

execution version

## Deed of Company Arrangement

Medivac Limited (Administrators Appointed)

Brent Kijurina, Richard Albarran and Cameron Shaw

Pacific Corporate Services (Aus) Pty Ltd

gadens

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# Deed of Company Arrangement

Dated

## Parties

1. Brent Kijurina, Richard Albarran, and Cameron Shaw c/- Hall Chadwick, Level 40, 2 Park Street Sydney NSW 2000, jointly and severally (Deed Administrators).
2. Medivac Limited (Administrators Appointed) ACN 055 747 941 c/- Hall Chadwick, Level 40, 2 Park Street Sydney NSW 2000 (Company).
3. Pacific Corporate Services (Aus) Pty Ltd ACN 146 770 121 of 8, 94 Burswood Road Burswood WA 6100 (PCS).

## Background

- A. On 29 February 2016, PCS appointed the Administrators to the Company pursuant to section 436C of the Act.
- B. The second meeting of the Company's Creditors, being the meeting convened pursuant to section 439A of the Act, was initially held on 13 April 2016 and subsequently adjourned to 17 June 2016.
- C. At the second meeting of the Company's Creditors the Company's Creditors resolved pursuant to section 439C(a) of the Act that the Company execute a deed of company arrangement on the terms and conditions contained in this Deed.
- D. This Deed has been prepared by the Deed Administrators in accordance with section 444A(3) of the Act as the instrument setting out the terms of the deed of company arrangement that the Company's Creditors resolved that the Company execute.
- E. The purpose of this Deed is to provide for the business, property and affairs of the Company to be administered in a way that maximises the chances of the Company, or as much as possible of its business, continuing in existence, or, if it is not possible for the Company or its business to continue in existence, results in a better return for the Company's Creditors and members than would result from an immediate winding up of the Company.

## Operative provisions

### 1. Definitions and Interpretation

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#### 1.1 Definitions

In this Deed, the following words have the meaning set out below unless the context or subject matter requires otherwise.

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

**Administration Amount** means total of the following:

- (a) \$70,000.00 plus GST;
- (b) the Administration Initial Amount; and
- (c) the Administration Legal Costs.

**Administration Initial Amount** means an amount of \$100,000.00.

**Administration Legal Costs** means an amount on account of legal costs (including GST) incurred by the following, up to a maximum amount of \$29,000.00 plus GST:

- (a) the Administrators, as the administrators of the Company; and
- (b) the Deed Administrators, as the administrators of this Deed.

**Administrators** means Brent Kijurina, Richard Albarran and Cameron Shaw c/- Hall Chadwick, Level 40, 2 Park Street Sydney NSW 2000 as the joint and several administrators of the Company pursuant to Part 5.3A of the Act.

**Administrators' Account** means accounts of the Company, or any other accounts, opened or held by the Administrators for the purposes of the administration of the Company.

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

**ASX** means Australian Securities Exchange.

**Available Property** means the property that is to be available to pay Participating Creditor's Claims as set out in 6.2.

**BTV Media** means Brand TV Media Pty Ltd ACN 611 488 110.

**Business Day** means a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.

**Claim** includes a claim, demand, debt, action, proceeding, suit, cost, charge, expense, damage, loss and other liability.

**Commissioner of Taxation** means the Commissioner of Taxation Australia, and where applicable the Australian Taxation Office.

**Court** has the meaning set out in section 58AA of the Act.

**Creditor** means a person who has a debt payable by or claim against the Company whether present or future, certain or contingent, ascertained or sounding only in damages, the circumstances giving rise to which occurred on or before the Relevant Date.

**Creditor's Claim** means, in relation to a Creditor, the Creditor's debt payable by or claim against the Company as at the Relevant Date.

**Creditors' Deed Fund** means as at any time the aggregate of the Company's property transferred to, paid into or assigned to, or held, by the Deed Administrators in the Creditors' Deed Fund established in accordance with clause 7.1, less any amount applied in accordance with the terms of this Deed.

**Creditors Trust** means the trust to be established pursuant to the Creditors Trust Deed.

**Creditors Trust Deed** means the deed entitled "*Medivac Trust – Creditors Trust Deed*" between the Company and the Trustees, to be executed in accordance with clause 8 of this Deed, in the form substantially set out in Annexure E to this Deed.

**Collateral Security Deed** means the security agreement to be executed between the Company and the Deed Administrators in their personal capacity under which the Company will give a Security Interest over the MetaMizer Assets to the Deed Administrators in their personal capacity.

**Deed** means this document, including any schedule or annexure to it.

**Effectuation Conditions** means the conditions set out in Annexure C of this Deed.

**Election Date** means 60 days after the date of this Deed.

**Eligible Employee Creditor** has the meaning given to that term in section 9 of the Act.

**Filing Obligations** means any obligation the Company has:

- (a) to call and hold any general meeting of its members and to issue any such document required under the Act, the Regulations, the Listing Rules, or any other statutory instrument for the purposes of such meetings; and
- (b) to report to, or file documents (including reports, returns, accounts and audited accounts) with, the ASX, the ASIC, or such other Governmental Agency having jurisdiction in relation to the Company pursuant to the Act, the Regulations, the Listing Rules, or any other statutory instrument.

**Firm Rates** has the meaning given to in clause 23.1.

**Governing Jurisdiction** means the state of Western Australia, Australia.

**Governmental Agency** means:

- (a) the Crown, any government or any governmental, semi-governmental or judicial authority, agency or entity;
- (b) any statutory corporation or any self-regulatory entity established under statute;
- (c) any stock or securities exchange; or
- (d) any other person (whether autonomous or not) who is charged with the administration of a law or regulation,

and includes the ASIC, the ASX and the Commissioner of Taxation.

**GST** means any tax, levy, charge or impost implemented under the GST Law or any statute of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Law.

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

**GST Law** means the GST Act, all written laws associated with that GST Act and all rulings associated with that statute that are binding upon the Commissioner of Taxation.

**Incoming Directors** means such persons nominated by PCS, and appointed by the Administrators pursuant to section 442A of the Act, to be the directors of the Company.

**Listing Rules** means the official listing rules of ASX and any other rules or regulations of ASX which are applicable while the Company is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

**Meeting Documents** means any document required by and in compliance with the requirements of the Listing Rules, the Act or the Regulations for the purposes of convening the Shareholders' Meeting, including but not limited to, a notice of meeting, prospectus, explanatory memorandum, the Shareholders Resolutions and independent experts' reports.

**Meeting Documents Condition** means each of the Meeting Documents prepared by PCS must be in a form and substance acceptable to the Deed Administrators.

**MetaMizer Assets** means the whole or any part of the following:

- (a) the MetaMizer Contract; and
- (b) all rights, title, interest and entitlements of the Company arising under, in connection with or in respect of the MetaMizer Contract (including but not limited to any income, royalty stream and other money or benefits derived from the MetaMizer Contract and any proceeds as defined in the PPSA).

**MetaMizer Contract** means the sale agreement between the Company and RR Taylor Pty Ltd dated 6 September 2013.

**Non-participating Creditor** means the Secured Creditor.

**Official List** means the official list of entities that ASX has admitted and not removed.

**Outgoing Directors** means each of the following:

- (a) Rodger Stuart Johnston
- (b) Craig Stephen Hitchings; and
- (c) Phillip John Pryor.

**Participating Creditor** means a Creditor, other than:

- (a) a Non-participating Creditor; and
- (b) the Secured Creditor.

**Participating Creditor's Claim** means, in relation to a Participating Creditor, the Participating Creditor's debt payable by or Claim against the Company as at the Relevant Date, but, for the purpose of distribution of dividends to Participating Creditors, excludes any part of that debt or Claim that constitutes a Priority Creditor's Claim.

**Prescribed Provisions** means those provisions that are prescribed for the purposes of section 444A(5) of the Act, namely, the provisions set out in Schedule 8A of the Regulations.

Priority Creditor means:

- (a) a Participating Creditor with a debt payable by or Claim against the Company as at the Relevant Date which, had the Company been wound up with the Relevant Date being the day on which the winding up was taken to have begun, would have been a debt or Claim which must be paid in priority to all other unsecured debts or claims in accordance with section 556 or section 560 of the Act including, for the avoidance of doubt, the Commissioner of Taxation in respect of superannuation guarantee charge ; and
- (b) the Administrators, the Deed Administrators and any person with a debt payable by or Claim against the Company properly incurred by the Administrators or the Deed Administrators.

Priority Creditor's Claim means:

- (a) in relation to a Priority Creditor within subclause (a) of the definition of "Priority Creditor" – the Priority Creditor's debt payable by or Claim against the Company as at the Relevant Date which, had the Company been wound up with the Relevant Date being the day on which the winding up was taken to have begun, would have been a debt or Claim which must be paid in priority to all other unsecured debts or Claims in accordance with section 556 or section 560 of the Act; and
- (b) in relation to a Priority Creditor within subclause (b) of the definition of "Priority Creditor" – the Priority Creditor's debt payable by or Claim against the Company which, had the Company been wound up with the Relevant Date being the day on which the winding up was taken to have begun, would have been a debt or Claim within sections 556(1)(a), (c), (dd) or (de) of the Act which must be paid in priority to all other unsecured debts or Claims in accordance with section 556 of the Act.

PPSR means Personal Property Security Register.

PPSA means the *Personal Property Securities Act 2009 (Cth)*.

Recapitalisation Completion means the satisfaction of the last of the Recapitalisation Conditions (unless otherwise waived in accordance with clause 4.2 or clause 4.3).

Recapitalisation Completion Date means a date that is three (3) Business Days after the Recapitalisation Completion occurs.

Recapitalisation Conditions means the conditions set out in Annexure A of this Deed.

Recapitalisation Due Date means the date that is 90 days after the date of this Deed, or such other date as is agreed in writing between the Deed Administrators and PCS.

Recapitalisation Period means the period:

- (a) commencing on the date of this Deed; and
- (b) ending on the Recapitalisation Due Date.

Recapitalisation Proposal means the proposal put forward by PCS to the Company in respect of the recapitalisation of the Company, details of which are set out in Annexure B of this Deed.

Regulations means *Corporations Regulations 2001*.

Relevant Date means 29 February 2016.



**Share** means a fully paid ordinary share in the capital of the Company.

**Shareholder** means the registered holder of a Share.

**Shareholders Condition** means the passing of the Shareholders' Resolutions by the Shareholders at the Shareholders' Meeting.

**Shareholders' Meeting** means the meeting of Shareholders convened for the purpose of satisfying the Shareholders Condition, which must be held by the Shareholders' Meeting Date.

**Shareholders' Meeting Date** means a date that is no later than the Recapitalisation Date.

**Shareholders' Resolutions** means such resolutions of the Shareholders as are necessary to effectuate the Recapitalisation Proposal, which must be in form and substance, and on terms satisfactory to the Deed Administrators in all respect.

**Secured Creditor** means PCS.

**Secured Creditor Claim** means, in relation to the Secured Creditor, the debt payable by, or the Claim it has, against the Company which is secured under the Secured Creditor Security.

**Secured Creditor Releases** means all releases in respect of the Secured Creditor Security, which must be in form and substance, and on terms satisfactory to the Deed Administrators in all respect.

**Secured Creditor Security** means any Security Interest given by the Company to the Secured Creditor, including but not limited to the security interests registered against the Company on the PPSR with registration numbers 201507300081590 and 201510210038411.

**Security Interest** includes:

- (a) any mortgage, pledge, lien, or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset;
- (b) any retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security but it excludes a charge or lien arising in favour of a Government Agency by operation of statute unless there is default in payment of moneys secured by that charge or lien; and
- (c) a 'security interest' as defined in section 12(1) of the PPSA.

**Subsidiary** has the meaning given to that term in section 9 of the Act.

**Trustees** means Brent Kijurina, Richard Albarran, and Cameron Shaw c/- Hall Chadwick, Level 40, 2 Park Street Sydney NSW 2000 as the joint and several trustees under the Creditors Trust Deed.

**Unconditional Guarantee** means an unconditional and irrevocable bank guarantee for payment of the balance of the Administration Amount by PCS to the Deed Administrators and/or the Trustees which must be in form and substance, and on terms satisfactory to the Deed Administrators in all respect, which would allow the Deed Administrators and/or the Trustees to be paid within two (2) calendar months after the date of termination of this Deed in accordance with clause 20.1(a).

**Trust Fund** has the meaning given to it in the Creditors Trust Deed.

## 1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a person includes any other entity recognised by law and vice versa;
- (d) any reference to a party to this Deed includes its successors and permitted assigns;
- (e) any reference to any agreement or document includes that agreement or document as amended at any time;
- (f) a provision of law or a regulation is a reference to that provision as amended, consolidated, replaced or re-enacted;
- (g) any reference to Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia;
- (h) any reference to a regulation or rule includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any Governmental Agency, and if not having the force of law, with which responsible entities in the position of the relevant party would normally comply;
- (i) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it;
- (j) the expression "at any time" includes reference to past, present and future time and performing any action from time to time;
- (k) an agreement, representation or warranty by two or more persons binds them jointly and severally and is for the benefit of them jointly and severally;
- (l) a reference to an item is a reference to an item in the schedule to this Deed;
- (m) a reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed;
- (n) a reference to a clause described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Deed means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (o) when a thing is required to be done or money is required to be paid under this Deed on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day; and
- (p) a reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

## 1.3 Incorporation of Definitions

Unless the contrary intention appears, where a word or expression is defined or given meaning in the Act or the Regulations, the word or expression has the same meaning when used in this Deed.

#### **1.4 Application of the Act and Regulations**

Where any provision of the Act or the Regulations is incorporated into, or is said to apply to, this Deed, that provision is incorporated into or applies to this Deed:

- (a) with all modifications as are necessary to give effect to Part 5.3A of the Act, this Deed and the Creditors Trust Deed; and
- (b) as if references to:
  - (i) the "liquidator" were references to the Deed Administrators or the Trustees whichever is applicable ;
  - (ii) the "relevant date" were references to the Relevant Date; and
  - (iii) references to "winding up" were references to the arrangement effected by this Deed and the Creditors Trust Deed.

#### **1.5 Construction**

This Deed shall not be construed or considered to the disadvantage of a party because that party was responsible for its preparation.

#### **1.6 Operation of Prescribed Provisions**

Except where expressly excluded, the Prescribed Provisions are included in this Deed.

### **2. Commencement**

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The operation of this Deed commences from the time when this Deed becomes a deed of company arrangement pursuant to section 444B(6) of the Act.

### **3. Conditions for operation**

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There are no conditions that affect the coming into operation of this Deed.

### **4. Conditions for continued operation**

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#### **4.1 Conditions**

The continued operation of this Deed is subject to all of the Recapitalisation Conditions being satisfied, unless otherwise waived in accordance with clause 4.2 or clause 4.3.

#### **4.2 Waiver by agreement**

Any waiver of any of the Recapitalisation Conditions must be by written agreement between the Deed Administrators and PCS.

#### **4.3 Deemed waiver**

In the event that PCS makes an election in accordance with clause 10.2 by the Election Date, the Recapitalisation Conditions are deemed to be waived in their entirety.

## **5. Appointment of administrators of this Deed**

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### **5.1 Appointment**

The Company appoints the Deed Administrators, and the Deed Administrators consent to and accept the appointment, as the administrators of this Deed.

### **5.2 Agency**

The Deed Administrators are and act as the agent of the Company.

### **5.3 Deed Administrators may resign**

A Deed Administrator may resign as administrator of this Deed by tendering a written resignation to the Company.

### **5.4 Replacement**

Where a Deed Administrator:

- (a) dies; or
- (b) becomes prohibited from acting as administrator of this Deed in accordance with the Act; or
- (c) resigns as administrator of this Deed by notice in writing given to the Company,

the remaining Deed Administrators may convene a meeting of creditors to appoint any one or more replacement administrators of this Deed and (if appropriate) to determine the rate of remuneration to be paid to the new administrators.

### **5.5 Joint and several**

- (a) The Deed Administrators are joint and several administrators of the Company subject to this Deed.
- (b) The functions and powers of the Deed Administrators may be performed or exercised by any one of them or all of them together.
- (c) The rights, benefits and obligations of the Deed Administrators under this Deed, including with respect to the indemnity set out in this Deed are conferred or imposed on them jointly and severally.

### **5.6 Power**

For the purpose of administering this Deed, the Deed Administrators will:

- (a) have all the powers set out in clause 2 of the Prescribed Provisions;
- (b) at their election, have the rights, benefits, powers, privileges, authorities and discretions conferred by the constitution of the Company or otherwise by law on the directors of the Company; and
- (c) be entitled to engage the services of their partners, employees, consultants and agents of their firm or organisation to assist them in their performance or exercise of their duties, obligations, responsibilities, functions and powers as the administrators of this Deed.

## 5.7 Applications to Court

The Deed Administrators may at any time apply to the Court for directions in relation to any matter arising out of, or in connection with:

- (a) their former capacity as voluntary administrators of the Company; or
- (b) their administration of this Deed.

## 5.8 Limitation of liability

The Deed Administrators (in any capacity) will not be personally liable for:

- (a) any debt, liability or other obligation which the Deed Administrators may incur on behalf of the Company pursuant to this Deed; and
- (b) any loss or damage caused by any act, default or omission by the Deed Administrators or on behalf of the Deed Administrators in the performance of the Administrators' duties, obligations, responsibilities, functions and powers under this Deed.

## 5.9 Post-execution debts

Any debts payable by, or Claims against, the Company the circumstances giving rise to which occur after the date of this Deed are not liabilities of the Deed Administrators.

## 5.10 Books and records

To the extent that the Deed Administrators are given access to, or possession of, the books and records of the Company, the Deed Administrators shall maintain the same in accordance with the requirements of the Act.

## 6. Available Property

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### 6.1 Property available to pay claims

The property available to pay Participating Creditors' Claims under this Deed and the Creditors Trust Deed is the Available Property.

### 6.2 Composition

The Available Property is made up of the following:

- (a) all property of the Company, including but not limited to the following:
  - (i) any legal or equitable estate or interest (whether present or future and whether vested or contingent) and any right, title and interest in real or personal property of any description;
  - (ii) any chose/thing in action;
  - (iii) any PPSA retention of title property;
  - (iv) any shares in any Subsidiary of the Company;

- (v) the MetaMizer Assets (including the MetaMizer Contract); and
  - (vi) any proceeds of realisation in respect of or in connection with the property of the Company;
- (b) the Administration Amount;
  - (c) the Creditors' Deed Fund (or any balance thereof);
  - (d) the benefits of the Company's covenants (including any money payable pursuant to any indemnity) under this Deed and the Creditors Trust Deed in favour of the Deed Administrators and the Trustees; and
  - (e) any income accruing from or in respect of each of the above.

## **7. Creditors' Deed Fund**

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### **7.1 Establishing the Creditors' Deed Fund**

Upon the execution of this Deed by all parties, or as soon as thereafter reasonably practicable, the Deed Administrators are to open and conduct at least one (1) bank account in the name of the Company, which forms the Creditors' Deed Fund.

### **7.2 Composition**

The Deed Administrators must pay into the Creditors' Deed Fund, as soon as they become available, the following:

- (a) any money whether cash or in bank held or received by:
  - (i) the Company;
  - (ii) the Administrators as administrators of the Company (including money in the Administration Account); and
  - (iii) the Deed Administrators in accordance with the terms of this Deed (including the Administration Amount); and
- (b) all proceeds in respect of or in connection with all property of the Company.

### **7.3 Application**

The Creditors' Deed Fund is not property of the Company and must only be applied or dealt with in accordance with the terms of this Deed. The Deed Administrators will hold the Creditors' Deed Fund in accordance with the terms of this Deed.

### **7.4 Upon winding up**

If this Deed is terminated and followed by a winding up of the Company, the Creditors' Deed Fund is to be applied in payment of unsecured debts and claims against the Company observing the priorities provided for in Subdivision D of Division 6 of Part 5.6 of the Act.

## 8. Creditors' Trust

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### 8.1 Execution

The Company and the Trustees must execute the Creditors Trust Deed as soon as practicable after the earlier of the following dates:

- (a) the date upon which Recapitalisation Completion occurs; and
- (b) the date upon which the Deed Administrators receive the Unconditional Guarantee.

### 8.2 Transfer of the Available Property

Upon the execution of the Creditors Trust Deed, or as soon as thereafter reasonably practicable, the Company and Deed Administrators must transfer, or pay, the Available Property to the Trustees, to be administered in accordance with the terms of the Creditors' Trust Deed.

### 8.3 Continuing obligations

The parties acknowledge and agree that:

- (a) notwithstanding termination of this Deed pursuant to clause 20.1(a):
  - (i) any money payable by the Company and PCS (including the Administration Amount) to the Deed Administrators under this Deed, to the extent that it remains outstanding, shall be due and payable to the Trustees; and
  - (ii) any obligation or liability of the Company and PCS owed to the Deed Administrators under this Deed, to the extent that it has not been satisfied in full, shall be owed to the Trustees; and
- (b) termination of this Deed pursuant to clause 20.1(a) does not affect the any obligation or liability of the Company and PCS under this Deed, which obligation and liability shall survive and be owed to the Trustees until satisfied in full.

### 8.4 Cooperation

The parties must take all steps and do all things necessary including executing any documents that may be required by the Deed Administrators or the Trustees for the purpose of giving effect to clause 8.

## 9. Object of this Deed and Creditors Trust Deed

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The object of this Deed and the Creditors Trust Deed is that on execution of the Creditors Trust Deed and termination of this Deed pursuant to clause 20.1(a):

- (a) the Creditors are to obtain an entitlement under the arrangement provided for in the Creditors Trust Deed equivalent to the Creditors' previous entitlements under this Deed immediately before termination of this Deed; and
- (b) the Deed Administrators as Trustees under the Creditors Trust Deed are to have duties and obligations in relation to the Trust Fund and the Creditors equivalent to those duties and obligations applicable to the Deed Administrators under this Deed immediately before termination of this Deed in relation to the Available Property and the Creditors.

## 10. Details of arrangement

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### 10.1 Initial payment

- (a) At the time of execution of this Deed, PCS must pay to the Deed Administrators the Administration Initial Amount in accordance with clause 10.1(b).
- (b) Unless otherwise agreed, any payment under clause 10.1(a) must be by way of bank cheque made out to "*Medivac Limited (Subject to Deed of Company Arrangement)*".

### 10.2 Election by PCS

- (a) Subject to clause 10.2(b), PCS may elect:
  - (i) to provide the Unconditional Guarantee to the Deed Administrators; and
  - (ii) not to implement the Recapitalisation Proposal.
- (b) Any election under clause 10.2(a) must be in writing and delivered to the Deed Administrators together with the Unconditional Guarantee, by the Election Date.

### 10.3 Payment of balance of the Administration Amount

PCS must pay, or cause to be paid, the balance of the Administration Amount to the Deed Administrators, as follows, either:

- (a) from the proceeds of implementation of the Recapitalisation Proposal by the Recapitalisation Completion Date; or
- (b) by providing the Deed Administrators with the Unconditional Guarantee in accordance with clause 10.2(a)(i).

### 10.4 Security interest in favour of the Deed Administrators

- (a) The Company, as legal and beneficial owner, hereby charges and grants a security interest in the MetaMizer Assets to the Deed Administrators in their personal capacity to secure:
  - (i) the prompt payment of any money due to the Deed Administrators under this Deed by the Company and PCS; and
  - (ii) the prompt performance of all obligations of the Company and PCS under this Deed.
- (b) Prior to execution of this Deed by all parties, the Company and the Deed Administrators in their personal capacity must execute the Collateral Security Deed.
- (c) The ability of the Deed Administrators in their own capacity to enforce any rights under the Collateral Security Deed is not affected by the termination of this Deed.
- (d) PCS:
  - (i) consents to the Company granting a Security Interest in respect of the MetaMizer Assets to the Deed Administrators in their personal capacity pursuant to the Collateral Security Deed; and
  - (ii) acknowledges and confirms that any Security Interest in respect of the MetaMizer Assets given by the Company to the Deed Administrators in their



personal capacity pursuant to the Collateral Security Deed, will have first priority over any Security Interest in respect of the MetaMizer Assets given by the Company to the Secured Creditor pursuant to the Secured Creditor Security.

- (e) The parties must take all steps and do all things necessary, including executing any documents that may be required by the Deed Administrators or the Trustees for the purpose of giving effect to clause 10.4.

#### 10.5 Outstanding Filing Obligations

- (a) PCS acknowledges and agrees that:
  - (i) the Company, the Administrators and the Deed Administrators have not complied with the Filing Obligations; and
  - (ii) PCS will not make any objection or bring any Claim against the Company, the Administrators and the Deed Administrators including for compensation or seek, or take any steps, to rescind or terminate this Deed, including filing any application in Court to do so, by reason of the outstanding Filing Obligations.
- (b) The Company will use reasonable endeavours to assist PCS by providing such information and documents, as PCS may reasonably request, to facilitate the Company in complying with the Filing Obligations.

#### 10.6 Inter-conditional obligations for Recapitalisation Completion

All things and obligations required under this Deed for Recapitalisation Completion are inter-conditional, and Recapitalisation Completion will not be regarded as having occurred unless all such things occur or all such obligations are done.

#### 10.7 PCS's obligations – recapitalisation

The Company and PCS must at all times use reasonable endeavours to:

- (a) satisfy the Recapitalisation Conditions (unless otherwise waived in accordance with clause 4.2 or clause 4.3);
- (b) satisfy the Effectuation Conditions; and
- (c) implement the Recapitalisation Proposal.

#### 10.8 PCS's costs

To the extent that PCS incurs any costs and outlays to satisfy any of the Recapitalisation Conditions and to implement the Recapitalisation Proposal, PCS will be personally liable for those costs and outlays. For avoidance of any doubt, PCS will be solely liable for all costs and outlays incurred in respect of the following:

- (a) liaising with the ASX and the ASIC, preparing all necessary materials and doing all things to satisfy any requirement imposed by the ASX, the ASIC or such other Governmental Agency in relation to the Recapitalisation Proposal;
- (b) complying with any requirements imposed by the ASX, the ASIC or such other Governmental Agency, or under any law, in relation to the Recapitalisation Proposal;
- (c) preparing and submitting the Meeting Documents to the ASX, the ASIC or such other Governmental Agency, the directors of the Company and the Shareholders;

- (d) doing all things to enable the Company (including paying for all postage, dispatch, delivery and meeting room hire costs) to:
  - (i) convene and hold the Shareholders' Meeting; and
  - (ii) satisfy the Shareholders Condition.

#### 10.9 Deed Administrators' costs

To the extent that the Deed Administrators incur any costs and outlays (including any legal costs) to assist the Company, the directors and officers of the Company or PCS to satisfy any of the Recapitalisation Conditions and to implement the Recapitalisation Proposal, PCS will be liable for, and must pay to the Deed Administrators, those costs and outlays (including any legal costs) incurred by the Deed Administrators.

#### 10.10 Dealings with Shares

Other than the issue and transfer of the Shares or alteration in the status of a Shareholder in accordance with the Recapitalisation Proposal, any issue and transfer of the Shares, or any alteration in the status of a Shareholder that is made, is void except so far as the Court orders otherwise.

### 11. Review Event

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#### 11.1 Review Events

A Review Event occurs on the happening of any one of the following events:

- (a) if any of the Recapitalisation Conditions has not been satisfied by the Recapitalisation Due Date, unless otherwise waived in accordance with clause 4.2 or clause 4.3, or
- (b) if there has been a breach by PCS or the Company of any one or more of its obligations under this Deed; or
- (c) if the Deed Administrators at any time determine that it is no longer practicable or desirable to continue to implement this Deed or the Recapitalisation Proposal.

#### 11.2 Deed Administrators to convene meeting of creditors

If a Review Event occurs, then the Administrators may convene a meeting of creditors pursuant to section 445F of the Act and at that meeting, the creditors may resolve to:

- (a) vary the terms of this Deed in accordance with section 445A of the Act; or
- (b) terminate this Deed in accordance with section 445C(b) of the Act; or
- (c) terminate this Deed and wind up the Company in accordance with section 445E of the Act; or
- (d) implement the terms of this Deed.

## **12. Moratorium**

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### **12.1 Moratorium – creditors**

A Creditor must not:

- (a) begin or proceed with any application for an order to wind up the Company;
- (b) without the leave of the Court, and then, only in accordance with such terms as the Court imposes:
  - (i) begin or proceed with a proceeding against the Company or in relation to any of the Company's property or property used or occupied by, or in the possession of, the Company; or
  - (ii) begin or proceed with any enforcement process in relation to the Company's property, or property used or occupied by, or in the possession of, the Company; or
- (c) begin or take any further steps in any arbitration against the Company, to which the Company is a party to; or
- (d) exercise any right of set off that the Creditor would not have been entitled to exercise had the Company been wound up with the Relevant Date being the day on which the winding up was taken to have begun. For the avoidance of doubt, nothing in this Deed prevents a person exercising any right of set off against the Company to which the person would have been entitled had the Company been wound up with the Relevant Date being the day on which the winding up was taken to have begun.

### **12.2 Moratorium – shareholders, members and officers**

The Shareholders, the Company's members and the Company's officers must not:

- (a) begin or proceed with any application for an order to wind up the Company; or
- (b) take any steps to wind up the Company; or
- (c) take any steps to place the Company into administration under Part 5.3A of the Act.

### **12.3 Bar to proceedings**

The Company may plead this Deed in bar to any Claim, action, proceeding or suit brought by a Creditor in respect of that Creditor's Claim.

### **12.4 Non-exclusion of laws**

- (a) Nothing in clause 12 limits the operation of sections 444D(2) or 444D(3) of the Act.
- (b) Clause 12 has effect, in addition to, and not in derogation of, section 444E of the Act.

## **13. Binding effect of this Deed**

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### **13.1 Binding effect**

This Deed binds:

- (a) all parties to this Deed;

- (b) in accordance with section 444D of the Act, all Creditors of the Company having a Claim as at the Relevant Date; and
- (c) in accordance with section 444G of the Act, the Company, the Deed Administrators, and the officers and members of the Company.

#### **13.2 Consent to arrangement**

The Creditors:

- (a) consent to and agree to be bound by the arrangement effected by this Deed and the Creditors Trust Deed; and
- (b) appoint the Trustees as trustees of the Creditors Trust.

### **14. Binding effect on Non-participating Creditors**

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#### **14.1 Binding effect**

Non-participating Creditors are bound by this Deed.

#### **14.2 Admissibility of claims**

The Non-participating Creditors' Claims are not admissible to proof under this Deed or the Creditors Trust Deed.

#### **14.3 Participation in dividends**

Non-participating Creditors are not entitled to participate in any dividends declared and distributed under this Deed or the Creditors Trust Deed.

#### **14.4 Subordination**

In accordance with section 563C of the Act, each Non-participating Creditor agrees that its Creditor's Claim is subordinated such that its Creditor's Claim is not repayable until all Participating Creditors' Claims are paid in full.

### **15. Binding effect on owners and lessors**

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#### **15.1 Binding effect**

This Deed binds Creditors who are owners or lessors of property that is used or occupied by, or is in the possession of, the Company.

#### **15.2 Restriction on actions**

Creditors who are owners or lessors of property that is used or occupied by, or is in the possession of, the Company, must not take possession of the property or otherwise recover the property.

### 15.3 Court application

If a Creditor who is an owner or lessor of property that is used or occupied by, or is in the possession of, the Company did not vote in favour of the resolution of the Company's creditors because of which the Company executed this Deed, then the Deed Administrators may at the Deed Administrators' absolute discretion make an application to the Court for an order pursuant to section 444F(4) of the Act that the Creditor, as owner or lessor of the property, must not take possession of the property or otherwise recover the property.

## 16. Binding effect on Secured Creditor

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### 16.1 Binding effect

This Deed binds the Secured Creditor.

### 16.2 Restriction on actions

The Secured Creditor must not enforce, realise or otherwise deal with the Secured Creditor Security.

### 16.3 Court application

If the Secured Creditor did not vote in favour of the resolution of the Company's creditors because of which the Company executed this Deed, then the Deed Administrators may at the Deed Administrators' absolute discretion make an application to the Court for an order pursuant to section 444F(2) of the Act that the Secured Creditor must not enforce, realise or otherwise deal with the Secured Creditor Security.

## 17. Admissibility of debts or claims

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### 17.1 Admissible claims

A debt payable by or Claim against the Company is not admissible to proof under this Deed unless it is a debt payable by or Claim against the Company the circumstances giving rise to which occurred on or before the Relevant Date.

### 17.2 Adjudication of claims

The Deed Administrators are to determine:

- (a) the Priority Creditors' Claims; and
- (b) the Participating Creditors' Claims;

that are admissible to proof under this Deed. For the avoidance of doubt:

- (c) there is nothing in this Deed that requires that the Deed Administrators commence or complete the determination of which Priority Creditors' Claims and the Participating Creditors' Claims are admissible to proof under this Deed before the termination of this Deed in accordance with clause 20.1(a); and
- (d) this Deed may terminate in accordance with clause 20.1(a) notwithstanding that the Deed Administrators has not completed those determinations.

### 17.3 Applicable provisions – adjudication of claims

The following provisions apply for the purpose of the Deed Administrators determining the Priority Creditors' Claims and the Participating Creditors' Claims that are admissible to proof under this Deed:

- (a) section 560 and Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Act; and
- (b) regulations 5.6.11A, 5.6.37, 5.6.39 to 5.6.57 (inclusive) and 5.6.70A of the Regulations.

## 18. Distribution of the Creditors' Deed Fund

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### 18.1 Priority

The Deed Administrators are to apply the Creditors' Deed Fund in the following order of priority:

- (a) **FIRST** in payment in full of any money payable pursuant to the Deed Administrators' and the Administrators' right of indemnity conferred by clause 24 which the Deed Administrators in the Deed Administrators' absolute discretion considers it necessary or convenient to pay prior to the termination of this Deed
- (b) **SECOND** in payment of the balance of the Creditors' Deed Fund to the Trustees to be administered by the Trustees, and distributed to Creditors, in accordance with, and in the order of priority provided for in, the Creditors Trust Deed

### 18.2 Priority Creditors

For the purposes of the Deed Administrators applying the Creditors' Deed Fund, the Deed Administrators must make payment to the Priority Creditors in respect of the Priority Creditors' Claims in the order of priority under sections 556(1), 559, 560 and 561 of the Act as if the Company had been wound up with the Relevant Date being the day on which the winding up was taken to have begun.

### 18.3 Employee Entitlements

For the purposes of the Deed Administrators applying the Creditors' Deed Fund, an Eligible Employee Creditor is, in accordance with section 444DA(1) of the Act, entitled to a priority at least equal to the priority the Eligible Employee Creditor would have been entitled to if the Creditors' Deed Fund was applied in accordance with sections 556, 560 and 561 of the Act.

### 18.4 Superannuation contribution

For the purposes of the Deed Administrators applying the Creditors' Deed Fund, the Deed Administrators must, in accordance with section 444DB of the Act determine that a particular part or the whole (as the case may be) of a debt by way of superannuation contribution is not admissible to proof against the Company if:

- (a) a debt by way of superannuation guarantee charge:
  - (i) has been paid; or
  - (ii) is, or is to be, admissible to proof against the Company; and

- (b) the Deed Administrators are satisfied that the superannuation guarantee charge is attributable to that part or the whole of the first mentioned debt as the case may be.

#### 18.5 Discretion as to distribution

The Deed Administrators will have absolute discretion in deciding when to distribute the Creditors' Deed Fund, including whether to make one or more interim distributions of the Creditors' Deed Fund in addition to any final distribution.

#### 18.6 Applicable provisions – declaration and distribution of dividends

The following provisions apply for the purpose of the Deed Administrators declaring and distributing dividends under this Deed:

- (a) section 544 of the Act; and
- (b) regulations 5.6.63 to 5.6.70A (inclusive) of the Regulations.

### 19. Meeting of creditors to consider termination

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#### 19.1 When convened

Without limiting the operation of sections 445C, 445E or 445F of the Act, if:

- (a) the Deed Administrators consider that it is no longer practicable or desirable to carry on the business of the Company or to implement the administration of this Deed; or
- (b) any of the obligations under this Deed are not met on or before the due date and the default is not remedied within ten (10) Business Days after written notice by the Deed Administrators to the party in breach requiring the breach to be remedied;

then the Deed Administrators:

- (i) may cease to carry on the business of the Company except so far as is necessary for the beneficial winding up of the Company; and
- (ii) may convene a meeting of the Company's Creditors to consider:
  - (A) a resolution under section 445C(b) of the Act terminating the Deed; or
  - (B) any proposed variation of the Deed; or
  - (C) the implementation of the terms of the Deed; and
- (iii) at the same time as giving the Company's Creditors notice in writing of that meeting, may give the Company's Creditors:
  - (A) a current report of the position of the Company accompanied by such financial information as the Deed Administrators considers fit; and
  - (B) a statement that the Deed Administrators considers that it is no longer practicable or desirable to carry on the business of the Company or to continue this Deed and that the Deed will be terminated if the Company's Creditors so resolve.

## 19.2 Applicable provisions – meeting of creditors

The provisions of regulations 5.6.12 to 5.6.36A inclusive of the Regulations apply, with such modifications as are necessary, to meetings of creditors as if the references to "the liquidator", "the liquidator or provisional liquidator", "the liquidator, provisional liquidator or chairperson" or "a liquidator, provisional liquidator or trustee for debenture holders", as the case may be, were references to the Deed Administrators.

## 20. Termination

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### 20.1 When Deed is terminated

This Deed automatically terminates when any one (1) of the following conditions are met:

- (a) the following events occurs:
  - (i) the Effectuation Conditions are satisfied; and
  - (ii) the Deed Administrators lodge a written notice with ASIC as contemplated in clause 20.2; and
- (b) the Court makes an order terminating this Deed under section 445D of the Act; or
- (c) the Company's Creditors pass a resolution terminating this Deed at a meeting that was convened under section 445F of the Act by a notice setting out the proposed resolution.

### 20.2 Termination upon effectuation of the deed of company arrangement

If the Effectuation Conditions are satisfied, the Deed Administrators shall within 28 days, execute and lodge with ASIC a notice of termination of this Deed in the following form:

*Medivac Limited*  
*ACN 055 747 941*

*We, Brent Kijurina, Richard Albarran, and Cameron Shaw c/- Hall Chadwick, Level 40, 2 Park Street Sydney NSW 2000, the deed administrators of the deed of company arrangement executed by amongst others Medivac Limited on [insert date] hereby certify that the deed has been wholly effectuated and is terminated upon lodgement of this notice with the Australian Securities and Investments Commission.*

### 20.3 Books and records – upon effectuation of the deed of company arrangement

On termination of this Deed in accordance with clause 20.1(a), the Deed Administrators must deliver to the Company all of the Company's books and records in the possession of the Deed Administrators other than those books and records created after the Relevant Date that the Deed Administrators wishes to retain.



#### 20.4 Effect of termination

The termination of this Deed does not affect:

- (a) the previous operation of this Deed; or
- (b) the enforceability of any accrued obligations under this Deed. For that purpose where the termination of this Deed is followed by the winding up of the Company:
  - (i) the liquidator may enforce any obligation under this Deed owed to the Deed Administrators; and
  - (ii) may do so as if the liquidator had been a party to the Deed at the execution of this Deed in the place of the Deed Administrators.

#### 21. Release from claims

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##### 21.1 Extent of release

On termination of this Deed in accordance with clause 20.1(a):

- (a) the Company is released from all Participating Creditors' Claims; and
- (b) the Company may plead this Deed in bar to any action, proceeding or suit brought by any Participating Creditor in respect of that Participating Creditor's Claim; and

it is agreed that there is no consideration payable in respect of any release provided for in or by reason of this clause 21.1.

##### 21.2 Satisfaction of Participating Creditor's Claims

Each Participating Creditor accepts the Participating Creditor's entitlement under this Deed and the Creditors' Trust Deed in full satisfaction of the Participating Creditor's Claim.

##### 21.3 Form of Release

If the Deed Administrators or the Trustees request Participating Creditors to do so, each Participating Creditor must, within 7 days after the making of the request, execute and deliver to the Company a written release of the Participating Creditor's Claim in the form the Deed Administrators or the Trustees requires to fulfil the arrangement effected by this Deed.

##### 21.4 Attorney

Each Participating Creditor irrevocably appoints the Deed Administrators and the Trustees to be the attorney of the Participating Creditor with full power for and on behalf of and in the name of the Participating Creditor to do all acts and things and sign and execute all deeds, documents and notices as may be necessary or convenient for the purpose of the execution and delivery to the Company of the written release of the Participating Creditor's Claim in accordance with this clause 21.

## **22. Abandonment by Creditors who do not prove**

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A Creditor is taken to have abandoned the Creditor's Claim if, before the declaration of a final dividend to Participating Creditors in accordance with the Creditors Trust Deed, the Creditor:

- (a) fails to submit a formal proof of debt or claim in respect of the Creditor's Claim; or
- (b) having submitted a formal proof of debt or claim in respect of the Creditor's Claim which is rejected, fails to appeal to the Court against the rejection.

## **23. Remuneration of Deed Administrators**

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### **23.1 Calculation**

Subject to clause 23.2, the Deed Administrators' remuneration for the Deed Administrators' services as administrators of this Deed is fixed at the amount calculated as follows:

$$\text{Remuneration} = \text{Time} \times \text{Firm Rates}$$

where:

**Time** means the time actually spent by the Deed Administrators and any of the Deed Administrators' partners or employees in performance of the services (to be calculated in 6 minute units or part of them); and

**Firm Rates** means the hourly rates set out in Annexure D of this Deed for persons having the job description of the Deed Administrators and the Deed Administrators' partners and employees performing the services (as varied from time to time with any increase to be no greater than 10% of those rates each year).

### **23.2 Remuneration cap**

Despite clause 23.1, the Deed Administrators' remuneration for the Deed Administrators' services as administrators of this Deed is not to exceed the sum of \$40,000.00 plus GST or such greater amount as is approved from time to time under section 449E of the Act, or alternatively, by a resolution of the committee of inspection.

### **23.3 Reimbursement for costs, charges and expenses**

The Deed Administrators are entitled to be reimbursed by the Company from the Creditors' Deed Fund, or, if the Creditors' Deed Fund is insufficient, from the Available Property, for the whole of the costs, charges and expenses incurred by the Deed Administrators in connection with or incidental to the Deed Administrators' administration of this Deed.

### **23.4 Drawings**

The Deed Administrators may draw the Deed Administrators' remuneration and reimbursement for the costs, charges and expenses from the Creditors' Deed Fund, or, if the Creditors' Deed Fund is insufficient, from the Available Property.

## **24. Indemnity**

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### **24.1 Extent of indemnity**

Subject to clause 24.2, the Deed Administrators and the Administrators are entitled to be indemnified out of the Creditors' Deed Fund and the Available Property for:

- (a) remuneration and reimbursement:
  - (i) under this Deed; and
  - (ii) as administrators of the Company pursuant to Part 5.3A of the Act;
- (b) all Claims arising out of, in connection with or incidental to any debts incurred by:
  - (i) the Company, the Deed Administrators or the Deed Administrators' partners or employees in the course of the administration of this Deed; and
  - (ii) the Company, the Administrators or the Administrators' partners or employees in the course of the administration of the Company pursuant to Part 5.3A of the Act;
- (c) all Claims, other than a Claim by the Company:
  - (i) against the Deed Administrators or the Deed Administrators' partners or employees, arising out of, in connection with or incidental to the Deed Administrators' administration of this Deed; and
  - (ii) against the Administrators or the Administrators' partners or employees, arising out of, in connection with or incidental to the Administrators' administration of the Company pursuant to Part 5.3A of the Act.

### **24.2 Limitation on indemnity**

Despite clause 24.1, the Deed Administrators and the Administrators are not entitled to an indemnity out of the Creditors' Deed Fund, the Available Property or any other property of the Company against any Claims arising out of, in connection with or incidental to:

- (a) any fraudulent or negligent act or omission by them or their partners or employees;
- (b) any act or omission done or omitted to be done them or their partners or employees:
  - (i) in breach of good faith; or
  - (ii) in contravention of any provision of sections 180 to 184 inclusive of the Act; or
- (c) any act done by them or their partners or employees outside the powers of the Deed Administrators and the Administrators under this Deed or the Act.

### **24.3 Priority**

The Deed Administrators' and Administrators' right of indemnity conferred by this clause 24 has priority as a Priority Creditor's Claim.

#### **24.4 Exercise of indemnity**

The Deed Administrators and the Administrators are entitled to exercise the Deed Administrators' and Administrators' right of indemnity conferred by this clause 24 whether or not the Deed Administrators or the Administrators has paid or satisfied the Claims.

#### **24.5 Lien**

The Deed Administrators and the Administrators are entitled to exercise a lien on the Creditors' Deed Fund, the Available Property and any other property of the Company to secure the Deed Administrators' and the Administrators' right of indemnity conferred by this clause 24.

#### **24.6 Effect of indemnity**

The indemnity in this clause 24 shall not:

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

#### **24.7 Indemnity not to exclude law**

Nothing in clause 24 affects or limits the operation of Subdivision B of Division 9 of Part 5.3A of the Act.

### **25. Management and control**

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#### **25.1 Replacement of directors of the Company**

In respect of the directors of the Company, the Deed Administrators must procure:

- (a) the resignation, or removal, of the Outgoing Directors as directors; and
- (b) the appointment of the Incoming Directors as the new directors.

#### **25.2 Control**

Upon execution of this Deed by all parties, the control and stewardship of the Company's property, business and affairs, will return to the directors of the Company.

### 25.3 Removal and resignation of director

Until this Deed is terminated in accordance with clause 20.1(a):

- (a) a director of the Company must not, without the prior written consent of the Deed Administrators, resign as a director of the Company; and
- (b) the Deed Administrators may at any time:
  - (i) remove from office any director of the Company; and
  - (ii) appoint any person as a director of the Company (whether to fill a vacancy or not).

### 25.4 Not to deal with property without consent

Unless with the prior written consent of the Deed Administrators, each director and officer of the Company must not in any way deal with (including by way of transfer, assignment, lease, sale or granting any Security Interest) any of the Company's property.

### 25.5 Assisting the Deed Administrators

- (a) Each director and officer of the Company must at all times:
  - (i) assist the Deed Administrators to administer this Deed and fulfil the arrangement to be effected by this Deed;
  - (ii) take all steps and do all things necessary to enable the Company to comply with its obligations under this Deed and not do anything in any way inconsistent with those obligations; and
  - (iii) upon request by the Deed Administrators:
    - (A) deliver to the Deed Administrators all books and records in the director's or officer's possession that relate to the Company; and
    - (B) if the director or officer knows where other books and records relating to the Company are located, tell the Deed Administrators where those books and records are located.
- (b) Without limiting the generality of clause 25.5(a), each director and officer of the Company must at all times:
  - (i) attend on the Deed Administrators when requested;
  - (ii) give the Deed Administrators all information about the Company's business, property, affairs and financial circumstances; and
  - (iii) attend all meetings of the Company's Creditors;
  - (iv) use reasonable endeavours to satisfy the Recapitalisation Conditions and the Effectuation Conditions;
  - (v) use reasonable endeavours to implement the Recapitalisation Proposal; and
  - (vi) do whatever the Deed Administrators, require the officer of the Company to do, for the purposes of administering this Deed and fulfilling the arrangements to be effected by this Deed.

## **25.6 Statutory duties remain**

Notwithstanding anything in this Deed, the directors and officers of the Company will not be relieved of their statutory duties which arise as a result of their office.

## **25.7 Inconsistency of powers**

If there is any inconsistency or overlap in any power or function of the directors of the Company and the Deed Administrators:

- (a) subject to clause 25.7(b), the Deed Administrators will be entitled to exercise or perform the affected power or function to the exclusion of the directors of the Company; and
- (b) the Deed Administrators may, by writing, from time to time delegate to the directors of the Company (which can be revoked at any time) the exercise or performance of a power or function which the Deed Administrator is otherwise entitled to exercise under clause 25.7(a).

## **26. Committee of Inspection**

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### **26.1 Appointment of a committee**

In order to advise and assist the Deed Administrators there may be a committee of inspection.

### **26.2 Applicable provision – committee of inspection**

The following provisions apply to this Deed for the purpose of determining whether there is to be a committee of inspection, and, if so, the conduct of proceedings of the committee of inspection:

- (a) sections 548 to 551 inclusive of the Act; and
- (b) regulations 5.6.12 to 5.6.36A inclusive of the Regulations.

### **26.3 Power of Committee**

The Committee of Inspection will have the power conferred to it under the Act to:

- (a) extend the timeframe for the payment of any money by the Company or the doing of any act or thing pursuant to the terms of this Deed; and
- (b) fix the Deed Administrators' remuneration.

## **27. Inconsistency**

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### **27.1 Inconsistency with the Act**

If there is any inconsistency between the terms of this Deed and the Act or the Regulation, then the Act or the Regulation shall, only to the extent of this inconsistency, prevail and this Deed shall be interpreted accordingly.

## **27.2 Inconsistency with Company's constitution**

If there is any inconsistency between the provisions of this Deed and the constitution of the Company or any other obligations binding on the Company, then the provisions of this Deed shall prevail to the extent of the inconsistency.

## **27.3 Inconsistency with Creditors' Trust Deed**

If there is any inconsistency between the provisions of this Deed and the provisions of the Creditors' Trust Deed, then the provisions of this Deed shall prevail to the extent of the inconsistency.

## **28. Costs and outlays**

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Unless otherwise set out in this Deed:

- (a) each party must pay its own costs and outlays in relation to the negotiation, preparation, execution, performance (including any consent or approval given or made), variation, enforcement and registration of this Deed and any ancillary or subsidiary agreement or document referred to in or contemplated by this Deed; and
- (b) the costs and outlays connected with the negotiation, preparation, execution, performance (including any consent or approval given or made), variation, enforcement and registration of this Deed and any ancillary or subsidiary agreement or document referred to in or contemplated by this Deed are taken to be costs, charges and expenses incurred by the Deed Administrators in connection with or incidental to the Deed Administrators' administration of this Deed.

## **29. Governing law and jurisdiction**

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### **29.1 Governing Law**

The law of Governing Jurisdiction governs this Deed.

### **29.2 Jurisdiction**

The parties submit to the exclusive jurisdiction of the Court in the Governing Jurisdiction and agree that any lawsuit must be heard, if at all, in the Court.

## **30. General provisions**

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### **30.1 Binding Obligations**

The obligations imposed and the benefits conferred by the agreements contained within this Deed are to be binding on the respective executors, administrators, successors and assigns of all the parties to this Deed.

### **30.2 Severability**

If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

### 30.3 Further assurance

The Company, the directors and other officers of the Company, the Creditors, the Administrators, the Deed Administrators and the Trustees must promptly do such further acts and execute and deliver such further documents (in form and content reasonably satisfactory) required by law or reasonably requested by the Deed Administrators to give effect to this Deed whether before or after performance of this Deed.

### 30.4 Consent

Any authority, consent, approval, discretion, determination or other thing to be given, made, or exercised by the Deed Administrators under this Deed may be done, given, or made how and when each of them decides in its absolute discretion, including by imposing conditions.

### 30.5 Parties

- (a) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (b) An obligation, representation or warranty in this Deed in favour of more than 1 person is for the benefit of them separately and jointly.

### 30.6 Assignment

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

### 30.7 Variation

This Deed may be varied in accordance with the Act or as set out in this Deed.

### 30.8 Waiver

- (a) No waiver or indulgence by any party to this Deed shall be binding on the parties unless it is in writing.
- (b) No waiver of a breach of any term or condition of this Deed shall operate as a waiver of another breach of the same or any other term or condition of this Deed.

### 30.9 Notices

- (a) Any notice or other communication which must be given or served under, or in connection with, this Deed:
  - (i) must be in writing in order to be valid;
  - (ii) is sufficient if executed by the party giving or serving the notice or on its behalf by any attorney, director, secretary, other duly authorised officer or solicitor of such party; and
  - (iii) may be served by:
    - (A) delivery in person; or
    - (B) made by pre-paid post; or
    - (C) email.



- (b) The postal address, email address and the department or officer for whose attention the notice or communication is to be made of each party is that identified in the Parties section of this Deed or in the most recent notice of any substitute postal address, email address or department or officer.
- (c) Any notice or communication will be deemed to be given by the sender and received by the addressee
  - (i) in the case of pre-paid post, on the second Business Day after the date of posting; and
  - (ii) in the case of delivery by hand, on delivery; and
  - (iii) if by way of email, on the date and time shown on the email.
- (d) If delivery or receipt is not a Business Day or is after 4.00pm on a Business Day (addressee's time), the notice or communication is taken to have been delivered or received at 9.00am on the next Business Day.

#### 30.10 GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Deed, the recipient must pay to the supplier an amount (GST Amount) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause is subject to any other specific agreement regarding the payment of GST on supplies.

#### 30.11 Deed

This Deed is executed and delivered as a deed.

#### 30.12 Deed Poll

To the extent that any covenant contained in this Deed is for the benefit of a person or body corporate that is not a party to this Deed, this Deed shall have effect as a deed poll in favour of that person or body corporate.

#### 30.13 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute the same document.

Signing page

Executed as a deed.

Signed, sealed and delivered by Richard Albarran in the presence of:

M. Cooper                      ~~R. Albarran~~

15-7-16

Witness  
Michael Cooper  
Print name  
Level 40, 2 Park Street  
Print address  
Sydney NSW 2000

Signed, sealed and delivered by Brent Kijurina in the presence of:

M. Cooper                      Brent Kijurina

15-7-16

Witness  
Michael Cooper  
Print name  
Level 40, 2 Park Street  
Print address  
Sydney NSW 2000

Signed, sealed and delivered by Cameron Shaw in the presence of:


Cameron Shaw                      Mollie McKenzie

15-7-16

Witness  
MOLLIE MCKENZIE  
Print name  
11, 16 ST GEORGES TCE  
Print address  
PERTH WA 6000.

Executed on behalf of Medivac Limited  
(Administrators Appointed) by its joint and  
several administrator in accordance with sections  
437A and 442A of the Corporations Act 2001 (Cth)  
in the presence of:

  
\_\_\_\_\_  
Witness Signature

  
\_\_\_\_\_  
Administrator Signature


8-7-16

Omeed Rassoul  
\_\_\_\_\_  
Print name

Cameron Shaw  
\_\_\_\_\_  
Print name

Level 11, 16 St Georges Terrace, Perth, WA  
\_\_\_\_\_  
Print Address

Signed sealed and delivered on behalf of  
Pacific Corporate Services (Aus) Pty Ltd  
in accordance with section 127 of the  
Corporations Act 2001 (Cth) by:

  
\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Director Signature

Dean G Sook  
\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

## Annexure A – Recapitalisation Conditions

---

Each of the following is a Recapitalisation Condition:

1. by the Recapitalisation Due Date, the Company must have satisfied the Meeting Documents Condition; and
2. by the Recapitalisation Due Date, the ASX must have provided written confirmation to the Company or PCS that to the effect that following satisfaction of the Shareholders Condition ASX will:
  - (a) not remove the Company from the Official List; and
  - (b) lift the suspension on the trading of the securities of the Company; and
3. by the Recapitalisation Due Date, the Shareholders Condition must be satisfied.

## **Annexure B – Recapitalisation Proposal**

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Each of the following comprises the Recapitalisation Proposal:

1. the proposed capital raising by the Company of up to \$3,000,000.00 (or such lesser sum to be agreed between the parties) by issuance of the Shares or otherwise as required by ASX; and
2. a proposed acquisition by the Company of the whole of the share capital of BTV, on such terms to be agreed between the parties and BTV.

## Annexure C – Effectuation Conditions

---

Each of the following is an Effectuation Condition:

1. Either one of the following occurs:
  - (a) the Recapitalisation Completion occurs; or
  - (b) the Deed Administrators have received the Unconditional Guarantee; and
2. the Company and the Deed Administrators have executed the Creditors Trust Deed in accordance with clause 8; and
3. PCS has paid the Deed Administrators for the costs and outlays (including legal costs) incurred by the Deed Administrators in accordance with clause 10.9; and
4. the Deed Administrators have received the following duly executed documents on terms satisfactory to the Deed Administrators in all respect:
  - (a) the Secured Creditor Releases in registrable form; and
  - (b) the documents required in writing by the Deed Administrators to give effect to the transfer, assignment, conveyance or setting over of each of the following:
    - (i) the Collateral Security Deed from the Deed Administrators in their personal capacity to the Trustees; and
    - (ii) the MetaMizer Assets (including the MetaMizer Contract) from the Company to the Trustees; and
    - (iii) the Available Property from the Company and the Deed Administrators to the Trustees; and
  - (c) the supplementary or ancillary documents referred to in, or implied by the terms, of this Deed or as required in writing by the Deed Administrators for the purpose of giving effect to this Deed, the Creditors' Trust Deed and the Recapitalisation Proposal; and
5. the Deed Administrators have applied the Creditors Deed Fund and transferred any balance thereof to the Trustees in accordance with clause 18.1; and
6. the parties have fulfilled and complied with all of their obligations under this Deed.

**Annexure D – Firm Rates**

---

1

Hall Chadwick - Insolvency Division

Rates as at 1 MARCH 2016  
(all amounts are exclusive of GST)

	POSITION	DESCRIPTION	RATES A\$ per hour
7.	Partner	Registered liquidator/ trustee or appointee's partner bringing a high level of insolvency knowledge and skill, with more than 10 years experience and an appreciation of risk control and personal commitment.	640
8.	Senior Associate	Qualified accountant with more than 10 years insolvency experience and able to control all aspects of an appointment, who brings a high level of insolvency knowledge and skill and has an appreciation of risk control	590
9.	Associate	Qualified accountant with more than 10 years insolvency experience and able to control all aspects of an appointment.	550
10.	Senior Manager	Qualified accountant with more than 7 years insolvency experience able to control all aspects of an appointment and manage a team of staff.	525
11.	Manager	Qualified accountant with more than 6 years insolvency experience able to control all aspect of an appointment and project manage a team on a large appointment.	490
12.	Supervisor	Graduate completing post graduate studies with up to 5 years insolvency experience and responsibility to supervise a small team of staff.	430
13.	Senior 1	Graduate completing post graduate studies with 2 to 4 years insolvency experience. Assists planning and control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	375
14.	Senior 2	Graduate completing post graduate studies with 1 to 2 years experience. Required to control the fieldwork on small jobs and is responsible for assisting complete fieldwork on medium to large jobs.	330
15.	Intermediate 1	Graduate or Undergraduate with 1-2 years insolvency experience. Required to assist in day to day fieldwork under supervision of more senior staff.	300
16.	Intermediate 2	Undergraduate with up to 1 year insolvency experience. Required to assist in day to day fieldwork under supervision of more senior staff.	275
17.	Intermediate 3	Appropriate Skills with 1 – 2 years insolvency experience and Geographically located outside of Australia	220
18.	Junior 1	Undergraduate completing their university degree.	165
19.	Junior 2	Appropriate Skills and Geographically located outside of Australia.	140



POSITION		DESCRIPTION	RATES A\$ per hour
Support Staff			
20.	IT Manager	Appropriate Skills	280
21.	Banking Administrator	Appropriate Skills	280
22.	PA /Secretary	Appropriate Skills	135
23.	Computer Operations	Appropriate Skills	135
24.	Administration Assistant	Appropriate Skills	135
25.	Filing Assistant	Appropriate Skills	55

**NOTE:**

The categories above do not cover professional staff that are unqualified and not studying to become qualified as accountants. In respect of the latter category there are some people who are highly skilled. It is not possible to give a description which will adequately cover all situations.

**Annexure E – Creditors Trust Deed**

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Annexure E

## Medivac Trust Creditors Trust Deed

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Brent Kijurina, Richard Albarran, and Cameron Shaw

Medivac Limited  
(subject to deed of company arrangement)

gadens

77 Castlereagh Street  
Sydney NSW 2000  
Australia  
T +61 2 9931 4999  
F +61 2 9931 4888  
Ref 36406340

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# Medivac Trust Creditors Trust Deed

Dated

## Parties

1. Brent Kijurina, Richard Albarran, and Cameron Shaw c/- Hall Chadwick, Level 40, 2 Park Street Sydney NSW 2000, jointly and severally (Trustees).
2. Medivac Limited (subject to deed of company arrangement) ACN 055 747 941 c/- Hall Chadwick, Level 40, 2 Park Street Sydney NSW 2000 (Company).

## Background

- A. The Company has entered into the DOCA.
- B. The DOCA contemplates that the Available Property will be transferred to the Trustees to be administered by the Trustee, and distributed to certain Creditors, in accordance with, and in the order of priority provided for in, this Deed. The Company wishes to create a trust for the benefit of those certain Creditors.
- C. The Company wishes to pay the Settled Sum to the Trustees.
- D. The Trustees consent to becoming the trustees of the Trust on the terms of this Deed.

## Operative provisions

### 1. Definitions and interpretation

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#### 1.1 Definitions

In this document, unless the context requires otherwise:

Act has the same meaning as in the DOCA.

Available Property has the same meaning as in the DOCA.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the Governing Jurisdiction.

Creditors has the same meaning as in the DOCA.

Creditors' Deed Fund has the same meaning as in the DOCA.

Deed means this document, including any schedule or annexure to it.

**Deed Administrators** means Brent Kijurina, Richard Albarran and Cameron Shaw c/- Hall Chadwick, Level 40, 2 Park Street Sydney NSW 2000 as the joint and several deed administrators of the DOCA.

**DOCA** means the deed entitled "Deed of Company Arrangement" dated 8 July 2016 between the Deed Administrator, the Company and PCS.

**Encumber** means to grant or create an interest or power:

- (a) reserved in, or over an interest in, any asset including, but not limited to, any retention of title; or
- (b) arising in, or over an interest in, any asset under a bill of sale, mortgage, charge, lien, pledge or other security,

by way of security for the payment of a debt or any other monetary obligation, or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create an interest or power referred to in sub-paragraphs (a) and (b) above.

**Firm Rates** has the meaning given to in clause 11.1.

**Governing Jurisdiction** means the state of Western Australia, Australia.

**GST** has the same meaning as in the DOCA.

**Non-participating Creditor** has the same meaning as in the DOCA.

**Non-participating Creditor's Claim** has the same meaning as in the DOCA.

**Perpetuity Period** means the period of eighty (80) years, commencing on the date of execution of this Deed.

**Participating Creditor** has the same meaning as in the DOCA.

**Participating Creditor's Claim** has the same meaning as in the DOCA.

**PCS** means Pacific Corporate Services (Aus) Pty Ltd.

**Power** means any right, power, authority, discretion and remedy available to the Trustees under this Deed, the DOCA or at law.

**Priority Creditor** has the same meaning as in the DOCA.

**Priority Creditor's Claim** has the same meaning as in the DOCA.

**Regulations** has the same meaning as in the DOCA.

**Settlor** means the Company.

**Settled Sum** means \$10.00.

**Trust** means the trust created by this Deed.

**Trust Fund** means:

- (a) the Settled Sum;
- (b) all money and property paid or transferred to and accepted by the Trustee as additions to the Trust Fund;

- (c) all Available Property (including the balance of the Creditors' Deed Fund) paid into or transferred to the Trustees in accordance with the terms of the DOCA; and
- (d) any income thereon.

Trustees Act means the *Trustees Act 1962* (WA).

## 1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) unless otherwise indicated, defined terms used in the DOCA shall, where used in this Deed, have the same meaning as in the DOCA;
- (b) clause and subclause headings are for reference purposes only;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a person includes any other entity recognised by law and vice versa;
- (e) any reference to a party to this Deed includes its successors and permitted assigns;
- (f) any reference to any agreement or document includes that agreement or document as amended at any time;
- (g) a provision of law or a regulation is a reference to that provision as amended, consolidated, replaced or re-enacted;
- (h) any reference to Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia;
- (i) any reference to a regulation or rule includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any Governmental Agency, and if not having the force of law, with which responsible entities in the position of the relevant party would normally comply;
- (j) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it;
- (k) the expression "at any time" includes reference to past, present and future time and performing any action from time to time;
- (l) an agreement, representation or warranty by two or more persons binds them jointly and severally and is for the benefit of them jointly and severally;
- (m) a reference to an item is a reference to an item in the schedule to this Deed;
- (n) a reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed;
- (o) a reference to a clause described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this Deed means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (p) when a thing is required to be done or money is required to be paid under this Deed on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day; and

- (c) a reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are Incorporated.

## **2. Creation and Declaration of Trust**

---

### **2.1 Appointment of Trustees**

The Settlor appoints the Trustees, and the Trustees accept the appointment, as joint and several trustees of the Trust.

### **2.2 Creation of the Trust**

On the date of this Deed, the Settlor must pay the Settled Sum to the Trustees to form part of the Trust Fund. The Trust is created as soon as the Settled Sum is received by the Trustees.

### **2.3 Name of the Trust**

The name of the Trust is "Medivac Trust".

### **2.4 Declaration of trust**

The Trustees hold the Trust Fund on trust and subject to the terms contained in this Deed.

## **3. Termination**

---

### **3.1 When this deed terminates**

The Trust will be at an end on the earlier of the following occurrences:

- (a) the DOCA being terminated for a reason other than, an effectuation of the DOCA in accordance with clause 20.1(a) of the DOCA; or
- (b) the Trustees applying the whole of the Trust Fund in accordance with clause 9.1.

### **3.2 Transfer of the Trust Fund**

If:

- (a) the Trust comes to an end by reason of the operation of clause 3.1(a); and
- (b) the Company is being wound up;

the Trustees may in the Trustees' absolute discretion elect not to apply any part of the Trust Fund in accordance with clause 9.1 and the Trustees will comply with all of the Trustees' duties and obligations in relation to the Trust, the Trust Fund and the Creditors by transferring the Trust Fund to the liquidator of the Company.

## **4. Object of Trust**

---

- 4.1 The object of the Trust is that, on execution of this Deed and termination of the DOCA in accordance with terms of the DOCA, the Creditors are to obtain an entitlement under the arrangement provided for in this Deed equivalent to the Creditors' previous entitlements under the DOCA immediately before termination of the DOCA.



4.2 Without limiting the generality of clause 4.1, the Trustees hold the Trust Fund on trust for:

- (a) the Priority Creditors in respect of the Priority Creditors' Claims; and
- (b) the Participating Creditors in respect of the Participating Creditors' Claims;

which Claims are the same as the Creditors' previous Claims under the DOCA immediately before termination of the DOCA.

## **5. Duties of Trustees**

---

5.1 The Trustees have duties and obligations in relation to the Trust Fund and the Creditors equivalent to those duties and obligations applicable to the Deed Administrator under the DOCA immediately before termination of the DOCA in relation to the Available Property and the Creditors.

5.2 Without limiting the generality of clause 5.1, the Trustees must:

- (a) subject to clause 5.3, collect or otherwise realise all money and property that will form part of the Trust Fund;
- (b) determine which Claims are admissible to proof under this Deed in accordance with this Deed;
- (c) apply the Trust Fund in accordance with this Deed; and
- (d) hold meetings of Creditors or any committee of inspection in accordance with this Deed.

5.3 If the Trustees consider that the likely costs of collecting or otherwise realising any part of the money or property that will form part of the Trust Fund outweigh the likely proceeds of collection or realisation the Trustees may in the Trustees' absolute discretion elect not to collect or otherwise realise that part of the money or property that would otherwise form part of the Trust Fund.

## **6. Powers of Trustees**

---

6.1 For the purpose of administering the Trust, the Trustees shall have

- (a) all the Powers and rights of a duly appointed trustee under statute and law, including but not limited to the Trustees Act; and
- (b) every Power as if they were natural persons of full age and capacity and the absolute owners of the Trust Fund.

6.2 Without limiting generality of clause 6.1, for the purpose of administering the Trust, the Trustees have each of the following Powers:

- (a) to administer the Trust Fund;
- (b) to make interim or other distributions of the Trust Fund;
- (c) to appoint agents to do any business or to attend to any matter or affairs of the Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;

- (d) to appoint a solicitor, accountant or other professionally qualified person to assist the Trustees;
- (e) to compromise any Creditor's Claim on terms as the Trustees consider fit;
- (f) subject to this Deed, to pay any class of Creditors in full;
- (g) to enter into possession of and manage any property forming part of the Trust Fund;
- (h) to acquire, purchase, sell, transfer, dispose of, lease, improve, Encumber, subdivide, partition, hire, licence, exchange, develop, grant leases and licences, and enter into any other agreement or dealing, including the surrender or termination of any dealing, in relation to any property forming, or which is to form, part of the Trust Fund, to or from (as the case may be) any person and on any terms the Trustees think fit;
- (i) to repair, renovate, demolish, build, or alter any improvement to, any property forming, or which is to form, part of the Trust Fund;
- (j) to determine any rental to be paid for the use of any property forming, or which is to form, part of the Trust Fund.
- (k) to exercise all Powers and perform all obligations in relation to any property forming, or which is to form, part of the Trust Fund;
- (l) to do anything that is incidental to exercising a Power set out in this clause; and
- (m) to do anything else that is necessary or convenient for the purpose of administering the Trust.

**6.3 Interpretation of powers**

- (a) Subject always to any express provision to the contrary contained in this Deed, every Power vested in the Trustees shall be exercisable at the Trustees' absolute and unfettered discretion.
- (b) Each Power shall be construed to its full extent and no one Power shall limit the generality of any other Power.
- (c) The Trustees shall, in their absolute discretion, have the power to do anything the Trustees consider is incidental to any Power.
- (d) All Powers and dispositions made by, or pursuant to, this Deed which, but for this clause 6.3(d), would or might vest, take effect or be exercisable after the expiration of the Perpetuity Period shall vest, take effect and be exercisable (as the case may be) only until the last day of the Perpetuity Period.

**6.4 Joint exercise of powers**

The Trustees may exercise any Power either jointly or severally.

**6.5 Use of trust funds**

The Trustees may use the Trust Fund for any purpose it considers will benefit the Trust or the Creditors in accordance with provisions of the DOCA and of this deed.

## **7. Agency, employment and delegation**

---

### **7.1 Power to appoint and employ**

The Trustees may appoint an agent, employ any person, engage any consultant or any other person, to do anything required or permitted in relation to the Trust or the exercise of any Power.

### **7.2 Delegation of Powers**

- (a) The Trustees may:
  - (i) subject to any restrictions it thinks fit, delegate any of the Powers; and
  - (ii) revoke any delegation of Power pursuant to clause 7.2(a)(i).
- (b) The Trustees shall not be liable for any loss arising under clause 7.2(a).
- (c) The Trustees may execute any document to give effect to the clause 7.2.
- (d) A person who deals with a delegate of the Trustees shall not be required to verify that the delegation is in force or that the Trustees who made the delegation are alive or in existence.

### **7.3 Taking of legal advice**

- (a) The Trustees may take and act upon the verbal or written advice or opinion of any legal practitioner practising in any country where any part of the Trust Fund is situated in relation to any matter which affects the Trust Fund or the Trustees in their capacity as trustees of the Trust.
- (b) The Trustees shall not be liable to any Creditor in respect of any act done, or omitted to be done, by the Trustees in accordance with an opinion obtained under this clause.
- (c) Nothing in this clause shall prevent the Trustees or any Creditor from applying to any Court if they think fit

## **8. Admissibility of Debts or Claims**

---

### **8.1 Adjudication of claims**

Subject to this clause 8, the Trustees are to determine:

- (a) the Priority Creditors' Claims; and
- (b) the Participating Creditors' Claims;

that are admissible to proof under this Deed.

### **8.2 Admissible claims**

A debt payable by or claim against the Company, as in existence immediately before termination of the DOCA, is not admissible to proof under this Deed unless it was a debt payable by or Claim against the Company the circumstances giving rise to which occurred on or before the Relevant Date.

**8.3 Previous actions under the DOCA**

- (a) If a Priority Creditor's Claim or a Participating Creditor's Claim was determined by the Deed Administrators pursuant to the DOCA, the Trustees are not obliged to determine that Claim again and can rely on the determination by the Deed Administrators.
- (b) Any determination of, or step taken towards a determination of, a Priority Creditor's Claim or a Participating Creditor's Claim under the DOCA will be deemed to be effective for the purpose of this Deed and need not be reconsidered, or retaken, by the Trustees under this Deed.

**8.4 Applicable provisions – adjudication of claims**

Subject to this clause 8, the following provisions apply to this Deed for the purpose of the Trustees determining the Priority Creditors' Claims and the Participating Creditors' Claims that are admissible to proof under this Deed:

- (a) section 560 and Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Act; and
- (b) regulations 5.6.11A, 5.6.37, 5.6.39 to 5.6.57 (inclusive) and 5.6.70A of the Regulations.

**9. Distribution of Trust Fund**

---

**9.1 Priority**

The Trustees are to apply the Trust Fund in the following order of priority:

- (a) **FIRST** in payment in full, in accordance with clause 9.2, to the Priority Creditors in respect of the Priority Creditors' Claims
- (b) **SECOND** in payment in full of any amount payable pursuant to the Trustees' right of indemnity conferred by clause 12 including but not limited to the Trustees' remuneration and reimbursement under this Deed
- (c) **THIRD** in payment of a dividend to the Participating Creditors to be distributed rateably among the Participating Creditors in accordance with the value of the Participating Creditors' Claims
- (d) **FOURTH** in respect of the remaining Trust Fund, if any, to be returned to the Company

**9.2 Priority Creditors**

For the purposes of the Trustees applying the Trust Fund, the Trustees are to make payment to the Priority Creditors in respect of the Priority Creditors' Claims in the order of priority under sections 556(1), 559, 560 and 561 of the Act as if the Company had been wound up with the Relevant Date being the day on which the winding up was taken to have begun.

**9.3 Employee Entitlements**

For the purposes of the Trustees applying the Trust Fund, an Eligible Employee Creditor is entitled to a priority at least equal to the priority the Eligible Employee Creditor would have been entitled to if the Trust Fund was applied in accordance with sections 556, 560 and 561 of the Act.

**9.4 Superannuation contribution**

For the purposes of the Trustees applying the Trust Fund, the Trustees must determine that a particular part or the whole (as the case may be) of a debt by way of superannuation contribution is not admissible to proof if:

- (a) a debt by way of superannuation guarantee charge:
  - (i) has been paid; or
  - (ii) is, or is to be, admissible to proof; and
- (b) the Deed Administrators are satisfied that the superannuation guarantee charge is attributable to that part or the whole (as the case may be) of the first mentioned debt as the case may be.

**9.5 Discretion as to distribution**

Provided that the Trustees apply the Trust Fund by no later than the expiration of the Perpetuity Period, the Trustees will have absolute discretion in deciding when to distribute the Creditors' Deed Fund, including whether to make one or more interim distributions of the Creditors' Deed Fund in addition to any final distribution.

**9.6 Application of whole of the fund**

Upon the Trustees applying the whole of the Trust Fund in accordance with clause 9.1 the Creditors have no further Claim against the Trust Fund or the Trustees.

**9.7 Previous actions under the DOCA**

Any step taken towards a declaration or distribution of a dividend under the DOCA will be deemed to be effective for the purpose of this Deed and not be repeated by the Trustees under this Deed.

**9.8 Applicable provisions – declaration and distribution of dividends**

The following provisions apply to this Deed for the purpose of the Trustees declaring and distributing dividends under this Deed:

- (a) section 544 of the Act; and
- (b) regulations 5.6.63 to 5.6.70A (inclusive) of the Regulations.

**9.9 Abandonment by Creditors who do not prove**

A Creditor is deemed to have abandoned the Creditor's Claim if, prior to the declaration of a final dividend to Participating Creditors in accordance with this Deed, the Creditor:

- (a) fails to submit a formal proof of debt or claim in respect of the Creditor's Claim; or
- (b) having submitted a formal proof of debt or claim in respect of the Creditor's Claim which is rejected, fails to appeal to the Court against the rejection.

## 10. Register

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### 10.1 Obligation to maintain

The Trustees shall maintain in an up-to-date register and shall enter in the register in respect of each Participating Creditor:

- (a) the name and address;
- (b) details of each Claim including the balance after payment of each distribution under this Deed; and
- (c) distributions made pursuant to this Deed.

### 10.2 Register conclusive

The register is conclusive evidence of the matters entered on the register.

## 11. Remuneration of Trustees

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### 11.1 Calculation

Subject to clause 11.2, the Trustees' remuneration for the Trustees' services as trustee of the Trust is fixed at the amount calculated as follows:

$$\text{Remuneration} = \text{Time} \times \text{Firm Rates}$$

where:

**Time** means the time actually spent by the Trustees and any of the Trustees' partners or employees in performance of the services (to be calculated in 6 minute units or part of them); and

**Firm Rates** means the hourly rates set out in Annexure A of this Deed for persons having the job description of the Trustees and the Trustees' partners and employees performing the services (as varied from time to time with such annual increases (if any) to be no greater than 10% of those rates each year).

### 11.2 Remuneration cap

Despite clause 11.1, the Trustees' remuneration for the Trustees' services as trustee of the Trust is not to exceed \$40,000 plus GST or such greater amount as is approved from time to time by a resolution of the Creditors, or alternatively, by a resolution of the committee of inspection.

### 11.3 Reimbursement for costs, charges and expenses

The Trustees are entitled to be reimbursed from the Trust Fund for the whole of the costs, charges and expenses incurred by the Trustees in connection with or incidental to the Trustees' administration of the Fund.

#### 11.4 Drawings

The Trustees:

- (a) may draw the Trustees' remuneration and reimbursement on a monthly basis or as required; and
- (b) must draw the Trustees' remuneration and reimbursement from a bank account conducted by the Trustees in the name of the Trust.

### 12. Trustees' Indemnity

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#### 12.1 Extent of indemnity

Subject to clause 12.2, the Trustees are entitled to be indemnified out of the Trust Fund for:

- (a) the Trustees' remuneration and reimbursement under this Deed;
- (b) all Claims arising out of, in connection with or incidental to any debts incurred by the Trustees or the Trustees' partners or employees in the course of the Trustees' administration of the Trust; and
- (c) all Claims against the Trustees or the Trustees' partners or employees, arising out of, in connection with or incidental to the Trustees' administration of the Trust.

#### 12.2 Limitation on indemnity

Despite clause 12.1, the Trustees are not entitled to an indemnity out of the Trust Fund against any Claims arising out of, in connection with or incidental to:

- (a) any fraudulent or negligent act or omission by the Trustees or the Trustees' partners or employees;
- (b) any act or omission done or omitted to be done by the Trustees or the Trustees' partners or employees:
  - (i) in breach of good faith; or
  - (ii) in contravention of any provision of the Trustees Act ; or
- (c) any act done by the Trustees or the Trustees' partners or employees outside the powers of the Trustees under this Deed and the Trustees Act

#### 12.3 Priority

The Trustees' right of indemnity conferred by this clause 12 has priority over all Creditors' Claims.

#### 12.4 Exercise of indemnity

The Trustees are entitled to exercise the Trustees' right of indemnity conferred by this clause 12 whether or not the Trustees have paid or satisfied the Claims.

#### 12.5 Lien

The Trustees are entitled to exercise a lien on the Trust Fund to secure the Trustees' right of indemnity conferred by this clause 12.

### **13. Exclusion of Indemnity**

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#### **13.1 Settlor and Creditors**

Neither the Trustees nor any creditor of the Trustees are entitled to be indemnified by the Settlor or by any Creditor in respect of any Claim.

#### **13.2 Limited recourse**

The right of indemnity of the Trustees and any creditor of the Trustees in respect of any Claim is limited to recourse to the Trust Fund.

#### **13.3 Release**

The Trustees release all Claims now existing and agrees to release all Claims arising after the date of this Deed that the Trustees might otherwise have at law or in equity against the Settlor or any Creditor by reason of any right of indemnity or subrogation notwithstanding that the right may not be able to be satisfied or discharged in whole or in part out of the Trust Fund.

### **14. Limitation of liability of the Trustees**

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#### **14.1 Extent of limitation**

The Trustees are not liable for any Claim in respect of the Trust or the Trust Fund or to any Creditor, other than a Claim attributable to:

- (a) any fraudulent or negligent act or omission by the Trustees or the Trustees' partners or employees; or
- (b) any act or omission done or omitted to be done by the Trustees or the Trustees' partners or employees in breach of good faith.

#### **14.2 Advice of others**

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

#### **14.3 Notice of the protection**

All persons claiming any interest in the Trust Fund are deemed to take it with and subject to notice of the protection conferred by this clause 14.

### **15. Account**

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The Trustees must keep complete and accurate books of account and records of all receipts and expenditures on account of the Trust Fund.



## **16. Meetings of Creditors**

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### **16.1 Meetings**

- (a) In order to advise and assist the Trustees, there may be meetings of Creditors.
- (b) The Trustees may from time to time convene and hold meetings of Creditors to obtain approval of the Trustees' remuneration. At such meetings, the Creditors may approve the Trustees' proposed remuneration by resolution following which the Trustees shall be entitled to have recourse to the Trust Fund for the purposes of drawing the Trustees' remuneration.

### **16.2 Applicable provisions – meeting of Creditors**

Subject to clause 16.3, the following provisions apply to this Deed for the purpose of convening and holding any meeting of Creditors:

- (a) sections 479(1) and (2) of the Act; and
- (b) regulations 5.6.12 to 5.6.36A Inclusive of the Regulations.

### **16.3 Previous actions under the DOCA**

Any step taken towards the convening or holding of a meeting of Creditors under the DOCA will be deemed to be effective for the purposes of this Deed and need not be retaken under this Deed.

## **17. Committee of Inspection**

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### **17.1 Meetings**

- (a) In order to advise and assist the Trustees, there may be a committee of inspection.
- (b) The Trustees may from time to time convene and hold meetings of a committee of inspection to obtain approval of the Trustees' remuneration. At such meetings, the committee of inspection may approve the Trustees' proposed remuneration by resolution following which the Trustees shall be entitled to have recourse to the Trust Fund for the purposes of drawing the Trustees' remuneration.

### **17.2 Applicable provisions – meeting of Creditors**

Subject to clause 17.3, the following provisions apply to this Deed for the purpose of determining whether there is to be a committee of inspection, and, if so, the conduct of proceedings of the committee of inspection:

- (a) sections 548 to 551 inclusive of the Act; and
- (b) regulations 5.6.12 to 5.6.36A inclusive of the Regulations.

### **17.3 Previous actions under the DOCA**

Any appointment of, or step taken towards the appointment of, a committee of inspection under the DOCA, will be deemed to be effective for the purpose of this Deed and need not be reconsidered, or retaken, under this Deed.

## 18. Variation of trust deed

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- (a) Subject to clauses 18(b) and 18(c), the Trustees may, by deed or by resolution and with the consent of the majority of the Creditors given at a meeting convened pursuant to clause 16, vary the provisions of this Deed.
- (b) Despite any other provision of this Deed, the Trustees may not amend this Deed to lessen the Trustees' liabilities or obligations under this Deed or at law including, but not limited to, lessening their liabilities in respect of any fraud, wilful default, negligence or breach of trust by the Trustees.
- (c) The Trust will determine if a Court so orders or the Creditors pass a resolution terminating the Trust at a duly convened meeting.

## 19. Party acting as trustee

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If a party enters into this deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this deed in its own right, and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this deed:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked, and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this deed on behalf of the trust, and that this deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists, or will be created or permitted to exist, and that right will have priority over the rights of the beneficiaries to the trust's assets.

## 20. Notices

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- (a) Any notice or other communication which must be given or served under, or in connection with, this Deed:
  - (i) must be in writing;
  - (ii) is sufficient if executed by the party giving or serving the notice or on its behalf by any attorney, director, secretary, other duly authorised officer or solicitor of such party; and
  - (iii) may be served by:
    - (A) delivery in person; or
    - (B) made by pre-paid post; or
    - (C) email.
- (b) The postal address, email address and the department or officer for whose attention the notice or communication is to be made of each party is that identified in the Parties

section of this deed or in the most recent notice of any substitute postal address, email address or department or officer.

- (c) Any notice or communication will be deemed to be given by the sender and received by the addressee
  - (i) in the case of pre-paid post, on the second Business Day after the date of posting; and
  - (ii) in the case of delivery by hand, on delivery; and
  - (iii) if by way of email, on the date and time shown on the email.
- (d) If delivery or receipt is not a Business Day or is after 4.00pm on a Business Day (addressee's time), the notice or communication is taken to have been delivered or received at 9.00am on the next Business Day.

## **21. Costs and Outlays**

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- (a) Unless otherwise set out in this Deed, the costs and outlays connected with the negotiation, preparation and execution of this Deed are taken to be costs, charges and expenses incurred by the Trustees in connection with or incidental to the Trustees' administration of the Trust.
- (b) The Company must pay all stamp duty and other government imposts payable in connection with this Deed and all other documents and matters referred to in this Deed when due or earlier if requested in writing by the Trust.

## **22. Governing law and jurisdiction**

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### **22.1 Governing Law**

The law of Governing Jurisdiction governs this Deed.

### **22.2 Jurisdiction**

The parties submit to the exclusive jurisdiction of the Court in the Governing Jurisdiction and agree that any lawsuit must be heard, if at all, in the Court.

## **23. General Provisions**

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### **23.1 Further assurance**

Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Deed.

### **23.2 Severability**

If anything in this Deed is unenforceable, illegal or void then it is severed and the rest of this Deed remains in force.

**23.3 Consent**

Any authority, consent, approval, discretion, determination or other thing to be given, made, or exercised by the Trustees under this Deed may be done, given, or made how and when each of them decides in its absolute discretion, including by imposing conditions.

**23.4 Parties**

- (a) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (b) An obligation, representation or warranty in this Deed in favour of more than 1 person is for the benefit of them separately and jointly.

**23.5 Goods and Services Tax**

Unless the contrary intention appears, except in relation to a dividend to be distributed under this Deed, where for the purposes of the GST Law an amount payable under this Deed is consideration for a taxable supply made after the Relevant Date in respect of which GST will be payable, the amount payable under this Deed is adjusted to the amount calculated in accordance with the following formula:

$$\text{Adjusted Amount} = \text{Original Amount} \times \text{GST Uplift}$$

where:

**Original Amount** is the amount that would be payable under this Deed but for this clause 23.5; and

**GST Uplift** is the proportion that the price of a taxable supply bears to the value of the taxable supply as provided under the GST Law (at present 11/10).

**23.6 Deed**

This Deed is executed and delivered as a deed.

**23.7 Deed Poll**

To the extent that any covenant contained in this Deed is for the benefit of a person or body corporate that is not a party to this Deed, this Deed shall have effect as a deed poll in favour of that person or body corporate.

**23.8 Counterparts**

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute the same document.

**Signing page**

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Executed as a deed.

Signed, sealed and delivered by Richard Albarran in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print address

Signed, sealed and delivered by Brent Kijurina in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print address

Signed, sealed and delivered by Cameron Shaw in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print address

Executed on behalf of Medivac Limited  
(subject to deed of company arrangement)  
in accordance with section 127 of the  
*Corporations Act 2001 (Cth)*:

\_\_\_\_\_  
Director/Secretary Signature

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

Annexure E

## Annexure A – Firm Rates

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## Hall Chadwick - Insolvency Division

Rates as at 1 MARCH 2015  
(all amounts are exclusive of GST)

POSITION	DESCRIPTION	RATES A\$ per hour
1. Partner	Registered liquidator/ trustee or appointee's partner bringing a high level of Insolvency knowledge and skill, with more than 10 years experience and an appreciation of risk control and personal commitment.	640
2. Senior Associate	Qualified accountant with more than 10 years insolvency experience and able to control all aspects of an appointment, who brings a high level of insolvency knowledge and skill and has an appreciation of risk control.	590
3. Associate	Qualified accountant with more than 10 years insolvency experience and able to control all aspects of an appointment.	550
4. Senior Manager	Qualified accountant with more than 7 years insolvency experience able to control all aspects of an appointment and manage a team of staff.	525
5. Manager	Qualified accountant with more than 6 years insolvency experience able to control all aspect of an appointment and project manage a team on a large appointment.	490
6. Supervisor	Graduate completing post graduate studies with up to 5 years Insolvency experience and responsibility to supervise a small team of staff.	430
7. Senior 1	Graduate completing post graduate studies with 2 to 4 years insolvency experience. Assists planning and control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.	375
8. Senior 2	Graduate completing post graduate studies with 1 to 2 years experience. Required to control the fieldwork on small jobs and is responsible for assisting complete fieldwork on medium to large jobs.	330
9. Intermediate 1	Graduate or Undergraduate with 1-2 years insolvency experience. Required to assist in day to day fieldwork under supervision of more senior staff.	300
10. Intermediate 2	Undergraduate with up to 1 year insolvency experience. Required to assist in day to day fieldwork under supervision of more senior staff.	275
11. Intermediate 3	Appropriate Skills with 1 – 2 years insolvency experience and Geographically located outside of Australia	220
12. Junior 1	Undergraduate completing their university degree.	165
13. Junior 2	Appropriate Skills and Geographically located outside of Australia.	140



Annexure E

POSITION		DESCRIPTION	RATES A\$ per hour
Support Staff			
14.	IT Manager	Appropriate Skills	280
15.	Banking Administrator	Appropriate Skills	280
16.	PA /Secretary	Appropriate Skills	135
17.	Computer Operations	Appropriate Skills	135
18.	Administration Assistant	Appropriate Skills	135
19.	Filing Assistant	Appropriate Skills	55

**NOTE:**

The categories above do not cover professional staff that are unqualified and not studying to become qualified as accountants. In respect of the latter category there are some people who are highly skilled. It is not possible to give a description which will adequately cover all situations.