superior Proposal, and failing to do so would be reasonably likely to constitute a breach of their fiduciary or statutory duties and provided such Competing Proposal was not encouraged, solicited, invited or initiated by WTF or its Representatives in contravention of clauses 8.1 to 8.2.

## 8.4 Notice of Competing Proposal

During the Exclusivity Period, WTF must promptly, and in any event no later than the Business Day following the relevant event notify Bidder if it or any of its Representatives or Related Bodies Corporate receives a Competing Proposal (including any variation of a Competing Proposal made prior to the date of this agreement or a Competing Proposal which terminates on the disclosure of such Competing Proposal to Bidder) from any person which the WTF Board determines, in good faith, after taking advice from the WTF Board's external legal and financial advisors that such proposal could reasonably be considered to become a Superior Proposal.

## 8.5 Normal provision of information

Nothing in this clause 8 prevents WTF from:

- (a) providing information to its Representatives;
- (b) providing information to any Regulatory Authority;

- (c) providing information to its auditors, advisers, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information to its advisers acting in that capacity in connection with the Transaction or a Competing Proposal;
- (e) providing information to be required to be provided by law or any Regulatory Authority; or
- (f) making presentations to brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business.

## 8.6 Matching Right

- (a) During the Exclusivity Period, WTF must not recommend a Competing Proposal, or enter into any agreement, arrangement or understanding to undertake a Competing Proposal or publicly recommend a Competing Proposal, unless it has first:
  - (i) notified Bidder in writing of the material terms of the Competing Proposal and the person or persons proposing the Competing Proposal; and
  - (ii) given Bidder at least 5 Business Days after provision of that information in which to provide an irrevocable offer of a matching or superior deal to the relevant Competing Proposal on terms which Bidder considers in good faith to be no less favourable to the relevant Competing Proposal (**Bidder Counter Proposal**).
- (b) WTF must use its best endeavours to procure that the WTF Directors, within 48 hours of receiving the Bidder Counter Proposal, consider any Bidder Counter Proposal in good faith and, if the WTF Directors determine that the terms and conditions of the Bidder Counter Proposal taken as a whole are no less favourable than those of the relevant Competing Proposal, WTF and Bidder must each use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Bidder Counter Proposal as soon as reasonably practicable, and WTF must use its best endeavours to procure that each WTF Director makes a public statement to the Shareholders recommending the Bidder Counter Proposal to the WTF Shareholders.

## 8.7 Acknowledgment

WTF acknowledges that:

- (a) Bidder has required WTF to agree to the obligations set out in this clause 8 in consideration of it proceeding with the Scheme and incurring significant costs in doing so; and
- (b) in the absence of obtaining these obligations from WTF, Bidder would not have entered into this agreement.

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## 9. Break Fee

### 9.1 Rationale

- (a) Each party:
  - (i) believes the Scheme will deliver significant benefits to WTF, Bidder, Guarantor and their respective shareholders;

- (ii) acknowledges that the Break Fee is a genuine and reasonable pre-estimate of the costs and losses which the Bidder expects to incur in connection with the Scheme (including internal and Third Party advisory, legal, accounting, due diligence and management costs and expenses and opportunity and other costs and expenses foregone) and it is not a pre-condition to being paid the Break Fee that the Bidder has actually incurred those costs or losses or that it be able to prove that it has done so.
- (b) WTF acknowledges and agrees that:
- (i) the Break Fee is reasonable in the context of the Scheme;
  - (ii) it has received legal advice on this agreement and the operation of this clause 9; and
  - (iii) it is appropriate to enter into this agreement under the terms of this clause 9 and that it is necessary to secure the significant benefits to it (and its shareholders) resulting from the Scheme.

## 9.2 Break Fee

Subject to clause 9.4, WTF agrees to pay Bidder the Break Fee without set-off or withholding only if, at any time after the date of this agreement, the Scheme does not become Effective because:

- (a) **(Competing Proposal)** a Competing Proposal is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and within 12 months of such announcement, the Third Party proposing the Competing Proposal or any Associate of that Third Party implements or consummates the Competing Proposal or enters into an agreement, arrangement or understanding with WTF or the WTF Directors with respect to such Competing Proposal; or
- (b) **(change of recommendation)** any WTF Director fails to recommend the Scheme or publicly changes, withdraws, modifies or in any way qualifies their Recommendation or publicly recommends a Superior Proposal, except if any WTF Director changes their Recommendation following the receipt of the Independent Expert's Report which states that, in the opinion of the Independent Expert, the Scheme is not in the best interests of WTF Shareholders (where the reason such conclusion is reached is not the existence of a Superior Proposal); or
- (c) if, before the date on which this agreement is terminated, any WTF Director recommends that WTF Shareholders accept, vote in favour of, or otherwise support a Competing Proposal which is announced or made after the date of this agreement; or
- (d) WTF is in material breach of this agreement and this agreement is terminated; or
- (e) a WTF Prescribed Occurrence occurs which, alone or together with one or more other WTF Prescribed Occurrences or breaches of this agreement by WTF, is likely to have a material effect on WTF and this agreement is terminated.

## 9.3 Break Fee payment

- (a) A demand by Bidder for payment of the Break Fee under clause 9.2 must:
  - (i) be in writing;

- (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Bidder or a Subsidiary into which WTF is to pay the Break Fee; and
- (b) WTF must pay the Break Fee into the account nominated by Bidder, without set-off or withholding, within 10 Business Days after receiving a demand for payment where Bidder is entitled under clause 9.2 to the Break Fee.

#### 9.4 Compliance with law

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the Break Fee (**Impugned Break Fee**):
- (i) is declared by the Takeovers Panel to constitute "unacceptable circumstances" within the meaning of the Corporations Act;
  - (ii) is determined to be unenforceable or unlawful by a Court;
- then
- (i) the requirement to pay the Break Fee does not apply to the extent of the Impugned Break Fee; and
  - (ii) if Bidder has received the Impugned Break Fee, it must refund it within ten Business Days of the final determination being made.
- (b) The parties must not make or cause to be made, any application to the Takeovers Panel or a Court for or in relation to a declaration referred to in this clause 9.4.

#### 9.5 WTF's limitation of liability

Notwithstanding any other provision of this agreement:

- (a) the maximum liability of WTF to Bidder and the Guarantor under or in connection with a breach of this clause 9 will be the amount of the Break Fee; and
- (b) the maximum liability of WTF under or in connection with this agreement other than under clause 9.5(a) will be the Break Fee,

and, other than under clauses 9.5(a) and 9.5(b), no further damages, fees, expenses or reimbursements of any kind will be payable by WTF under or in connection with this agreement except where the further damages, fees, expenses or reimbursements have been caused by the wilful misconduct or fraud of WTF.

#### 9.6 No Break Fee if Scheme Effective

Despite anything to the contrary in this agreement, the Break Fee will not be payable to the Bidder if the Scheme becomes Effective, notwithstanding the occurrence of any event in clause 9.2 and, if the Break Fee has already been paid, it must be refunded by Bidder.

#### 9.7 Survival

Any accrued obligations under this clause 9 survive termination of this agreement.

## 10. Liability of directors and employees

### 10.1 Liability of directors and employees

To the maximum extent permitted by law, each party (**first party**) releases all rights against, and agrees that it will not make any claim against, each past or present director and employee of the other party of this agreement (**other party**) in relation to information provided to the first party in relation to the transactions contemplated by this agreement to the extent that such director or employee has acted in good faith and has not engaged in fraud or wilful misconduct.

### 10.2 Directors' and officers' insurance

Bidder acknowledges that WTF will:

- (a) arrange for the cover provided under the Policy for a further period until the End Date; and
- (b) by no later than the Implementation Date, arrange for the cover provided under the Policy to be amended so as to provide run off cover in accordance with the terms of the Policy for a 7 year period from the end of the term of the Policy, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date.

### 10.3 Obligations in relation to directors' and officers' insurance

From the Implementation Date, WTF must not:

- (a) vary or cancel the Policy; or
- (b) unless required under the Policy, commit any act or omission that may prejudice any claim by a Beneficiary under the Policy as extended pursuant to clause 10.2(b) above.

### 10.4 Directors' and officers' indemnities

- (a) Without limiting any other term of this agreement, from the Effective Date for the Scheme, Bidder undertakes that it will, in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by an WTF Group entity (**Relevant Entity**) in favour of a director or officer of any WTF Group entity (**Indemnified Person**) from time to time procure that:
  - (i) the Relevant Entity complies with the Relevant Deed; and
  - (ii) to the extent that the Relevant Entity ceases to exist after the Implementation Date, each Indemnified Person has the benefit of an indemnity from Bidder on terms no less favourable than those contained in the Relevant Deed as at the Effective Date.
- (b) This clause 10.4 applies to the maximum extent permitted by the Corporations Act and will be read down accordingly.

### 10.5 Benefit

Bidder acknowledges that WTF holds the benefit of this clause 10 to the extent it relates to each director and officer of an WTF Group entity as trustee for them, and, as such, each such director or officer of an WTF Group entity may enforce this clause 10 against Bidder.

## 11. Representations, warranties and indemnities

### 11.1 Representations and warranties by Bidder

Bidder represents and warrants to WTF (on its own behalf and separately as trustee or nominee for each of the WTF Indemnified Parties):

- (a) on each date from the date of this agreement until (and including) the Second Court Date that each of the below statements is true and correct:
  - (i) Bidder is a validly existing corporation registered under the laws of its place of incorporation;
  - (ii) the execution and delivery by Bidder of the Transaction Documents to which Bidder is party has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
  - (iii) subject to laws generally affecting creditors' rights and the principles of equity, the Transaction Documents to which Bidder is party constitute legal, valid and binding obligations on it and do not conflict with or result in a breach of or default under:
    - A. the constitution or equivalent constituent documents of Bidder or any of its Subsidiaries; or
    - B. any writ, order or injunction, judgment, law, rule or regulation to which Bidder or any of its Subsidiaries is party, or by which Bidder or any of its Subsidiaries is bound and which could reasonably be expected to have a material adverse effect on Bidder's ability to perform its obligations under this agreement; and
  - (iv) other than as expressly contemplated by clause 3, no shareholder or Regulatory Authority approvals are required to be obtained by the Bidder Group in order for it to execute and perform the Transaction Documents to which it is a party;
- (b) on the date of this agreement, the First Court Date, the date the Explanatory Memorandum is despatched, the date of the Scheme Meetings and the Second Court Date, Bidder is not aware of any material information relating to Bidder's capacity to fund the Scheme Consideration, and perform its obligations under this agreement, that has not been disclosed to WTF and is objectively necessary for WTF to make an informed decision as to whether to enter into this agreement or proceed with the Scheme;
- (c) on the First Court Date, the date the Explanatory Memorandum is despatched, the date of the Scheme Meetings and the Second Court Date:
  - (i) the Bidder Information has been prepared and included in the Explanatory Memorandum in good faith and on the understanding that WTF and the WTF Indemnified Parties have relied on that information for the purposes of considering and approving the WTF Information in the Explanatory Memorandum;
  - (ii) the Bidder Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);



- (iii) the Bidder Information (other than to the extent that it consists of information relating to WTF that was provided by or on behalf of WTF, or has been extracted from public announcements made by WTF to ASX regarding the WTF Group) in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission; and
- (iv) Bidder has complied with its obligations under clause 4.2(d);
- (d) on each date from the date of this agreement until (and including) the Implementation Date that no Insolvency Event has occurred in relation to Bidder or any of the Bidder's Group.
- (e) as at 8:00am on the Second Court Date, Bidder will have sufficient cash on its balance sheet, or financial commitments available to it on an unconditional basis (other than conditions relating to the approval of the Court and related procedural matters or documentary requirements which, by their terms or nature, can only be satisfied or performed after the Second Court Date), to ensure that the Scheme Consideration is paid to Scheme Shareholders in accordance with the terms of this agreement, the Scheme and the Deed Poll;
- (f) Bidder will have available to it on the Implementation Date sufficient cash amounts (including debt facilities) to ensure that the Scheme Consideration is paid to Scheme Shareholders in accordance with the terms of this agreement, the Scheme and the Deed Poll; and
- (g) any statement of opinion or belief contained in Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief.

## 11.2 Bidder indemnity

- (a) Bidder acknowledges that in entering into this agreement WTF and the WTF Indemnified Parties have relied on Bidder Warranties and Guarantor Warranties.
- (b) Bidder indemnifies WTF (on its own behalf and separately as trustee for each of the WTF Indemnified Parties) against any loss suffered or incurred by reason of any breach of any of Bidder Warranties or any Guarantor Warranties.

## 11.3 Warranty certificate

Bidder and Guarantor must provide to WTF by 8.00am on the Second Court Date a certificate signed by a director of Bidder and a director of Guarantor and made in accordance with a resolution of the Bidder Board and Guarantor Board stating, as at that date, that the representations or warranties given by Bidder and Guarantor in clause 11.1 remain true and correct or, if any such representation or warranty is not true and correct as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or incorrect.

## 11.4 Warranties by Guarantor

The Guarantor warrants to WTF as at the date of execution of this agreement and as the time immediately prior to the Second Court Date that each Guarantor Warranty is true and correct.

## 11.5 Representations and warranties by WTF

WTF represents and warrants to Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder Indemnified Parties):

- (a) on each date from the date of this agreement until (and including) the Second Court Date that each of the below statements is true and correct:

- (i) WTF is a validly existing corporation registered under the laws of its place of incorporation;
  - (ii) the execution and delivery by WTF of the Transaction Documents to which WTF is party has been properly authorised by all necessary corporate action and WTF has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
  - (iii) subject to laws generally affecting creditors' rights and the principles of equity, the Transaction Documents to which WTF is party constitute legal, valid and binding obligations on WTF and do not conflict with or result in a breach of or default under:
    - A. the constitution or equivalent constituent documents of WTF or any of its Subsidiaries; or
    - B. any writ, order or injunction, judgment, law, rule or regulation to which WTF or any of its Subsidiaries is party, or by which WTF or any of its Subsidiaries is bound and which could reasonably be expected to have a material adverse effect on WTF's ability to perform its obligations under this agreement;
  - (iv) other than as expressly contemplated by clause 3, no shareholder or Regulatory Authority approvals are required to be obtained by the WTF Group in order for it to execute and perform the Transaction Documents to which it is a party;
- (b) as at the date of this agreement there are:
- (i) 211,736,244 WTF Shares on issue; and
  - (ii) 2,825,762 Options,
- on issue, and WTF has not issued (and is not required to issue) any other securities or instruments which are still outstanding (or may become outstanding) and which may convert into WTF Shares other than in connection with a dividend reinvestment plan (including pursuant to any underwriting of that plan);
- (c) on the date of this agreement there is no material Encumbrance over all or any of its (or any of its Subsidiaries) material assets or revenues (other than assets which are held in a fiduciary capacity for third parties other than as disclosed by WTF to Bidder);
  - (d) on the date of this agreement and other than as disclosed by WTF to Bidder , neither it nor any of its Subsidiaries is in default under any Material Contract to which a member of the WTF Group is a party nor has anything occurred which is or would be with the giving of notice or lapse of time constitute an event of default, prepayment or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such Material Contract with such an effect;
  - (e) on the date of this agreement and as far as the management team who have directly participated in the Bid Process after making due enquiry is aware, WTF is not aware of any material information relating to any member of the WTF Group that has not been disclosed to Bidder and is objectively necessary for Bidder to make an informed decision as to whether to proceed with the Transaction;

- (f) on the First Court Date, the date the Explanatory Memorandum is despatched, the date of the Scheme Meetings and the Second Court Date;
- (i) the WTF Information has been prepared and included in the Explanatory Memorandum in good faith and on the understanding that:
    - A. Bidder and the Bidder Indemnified Parties have relied on that information for the purposes of considering and approving the Bidder Information in the Explanatory Memorandum; and
    - B. the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report.
  - (ii) the WTF Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
  - (iii) the WTF Information (other than to the extent that it consists of information relating to Bidder that was provided by or on behalf of Bidder, or has been extracted from public announcements made by Bidder to ASX regarding the Bidder Group) in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission;
  - (iv) WTF has complied with its obligations under clause 4.1(i); and
  - (v) all information provided by or on behalf of WTF to the Independent Expert to enable the Independent Expert's Report to be prepared has been prepared and provided in good faith and on the understanding that the Independent Expert have relied on the information for the purposes of preparing the Independent Expert's Report;
- (g) on the date of this agreement, the First Court Date, the date the Explanatory Memorandum is despatched, the date of the Scheme Meetings and the Second Court Date, following the making by WTF of the Announcement to ASX pursuant to clause 7.3, WTF has complied in all respects with its continuous disclosure obligations under Listing Rule 3.1 and is not withholding any information pursuant to Listing Rule 3.1A; and
- (h) on each date from the date of this agreement until (and including) the Implementation Date that none of the following events has occurred in relation to WTF:
- (i) a receiver, receiver and manager, liquidator, provisional liquidator, administrator or trustee is appointed in respect of WTF or any of its assets or anyone else is appointed who (whether or not as agent for WTF) is in possession, or has control, of any of WTF's assets for the purpose of enforcing an Encumbrance;
  - (ii) an application is made to court or a resolution is passed or an order is made for the winding up or dissolution of WTF;
  - (iii) WTF proposes or takes any steps to implement a scheme of arrangement or other compromise or arrangement with its creditors or any class of them; or
  - (iv) WTF stops paying its debts when they become due or is declared or taken under any applicable law to be insolvent or WTF's board of

directors resolves that it is, or is likely to become at some future time, insolvent;

- (i) a member of WTF Group owns all right, title and interest in and to, or has valid and continuing rights to use, all of the material assets and intellectual property rights used in the conduct of WTF Group's business;
- (j) on the date of this agreement, the First Court Date, the date the Explanatory Memorandum is despatched, the date of the Scheme Meetings and the Second Court Date, the financial statements provided to Bidder present fairly, in all material respects, the combined balance sheets and combined statements of income, equity and cash flows of the WTF Group as of the dates thereof, or for the periods covered thereby, and have been prepared in accordance with Australian Accounting Standards, as issued by the Australian Accounting Standards Board, and International Financial Reporting Standards as issued by the International Accounting Standards Board, consistently applied, based on the historic practices and accounting policies of the WTF Group;
- (k) on the date of this agreement, the First Court Date, the date the Explanatory Memorandum is despatched, the date of the Scheme Meetings and the Second Court Date, WTF Group is not in material breach or violation of any material law, regulation, or other rule of any Regulatory Authority or ruling, or other determination of any court or other tribunal to which the WTF Group, or with respect to which any of its assets or business, is subject and which would have a material adverse effect on the WTF Group; and
- (l) any statement of opinion or belief contained in WTF Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
- (m) any Third Party that was provided access to confidential information during the period prior to the date of this agreement for the purposes of considering a Competing Proposal (including any person participating in any part of the Bid Process) agreed to be bound by Standstill Obligations and will continue to be bound by those Standstill Obligations for a period of no less than 4.5 months from the date of this agreement.

## 11.6 Qualification of WTF Warranties

The WTF Warranties and the indemnity under clause 11.7, are subject to matters which have been fairly disclosed in the, WTF Due Diligence Material or WTF's announcements to the ASX regarding the WTF Group since 30 June 2013 and up until entry into this agreement.

## 11.7 WTF indemnity

- (a) WTF acknowledges that in entering into this agreement Bidder and Bidder Indemnified Parties have relied on the WTF Warranties.
- (b) WTF indemnifies Bidder (on its own behalf and separately as trustee for each of Bidder Indemnified Parties) against any loss suffered or incurred by reason of any breach of any of the WTF Warranties.

## 11.8 WTF warranty certificate

WTF must provide to Bidder by 8.00am on the Second Court Date a certificate signed by a director of WTF and made in accordance with a resolution of the WTF Board stating, as at that date, that the representations or warranties given by WTF in clause 11.4 remain true and correct or, if any such representation or warranty is not true and correct as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or incorrect.

## 11.9 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 11.

## 11.10 Status of representations and warranties

Each representation and warranty in this clause 11:

- (a) is severable;
- (b) will survive the termination of this agreement; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this agreement.

## 11.11 Status and enforcement of indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement; and
- (b) it is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.

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## 12. Confidentiality and communications

### 12.1 Confidentiality Deed

- (a) Each party acknowledges and agrees that it continues to be bound by the Confidentiality Deed after the date of this agreement.
- (b) The parties acknowledge and agree that the terms of this agreement will prevail over the terms of the Confidentiality Deed to the extent of any inconsistency.

### 12.2 Survival of obligations

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

### 12.3 Disclosure on termination of agreement

The parties agree that, if this agreement is terminated under clause 13, any party may disclose:

- (a) the fact that this agreement has been terminated, where such disclosure is required by the relevant Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed; and
- (b) the fact that this agreement has been terminated to ASIC.

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## 13. Termination

### 13.1 Termination

- (a) This agreement may only be terminated if:

- (i) the parties agree in writing to terminate this agreement; or
  - (ii) a termination event described in the following table occurs; and :
    - A. if one party is specified in the second column of the following table opposite the termination event, by that party providing written notice to each other party at any time before 8.00 am on the Second Court Date;
    - B. if more than one party is specified in the second column of the following table opposite the termination event, by any of those parties providing written notice to the other party at any time before 8.00 am on the Second Court Date.
- (b) A party (**Terminating Party**) may only terminate this agreement in reliance on the termination event (other than the termination event described in item (i) of the table below):
- (i) if that Terminating Party has first given the other parties written notice of the occurrence of the termination event, including relevant details of the facts, matters and circumstances giving rise to the termination event (**First Notice**); and
  - (ii) the termination event has not been remedied to the reasonable satisfaction of that Terminating Party by the earlier of 5 Business Days from the date on which the First Notice was given and 8.00 am on the date one Business Day before the Second Court Date.

Termination event	Who may terminate
(i) if a party terminates this agreement in accordance with and pursuant to clauses 3.6(i) or 3.6(ii);	Bidder or WTF (as applicable)
(ii) if WTF is in material breach of any clause of this agreement (other than clause 7, the WTF Warranties or in relation to a WTF Prescribed Occurrence);	Bidder
(iii) if Bidder or the Guarantor is in material breach of any clause of this agreement (other than the Bidder Warranties or Guarantor Warranties);	WTF
(iv) if the WTF Warranties: <ul style="list-style-type: none"> <li>A. that are qualified as to materiality, are not true and correct; and</li> <li>B. that are not so qualified, are not true and correct in all material respects,</li> </ul> as at the time they are given;	Bidder
(v) if the Bidder Warranties or the Guarantor Warranties: <ul style="list-style-type: none"> <li>A. that are qualified as to materiality,</li> </ul>	WTF

are not true and correct; and  B. that are not so qualified, are not true and correct in all material respects,  as at the time they are given;	
(vi) if a WTF Prescribed Occurrence occurs;	Bidder
(vii) if any WTF Director publicly changes, withdraws, modifies or in any way qualifies their Recommendation or Voting Intention or publicly recommends a Superior Proposal, for any reason, whether or not permitted to do so under this agreement;	Bidder
(viii) if any WTF Director publicly changes, withdraws, modifies or in any way qualifies their Recommendation or Voting Intention or publicly recommends a Superior Proposal, but only where such change, withdrawal, modification or qualification occurs or is made in accordance with the rights and obligations of WTF and the WTF Board pursuant to the terms of this agreement.	WTF and Bidder

## 13.2 Effect of termination

If this agreement is terminated:

- (a) the provisions of this agreement shall cease to have effect except for the provisions of clauses 1, 9, 11, 12, 13.2, and 14 to 17 (inclusive), 18.1 to 18.6 (inclusive), 18.8 to 18.12 (inclusive) and 19 which will survive termination, provided that if this agreement is terminated due to the Bidder or the Guarantor being in material breach of any clause of this agreement (other than the Bidder Warranties or Guarantor Warranties clause), clause 9 will not survive termination; and
- (b) each party retains the rights it has against the others in respect of any breach of this agreement occurring before termination.

## 13.3 Remedies

- (a) The parties acknowledge that damages may not be a sufficient remedy for breach of this agreement. Specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this agreement by any party, notwithstanding the ability of the other party to terminate this agreement or seek damages for such a breach or threatened breach, and notwithstanding any payment of a Break Fee.
- (b) Neither party (Restrained Party) will be considered to be in breach of this agreement (including for the purposes of items (ii) or (iii) of the table in clause 13.1) and no party may make a claim against the Restrained Party for breach of this agreement, in circumstances where the Restrained Party is prevented by an order of a court of competent jurisdiction from performing an obligation under this agreement.

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## **14. Guarantee and indemnity**

### **14.1 Guarantee**

In consideration of WTF entering into this agreement with Bidder at the request of the Guarantor, the Guarantor irrevocably and unconditionally guarantees to WTF the due and punctual performance of all present and future obligations and the payment of all present and future liabilities of Bidder under each Transaction Document and must on demand by WTF perform such obligations or pay such liabilities in the manner specified in the relevant Transaction Document if Bidder fails to do so on the due date.

### **14.2 Indemnity**

As a separate and independent obligation from that contained in clause 14.1, Guarantor must pay to WTF on demand the amount of any Indemnified Loss suffered or incurred by WTF arising out of or in connection with any failure of Bidder or Guarantor to perform any obligation or pay any liability under any Transaction Document on the due date.

### **14.3 Nature and preservation of liability**

The Guarantor acknowledges and agrees that each of its obligations under this clause 14:

- (a) is a principal and continuing obligation and will not be affected by any principle of law or equity which might otherwise reduce or limit in any way the liability of the Guarantor under this clause 14; and
- (b) continues notwithstanding any amendment of any Transaction Document or any waiver, consent or notice given under any Transaction Document by any party to another.

### **14.4 Waiver of rights**

The Guarantor must not exercise any right of indemnity or subrogation which it might otherwise be entitled to claim and enforce against or in respect of Bidder and irrevocably waives all those rights of indemnity or subrogation it may have.

### **14.5 Restrictions on Guarantor's dealings**

The Guarantor irrevocably appoints WTF as its attorney to prove in the insolvency of Bidder for all money to which the Guarantor may be entitled from Bidder up to an amount which does not exceed the amount which may be payable by the Guarantor under any Transaction Document. The Guarantor acknowledges that WTF may, subject to the terms of this agreement, retain any money which WTF may receive from any proof on account of the Guarantor's liability under this clause 14.

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## **15. Notices**

### **15.1 How notice to be given**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or facsimile or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):



- (i) if to WTF: Wotif.com Holdings Limited  
 Address: Level 1, 7 Baroona Road, Milton QLD 4064  
 Fax number: +61 7 3512 9914  
 Email: sean.simmons@wotifgroup.com  
 Attention: Sean Simmons  
 with a copy to: Clayton Utz  
 Address: Level 28, Riparian Plaza, 71 Eagle Street,  
 Brisbane QLD 4000  
 Fax number: +61 7 3221 9669  
 Email: ahay@claytonutz.com  
 Attention: Andrew Hay
- (ii) if to Bidder: Emu Australia Investments Pty Limited  
 Address: 333 108<sup>th</sup> Avenue NE, Bellevue, WA 98004  
 Fax number: +1 425 679 7251  
 Email: bdzialak@expedia.com  
 Attention: General Counsel  
 with a copy to: King & Wood Mallesons  
 Address: Level 61, Governor Phillip Tower, 1 Farrer Place,  
 Sydney NSW 2000  
 Email: David.Friedlander@au.kwm.com  
 Attention: David Friedlander  
 and  
 with a copy to: Wachtell, Lipton, Rosen & Katz  
 Address: 51 West 52<sup>nd</sup> Street  
 Fax number: 212-403-2269  
 Email: AJNussbaum@wlrk.com  
 Attention: Andrew J. Nussbaum
- (iii) if to Guarantor: Expedia, Inc.  
 Address: 333 108<sup>th</sup> Avenue NE, Bellevue, WA 98004  
 Fax number: +1 425 679 7251  
 Email: bdzialak@expedia.com

Attention: General Counsel

with a copy to: King & Wood Mallesons

Address: Level 61, Governor Phillip Tower, 1 Farrer Place,  
Sydney NSW 2000

Email: David.Friedlander@au.kwm.com

Attention: David Friedlander

and

with a copy to: Wachtell, Lipton, Rosen & Katz

Address: 51 West 52<sup>nd</sup> Street

Fax number: 212-403-2269

Email: AJNussbaum@wlrk.com

Attention: Andrew J. Nussbaum

- (d) (in the case of personal service, post or facsimile) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
- (e) (in the case of email) must be in pdf or other format that is a scanned image of the original of the communication, including a handwritten signature, and be attached to an email that states that the attachment is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address, sent by fax to the number, or sent by email to the email address, of the addressee, in accordance with this clause 15.1.

## 15.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
- (d) (in the case of delivery by hand) on delivery; and
- (e) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 15.1, 4 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day

("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

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## 16. GST

### 16.1 Interpretation

- (a) Except where the context suggests otherwise, and subject to clause 16.1(b), terms used in this clause 16 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) "Input tax credit" has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 and a reference to an input tax credit entitlement of an entity includes an input tax credit for an acquisition made by that entity but to which another member of the same GST group is entitled.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 16.
- (d) Any consideration for a supply that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to that supply for the purpose of this clause 16.

### 16.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement 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.

### 16.3 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must, subject to clause 16.3(b), pay an additional amount to the Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 16.3(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) Where additional amounts are payable between parties to this agreement pursuant to clause 16.3(a), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to provide the tax invoice referred to in clause 16.3(b) no later than the time at which any consideration is to be first provided for that supply.
- (d) If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 16.3(a) then the Supplier must promptly issue an adjustment note 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 16.3(d) is deemed to be a payment, credit or refund of the additional amount payable under clause 16.3(a).

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## 17. Entire agreement

The Transaction Documents and the Confidentiality Deed constitute the entire agreement between the parties in relation to their subject matter and supersede all previous agreements and understandings between the parties in relation to their subject matter.

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## 18. General

### 18.1 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this agreement, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.
- (c) Clauses 18.1(a) and 18.1(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

### 18.2 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

### 18.3 Assignment

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

### 18.4 Consents

Unless this agreement expressly provides otherwise, a consent under this agreement 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.

### 18.5 Costs

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing each Transaction Document.

### 18.6 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

### 18.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

## 18.8 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this agreement. Specific performance, injunctive relief, or any other remedies which would otherwise be available in equity or in law are available as a remedy for a breach or threatened breach of this agreement by any party, notwithstanding the ability of any party to terminate this agreement or seek damages for such a breach or threatened breach.

## 18.9 No merger

A party's rights and obligations do not merge on completion of any transaction under this agreement.

## 18.10 Severance

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

## 18.11 Stamp duties

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement;
- (b) must pay to WTF on demand the amount of duty, any late payment penalties or interest assessed to WTF arising out of or in connection with any failure to comply with clause 18.11(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause 18.11.

## 18.12 Waivers

Without limiting any other provision of this agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement;
- (b) a waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

## 18.13 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this agreement expressly states otherwise.

**18.14 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

**18.15 No liability for loss**

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

**18.16 Approvals and consents**

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

**18.17 Conflict of interest**

The parties' rights and remedies under this agreement may be exercised even if it involves a conflict of duty or a party has a personal interest in their exercise.

**18.18 Indemnities**

The indemnities in this agreement are continuing obligations, independent from the other obligations of the parties under this agreement and continue after this agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this agreement.

**18.19 Enforceability**

For the purpose of this agreement:

- (a) WTF is taken to be acting as agent and trustee on behalf of and for the benefit of all WTF Indemnified Parties; and
- (b) Bidder is taken to be acting as agent and trustee on behalf of and for the benefit of all Bidder Indemnified Parties,

and all of those persons are to this extent taken to be parties to this agreement.

**18.20 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

---

**19. Governing law, jurisdiction and service of process****19.1 Governing law**

This agreement is governed by the law applying in Queensland.

**19.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of Queensland, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and

- (b) 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, if that venue falls within clause 19.2(a).

### **19.3 Service of process**

Bidder and Guarantor irrevocably appoints David Friedlander of King & Wood Mallesons as its agent in Australia for service of process.

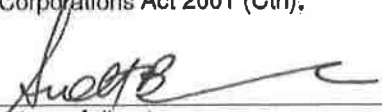
**Schedule 1 Timetable**

<b>Event</b>	<b>Date</b>
Release of agreed Announcement	7 July 2014
Regulator's Draft provided to ASIC	mid August 2014
First Court Date	late August 2014
Scheme Meeting	late September 2014
Second Court Date	late September 2014
Effective Date	early October 2014
Scheme Record Date	early October 2014
Implementation Date (including registration of shares in name of Bidder)	early October 2014
Removal of WTF from ASX Official List	early October 2014, day after Implementation Date




Executed as an agreement.

Executed by **Wotif.com Holdings Limited ACN 093 000 456** in accordance with section 127 of the Corporations Act 2001 (Cth);

  
\_\_\_\_\_  
Signature of director

**SCOTT BLUME**  
\_\_\_\_\_  
Full name of director

  
\_\_\_\_\_  
Signature of company secretary/director

**Sean Simmons**  
\_\_\_\_\_  
Full name of company secretary/director

**SIGNED by ERIC HART as attorney for EMU AUSTRALIA INVESTMENTS PTY LIMITED** under power of attorney dated \_\_\_\_\_ in the presence of: \_\_\_\_\_ )  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
..... )  
Signature of witness \_\_\_\_\_ )  
\_\_\_\_\_)  
..... )  
Name of witness (block letters) \_\_\_\_\_ )

By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney

By Expedia, Inc.:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

Executed as an agreement.

Executed by Wotif.com Holdings Limited ACN 093 000 456 in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

SIGNED by ERIC HART as attorney for EMU AUSTRALIA INVESTMENTS PTY LIMITED under power of attorney dated July 5, 2014 in the presence of:

Signature of witness

Name of witness (block letters)

Signature of attorney

By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney

By Expedia, Inc.: Eric Hart

Name

Senior Vice President

Title

**Annexure A Scheme**

**DRAFT**

# Scheme of Arrangement

## Pursuant to section 411 of the Corporations Act

Wotif.com Holdings Limited  
WTF

The registered holders of fully paid ordinary shares in the capital of WTF as  
at the Record Date

Clayton Utz  
Lawyers  
Level 28, Riparian Plaza  
71 Eagle Street  
Brisbane QLD 4000  
GPO Box 9806  
Brisbane QLD 4001  
Tel +61 7 3292 7000  
Fax +61 7 3221 9669  
[www.claytonutz.com](http://www.claytonutz.com)

Our reference 12293/12261/80154501

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## Contents

<b>1.</b>	<b>Definitions and interpretation</b> .....	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation.....	3
1.3	Business Day.....	4
<b>2.</b>	<b>Conditions Precedent</b> .....	<b>4</b>
2.1	Conditions to the Scheme .....	4
2.2	Certificates in relation to Conditions Precedent .....	4
2.3	Termination of Implementation Agreement .....	5
<b>3.</b>	<b>Scheme</b> .....	<b>5</b>
3.1	Effective Date of the Scheme .....	5
3.2	End Date .....	5
<b>4.</b>	<b>Implementation of Scheme</b> .....	<b>5</b>
4.1	Lodgement.....	5
4.2	Transfer of Scheme Shares.....	5
4.3	Provision of Scheme Consideration .....	6
4.4	Joint holders .....	6
<b>5.</b>	<b>Scheme Consideration</b> .....	<b>6</b>
5.1	Consideration.....	6
<b>6.</b>	<b>Dealings in WTF Shares</b> .....	<b>7</b>
6.1	Dealings in WTF Shares by Scheme Shareholders .....	7
6.2	WTF Share Register .....	7
6.3	Information to be made available to Bidder .....	7
6.4	Effect of share certificates and holding statements .....	7
6.5	No disposals after Record Date.....	7
<b>7.</b>	<b>Suspension and termination of quotation</b> .....	<b>7</b>
<b>8.</b>	<b>General Scheme provisions</b> .....	<b>8</b>
8.1	Appointment of agent and attorney .....	8
8.2	Enforcement of Deed Poll.....	8
8.3	Scheme Shareholders' consent.....	8
8.4	Scheme Shareholder's agreements .....	8
8.5	Warranty by Scheme Shareholders.....	8
8.6	Title to Scheme Shares .....	9
8.7	Alterations and Conditions.....	9
8.8	Notices .....	9
8.9	Inconsistencies .....	9
8.10	Further assurance.....	9
8.11	Stamp Duty .....	9
8.12	Governing Law.....	10

# Scheme of Arrangement made under section 411 of the Corporations Act 2001 (Cth)

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## Date

**Parties**                    **Wotif.com Holdings Limited ACN 093 000 456** of Level 1, 7 Baroona Road, Milton QLD 4064 (WTF)

**The registered holders of fully paid ordinary shares in the capital of WTF as at the Record Date**

## Background

- A. WTF is a public company limited by shares incorporated in the State of Queensland and is admitted to the official list of ASX.
- B. **Emu Australia Investments Pty Limited ACN 600 494 086 (Bidder)** is a company limited by shares incorporated in the State of Victoria.
- C. **Expedia, Inc. (Guarantor)** is a Delaware corporation listed on the NASDAQ Stock Market.
- D. WTF, Bidder and Guarantor have entered into the Implementation Agreement pursuant to which, amongst other things, WTF has agreed to propose this Scheme to WTF Shareholders, and each of WTF, Bidder and Guarantor have agreed to take certain steps to give effect to the Scheme.
- E. If the Scheme becomes Effective, then:
- (a) all the Scheme Shares will be transferred to Bidder and the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the provisions of the Scheme; and
  - (b) WTF will enter the name and address of Bidder in the WTF Share Register as the holder of the Scheme Shares.
- F. Bidder and Bidder Guarantor have entered into the Deed Poll for the purpose of covenanting in favour of Scheme Shareholders to perform the obligations contemplated of it under the Scheme.

---

## 1. Definitions and interpretation

### 1.1 Definitions

In this document, unless the contrary intention appears or the context requires otherwise:

**Aggregate Scheme Consideration** means the aggregate amount of the Scheme Consideration payable to Scheme Shareholders under this Scheme.

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

**ASX** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Australia or the United States and on which banks are open for business generally in Brisbane and New York.

**CHESS** means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlement and Transfer Corporation Pty Limited ABN 49 008 504 532.

**Condition** means each condition to this Scheme set out in clause 2.1.

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

**Court** means the Federal Court, Queensland registry or such other court of competent jurisdiction as WTF and Bidder agree in writing.

**Deed Poll** means the deed poll dated *[insert]* 2014 executed by Bidder and Guarantor in favour of the Scheme Shareholders (subject to any amendments permitted by its terms).

**Effective** means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

**Effective Date** means the date on which the Scheme becomes Effective.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**End Date** means the latest to occur of:

- (a) 28 February 2015; and
- (b) such other date agreed in writing between WTF and Bidder.

**Explanatory Memorandum** means the explanatory memorandum to be prepared by WTF pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of the Implementation Agreement and to be dispatched to the WTF Shareholders.

**Implementation Agreement** means the scheme implementation agreement dated 5 July 2014 between WTF, Bidder and Guarantor under which, amongst other things, WTF has agreed to propose the Scheme to Scheme Shareholders, and each of Bidder, Guarantor and WTF has agreed to take certain steps to give effect to the Scheme.

**Implementation Date** means the date which is 3 Business Days after the Record Date or such other date as WTF and Bidder agree in writing.

**Listing Rules** means the official listing rules of ASX.

**Record Date** means 5.00 pm (Brisbane time) on the date which is 3 Business Days after the Effective Date or such other time and date agreed in writing between Bidder and WTF.

**Scheme** means the scheme of arrangement under part 5.1 of the Corporations Act between WTF and WTF Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by Bidder and WTF.

**Scheme Consideration** means, for each Scheme Share, \$3.30 less the aggregate amount of the WTF Discretionary Special Dividend and/or the WTF Final Dividend (if any) paid in respect of each WTF Share.

**Scheme Meeting** means the meeting of WTF Shareholders ordered by the Court in relation to the Scheme to be convened under section 411(1) of the Corporations Act.

**Scheme Share** means a WTF Share on issue as at the Record Date.

**Scheme Shareholder** means a person who holds WTF Shares as at the Record Date.

**Second Court Date** means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Trading Day** has the meaning given in the Listing Rules.

**Trust Account** means an Australian dollar denominated trust account operated by WTF as trustee for the Scheme Shareholders, as nominated by WTF and notified to Bidder at least 5 Business Days prior to the Implementation Date, being the account into which Bidder will deposit the Aggregate Scheme Consideration in accordance with clause 4.3.

**WTF Board** means the board of directors of WTF.

**WTF Discretionary Special Dividend** means a fully franked cash dividend, which together with any WTF Final Dividend does not exceed 24 cents per WTF Share, provided that the franking account of WTF will not be in deficit after the payment of any such dividends.

**WTF Final Dividend** means a fully franked cash dividend, which together with the WTF Discretionary Special Dividend does not exceed 24 cents per WTF Share, to be paid by WTF prior to the Implementation Date in respect of the year ended 30 June 2014, provided that the franking account of WTF will not be in deficit after the payment of any such dividends.

**WTF Share Register** means the register of members of WTF maintained by or on behalf of WTF in accordance with section 168(1) of the Corporations Act.

**WTF Share Registry** means Computershare Investor Services Pty Limited ACN 078 279 277.

**WTF Shareholder** means a person who is registered in the WTF Share Register as a holder of WTF Shares.

**WTF Shares** means fully paid ordinary shares in the capital of WTF.

## 1.2 Interpretation

In this document, unless the contrary intention appears or the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes each other gender;
- (c) references to persons includes references to individuals, corporations, other bodies corporate or bodies politic;
- (d) references to paragraphs or clauses are to a paragraph or clause of this document;
- (e) a reference to a statute, regulation or agreement is to such a statute, regulation or agreement as from time to time amended;
- (f) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;



- (g) if a time period is specified and dates from a given date or the day of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (i) a reference to any time is a reference to that time in Brisbane, Australia;
- (j) a reference to "\$" or "A\$" is to the lawful currency of the Commonwealth of Australia;
- (k) a reference to a document is that document as varied, novated, ratified or replaced from time to time;
- (l) the interpretation of a substantive provision is not affected by any heading; and
- (m) "includes" in any form is not a word of limitation.

### **1.3 Business Day**

Except where otherwise expressly provided, where under this document the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately preceding Business Day.

---

## **2. Conditions Precedent**

### **2.1 Conditions to the Scheme**

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions, and the provisions of clauses 3, 4 and 5 will not come into effect unless and until each of these conditions have been satisfied:

- (a) as at 8.00 am on the Second Court Date each of the conditions set out in clause 3.1 of the Implementation Agreement (other than the condition relating to the approval of the Court set out in clause 3.1(h) of the Implementation Agreement) have been satisfied or waived in accordance with the terms of the Implementation Agreement;
- (b) as at 8.00 am on the Second Court Date the Implementation Agreement has not been terminated;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act with or without modification;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to Bidder and WTF have been satisfied; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to the Scheme.

### **2.2 Certificates in relation to Conditions Precedent**

On the Second Court Date:

- (a) WTF must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00 am on the Second Court Date the conditions set out in clauses 3.1 (other

than clause 3.1(h)) of the Implementation Agreement have been satisfied or waived in accordance with the Implementation Agreement; and

- (b) Bidder must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not as at 8.00 am on the Second Court Date the conditions set out in clauses 3.1 (other than clause 3.1(h)) of the Implementation Agreement have been satisfied or waived in accordance with the Implementation Agreement.

## **2.3 Termination of Implementation Agreement**

Without limiting any rights under the Implementation Agreement, in the event that the Implementation Agreement is terminated in accordance with its terms before 8.00 am on the Second Court Date, WTF, Bidder and Guarantor are each released from:

- (a) any further obligation to take steps to implement the Scheme; and
- (b) any liability with respect to the Scheme.

---

## **3. Scheme**

### **3.1 Effective Date of the Scheme**

Subject to clause 3.2, the Scheme will take effect on and from the Effective Date.

### **3.2 End Date**

The Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date, or such later date as WTF, Bidder and Guarantor agree in writing.

---

## **4. Implementation of Scheme**

### **4.1 Lodgement**

If the Conditions are satisfied, WTF must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving the Scheme as soon as possible after, and in any event by no later than 5.00 pm on the Business Day following, the date on which the Court approves the Scheme or such other Business Day as WTF, Bidder and Guarantor agree in writing.

### **4.2 Transfer of Scheme Shares**

On the Implementation Date, subject to the provision of the Scheme Consideration in the manner contemplated by clauses 4.3, 4.4 and 5 and Bidder having provided WTF with written confirmation thereof, all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares, be transferred to Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by WTF or its directors as attorney or agent for Scheme Shareholders under this Scheme), by WTF effecting a valid transfer or transfers of the Scheme Shares to Bidder under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:

- (a) WTF delivering to Bidder a completed share transfer form or forms (which may be a master transfer form) to transfer all of the Scheme Shares to Bidder duly executed by WTF as the attorney and agent of each Scheme Shareholder under clause 8.1 of this Scheme;
- (b) Bidder executing and delivering the share transfer form or forms to WTF; and

- (c) WTF immediately after receipt of the share transfer form or forms under clause 4.2(b), entering, or procuring the entry of, the name and address of Bidder in the WTF Share Register as the holder of all of the Scheme Shares.

#### **4.3 Provision of Scheme Consideration**

- (a) On the Implementation Date, in consideration for the transfer to Bidder of each Scheme Share:
- (i) Bidder will, [at or before 12:00 pm on the Implementation Date], deposit the Aggregate Scheme Consideration into the Trust Account;
  - (ii) Subject to Bidder having complied with clause 4.3(a)(i), WTF must, on the Implementation Date and from the Trust Account, pay or procure the payment to each Scheme Shareholder of the proportion of the Aggregate Scheme Consideration attributable to that Scheme Shareholder based on the number of Scheme Shares held by that Scheme Shareholder as at the Record Date, which obligation will be satisfied by WTF:
    - A. where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the WTF Registry to receive dividend payments from WTF by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
    - B. otherwise, dispatching, or procuring the dispatch of, a cheque in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.4), for the relevant amount.

#### **4.4 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to Scheme Shareholders will be payable to the joint holders and will be forwarded to the holder whose name appears first in the WTF Share Register as at 5:00pm on the Record Date; and
- (b) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the WTF Share Register as at the Record Date.

---

### **5. Scheme Consideration**

#### **5.1 Consideration**

Bidder and Guarantor covenant in favour of WTF Shareholders that, in consideration for the transfer to Bidder of Scheme Shares held by Scheme Shareholders under the terms of the Scheme, Bidder or Guarantor will (pursuant to their obligations under the Deed Poll) provide the Scheme Consideration to the Scheme Shareholders in accordance with the terms of the Scheme.

---

## **6. Dealings in WTF Shares**

### **6.1 Dealings in WTF Shares by Scheme Shareholders**

For the purposes of establishing who are Scheme Shareholders, dealings in WTF Shares or other alterations to the WTF Share Register will be recognised by WTF provided that:

- (a) in the case of dealings of the type to be effected on CHESSE, the transferee is registered in the WTF Share Register as the holder of the relevant WTF Shares by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the place where the WTF Share Register is kept by 5:00 pm on the day which is the Record Date (in which case WTF must register such transfers before 7:00 pm on that day),

and WTF will not accept for registration, or recognise for the purpose of establishing who are Scheme Shareholders, any transmission application or transfer in respect of WTF Shares received after such times on the Record Date.

### **6.2 WTF Share Register**

WTF will, until the Scheme Consideration has been paid and Bidder has been entered in the WTF Share Register as the holder of all of the Scheme Shares, maintain the WTF Share Register in accordance with the provisions of this clause 6 and the WTF Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

### **6.3 Information to be made available to Bidder**

WTF must procure that as soon as practicable following the Record Date, details of the names, registered addresses and holdings of WTF Shares of every Scheme Shareholder shown in the WTF Share Register at the Record Date are made available to Bidder in such form as Bidder may reasonably require.

### **6.4 Effect of share certificates and holding statements**

As from the Record Date (and other than for Bidder following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the WTF Share Register at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

### **6.5 No disposals after Record Date**

If the Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and WTF will be entitled to disregard any such disposal, purported disposal or agreement.

---

## **7. Suspension and termination of quotation**

- (a) WTF must apply to ASX for suspension of trading of the WTF Shares on ASX with effect from the close of business on the Effective Date.
- (b) WTF must apply to ASX for termination of official quotation of the WTF Shares on ASX and the removal of WTF from the official list of ASX with effect from the Business Day immediately following the Implementation Date.

---

## **8. General Scheme provisions**

### **8.1 Appointment of agent and attorney**

Each Scheme Shareholder, without the need for any further act, irrevocably appoints WTF as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary to give effect to the terms of the Scheme including, without limitation, the execution of the share transfer(s) to be delivered under clause 4.2(a) and the giving of the Scheme Shareholders' consent under clause 8.3; and
- (b) enforcing the Deed Poll against Bidder,

and WTF accepts such appointment. WTF, as agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

### **8.2 Enforcement of Deed Poll**

WTF undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Bidder (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

### **8.3 Scheme Shareholders' consent**

Each Scheme Shareholder irrevocably:

- (a) consents to WTF and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of the Scheme; and
- (b) acknowledges that the Scheme binds WTF and all of the WTF Shareholders from time to time (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme).

### **8.4 Scheme Shareholder's agreements**

Under the Scheme:

- (a) each Scheme Shareholder agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of the Scheme;
- (b) each Scheme Shareholder agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme; and
- (c) each Scheme Shareholder acknowledges that this Scheme binds WTF and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting).

### **8.5 Warranty by Scheme Shareholders**

Each Scheme Shareholder is deemed to have warranted to Bidder that all their Scheme Shares (including any rights and entitlements attaching to those shares) will, at the date of the transfer of them to Bidder, be fully paid and free from all mortgages, charges, security interests, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity

to sell and to transfer their Scheme Shares together with any rights and entitlements attaching to such shares.

## **8.6 Title to Scheme Shares**

Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by WTF of Bidder in the WTF Share Register as the holder of the Scheme Shares.

## **8.7 Appointment of sole proxy**

On this Scheme becoming Effective, and until WTF registers Bidder as the holder of all Scheme Shares in the WTF Share Register, each Scheme Shareholder:

- (a) is deemed to have appointed Bidder as attorney and agent (and directed Bidder in each such capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution;
- (b) no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.7(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers conferred in clause 8.7(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

## **8.8 Alterations and Conditions**

WTF may, by its counsel or solicitors, and with the consent of Bidder, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to the Scheme which the Court thinks fit to impose.

## **8.9 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to WTF, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at WTF's registered office or at the WTF Share Registry as the case may be.

## **8.10 Inconsistencies**

This Scheme binds WTF and all WTF Shareholders, and to the extent of any inconsistency, overrides the WTF constitution.

## **8.11 Further assurance**

WTF will execute all documents and do all acts and things as may be necessary or expedient for the implementation of, and performance of its obligations under, the Scheme.

## **8.12 Stamp Duty**

Bidder will pay any stamp duty payable on the transfer by Scheme Shareholders of the Scheme Shares to Bidder.

### **8.13 Governing Law**

This Scheme is governed by the law applying in Queensland. The parties submit to the non-exclusive jurisdiction of the courts of Queensland, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings in connection with the Scheme.

**Annexure B Deed Poll**



DRAFT

# Deed Poll

(in respect of the Scheme)

Emu Australia Investments Pty Limited (ACN 600 494 086)

Bidder

Expedia, Inc.

Guarantor

In favour of each registered holder of fully paid ordinary shares in the capital of Wotif.com Holdings Limited as at the Record Date

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**Contents**

**1. Definitions and interpretations.....2**

    1.1 Definitions .....2

    1.2 Interpretation.....2

    1.3 Nature of deed poll .....3

**2. Conditions .....3**

    2.1 Conditions Precedent .....3

    2.2 Termination .....3

    2.3 Consequences of termination .....4

**3. Obligation to pay Scheme Consideration.....4**

**4. Warranties.....4**

**5. Continuing obligations .....4**

**6. General .....4**

    6.1 Stamp duty.....4

    6.2 Waiver.....5

    6.3 Variation .....5

    6.4 Cumulative rights .....5

    6.5 Assignment .....5

    6.6 Further action.....5

**7. Governing law and jurisdiction .....6**

**Deed poll made on**

**2014**

**Parties**

**Emu Australia Investments Pty Limited** (ACN 600 494 086) of Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000 (**Bidder**)

**Expedia, Inc.** of 333 108th Avenue NE, Bellevue, WA 98004 (**Guarantor**)

**In favour of**

**Each registered holder of fully paid ordinary shares in the capital of Wotif.com Holdings Limited ACN 093 000 456 (WTF)** on issue as at the Record Date (**Scheme Shareholders**)

**Background**

- A. WTF, Bidder and Guarantor have entered into the Implementation Agreement.
- B. WTF has agreed in the Implementation Agreement to propose a scheme of arrangement between Bidder and the Scheme Shareholders, the effect of which will be that Bidder acquires all of the Scheme Shares from Scheme Shareholders for the Scheme Consideration, subject to the satisfaction of certain conditions.
- C. Bidder has agreed in the Implementation Agreement to take certain steps in relation to the Scheme and Guarantor has agreed in the Implementation Agreement to guarantee the obligations of Bidder.
- D. In accordance with clause 4.2(e) of the Implementation Agreement, Bidder is entering into this deed poll to covenant in favour of the Scheme Shareholders that it will observe and perform its obligations under the Implementation Agreement and attributed to it under the Scheme.
- E. Guarantor is entering into this deed poll to covenant in favour of Scheme Shareholders that it will observe and perform its obligations under the Implementation Agreement and the Scheme, and procure that Bidder observes and performs its obligations under the Implementation Agreement and attributed to it under the Scheme.

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**1. Definitions and interpretations**

**1.1 Definitions**

In this deed poll:

- (a) **Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between WTF and the Scheme Shareholders, a copy of which is annexed to this deed poll, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by Bidder and WTF.
- (b) **Implementation Agreement** means the scheme implementation agreement dated 5 July 2014 between WTF, Bidder and Guarantor under which, amongst other things, WTF has agreed to propose the Scheme to Scheme Shareholders, and each of Bidder and WTF has agreed to take certain steps to give effect to the Scheme.
- (c) capitalised terms have the meaning given to them in the Scheme, unless the context requires otherwise.

**1.2 Interpretation**

In this deed poll, unless the contrary intention appears or the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes each other gender;
- (c) references to persons includes references to individuals, corporations, other bodies corporate or bodies politic;
- (d) references to paragraphs or clauses are to a paragraph or clause of this deed poll;
- (e) a reference to a statute, regulation or agreement is to such a statute, regulation or agreement as from time to time amended;
- (f) a reference to a person includes a reference to a person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (g) if a time period is specified and dates from a given date or the day of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (i) a reference to any time is a reference to that time in Melbourne, Australia;
- (j) a reference to "\$" or "A\$" is to the lawful currency of the Commonwealth of Australia;
- (k) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (l) the interpretation of a substantive provision is not affected by any heading; and
- (m) "includes" in any form is not a word of limitation.

### 1.3 Nature of deed poll

Bidder and Guarantor acknowledge and agree that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints WTF and each of its directors and officers (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder and Guarantor.

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## 2. Conditions

### 2.1 Conditions Precedent

Bidder's and Guarantor's obligations under this deed poll are subject to the Scheme becoming Effective.

### 2.2 Termination

If the Implementation Deed is terminated or the Scheme does not become Effective on or before the End Date, the obligations of Bidder and the Guarantor under this deed poll automatically terminate and the terms of this deed poll will be of no further force or effect, unless WTF, Bidder and Guarantor otherwise agree in accordance with the Implementation Agreement.

## 2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, then in addition and without prejudice to any other rights, powers or remedies available to it, Bidder and Guarantor are released from their obligations to further perform this deed poll except those obligations under clause 6.1 and any other obligations which by their nature survive termination.

---

## 3. Obligation to pay Scheme Consideration

Subject to clause 2, Bidder undertakes in favour of each Scheme Shareholder (and Guarantor must procure Bidder) to:

- (a) deposit the Aggregate Scheme Consideration into the Trust Account; and
  - (b) undertake all other actions attributed to it under the Scheme,
- subject to and in accordance with the terms of the Scheme.

---

## 4. Warranties

Each of the Bidder and Guarantor represent and warrant that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery by it of this deed poll has been properly authorised by all necessary corporate action and it has full corporate power and lawful authority to perform or cause to be performed its obligations under this deed poll and to carry out or cause to be carried out the transactions contemplated by this deed poll; and
- (c) this deed poll will constitute legally, valid and binding obligations on it enforceable in accordance with its terms (subject to any necessary stamping) and does not conflict with or result in a breach of or default under:
  - (i) the constitution or equivalent constituent documents of it or any of its Related Bodies Corporate (as defined in the Implementation Agreement); or
  - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party, or by which it is bound.

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## 5. Continuing obligations

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

- (a) Bidder and Guarantor have fully performed their obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

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## 6. General

### 6.1 Stamp duty

Bidder or Guarantor will:

- (a) pay or procure the payment of all stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll; and

- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

## 6.2 Waiver

- (a) Waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
- (i) a right arising from a breach of this deed poll; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under this deed poll,
- does not result in a waiver of that right, power, authority, discretion or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to the exercise of a right, power, authority, discretion or remedy by that other party.
- (e) This clause 6.2 may not itself be waived except in writing.

## 6.3 Variation

A provision of this deed poll may not be varied unless:

- (a) before the Second Court Date, the variation is agreed to in writing by WTF, Bidder and Guarantor; or
- (b) on or after the Second Court Date, the variation is agreed to in writing by WTF, Bidder and Guarantor, and is approved by the Court,

in which event Bidder and Guarantor will enter into a further deed poll in favour of the Scheme Shareholders giving effect to such amendment or variation.

## 6.4 Cumulative rights

The rights, powers and remedies of Bidder and Guarantor and each Scheme Shareholder under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this deed poll.

## 6.5 Assignment

The rights and obligations of Bidder and Guarantor and the rights of each Scheme Shareholder under this deed poll are personal and must not be assigned, charged or otherwise dealt with at law or in equity.

## 6.6 Further action

Bidder and Guarantor will promptly do all things and execute and deliver all further documents required by law to give effect to this deed poll.

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**7. Governing law and jurisdiction**

- (a) This deed poll is governed by the law applying in Queensland.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Queensland, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings in connection with this deed poll.

Executed as a deed poll.

**SIGNED, SEALED AND DELIVERED** )  
by )

as attorney for **EMU AUSTRALIA** )  
**INVESTMENTS PTY LTD** under power )  
of attorney dated )

in the presence of: )

..... )

Signature of witness )

.....  
By executing this document the  
attorney states that the attorney has  
received no notice of revocation of the  
power of attorney

..... )

Name of witness (block letters) )

)

)

)

)

By **Expedia, Inc.:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title