
Scheme implementation deed

BigAir Group Limited
Superloop Limited

13 September 2016

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Parties

- 1 **BigAir Group Limited (ACN 098 572 626)** of Level 1, 203 Pacific Highway St Leonards NSW 2065 (**BigAir**)
- 2 **Superloop Limited (ACN 169 263 094)** of Level 17, 333 Ann Street, Brisbane, QLD, 4000 (**Superloop**)

The parties agree

Background

- A BigAir and Superloop have agreed to implement the Transaction on and subject to the terms and conditions of this deed.
 - B BigAir and Superloop have agreed certain other matters in connection with the Transaction as set out in this deed.
-

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this deed.

2 Agreement to propose Scheme

2.1 Proposal of Scheme

- (a) BigAir will propose and implement the Scheme on and subject to the terms and conditions of this deed.
- (b) Subject to clauses 2.1(c) and (d), Superloop will assist BigAir in proposing and implementing the Scheme on and subject to the terms and conditions of this deed.
- (c) Superloop may nominate any wholly-owned Subsidiary of Superloop (**Superloop Sub**) to acquire the Scheme Shares under the Scheme by giving written notice to

BigAir on before the date that is 5 Business Days before the First Court Date (**Sub Notification**).

- (d) If Superloop nominates a Superloop Sub to acquire the Scheme Shares under the Scheme, then:
- (i) references in this deed to Superloop acquiring the Scheme Shares under the Scheme, or taking any other action under or in respect of the Scheme, are to be read as references to the Superloop Sub doing so;
 - (ii) Superloop must procure that Superloop Sub complies with its obligations under the Scheme; and
 - (iii) despite paragraphs 2.1(d)(i) and 2.1(d)(ii), Superloop will continue to be bound by all of the obligations of Superloop under this deed and will not be released from any obligations or liabilities under this deed following the Sub Notification. However, BigAir agrees that Superloop will not be in breach of this deed for failing to discharge an obligation of Superloop under this deed if the Superloop Sub fully discharges that obligation.

2.2 Timetable

The parties acknowledge the Timetable as an indicative timetable and will consult with each other regularly in relation to:

- (a) performing their respective obligations within the framework established by the Timetable; and
- (b) any need to modify the Timetable.

3 Conditions precedent and pre-implementation steps

3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Superloop in relation to the implementation of the Scheme (including under clause 4) are not binding, until each of the following conditions precedent is satisfied or waived (to the extent and in the manner set out in this clause 3:

- (a) **(Restraints)** no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any Court of competent jurisdiction or Governmental Agency or other legal restraint or prohibition preventing or materially restricting the Scheme is in effect at 8.00am on the Second Court Date;
- (b) **(Orders convening Scheme Meeting)** the Court orders the convening of the Scheme Meeting under section 411(1) of the Corporations Act;
- (c) **(Shareholder approval)** the Scheme is approved by BigAir Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (d) **(Regulatory Approvals)** before 8.00am on the Second Court Date, all Regulatory Approvals required to implement the Scheme are granted or obtained (including ASIC and ASX having issued or provided such consents, waivers or approvals as are necessary or which BigAir and Superloop agree are reasonably necessary or

desirable to implement the Scheme), either unconditionally or on conditions that do not impose unduly onerous obligations on either party (acting reasonably), and those Regulatory Approvals have not been withdrawn, cancelled or revoked before 8.00am on the Second Court Date;

- (e) **(Court approval)** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably);
- (f) **(No BigAir Prescribed Occurrence)** no BigAir Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date;
- (g) **(No Superloop Prescribed Occurrence)** no Superloop Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date;
- (h) **(No BigAir Material Adverse Change)** there is no BigAir Material Adverse Change between the date of this deed and 8.00am on the Second Court Date;
- (i) **(No Superloop Material Adverse Change)** there is no Superloop Material Adverse Change between the date of this deed and 8.00am on the Second Court Date;
- (j) **(BigAir Warranties)** the BigAir Warranties being true and correct in all material respects on the date of this deed and at 8.00am on the Second Court Date;
- (k) **(Superloop Warranties)** the Superloop Warranties being true and correct in all material respects on the date of this deed and at 8.00am on the Second Court Date;
- (l) **(Decline in S&P/ASX 300 Index)** on no day in the period between the date of this deed and the Business Day before the Second Court Date is the S&P/ASX 300 Index at the close of trading for the previous 5 trading days 15% or more below its level as at the close of trading on the date of this deed;
- (m) **(Independent Expert's Report)** subject to clause 3.2, the Independent Expert provides the Independent Expert's Report to BigAir, stating that in its opinion the Scheme is in the best interests of BigAir Shareholders, on or before the date on which the Scheme Booklet is registered with ASIC under the Corporations Act, and the Independent Expert does not change or publicly withdraw this conclusion prior to 8.00am on the Second Court Date; and
- (n) **(BigAir Performance Rights and BigAir Service Rights)** before 8.00am on the Second Court Date, arrangements have been put in place and all necessary Regulatory Approvals, consents and waivers have been obtained so that all BigAir Performance Rights and BigAir Service Rights outstanding at the date of this deed will either vest, be cancelled or have lapsed before the Record Date in accordance with clause 12.

3.2 Change in Independent Expert opinion

For the purposes of the Condition in clause 3.1(m), if the Independent Expert provides the Independent Expert's Report to BigAir stating that in its opinion the Scheme is in the best interests of BigAir Shareholders on or before the date on which the Scheme Booklet is registered with ASIC under the Corporations Act, and prior to 8.00am on the Second Court Date determines that one of either the Scrip Consideration or the Mixed Consideration are (in its opinion) no longer in the best interests of BigAir Shareholders, then the Independent Expert will not be considered to have changed or publicly

withdrawn this conclusion (and the Condition in clause 3.1(m) will remain satisfied), provided that the Independent Expert retains its conclusion that the other of the Mixed Consideration or the Scrip Consideration remains in the best interests of BigAir Shareholders.

3.3 Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d) and 3.1(e) are for the benefit of both parties and any breach or non-satisfaction of any of them may only be waived in accordance with applicable law and with the written agreement of both parties.
- (b) The Conditions in clauses 3.1(f), 3.1(h), 3.1(j), 3.1(l) and 3.1(n) are for the sole benefit of Superloop and any breach or non-satisfaction of any of them may only be waived by Superloop in writing.
- (c) The Conditions in clauses 3.1(g), 3.1(i), 3.1(k) and 3.1(m) are for the sole benefit of BigAir and any breach or non-satisfaction of any of them may only be waived by BigAir in writing.
- (d) A party entitled to waive the breach or non-satisfaction of a Condition pursuant to this clause 3.3 (either individually or jointly) may do so in its absolute discretion.
- (e) Any waiver of the breach or non-satisfaction of a Condition by a party who is entitled to do so pursuant to this clause 3.3 is only effective if such waiver is given on or prior to 8.00am on the Second Court Date. The Conditions in clauses 3.1(b), 3.1(c), 3.1(d) and 3.1(e) cannot be waived.
- (f) If a party waives the breach or non-satisfaction of any Condition, that waiver will not preclude it from suing the other party for any breach of this deed including a breach that resulted in the non-satisfaction of the Condition that was waived.
- (g) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Condition arising from any other event.

3.4 Procuring satisfaction of the Conditions

- (a) BigAir and Superloop will use their respective reasonable endeavours to ensure that:
 - (i) each of the Conditions is satisfied as soon as reasonably practicable after the date of this deed or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require); and
 - (ii) there is no occurrence within their control (as the context requires) that would prevent the Conditions being satisfied.
- (b) Without limiting clauses 3.5 and 3.6, each of BigAir and Superloop must:

- (i) promptly apply for all approvals necessary in order to satisfy the Conditions in clause 3.1(d) and provide the other party with a copy of all such applications;
- (ii) take all the steps for which it is responsible as part of the process to obtain the approvals necessary in order to satisfy the Conditions in clause 3.1(d);
- (iii) respond, at the earliest practicable time, to all requests for information in respect of the applications for approvals necessary in order to satisfy the Conditions in clause 3.1(d);
- (iv) provide the other with all information and assistance reasonably requested by the other and the relevant regulatory authority in connection with the application necessary in order to satisfy the Conditions in clause 3.1(d); and
- (v) so far as it is able, allow the other and its Authorised Persons the opportunity to be present and make submissions at any meetings with the relevant regulatory body relating to the application necessary in order to satisfy the Conditions in clause 3.1(d).

3.5 Notifications

Each of Superloop and BigAir must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.4).

3.6 Certificate

On the Second Court Date, Superloop and BigAir will provide a joint certificate to the Court confirming whether or not the Conditions (other than the Condition set out in clause 3.1(e)) have been satisfied or waived in accordance with the terms of this deed.

3.7 Scheme voted down because of Headcount Test

If the Scheme is not approved by BigAir Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and BigAir or Superloop considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then BigAir must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by BigAir to represent it in Court proceedings related to the Scheme, in consultation with Superloop, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Act by making an order to disregard the Headcount Test.

3.8 Conditions not capable of being satisfied

- (a) If a Condition is not satisfied, or becomes incapable of being satisfied, before the End Date, then unless the relevant Condition (where capable of waiver) is waived:
 - (i) subject to clause 3.8(b), either party may give the other party written notice (**Consultation Notice**) within 5 Business Days after the relevant notice of that fact being given under clause 3.5(c);
 - (ii) upon delivery of the Consultation Notice, the parties must consult in good faith with a view to determining whether they can reach agreement with respect to:
 - (A) the terms (if any) on which the party with the benefit of the relevant Condition will waive that Condition;
 - (B) an extension of the time for satisfaction of the relevant Condition or an extension of the End Date (as the case may be);
 - (C) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
 - (D) the Transaction proceeding by way of alternative means or methods; and
 - (iii) if the parties are unable to reach such agreement within 5 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within the timeframe specified in clause 3.8(a)(i) then, subject to clause 3.8(b), either party may terminate this deed by notice to the other without any liability to any party by reason of that termination alone.
- (b) A party will not be entitled to give a Consultation Notice or terminate this deed pursuant to clause 3.8(a)(iii) if the relevant Condition has not been satisfied as a result of:
 - (i) a breach of this deed by that party; or
 - (ii) a deliberate act or omission of that party which directly and materially contributed to that Condition not being satisfied.

3.9 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being satisfied if there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this deed).

4 Scheme and Scheme Consideration

4.1 Scheme

- (a) The parties acknowledge and agree that, subject to the Scheme becoming Effective, on the Implementation Date the general effect of the Scheme will be that

all of the Scheme Shares will be transferred to Superloop and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Record Date, the Scheme Consideration.

- (b) Superloop undertakes and warrants to BigAir that, if the Scheme becomes Effective, in consideration for the transfer to Superloop of the Scheme Shares held by each Scheme Shareholder under the terms of the Scheme, Superloop will provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by them in accordance with the terms of the Scheme.
- (c) Subject to the Scheme becoming Effective, at 10.00am on the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:
 - (i) all existing BigAir Shares at the Record Date will be transferred to Superloop; and
 - (ii) in exchange, each Scheme Shareholder will receive the Scheme Consideration for each Scheme Share held by that Scheme Shareholder as at the Record Date.

4.2 Scheme Consideration

The Scheme Consideration in respect of each Scheme Share is either:

- (a) the Scrip Consideration; or
- (b) the Mixed Consideration.

4.3 Election Mechanism

- (a) BigAir must ensure that the Scheme Booklet sent to BigAir Shareholders permits Scheme Shareholders to make an election (**Election**) to receive the Mixed Consideration for all their Scheme Shares by completing an Election Form, such Election being subject to the terms of the Scheme.
- (b) The Election Form shall provide that:
 - (i) subject to clause 4.3(b)(vi), a BigAir Shareholder may make only one Election in relation to a particular holding;
 - (ii) subject to clause 4.3(b)(vi), any Election by a BigAir Shareholder will apply to all of the BigAir Shares that BigAir Shareholder holds as at the Record Date;
 - (iii) an Election may be made by a BigAir Shareholder by:
 - (A) completing the Election Form in accordance with the instructions specified on the form or set out in the Scheme Booklet; and
 - (B) returning the completed Election Form in accordance with the instructions on it so that it is received by no later than the Election Date,or by taking equivalent actions in electronic form if permitted by the BigAir Constitution and the Court at the first Court hearing;

- (iv) once made, an Election by a BigAir Shareholder may be varied before the Election Date (provided that any variation that purports to make an Election invalid will not be effective);
- (v) if an Election is not made by a BigAir Shareholder prior to the Election Date in respect of all of the BigAir Shares held by that BigAir Shareholder as at the Record Date, then that BigAir Shareholder will receive the Scrip Consideration in respect of all of their BigAir Shares;
- (vi) a BigAir Shareholder that holds one or more parcels of BigAir Shares as trustee or nominee for, or otherwise on account of, another person, may, in a manner to be agreed between the parties (acting reasonably), make separate Elections in relation to each of those parcels of BigAir Shares (and, for the purpose of calculating the Scheme Consideration to which the BigAir Shareholder is entitled each such parcel of BigAir Shares will be treated as though it were held by a separate BigAir Shareholder), and

must otherwise be in a form agreed between BigAir and Superloop.

- (c) BigAir must ensure that, to the extent reasonably practicable, BigAir Shareholders who have acquired BigAir Shares after the date of the despatch of the Scheme Booklet can receive an Election Form on request to BigAir.
- (d) In order to facilitate the provision of the Scheme Consideration, BigAir must, upon the written request of Superloop, provide, or procure the provision, to Superloop or a nominee of Superloop, of:
 - (i) a weekly update of the Elections that have been received;
 - (ii) details of the final Elections made by each BigAir Shareholder, within three Business Days after the Election Date; and
 - (iii) a complete copy of the Register (which must include the name, registered address and registered holding of each Scheme Shareholder) as at the Record Date, within three Business Days after the Record Date,

and such other information as Superloop may reasonably require to provide the Scheme Consideration in accordance with this deed and the terms of the Scheme.

4.4 Election to receive Mixed Consideration

- (a) If a Scheme Shareholder has made an Election to receive the Mixed Consideration, the Scheme Shareholder will be entitled to receive for each Scheme Share held by that Scheme Shareholder at the Record Date:
 - (i) if the cash component of the Mixed Consideration is not required by clause 4.4(b) to be pro-rated among Scheme Shareholders who validly Elect to receive the Mixed Consideration:
 - (A) \$0.70 cash;
 - plus
 - (B) 0.118 New Superloop Shares; or

- (ii) if the cash component of the Mixed Consideration is required by clause 4.4(b) to be pro-rated among Scheme Shareholders who validly Elect to receive the Mixed Consideration:

- (A) an amount of cash per Scheme Share (**A**) calculated as follows:

$$A = \frac{B}{C} \times \$0.70$$

where:

- A is the amount of cash to be paid to the Scheme Shareholder for each Scheme Share (in dollars rounded to 3 decimal places)
- B is the Cash Cap, being \$95,000,000
- C is \$0.70 multiplied by the number of Scheme Shares held by all Scheme Shareholders who validly Elect to receive the Mixed Consideration;

plus

- (B) that number of New Superloop Shares per Scheme Share (**X**) calculated as follows:

$$X = ((\$0.70 - A) \times Y) + 0.118$$

where:

- X is the number of New Superloop Shares to be issued to the Scheme Shareholder (rounded to 4 decimal places)
- A is the amount determined under clause 4.4(a)(ii)(A)
- Y is 0.337.

- (b) For the purposes of clause 4.4(a), the cash component of the Mixed Consideration is required to be pro-rated amongst the Scheme Shareholders who validly Elect to receive the Mixed Consideration if the amount determined by multiplying \$0.70 by the number of Scheme Shares held by all Scheme Shareholders who validly Elect to receive the Mixed Consideration exceeds the Cash Cap.

4.5 Cash component of Mixed Consideration

Superloop must, by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the Aggregate Cash Consideration in an Australian dollar denominated trust account operated by BigAir as trustee of the Scheme Shareholders who validly Elect to receive the Mixed Consideration, provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Superloop's account.

4.6 Allotment and issue of New Superloop Shares

- (a) Subject to clauses 4.7 and 4.8 and to the Scheme becoming Effective, Superloop must:

- (i) allot and issue to the Scheme Shareholders the New Superloop Shares that comprise the Scheme Consideration in accordance with the Scheme on terms such that each New Superloop Share will rank equally in all respects with each existing Superloop Share; and
 - (ii) apply to ASX for the official quotation of the New Superloop Shares that comprise the Scheme Consideration on the ASX.
- (b) Superloop covenants in favour of BigAir that:
- (i) the New Superloop Shares to be issued under the Scheme will rank equally in all respects with all existing Superloop Shares; and
 - (ii) on issue, each such New Superloop Share will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

4.7 Ineligible Foreign Shareholders

- (a) Superloop will be under no obligation under the Scheme to issue, and will not issue, any New Superloop Shares to any Ineligible Foreign Shareholder, and instead, unless Superloop and BigAir otherwise agree, Superloop will issue on the Implementation Date the New Superloop Shares to which that Ineligible Foreign Shareholder would otherwise have been entitled (if they were a Scheme Shareholder who was not an Ineligible Foreign Shareholder) to a nominee appointed by Superloop.
- (b) Where New Superloop Shares are issued to a nominee pursuant to clause 4.7(a), Superloop will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the nominee:
 - (i) sells on ASX or another prescribed financial market all of the New Superloop Shares issued to the nominee in accordance with clause 4.7(a) in such manner, at such price and on such other terms as the nominee determines in good faith, and at the risk of the Ineligible Foreign Shareholders; and
 - (ii) remits to Superloop the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).
- (c) Where New Superloop Shares are issued to a nominee pursuant to clause 4.7(a), promptly after the last remittance in accordance with clause 4.7(b)(ii), Superloop will pay to each Ineligible Foreign Shareholder the proportion of the net proceeds of sale received by Superloop pursuant to clause 4.7(b)(ii) to which that Ineligible Foreign Shareholder is entitled.

4.8 Fractional entitlements

Any fractional entitlement of a Scheme Shareholder to a part of a New Superloop Share will be rounded up or down to the nearest whole number of New Superloop Shares.

4.9 Share splitting

If Superloop or BigAir are of the opinion that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares that results in rounding in accordance with clauses 4.4 or 4.8) have, before the Record Date, been party to Share Splitting or division in an attempt to obtain unfair advantage by reference to such rounding, then Superloop and BigAir must consult in good faith to determine whether such matters have arisen and

if agreement is reached between Superloop and BigAir following such consultation BigAir must give notice to those Scheme Shareholders:

- (a) setting out their names and registered addresses as shown in the BigAir Register;
- (b) stating that opinion; and
- (c) attributing the Scheme Shares held by all of them to one of them as specifically identified in the notice,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the Scheme, be taken to hold no Scheme Shares. Superloop, in complying with the other provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

4.10 No amendment to Scheme without consent

BigAir must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of BigAir.

4.11 Deed Poll

Superloop covenants in favour of BigAir (in its own right and separately as trustee for each of the Scheme Shareholders) to execute and deliver the Deed Poll prior to the First Court Date.

5 Implementation of the Scheme

5.1 BigAir's obligations

BigAir must take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable, including taking each of the following steps:

- (a) **(promote merits of the Transaction)** participate in, and ensure the directors of BigAir who recommend that BigAir Shareholders vote in favour of the Scheme in accordance with clause 6, participate in, efforts reasonably requested by Superloop to promote the merits of the Transaction and solicit proxy votes in favour of the Scheme, including meeting with key BigAir Shareholders at the reasonable request of Superloop;
- (b) **(Scheme Booklet)** prepare the Scheme Booklet in compliance with all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules);
- (c) **(drafts of Scheme Booklet)** make available to Superloop drafts of the Scheme Booklet (excluding any draft of the Independent Expert's Report), consult with Superloop in relation to the content of those drafts (other than the Superloop Information), and consider in good faith, for the purpose of amending those drafts, comments from Superloop on those drafts;

- (d) **(commission Independent Expert's Report)** promptly appoint an Independent Expert to provide the Independent Expert's Report, and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (e) **(experts)** provide all assistance and information reasonably requested by any experts appointed by BigAir and/or Superloop in connection with the preparation of the Scheme Booklet;
- (f) **(approval of Superloop Information)** seek approval from Superloop for the form and context in which the Superloop Information appears in the Scheme Booklet, which approval Superloop must not unreasonably withhold or delay, and BigAir must not lodge the Scheme Booklet with ASIC until such approval is obtained from Superloop;
- (g) **(liaison with ASIC)** as soon as reasonably practicable after the date of this deed:
 - (i) provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep Superloop reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with Superloop, to resolve any such matters;
- (h) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the BigAir Board, or of a committee of the BigAir Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to the BigAir Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (i) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (j) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.1(h) has been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing BigAir to convene the Scheme Meeting;
- (k) **(registration of Scheme Booklet)** if the Court directs BigAir to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (l) **(updating Scheme Booklet)** until the date of the Scheme Meeting, promptly update the Scheme Booklet with any information that arises after the Scheme Booklet has been dispatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect (including because of any material omission from that statement);
- (m) **(convening Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the BigAir Shareholders and convening and holding the Scheme Meeting, provided

that if this deed is terminated under clause 13 BigAir will take all steps reasonably required to ensure the Scheme Meeting is not held;

- (n) **(Court approval application if parties agree that conditions are capable of being satisfied)** if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.7 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act) and, if necessary, the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to 8.00am on the proposed Second Court Date, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- (o) **(implementation of Scheme)** if the Scheme is approved by the Court:
 - (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
 - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Superloop on the Implementation Date; and
 - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (p) **(documents)** consult with Superloop in relation to the content of the documents required for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders); and
- (q) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

5.2 Superloop's obligations

Superloop must take all steps reasonably necessary to assist BigAir to implement the Scheme as soon as reasonably practicable, including taking each of the following steps:

- (a) **(Superloop Information)** provide to BigAir all information regarding Superloop, the Scheme Consideration, and Superloop's intentions with respect to the assets, business and employees of BigAir if the Scheme is approved and implemented that is required by all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules) for inclusion in the Scheme Booklet;
- (b) **(confirmation of Superloop Information)** subject to clause 5.8, promptly after BigAir requests that it does so, confirm in writing to BigAir that it consents to the inclusion of the Superloop Information in the Scheme Booklet, in the form and context in which the Superloop Information appears;
- (c) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report for inclusion in the Scheme Booklet;

- (d) **(assistance with Scheme Booklet and Court documents)** promptly provide any assistance or information reasonably requested by BigAir or its Advisers in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to BigAir Shareholders) and any documents required to be filed with the Court in respect of the Scheme;
- (e) **(representation)** procure that, if requested by BigAir at least 20 Business Days Superloop is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act; and
- (f) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

5.3 Conduct of Court proceedings

- (a) Superloop is entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) Nothing in this deed gives BigAir or Superloop any right or power to give undertakings to the Court for or on behalf of the other party without that other party's written consent.

5.4 Appeal process

If the Court refuses to make any orders directing BigAir to convene the Scheme Meeting or approving the Scheme, BigAir and Superloop must:

- (a) consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) appeal the Court decision unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success.

5.5 New information

- (a) BigAir must provide to Superloop all such further or new information of which BigAir becomes aware that arises after the Scheme Booklet has been despatched to BigAir Shareholders until the date of the Scheme Meeting where this is or may be necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (b) Superloop must provide to BigAir all such further or new information of which Superloop becomes aware that arises after the Scheme Booklet has been despatched to BigAir Shareholders until the date of the Scheme Meeting where this is or may be necessary to ensure that the Superloop Information continues to comply with the Corporations Act, RG 60 and the Listing Rules.

5.6 Verification

- (a) BigAir must undertake reasonable verification processes in relation to the information included in the Scheme Booklet (other than the Superloop Information) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to Superloop of the completion of such processes.

- (b) Superloop must undertake reasonable verification processes in relation to the Superloop Information so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to BigAir of the completion such processes.

5.7 Responsibility statements

The Scheme Booklet will include a responsibility statement, in a form to be agreed by the parties, which will contain words to the following effect:

- (a) Superloop will be responsible for the Superloop Information (other than any information provided by BigAir to Superloop or obtained from BigAir public filings on the ASX regarding the BigAir Group contained in, or used in the preparation of, the information regarding the merged Superloop/BigAir groups following implementation of the Scheme) and, to the maximum extent possible at law, BigAir will not be responsible for any Superloop Information and will disclaim any liability for Superloop Information appearing in the Scheme Booklet; and
- (b) BigAir will be responsible for the Scheme Booklet (other than the Superloop Information) and any information provided by BigAir to Superloop or obtained from BigAir public filings on the ASX regarding the BigAir Group contained in, or used in the preparation of, the information regarding the merged Superloop/BigAir groups following implementation of the Scheme and, to the maximum extent possible at law, Superloop will not be responsible for any information appearing in the Scheme Booklet other than the Superloop Information and will disclaim any liability for any information appearing in the Scheme Booklet other than the Superloop Information.

5.8 Disagreement on content

If Superloop and BigAir disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of any information appearing in the Scheme Booklet other than the Superloop Information, the BigAir Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet; and
- (b) if the disagreement relates to the form or content of the Superloop Information, BigAir will make such amendments to the form or content of the disputed part of the Superloop Information as Superloop reasonably requires.

5.9 Good faith co-operation

Each party must procure that its Authorised Persons work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to implement the Scheme, to prepare all documents required relating to the Scheme, and to agree and execute the strategy described in clause 7.7.

6 Board recommendation

6.1 Recommendation

Subject to clause 6.3, BigAir represents and warrants to Superloop, as at the date of this deed, that it has been advised by each BigAir director that he or she will, and BigAir must procure that each BigAir director will, recommend that BigAir Shareholders vote in favour of the Scheme, qualified only by the words to the effect of 'in the absence of a superior proposal and subject to the independent expert concluding that the Scheme is in the best interests of BigAir shareholders'.

6.2 BigAir's Statement to contain recommendation

Subject to clause 6.3, BigAir must ensure that the Scheme Booklet includes:

- (a) a unanimous recommendation by the BigAir Board that BigAir Shareholders vote in favour of the Scheme, qualified only by the words to the effect of 'in the absence of a superior proposal' and, other than in respect of the Scheme Booklet or any document issued after the issue of the Scheme Booklet, 'subject to the independent expert concluding that the scheme is in the best interests of BigAir shareholders (**Recommendation**); and
- (b) a statement by each BigAir director that he or she intends to vote in favour of the Scheme in respect of all BigAir Shares controlled or held by, or on behalf of, that BigAir director, qualified only by the words to the effect of 'in the absence of a superior proposal and, other than in respect of the Scheme Booklet or any document issued after the issue of the Scheme Booklet, ' subject to the independent expert concluding that the scheme is in the best interests of BigAir shareholders' (**Voting Intention**).

6.3 Withdrawal or modification of recommendation and voting intention

BigAir represents and warrants to Superloop, as at the date of this deed, that it has been advised by each BigAir director that he or she does not intend to, and BigAir must procure that each BigAir director does not:

- (a) change, withdraw or modify his or her Recommendation or Voting Intention; or
- (b) make any public statement or take any other action that is inconsistent with his or her recommendation of the Scheme,

in each case except where:

- (c) BigAir receives a Competing Proposal and the relevant BigAir director determines, after all of Superloop's rights under clause 10.6 have been exhausted, that the Competing Proposal constitutes a Superior Proposal; or
- (d) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of BigAir Shareholders, or the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of BigAir Shareholders but then changes or publicly withdraws this conclusion prior to 8.00am on the Second Court Date.

6.4 Change in Independent Expert Opinion

For the purposes of clause 6.3(d), if the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of BigAir Shareholders, and prior to 8.00am on the Second Court Date determines that one of either the Scrip Consideration or the Mixed Consideration are (in its opinion) no longer in the best interests of BigAir Shareholders, then the Independent Expert will not be considered to have changed or publicly withdrawn this conclusion (and the BigAir directors will not be entitled to take any of the actions referred to in clauses 6.3(a) and 6.3(b)), provided that the Independent Expert retains its conclusion that the other of the Mixed Consideration or the Scrip Consideration remains in the best interests of BigAir Shareholders.

7 Conduct of business before the Implementation Date

7.1 Conduct of BigAir business

Subject to clause 7.3, from the date of this deed up to and including the Implementation Date, other than to the extent that the relevant matter has been Fairly Disclosed to the ASX before the date of this deed, BigAir must conduct its business, and must cause each of its Subsidiaries to conduct their businesses, in the ordinary and usual course of business and:

- (a) operate those businesses consistent with past practice, in substantially the same manner as previously conducted;
- (b) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
- (c) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
- (d) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the BigAir Group is a party, and with laws, authorisations and licenses applicable to each member of the BigAir Group;
- (e) not take or fail to take any action that constitutes a BigAir Prescribed Occurrence or that could reasonably be expected to result in a BigAir Prescribed Occurrence; and
- (f) not take or fail to take any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied.

7.2 BigAir Prohibited actions

Subject to clause 7.3, from the date of this deed up to and including the Implementation Date, other than to the extent that the relevant matter has been Fairly Disclosed to the ASX before the date of this deed, BigAir must not, and must procure that the BigAir Group does not:

- (a) declare, pay or distribute any dividend, bonus or other share of its profits or assets by way of dividend, capital reduction or otherwise;
- (b) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds \$2 million in aggregate;

- (c) pay any Adviser any fee, cost or other form of compensation or remuneration that is directly or indirectly as a result of, contingent on, or in connection with:
- (i) BigAir or Superloop entering into this deed;
 - (ii) Superloop acquiring a Relevant Interest in the Scheme Shares; or
 - (iii) the Scheme or a transaction contemplated by this deed,
- where all such amounts paid would exceed, in aggregate, \$2 million;
- (d) except as required by law or as provided in an existing contract in place at the date of this deed, make any material change to the terms of employment of (including increasing the remuneration or compensation of or accelerating the rights to benefits of any kind), or grant or pay any bonus, incentive, retention, severance or termination payment to, any director, officer, executive or senior manager of the BigAir Group;
- (e) enter into a new employment contract with a potential employee of the BigAir Group under which contract the total remuneration payable to that potential employee would exceed \$150,000 in any 12 month period, other than to replace a role that becomes vacant after the date of this deed as a result of the resignation of an existing employee or in respect of a new employee who is employed in order to fill a role that is vacant as at the date of this deed;
- (f) enter into any enterprise bargaining agreement or any other form of collective agreement concerning the terms of employment of employees of the BigAir Group;
- (g) incur any additional financial indebtedness (except for draw-downs on existing banking facilities consistent with BigAir's current budget), or guarantee or indemnify the obligations of any person other than a member of the BigAir Group, other than in the usual and ordinary course of business and consistent with past practice;
- (h) enter into any new financing arrangement, agreement or otherwise provide financial accommodation (irrespective of what form that accommodation takes), or amend the term of any existing financing arrangement, agreement or instrument;
- (i) incur or enter into any new commitments involving the purchase of plant and equipment (as defined in BigAir's statement of cash flows) of more than \$3 million in aggregate;
- (j) give or agree to give a financial benefit to a related party of BigAir;
- (k) enter into a contract which is material to the conduct of the BigAir Group's business, involves aggregate expenditure greater than \$1 million, annual revenue greater than \$3 million (it being acknowledged and agreed that any contract that has annual revenue less than or equal to \$3 million must have a reasonably expected profit margin that is consistent with profit margins previously achieved by BigAir on other comparable contracts of a similar nature), or has a committed term which is greater than 5 years (**Material Contract**), or terminate or amend the terms of a Material Contract;
- (l) implement any share based incentive plan or scheme;
- (m) amend its constitution;

- (n) alter in any material respect any accounting policy of any member of the BigAir Group;
- (o) enter into, renew, or permit to rollover for a term that exceeds 90 days, any contract arrangement or understanding for the acquisition of domestic or international transmission services (except in respect of customer links), domestic or international IP transit or peering, or data centre space or services; or
- (p) agree to do any of the matters set out above.

7.3 BigAir permitted activities

The obligations of BigAir under clauses 7.1 and 7.2 do not apply in respect of any matter:

- (a) required to be done or procured by BigAir pursuant to this deed or the Scheme;
- (b) to the extent it is Fairly Disclosed in the BigAir Disclosure Letter;
- (c) required by law or by an order of a court or Governmental Agency; or
- (d) the undertaking of which Superloop has previously approved in writing.

7.4 Conduct of Superloop business

Subject to clause 7.5, from the date of this deed up to and including the Implementation Date, other than to the extent that the relevant matter has been Fairly Disclosed to the ASX before the date of this deed, Superloop must conduct its business, and must cause each of its Subsidiaries to conduct their businesses, in the ordinary and usual course of business and:

- (a) operate those businesses consistent with past practice, in substantially the same manner as previously conducted;
- (b) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
- (c) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
- (d) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the Superloop Group is a party, and with laws, authorisations and licenses applicable to each member of the Superloop Group;
- (e) not take or fail to take any action that constitutes a Superloop Prescribed Occurrence or that could reasonably be expected to result in a Superloop Prescribed Occurrence; and
- (f) not take or fail to take any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied.

7.5 Superloop permitted activities

The obligations of Superloop under clause 7.4 do not apply in respect of any matter:

- (a) required to be done or procured by Superloop pursuant to this deed or the Deed Poll;

- (b) to the extent it is Fairly Disclosed in the Superloop Disclosure Letter;
- (c) required by law or by an order of a court or Governmental Agency;
- (d) required for the purpose of funding the Mixed Consideration; or
- (e) the undertaking of which BigAir has previously approved in writing.

7.6 Access

From the date of this deed to the Implementation Date, BigAir must provide Superloop with all reasonable access during normal business hours and on reasonable notice to the management, offices, books, records and business operations of BigAir that Superloop reasonably requires in order to implement the Transaction or for Superloop to prepare for the transition of ownership of the BigAir Group.

7.7 Change of control

As soon as practicable after the date of this deed, the parties must:

- (a) seek to identify any change of control or similar provisions in any material contract to which a member of the BigAir Group is party which may be triggered by the implementation of the Transaction (**Change of Control Requirements**); and
- (b) use all reasonable endeavours to agree a proposed strategy to obtain any consents required in accordance with the terms of any identified Change of Control Requirements, and to then expeditiously seek those consents in accordance with the agreed strategy.

8 Board composition and matters

8.1 Appointment of BigAir directors to the Superloop board

Superloop represents and warrants to BigAir that it has been advised by each Superloop director that he or she will, and Superloop must procure that the Superloop Board will appoint Vivian Stewart and Jason Ashton to the Superloop Board, effective as of the Implementation Date and subject to those persons consenting to so act.

8.2 Reconstitution of the BigAir Group boards

BigAir represents and warrants to Superloop that it has been advised by each BigAir director that he or she will, and BigAir must procure that the BigAir Board will, on the Implementation Date:

- (a) procure that each BigAir director resigns from their office as a BigAir director by providing to the BigAir Board their resignation in writing (such resignation to include a statement to the effect that the outgoing director has no claim outstanding against any member of the BigAir Group); and
- (b) procure that each director of each Subsidiary of BigAir resigns from their office as a director of the relevant Subsidiary of BigAir by providing to the board of the relevant Subsidiary of BigAir their resignation in writing (such resignation to include a statement to the effect that the outgoing director has no claim outstanding against any member of the BigAir Group).

9 Representations and warranties

9.1 Superloop representations and warranties

- (a) Superloop represents and warrants to BigAir each of the matters set out in clause 9.1(b) as at the date of this deed and at all subsequent times until 8.00am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Superloop represents and warrants that:
 - (i) Superloop is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this deed has been properly authorised by all necessary corporate action and Superloop has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
 - (iii) this deed constitutes legal, valid and binding obligations on it and this deed does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which Superloop is a party or is bound;
 - (iv) no Superloop Prescribed Occurrence has occurred;
 - (v) the Superloop Information provided to BigAir in accordance with clause 5.2(a) for inclusion in the Scheme Booklet will:
 - (A) be provided in good faith;
 - (B) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
 - (C) be provided on the understanding that BigAir will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
 - (vi) as at the date the Scheme Booklet is despatched to BigAir Shareholders, the Superloop Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);
 - (vii) as at the Date of this deed, Superloop is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Transaction or as disclosed in writing to BigAir on or before the date of this deed);
 - (viii) the issued capital of Superloop as at the date of this deed is:
 - (A) 103,861,688 Superloop Shares;
 - (B) 30,491,250 restricted fully paid ordinary shares;

- (C) 196,068 performance rights in relation to Superloop Shares; and
- (D) 725,814 options over Superloop Shares,

and there are no other Superloop options, performance rights, shares, warrants, convertible notes, instruments or other securities (or offers or agreements to issue any of the foregoing) that may convert into Superloop Shares;

- (ix) all information provided by or on behalf of Superloop to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet to be prepared and completed will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;
- (x) Superloop does not require the approval of its shareholders or the approval or consent of any other person to enter into or perform any of its obligations under this deed;
- (xi) Superloop's financial statements as disclosed to the ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as Superloop is aware, there has not been any event, change, effect or development which would require Superloop to restate its financial statements as disclosed to the ASX;
- (xii) so far as the board of directors of Superloop and the key management personnel of any member of the Superloop Group are aware, or ought reasonably to be aware, after due and diligent inquiry of each Superloop Group member, as at the date of this deed, there is no material breach by any Superloop Group member of:
 - (A) any law or regulation applicable to them (or order of any Regulatory Authority having jurisdiction over them); or
 - (B) any material contract to which it is a party,which breach (alone or together with any other breaches of law or contract) has or could reasonably be expected to have the effect of causing:
 - (C) any material contract to be terminable or terminated; or
 - (D) a Superloop Group member to be restricted in conducting its business, or to be subject to criminal liability or penalty; or
 - (E) a Superloop Material Adverse Change;
- (xiii) so far as the board of directors of Superloop and the key management personnel of any member of the Superloop Group are aware, or ought reasonably to be aware, all responses by Superloop and its Authorised Persons to BigAir's requests for information in connection with its due diligence investigations of the Superloop Group are materially true, accurate, complete and not misleading or deceptive whether by omission or otherwise; and

- (xiv) the Superloop Group owns, or has the right to use, all of the assets, real property, information technology and intellectual property that are material for the conduct of the business of the Superloop Group, and will continue to do so upon and immediately following Implementation.

9.2 Superloop's indemnity

Superloop agrees with BigAir (on BigAir's own behalf and separately as trustee for each of the other BigAir Indemnified Parties) to indemnify and keep indemnified BigAir and BigAir Indemnified Parties against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which BigAir may suffer or incur by reason of any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b).

9.3 BigAir representations and warranties

- (a) BigAir represents and warrants to Superloop each of the matters set out in clause 9.3(b) as at the date of this deed and at all subsequent times until 8.00am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) BigAir represents and warrants that:
 - (i) BigAir is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this deed by BigAir has been properly authorised by all necessary corporate action and BigAir has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
 - (iii) this deed constitutes legal, valid and binding obligations on BigAir and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which BigAir or any of its Subsidiaries is a party or to which they are bound;
 - (iv) no BigAir Prescribed Occurrence has occurred;
 - (v) the information contained in the Scheme Booklet (other than the Superloop Information):
 - (A) will be prepared and included in the Scheme Booklet in good faith; and
 - (B) will comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60;
 - (vi) as at the date the Scheme Booklet is despatched to BigAir Shareholders, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Superloop Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
 - (vii) as at the date of this deed, BigAir is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure

(other than in relation to the Transaction or as disclosed in writing to Superloop on or before the date of this deed);

(viii) the issued capital of BigAir as of the date of this deed is:

- (A) 180,945,451 BigAir Shares;
- (B) 917,040 BigAir Performance Rights;
- (C) 166,515 BigAir Service Rights,

and there are no other BigAir options, performance rights, shares, warrants, convertible notes, instruments or other securities (or offers or agreements to issue any of the foregoing) that may convert into BigAir Shares;

(ix) BigAir's financial statements as disclosed to the ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as BigAir is aware, there has not been any event, change, effect or development which would require BigAir to restate its financial statements as disclosed to the ASX;

(x) no member of the BigAir Group has issued, or agreed to issue, any other securities or instruments which may convert into BigAir Shares or any other securities in BigAir;

(xi) so far as the BigAir Board and the key management personnel of any member of the BigAir Group are aware, or ought reasonably to be aware, after due and diligent inquiry of each BigAir Group member, as at the date of this deed, there is no material breach by any BigAir Group member of:

- (A) any law or regulation applicable to them (or order of any Regulatory Authority having jurisdiction over them); or
- (B) any material contract to which it is a party,

which breach (alone or together with any other breaches of law or contract) has or could reasonably be expected to have the effect of causing:

- (C) any material contract to be terminable or terminated; or
- (D) a BigAir Group member to be restricted in conducting its business, or to be subject to criminal liability or penalty; or
- (E) a BigAir Material Adverse Change;

(xii) so far as the BigAir Board and the key management personnel of any member of the BigAir Group are aware, or ought reasonably to be aware, all responses by BigAir and its Authorised Persons to Superloop's requests for information in connection with its due diligence investigations of the BigAir Group are materially true, accurate, complete and not misleading or deceptive whether by omission or otherwise; and

(xiii) the BigAir Group owns, or has the right to use, all of the assets, real property, information technology and intellectual property that are material for the conduct of the business of the BigAir Group, and will continue to do so upon and immediately following Implementation.

9.4 BigAir's indemnity

BigAir agrees with Superloop (on Superloop's own behalf and separately as trustee for each of the other Superloop Indemnified Parties) to indemnify and keep indemnified Superloop and Superloop Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Superloop may suffer or incur by reason of any breach of any of the representations and warranties in clauses 9.3(a) or 9.3(b).

9.5 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or is reasonably expected to constitute a breach of any of the representations or warranties given by it under this clause 9.

9.6 Survival of representations

Each representation and warranty in clauses 9.1 and 9.3:

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

9.7 Survival of indemnities

Each indemnity in this deed (including those in clauses 9.2 and 9.4) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survive the termination of this deed.

10 Exclusivity

10.1 No existing discussions

Other than in relation to the discussions with Superloop in connection with the Transaction and this deed, BigAir represents and warrants to Superloop that, as at the date of this deed:

- (a) neither itself, its Related Bodies Corporate nor any of their respective Authorised Persons is a party to any agreement with a third party entered into for the purpose of facilitating a Competing Proposal; and
- (b) neither itself, its Related Bodies Corporate nor any of their respective Authorised Persons is participating in any discussions or negotiations with a third party that concern, or that could reasonably be expected to lead to, a Competing Proposal.

10.2 No-shop

During the Exclusivity Period, BigAir must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly solicit, invite, initiate or encourage any Competing Proposal or any enquiries, proposals, discussions or negotiations with any third party in relation to (or that could reasonably be expected to lead to) a Competing Proposal, or communicate any intention to do any of these things.

10.3 No-talk

Subject to clause 10.7, during the Exclusivity Period, BigAir must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) negotiate or enter into or participate in negotiations or discussions with any person; or
- (b) communicate any intention to do any of these things,

in relation to (or which may reasonably be expected to lead to) a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, encouraged or initiated by BigAir or any of its Related Bodies Corporate, or that person has publicly announced the Competing Proposal.

10.4 No due diligence

During the Exclusivity Period, except with the prior written consent of Superloop, BigAir must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) solicit, invite, initiate, or encourage, or (subject to clause 10.7) facilitate or permit, any person (other than Superloop) to undertake due diligence investigations in respect of BigAir, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
- (b) subject to clause 10.7, make available to any person (other than Superloop) or permit any such person to receive any non-public information relating to BigAir, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

10.5 Notification of approaches

- (a) During the Exclusivity Period, BigAir must promptly notify Superloop in writing of:
 - (i) any approach, inquiry or proposal made by any person to BigAir, any of its Related Bodies Corporate or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Competing Proposal; and
 - (ii) any request made by any person to BigAir, any of its Related Bodies Corporate, or any of their respective Authorised Persons, for any information relating to BigAir, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or

finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

- (b) Subject to clause 10.7, a notice given under clause 10.5(a) must be accompanied by all material details of the relevant event, including (as the case may be):
 - (i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 10.5(a)(i), or who made the relevant request for information referred to in clause 10.5(a)(ii); and
 - (ii) the material terms and conditions (including price, conditions precedent, timetable and break fee (if any)) of any Competing Proposal or any proposed Competing Proposal (to the extent known).
- (c) During the Exclusivity Period, BigAir must promptly provide Superloop with:
 - (i) in the case of written materials, a copy of; or
 - (ii) in any other case, a written statement of,

any material non-public information relating to BigAir, its Related Bodies Corporate, or any of their businesses and operations made available or received by any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which has not previously been provided to Superloop.

10.6 BigAir's response to Rival Acquirer and Superloop's right to respond

- (a) If BigAir is permitted by virtue of clause 10.7 to engage in activity that would otherwise breach any of clauses 10.3, 10.4(a), 10.4(b) and 10.5(b), BigAir must enter into a confidentiality agreement with the person who has made the applicable Competing Proposal (**Rival Acquirer**) on customary terms and must not enter into any other agreement, understanding or commitment in respect of a Competing Proposal or a potential Competing Proposal except as permitted by clause 10.6(b).
- (b) If BigAir receives a Competing Proposal and as a result, any BigAir director proposes to either:
 - (i) change, withdraw or modify his or her recommendation of the Scheme; or
 - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal (other than a confidentiality agreement contemplated by clause 10.6(a)),

BigAir must ensure that no BigAir director does so:

- (iii) unless the Competing Proposal is bona fide; and
- (iv) until each of the following has occurred:
 - (A) the relevant BigAir director has made the determination contemplated by clause 10.7(b) in respect of that Competing Proposal;
 - (B) BigAir has given Superloop written notice (**Relevant Notice**) of the BigAir director's proposal to take the action referred to in clauses 10.6(b)(i) or 10.6(b)(ii) (subject to Superloop's rights under clause

10.6(d)), including details of the grounds on which the BigAir directors propose to take such action;

- (C) subject to clause 10.6(c), BigAir has given Superloop all information that would be required by clause 10.5(b) as if it was not subject in any way to clause 10.7;
 - (D) Superloop's rights under clause 10.6(d) have been exhausted; and
 - (E) the BigAir directors have made the determination contemplated by clause 10.7(b) in respect of that Competing Proposal after Superloop's rights under clause 10.6(d) have been exhausted and after evaluation of any Counter Proposal.
- (c) Prior to giving Superloop the information under clause 10.6(b)(iv)(C), BigAir must advise the Rival Acquirer that the Rival Acquirer's name and other details which may identify the Rival Acquirer will be provided by BigAir to Superloop on a confidential basis.
- (d) If BigAir gives a Relevant Notice to Superloop under clause 10.6(b)(iv)(B), Superloop will have the right, but not the obligation, at any time during the period of 3 Business Days following the receipt of the Relevant Notice, to amend the terms of the Transaction including increasing the amount of consideration offered under the Transaction or proposing any other form of transaction (each a **Counter Proposal**), and if it does so then the BigAir directors must review the Counter Proposal in good faith. If the BigAir directors determine that the Counter Proposal would be more favourable to BigAir and the BigAir Shareholders than the Competing Proposal (having regard to the matters noted in clause 10.7(b)), then BigAir and Superloop must use their best endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and BigAir must use its best endeavours to procure that the BigAir directors recommend the Counter Proposal to the Shareholders and not recommend the applicable Competing Proposal.
- (e) For the purposes of this clause 10.6, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

10.7 Fiduciary out

The restrictions in clauses 10.3, 10.4(a) and 10.4(b) and the obligations in clause 10.5(b) do not apply to the extent they restrict BigAir or any BigAir director from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 10) provided that:

- (a) the Competing Proposal is bona fide and is made by or on behalf of a person that the BigAir Board considers is of reputable commercial standing; and
- (b) the BigAir Board has determined in good faith after:
 - (i) consultation with BigAir's financial advisers, that the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal; and
 - (ii) receiving written advice from BigAir's external Australian legal adviser practising in the area of corporate law,

that failing to take the action or refuse to take the action (as the case may be) with respect to the Competing Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of the BigAir Board.

11 Break Fees

11.1 Superloop declaration

Superloop represents and warrants to BigAir that it would not have entered into this deed without the benefit of this clause 11 and it would not have entered into and continued the negotiations leading up to this deed unless Superloop had a reasonable expectation that BigAir would agree to enter into a clause of this kind.

11.2 Acknowledgments

- (a) BigAir acknowledges that Superloop has incurred:
- (i) significant external advisory costs;
 - (ii) some internal costs of a similar kind (including directors and management time costs, risk management costs and capital costs);
 - (iii) out-of-pocket expenses;
 - (iv) commitment fees and other financing costs; and
 - (v) reasonable opportunity costs incurred by Superloop in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives,
- in relation to the Scheme and will incur further costs after the date of this deed if the Scheme is not successful (**Costs**).
- (b) Each of BigAir and Superloop represents and warrants that:
- (i) it has received legal advice on this deed and the operation of this clause 11; and
 - (ii) it considers this clause 11 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 11 in order to secure the significant benefits to it (and its Shareholders) resulting from the Scheme.

11.3 Agreement on Costs

The parties acknowledge that the amount of the Costs is inherently unascertainable and that, even after termination of this deed, the Costs will not be able to be accurately ascertained. As a genuine and reasonable pre-estimate of the Costs that Superloop will suffer if the Scheme does not proceed (being an amount commensurate with the interest protected by the bargain), the parties agree that, for the purposes of this clause 11, the Costs will be the sum of \$2.1 million (**BigAir Break Fee**).

11.4 BigAir Break Fee

- (a) BigAir agrees to pay to Superloop the BigAir Break Fee if at any time on or after the date of this deed and before the End Date, any of the following events occur:

- (i) any BigAir director fails to recommend the Scheme as described in clauses 6.1 and 6.2;
 - (ii) any BigAir director changes, withdraws or modifies his or her recommendation of the Scheme or makes any public statement, or take any other action that is inconsistent with his or her recommendation of the Scheme (including where a Competing Proposal is announced and is recommended by any BigAir director), other than in the case specified in clause 6.3(d) (and subject always to clause 6.4) provided that the reasons for the Independent Expert's conclusions do not include (in whole or in part) the existence of a Competing Proposal;
 - (iii) a Competing Proposal is announced before the End Date and, within 9 months of the Competing Proposal being announced, the Competing Proposal results in a person or persons (other than a member of the Superloop Group) obtaining Control of BigAir, voting power in more than 50% of the BigAir Shares, merging or amalgamating with BigAir or acquiring (directly or indirectly) an interest in all or a substantial part of the business or assets of the BigAir Group;
 - (iv) a Condition (other than the Conditions in clause 3.1(k) and 3.1(l)) is not satisfied due to an action (or failure to act) of BigAir or any of its Related Bodies Corporate in breach of BigAir's obligations under clause 3.4, and Superloop does not waive that Condition before the End Date; or
 - (v) Superloop terminates this deed under clause 13.1(a)(i).
- (b) The payment of the BigAir Break Fee by BigAir to Superloop provided for in this clause 11.4 must be made within 5 Business Days of receipt of a written demand for payment by Superloop. The demand may only be made after the occurrence of an event referred to in clause 11.4(a).

11.5 Superloop Break Fee

- (a) The parties acknowledge that BigAir will incur substantial costs in implementing the Scheme, including significant external advisory costs and costs of preparing the Scheme Booklet and commissioning the Independent Expert's Report, costs of providing due diligence, and reasonable opportunity costs incurred by BigAir in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives.
- (b) Subject to clauses 11.6 and 11.8, if BigAir validly terminates this deed in accordance with clause 13.1(a)(i), then Superloop must pay to BigAir \$2.1 million (**Superloop Break Fee**).
- (c) The payment of the Superloop Break Fee by Superloop to BigAir provided for in this clause 11.5 must be made within 5 Business Days of receipt of a written demand for payment by BigAir. The demand may only be made after the occurrence of an event referred to in clause 11.5(b).

11.6 Qualifications

- (a) No BigAir Break Fee or Superloop Break Fee is payable if the Scheme becomes Effective. To the extent that any amounts have already been paid under this clause 11 and the Scheme becomes Effective, such amounts must be immediately refunded to the other party.

- (b) The BigAir Break Fee is not payable by BigAir if BigAir validly terminates this deed in accordance with clause 13.1(a)(i).
- (c) The Superloop Break Fee is not payable by Superloop if Superloop validly terminates this deed in accordance with clause 13.1(a)(i).
- (d) The BigAir Break Fee is only payable once and the maximum amount payable by BigAir under clause 11.4 is the amount of the BigAir Break Fee.
- (e) The Superloop Break Fee is only payable once and the maximum amount payable by Superloop under clause 11.5 is the amount of the Superloop Break Fee.

11.7 BigAir's limitation of liability

Notwithstanding any other provisions of this agreement but subject to clauses 11.9 and 11.10:

- (a) the maximum liability of BigAir to Superloop under or in connection with this deed including in respect of any breach of the deed will be the BigAir Break Fee referred to in clause 11.4; and
- (b) a payment by BigAir in accordance with this clause 11 represents the sole and absolute liability of BigAir under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by BigAir in connection with this deed.

11.8 Superloop's limitation of liability

Notwithstanding any other provisions of this agreement but subject to clauses 11.9 and 11.10:

- (a) the maximum liability of Superloop to BigAir under or in connection with this deed including in respect of any breach of the deed will be the Superloop Break Fee referred to in clause 11.5; and
- (b) a payment by Superloop in accordance with this clause 11 represents the sole and absolute liability of Superloop under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Superloop in connection with this deed.

11.9 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the BigAir Break Fee or the Superloop Break Fee required to be paid under clause 11.4 or clause 11.5 (as the case may be) (**Impugned Amount**):

- (a) is unlawful;
- (b) involves a breach of directors' duties; or
- (c) constitutes unacceptable circumstances or breaches an order of the Takeovers Panel,

then,

- (d) the requirement to pay the BigAir Break Fee or the Superloop Break Fee (as the case may be) does not apply to the extent of the Impugned Amount; and
- (e) if BigAir or Superloop (as the case may be) has received the Impugned Amount, it must refund it within five Business Days of the final determination being made.

11.10 Regulatory Intervention

If any regulatory body (including ASIC or the Takeovers Panel) or a court requires any modification (including requiring such a modification as a condition of consenting to or approving the Scheme or as a condition of not opposing the Scheme) to the BigAir Break Fee or the Superloop Break Fee, including as to the amount or circumstances in which it is to be paid, then:

- (a) the parties will accept this determination and amend this deed to that extent; and
- (b) it will not result in a breach of this deed or termination of the transactions contemplated by it.

12 BigAir Performance Rights and BigAir Service Rights

- (a) BigAir must take such action as is necessary after the Effective Date and prior to the Record Date to ensure that any BigAir Performance Rights and BigAir Service Rights which have not already vested, so vest and convert prior to the Record Date, which actions shall include procuring that the BigAir board:
 - (i) resolve that the Scheme becoming Effective constitutes a Change of Control (as defined in the Plan Rules);
 - (ii) resolve to waive unsatisfied vesting conditions and accelerate the exercise period such that all BigAir Performance Rights and BigAir Service Rights convert or are exercised prior to the Record Date; and
 - (iii) notify such BigAir Performance Rights Holders and BigAir Service Rights Holders of such accelerating prior to the Scheme Meeting.
- (b) BigAir must, prior to the Record Date, issue the number of BigAir Shares required by the terms of those BigAir Performance Rights and BigAir Service Rights on such vesting, so that the relevant former holders of the BigAir Performance Rights and BigAir Service Rights, as the case may be, can participate in the Scheme.

13 Termination

13.1 Termination by notice

- (a) Superloop or BigAir may, by notice in writing to the other, terminate this deed at any time prior to 9.00am on the Second Court Date:
 - (i) if the other is in material breach of any of its obligations under this deed (other than a material breach of a representation or warranty), and, if capable of remedy, the other party has failed to remedy that breach within five Business Days (or 5.00 pm on the day before the Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach; or

- (ii) in accordance with clause 3.8.
- (b) BigAir may, by notice in writing to Superloop, terminate this deed at any time prior to 9.00am on the Second Court Date if at any time before then:
 - (i) at least a majority of the BigAir directors publicly recommend a Superior Proposal and do not, within three Business Days, reinstate their recommendation of the Transaction; or
 - (ii) Superloop materially breaches a representation or warranty contained in clause 9.1(b), and:
 - (A) Superloop fails to remedy that breach within five Business Days of receipt by it of a notice in writing from BigAir setting out details of the relevant circumstance and requesting Superloop to remedy the breach or the breach cannot be remedied to the reasonable satisfaction of BigAir by subsequent action on the part of Superloop before 8.00am on the Second Court Date; and
 - (B) the breach was of a kind that, had it been disclosed to BigAir prior to its entry into this deed, could reasonably be expected to have resulted in BigAir either not entering into this deed or entering into it on materially different terms.
- (c) Superloop may, by notice in writing to BigAir, terminate this deed at any time prior to 8.00am on the Second Court Date if, at any time before then:
 - (i) BigAir materially breaches a representation or warranty contained in clause 9.3(b), and:
 - (A) BigAir fails to remedy that breach within five Business Days of receipt by it of a notice in writing from Superloop setting out details of the relevant circumstance and requesting BigAir to remedy the breach or the breach cannot be remedied to the reasonable satisfaction of Superloop by subsequent action on the part of BigAir before 8.00am on the Second Court Date; and
 - (B) either:
 - (I) the breach was of a kind that, had it been disclosed to Superloop prior to its entry into this deed, could reasonably be expected to have resulted in Superloop either not entering into this deed or entering into it on materially different terms; or
 - (II) the breach amounts to, results in, or discloses anything, that could reasonably be expected to amount to a Material Adverse Change; or
 - (ii) any BigAir director:
 - (A) fails to recommend the Scheme in the manner described in clauses 6.1 and 6.2; or
 - (B) changes, withdraws or modifies his or her recommendation of the Scheme or makes any public statement, or takes any other action that is inconsistent with his or her recommendation of the Scheme

(including where a Competing Proposal is recommended or supported by any BigAir director).

13.2 Effect of termination

- (a) In the event of termination of this deed under clause 3.8 or 13.1, this deed will become void and have no effect, except that the provisions of clauses 9.6, 9.7, 11, 13, 14 and 17.2 to 17.14 (inclusive) survive termination.
- (b) Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination.

14 Releases

14.1 Release of BigAir Indemnified Parties

- (a) Subject to any restrictions imposed by law, Superloop releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with BigAir that it will not make any Claim, against any BigAir Indemnified Party in connection with:
 - (i) any breach of any covenant, representation or warranty given by BigAir under this deed;
 - (ii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
 - (iii) any failure to provide information,except where a BigAir Indemnified Party has not acted in good faith, has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 14.1(a) limits the rights of Superloop to terminate this deed under clause 13.
- (b) BigAir receives and holds the benefit of clause 14.1(a) as trustee for the BigAir Indemnified Parties.

14.2 Release of Superloop Indemnified Parties

- (a) Subject to any restrictions imposed by law, BigAir releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with Superloop that it will not make any Claim, against any Superloop Indemnified Party in connection with:
 - (i) any breach of any covenant, representation or warranty given by Superloop under this deed;
 - (ii) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
 - (iii) any failure to provide information,except where a Superloop Indemnified Party has not acted in good faith, has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 14.2(a) limits the rights of BigAir to terminate this deed under clause 13.

- (b) Superloop receives and holds the benefit of clause 14.2(a) as trustee for the Superloop Indemnified Parties.

14.3 Deeds of indemnity, access and insurance

- (a) Superloop acknowledges that, notwithstanding any other provision of this deed, BigAir may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such 7 year period in a form to be approved by Superloop (acting reasonably) and on terms consistent with the directors and officers run-off insurance policy BigAir has in place at the date of this deed, and that any actions to facilitate that insurance or in connection therewith will not be BigAir Prescribed Occurrences or breach any provision of this deed.
- (b) BigAir receives and holds the benefit of paragraph (a) as trustee for each director and officer of a member of the BigAir Group.

15 Confidentiality and Public Announcement

15.1 Confidentiality

- (a) Each party acknowledges and agrees that:
 - (i) information provided by either party to the other, or obtained by either party from the other, in the course of proposing, negotiating or implementing the Transaction (including information provided before or after the date of this deed); and
 - (ii) all copies of information, agreements and those parts of the notes and other records referred to above,is strictly confidential (**Confidential Information**) and may not be disclosed to any third party (except as permitted by this deed).
- (b) For the avoidance of doubt, information that is known by a party before the date of this deed and that was not obtained on a confidential basis from another party in the course of proposing, negotiating or implementing the Transaction is not Confidential Information.
- (c) Confidential Information may only be used for the purposes of implementing the Transaction or disclosed by a party:
 - (i) to a Related Body Corporate or any Authorised Person of that party (or of any Related Body Corporate) for the purpose of implementing the Transaction, provided that the disclosing party ensures that the recipient only uses it for the purposes of implementing the Transaction and otherwise complies with these terms of confidentiality; and
 - (ii) if disclosure is required by law, the rules of a stock exchange, or any requirement of a court or Governmental Agency.

15.2 Public Announcements on execution

Immediately after the Date of this deed, the parties must issue public announcements in a form previously agreed to in writing between them.

15.3 Further public announcements

- (a) Subject to clause 15.3(b), any further public announcements by BigAir or Superloop in relation to, or in connection with, the Transaction or any other transaction the subject of this deed or the Scheme may only be made in a form approved by each party in writing (acting reasonably) subject to where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with, the Transaction or any other transaction the subject of this deed or the Scheme.
- (b) Where BigAir is required by law and/or the Listing Rules to make any announcement or make any disclosure in relation to the Transaction, it may do so only after it has given as much notice as is reasonable in all the circumstances to, and has consulted (to the fullest extent reasonable in the circumstances) with, Superloop or its Advisers.

16 Notices

16.1 Service of notices

- (a) A notice, consent or other communication under this deed (**Notice**) is only effective if:
 - (i) it is in writing, signed by or on behalf of the party giving it; and
 - (ii) it is directed to the recipient's address for notices as follows:

BigAir

Address: PO Box 564, St Leonards NSW 1590
Facsimile: +61 2 8080 8162
E-mail: Charles@bigair.net.au
Attn: Charles Chapman

with a copy to Baker & McKenzie:

Address: Level 27, AMP Centre, 50 Bridge Street, Sydney NSW 2000
Facsimile: +61 2 9225 1595
E-mail: Guy.Sanderson@bakermckenzie.com
Attn: Guy Sanderson

Superloop

Address: Level 17, 333 Ann Street, Brisbane, QLD 4000
Facsimile: +61 7 3088 7398
E-mail: paul.jobbins@superloop.com and
bevan.slattery@superloop.com
Attn: Paul Jobbins and Bevan Slattery

with a copy to Gilbert+Tobin:

Address: Level 35, Tower 2, International Towers Sydney,
200 Barangaroo Avenue, Barangaroo, NSW 2000
Facsimile: +61 2 9263 4111
E-mail: ccondoleon@gtlaw.com.au, kko@gtlaw.com.au and

ahumphreys@gtlaw.com.au

Attn: Costas Condoleon, Kevin Ko and Annabel Humphreys

- (b) If a party changes address and fails to notify the other party of this change and the new address, delivery of Notices to a new address, or otherwise brought to the attention of the addressee, are deemed compliance with the notice obligations under this clause 16.1.

16.2 Effective on receipt

A Notice given in accordance with clause 16.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (d) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

but if the delivery or transmission under clause 16.2(a) or 16.2(b) is not on a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

17 General

17.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this deed.

17.2 Payments

Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this deed, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and

- (b) without deduction, withholding or set-off.

17.3 Consents or approvals

Except as expressly provided in this deed, a party may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under this deed.

17.4 GST

- (a) Any reference in this clause 17.4 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 17.4(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 17.4(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 17.4 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.
- (f) Unless expressly included, any monetary thresholds specified in this deed are exclusive of GST.

17.5 Stamp duty

Superloop must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme (including the acquisition or transfer of Scheme Shares pursuant to the Scheme).

17.6 Expenses

Except as otherwise provided in this deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this deed and the Scheme Booklet and the proposed, attempted or actual implementation of this deed and the Scheme.

17.7 Amendments

This deed may only be varied by a document signed by or on behalf of each of the parties.

17.8 Assignment

A party must not assign or novate this deed or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the other party, which consent may be withheld at the absolute discretion of the party from whom consent is sought.

17.9 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

17.10 Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by facsimile machine to the facsimile number or by email to the email address of the other party specified in clause 16, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

17.11 Entire agreement

This deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

17.12 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

17.13 No merger

The rights and obligations of the parties will not merge on completion of any transaction under this deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

17.14 Governing law

- (a) This deed is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

1 Dictionary

1.1 Defined terms

In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

Accounting Standards means:

- (a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of that Act relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a).

Adviser means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to BigAir or Superloop.

Aggregate Cash Consideration means the aggregate amount of the cash component of the Mixed Consideration payable to Scheme Shareholders, which must not exceed the Cash Cap.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act.

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

Authorised Person means, in respect of a person:

- (a) a director, officer, contractor, agent or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

BigAir Board means the board of directors of BigAir as constituted from time to time (or any committee of the board of directors of BigAir constituted from time to time to consider the Transaction on behalf of BigAir).

BigAir Disclosure Letter means the letter so entitled from BigAir provided to Superloop on or prior to the date of this deed and countersigned by Superloop.

BigAir Due Diligence Materials means the information disclosed by or on behalf of the BigAir Group (including management presentations and in response to requests for information) to Superloop or any of its Authorised Persons prior to the date of this deed as evidenced conclusively by schedule 2 to the BigAir Disclosure Letter.

BigAir FY16 Dividend means a fully franked dividend in respect of the financial year ending 30 June 2016 being a cash amount per BigAir Share not exceeding \$0.013 as announced to ASX on 26 August 2016.

BigAir Group means BigAir and its Subsidiaries.

BigAir Indemnified Parties means each Authorised Person of a member of the BigAir Group.

BigAir Material Adverse Change means an event, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to Superloop (whether it becomes public or not) after the date of this deed, and which (individually or when aggregated with other events, occurrences or matters) has or could reasonably be expected to have:

- (a) the result that the business of BigAir is unable to be carried on substantially in the way it is carried on as at the date of this deed;
- (b) one or more of the following effects (in each case determined in accordance with Accounting Standards):
 - (i) diminishing the net assets of the BigAir Group by \$10 million or more as compared to the net assets shown in BigAir's audited financial statements for the year ended 30 June 2016;
 - (ii) diminishing the Underlying EBITDA or the revenue of the BigAir Group by at least 10% (on an annualised basis) of the Underlying EBITDA or revenue (as the case may be) shown in BigAir's audited financial statements and related public announcements for the year ended 30 June 2016; or
 - (iii) increasing the costs or expenses of the BigAir Group by \$10 million or more (on an annualised and pre-tax deduction basis) as compared to the costs and expenses shown in BigAir's audited financial statements for the year ended 30 June 2016,

other than events, occurrences or matters:

- (c) required to be done or procured by BigAir pursuant to this deed or the Scheme;
- (d) resulting directly from changes in general economic and political conditions or changes that affect the telecommunications industry generally;
- (e) to the extent that it was Fairly Disclosed in the BigAir Disclosure Letter or the BigAir Due Diligence Materials;
- (f) to the extent it was Fairly Disclosed to the ASX before the date of this deed or which may arise from an event, occurrence or matter which was so disclosed; or
- (g) which Superloop has previously approved in writing.

BigAir Performance Right means a right granted under the Plan Rules to acquire by way of issue or transfer a BigAir Share subject to the terms of the Plan Rules.

BigAir Performance Rights Holder means a person who holds BigAir Performance Rights.

BigAir Prescribed Occurrence means the occurrence of any of the following on or after the date of this deed and before 8.00am on the Second Court Date:

- (a) BigAir converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the BigAir Group resolves to reduce its share capital in any way;
- (c) any member of the BigAir Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the BigAir Group declares, pays or distributes any dividend other than the BigAir FY16 Dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital;
- (e) any member of the BigAir Group issues shares, or grants a performance right, a phantom performance right, or an option over its shares, or agrees to make such an issue or grant such a performance right, phantom performance right or an option;
- (f) any member of the BigAir Group issues, or agrees to issue, convertible notes;
- (g) any member of the BigAir Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (h) any member of the BigAir Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the usual and ordinary course of business consistent with past practice; or
- (i) any member of the BigAir Group becomes Insolvent,

provided that a BigAir Prescribed Occurrence will not include any matter:

- (j) required to be done or procured by BigAir pursuant to this deed or the Scheme;
- (k) to the extent it is Fairly Disclosed in filings of BigAir with the ASX prior to the date of this deed;
- (l) to the extent it is Fairly Disclosed in the BigAir Disclosure Letter or the BigAir Due Diligence Materials;
- (m) required by law or by an order of a court or Governmental Agency;
- (n) expressly permitted pursuant to this deed; or
- (o) the undertaking of which Superloop has previously approved in writing (which approval must not be unreasonably withheld or delayed).

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

BigAir Service Right means a right granted under the Plan Rules to acquire by way of issue or transfer a BigAir Share subject to the terms of the Plan Rules.

BigAir Service Right Holder means a person who holds BigAir Service Rights.

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

BigAir Shareholder means each person who is registered in the BigAir Register as a holder of BigAir Shares.

BigAir Warranties means the representations and warranties of BigAir set out in clause 9.3.

Break Fee has the meaning given to that term in clause 11.3.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales.

Cash Cap means \$95,000,000.

Change of Control Requirements has the meaning given to that term in clause 7.7.

Claim means a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

Competing Proposal means any proposal, offer or transaction by a third party (other than Superloop or its Related Bodies Corporate) that, if completed, would mean:

- (a) a person would acquire a relevant interest or voting power in 10% or more of the BigAir Shares or of the securities of any of member of the BigAir Group;
- (b) a person would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 10% or more of the BigAir Shares or of the securities of any member of the BigAir Group;
- (c) a person would directly or indirectly acquire or obtain an interest (including an economic interest) in all or a substantial part or material part of the business conducted by, or assets or property of, BigAir or any member of the BigAir Group;
- (d) a person would acquire Control of BigAir or any member of the BigAir Group;
- (e) a person may otherwise acquire, or merge with, BigAir or any member of the BigAir Group (including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed company structure, joint venture or partnership); or
- (f) BigAir will issue, on a fully diluted basis, 10% or more of its capital as consideration for the assets or share capital or another person,

or any proposal by BigAir to implement any reorganisation of capital. Each successive material modification or variation of any proposal, offer or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

Conditions means the conditions set out in clause 3.1 and **Condition** means any one of them.

Control has the meaning given under section 50AA of the Corporations Act. **Controlled** has the equivalent meaning.

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

Costs has the meaning given to that term in clause 11.2(a).

Counter Proposal has the meaning given to that term in clause 10.6(d).

Court means the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Deed Poll means the deed poll to be executed by Superloop prior to the First Court Date, substantially in the form set out in Schedule 4 or in such other form as is acceptable to BigAir acting reasonably, provided that where Superloop nominates a Superloop Sub in accordance with clause 2.1(c), the Deed Poll must provide for the Superloop Sub to have the primary obligations under the Deed Poll.

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

Effective Date, with respect to the Scheme, means the date on which the Scheme becomes Effective.

Election is defined in clause 4.3(a). **Elect** has a corresponding meaning.

Election Date means the last date for receipt of an election form in order to make an Election in accordance with the terms of the Scheme, being that date that is five Business Days before the date of the Scheme Meeting or such other date as BigAir and Superloop agree in writing.

Election Form means the election form provided with the Scheme Booklet under which each Scheme Shareholder (other than an Excluded Shareholder) may elect to receive the Mixed Consideration (instead of the Scrip Consideration) in respect of all their Scheme Shares.

End Date means the later of:

- (a) 15 March 2017; and
- (b) such other date and time agreed in writing between Superloop and BigAir.

Excluded Shareholder means any BigAir Shareholder who is Superloop or a wholly-owned subsidiary of Superloop.

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

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

First Court Date means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act.

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body,

department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of BigAir Shareholders present and voting, either in person or by proxy.

Implementation Date means, with respect to the Scheme, the fifth Business Day, or such other Business Day as the parties agree, following the Record Date for the Scheme.

Independent Expert means an expert, independent of the parties, engaged by BigAir in good faith to opine on whether the Scheme is in the best interests of BigAir Shareholders.

Independent Expert's Report means the report from the Independent Expert commissioned by BigAir for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in its opinion, the Scheme is in the best interests of BigAir Shareholders, and includes any update of that report by the Independent Expert.

Ineligible Foreign Shareholder means a Scheme Shareholder whose address as shown in the BigAir Register (as at the Record Date) is in a place which Superloop reasonably determines is a place that it is unlawful or unduly onerous to issue that Scheme Shareholder with New Superloop Shares when the Scheme becomes Effective (provided that a Scheme Shareholder whose address shown in the BigAir Register is within Australia and its external territories and New Zealand will not be an Ineligible Foreign Shareholder).

Insolvency Event means in relation to a person:

- (a) **(insolvency official)** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **(arrangements)** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **(winding up)** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **(suspends payments)** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **(ceasing business)** the person ceases or threatens to cease to carry on business;
- (f) **(insolvency)** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **(deregistration)** the person being deregistered as a company or otherwise dissolved;

- (h) **(deed of company arrangement)** the person executing a deed of company arrangement;
- (i) **(person as trustee or partner)** the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
 - (i) a breach of trust or obligation as partner by the person;
 - (ii) the person acting outside the scope of its powers as trustee or partner;
 - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
 - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (j) **(analogous events)** anything analogous to those set out in any of paragraphs (a) to (g) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person shall be **Insolvent** if any event specified in paragraphs (a) to (j) inclusive occurs in respect of that person.

Listing Rules means the official listing rules of ASX as amended from time to time.

Material Contract has the meaning given to that term in clause 7.2(k).

Mixed Consideration means the consideration per Scheme Share determined in accordance with clause 4.4.

New Superloop Share means a fully paid ordinary share in the capital of Superloop to be issued under the Scheme.

Plan Rules means the BigAir Equity Incentive Plan rules.

Record Date means, in respect of the Scheme, 5.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

Regulatory Approval means:

- (a) any approval, consent, authorisation, registration, filing, lodgment, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgment, filing, registration or notification, the expiry of that period without intervention or action.

Related Body Corporate of a person, means a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

Relevant Notice has the meaning given to that term in clause 10.6(b)(iv)(B).

Rival Acquirer has the meaning given to that term in clause 10.6(a).

RG 60 means Regulatory Guide 60 issued by ASIC.

Scheme means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between BigAir and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 3 or in such other form as the parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.

Scheme Booklet means the explanatory booklet to be prepared by BigAir in respect of the Transaction in accordance with the terms of this deed and to be despatched to BigAir Shareholders.

Scheme Consideration means the consideration payable to Scheme Shareholders under the Scheme, being comprised of the Scrip Consideration and the Mixed Consideration.

Scheme Meeting means the meeting of BigAir Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Share means a BigAir Share on issue as at the Record Date other than any BigAir Share then held by an Excluded Shareholder (but including any such BigAir Share held on behalf of one or more third parties or otherwise in a fiduciary capacity).

Scheme Shareholder means a person who holds one or more Scheme Shares.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

Scrip Consideration means 0.371 New Superloop Shares for each Scheme Share held by a Scheme Shareholder who does not validly Elect to receive the Mixed Consideration.

Share Splitting means the splitting by a holder of BigAir Shares into two or more parcels of BigAir Shares whether or not it results in any change in beneficial ownership of the BigAir Shares.

Subsidiary has the meaning given to that term in section 46 of the Corporations Act.

Superloop Disclosure Letter means the letter so entitled from Superloop provided to BigAir on or prior to the date of this deed and countersigned by BigAir.

Superloop Group means Superloop and its Subsidiaries.

Superloop Indemnified Parties means each Authorised Person of a member of the Superloop Group.

Superloop Information means such information regarding Superloop that is provided by or on behalf of Superloop to BigAir or the Independent Expert:

- (a) to enable the Scheme Booklet to be prepared and completed in compliance with all applicable laws;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with Superloop's obligations under clause 5.2(a).

Superloop Material Adverse Change means:

- (a) the Chief Executive Officer of Superloop on the date of this deed, ceases to be either a director or employee of Superloop; or
- (b) an event, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to BigAir (whether it becomes public or not) after the date of this deed, and which (individually or when aggregated with other events, occurrences or matters) has or could reasonably be expected to have the result that the business of Superloop is unable to be carried on substantially in the way it is carried on as at the date of this deed other than events, occurrences or matters:
 - (i) required to be done or procured by Superloop pursuant to this deed or the Deed Poll;
 - (ii) resulting directly from changes in general economic and political conditions or changes that affect the telecommunications industry generally;
 - (iii) to the extent that it was Fairly Disclosed by Superloop in writing;
 - (iv) to the extent it was Fairly Disclosed to the ASX before the date of this deed or which may arise from an event, occurrence or matter which was so disclosed; or
 - (v) which BigAir has previously approved in writing.

Superloop Prescribed Occurrence means the occurrence of any of the following on or after the date of this deed and before 8.00am on the Second Court Date:

- (a) Superloop converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Superloop Group resolves to reduce its share capital in any way;
- (c) any member of the Superloop Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Superloop Group declares, pays or distributes any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital;

- (e) any member of the Superloop Group issues shares, or grants a performance right, a phantom performance right, or an option over its shares, or agrees to make such an issue or grant such a performance right, phantom performance right or an option;
- (f) any member of the Superloop Group issues, or agrees to issue, convertible notes;
- (g) any member of the Superloop Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (h) any member of the Superloop Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the usual and ordinary course of business consistent with past practice; or
- (i) any member of the Superloop Group becomes Insolvent,

provided that a Superloop Prescribed Occurrence will not include any matter:

- (j) required to be done or procured by Superloop pursuant to this deed or the Scheme;
- (k) to the extent it is Fairly Disclosed in filings of Superloop with the ASX prior to the date of this deed;
- (l) to the extent it is Fairly Disclosed in the Superloop Disclosure Letter;
- (m) required by law or by an order of a court or Governmental Agency;
- (n) expressly permitted pursuant to this deed; or
- (o) the undertaking of which BigAir has previously approved in writing (which approval must not be unreasonably withheld or delayed).

Superloop Share means an issued fully paid ordinary share in the capital of Superloop.

Superloop Sub has the meaning given to that term in clause 2.1(c).

Superloop Warranties means the representations and warranties of Superloop set out in clause 9.1.

Superior Proposal means a bona fide Competing Proposal which the BigAir Board determines, acting in good faith and in order to satisfy what the BigAir Board reasonably considers to be its fiduciary or statutory duties, would, if completed substantially in accordance with its terms, be likely to result in a transaction more favourable to BigAir Shareholders than the Transaction having regard to matters including consideration, conditionality, funding, certainty and timing.

Timetable means the indicative timetable in relation to the Transaction set out in Schedule 2 with such modifications as may be agreed in writing by the parties.

Transaction means the proposed acquisition by Superloop, in accordance with the terms and conditions of this deed, of all of the BigAir Shares (other than the BigAir Shares held by an Excluded Shareholder) through the implementation of the Scheme.

Underlying EBITDA means earnings before interest, tax, depreciation and amortisation calculated in accordance with the Accounting Standards and with Schedule 5.

1.2 Interpretation

In this deed the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its agents, successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
 - (vi) this deed includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
 - (ix) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (x) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) a reference to time is to Sydney, Australia time;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it;

- (k) a reference to **Fairly Disclosed** to a party means disclosed to any of that party or any of its Authorised Persons in good faith and in sufficient detail so as to enable a reasonable and sophisticated buyer (or one of its Authorised Persons) experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the BigAir Group (if disclosed to Superloop) or the Superloop Group (if disclosed to BigAir), to identify the nature and scope of the relevant matter, event or circumstance.

Schedule 2 Indicative Timetable

Event	Date
Enter into Scheme Implementation Agreement	14 September 2016
Lodge Scheme Booklet with ASIC for review and comment	10 October 2016
First Court Date	28 October 2016
Scheme Booklet registered with ASIC	28 October 2016
Despatch Scheme Booklet to BigAir Shareholders	3 November 2016
Scheme Meeting	7 December 2016
Second Court Date	9 December 2016
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	9 December 2016
Record Date	14 December 2016
Implementation Date: Pay Scheme Considerations to participants in the Scheme. Reconstitute boards of each BigAir Group company	21 December 2016

Schedule 3 Scheme of arrangement

Scheme of Arrangement

Parties

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth) between:

- 1 **BigAir Group Limited** (ACN 098 572 626) of Level 1, 203 Pacific Highway St Leonards NSW 2065 (**BigAir**)
- 2 Each person who holds one or more Scheme Shares (**Scheme Shareholders**)

Background

- A BigAir is a public company limited by shares and is admitted to the official list of ASX.
- B Superloop Limited (ACN 169 263 094) (**Superloop**) is a public company limited by shares and is admitted to the official list of ASX.
- C On 13 September 2016, Superloop and BigAir entered into the Implementation Deed pursuant to which, amongst other things, BigAir has agreed to propose this Scheme to the Scheme Shareholders, and each of BigAir and Superloop have agreed to take certain steps to give effect to this Scheme.
- D If this Scheme becomes Effective, then all the Scheme Shares will be transferred to Superloop and the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the provisions of this Scheme.
- E Superloop has entered into the Deed Poll for the purposes of covenanting in favour of Scheme Shareholders to perform all actions attributed to it under this Scheme.

The parties agree

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this document.

2 Conditions

2.1 Conditions to the Scheme

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following:

- (a) as at 8.00am on the Second Court Date, each of the conditions set out in clause 3.1 of the Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(e) of the Implementation Deed) have been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) as at 8.00am on the Second Court Date, neither the Implementation Deed nor the Deed Poll have been terminated in accordance with their terms;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act either unconditionally or on conditions consented to by Superloop in accordance with clause 8.12;
- (d) subject to clause 8.12, such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme have been satisfied or waived; and
- (e) the coming into effect of the Scheme Order, on or before the End Date.

2.2 Certificate

BigAir will provide to the Court on the Second Court Date certificates signed by Superloop and BigAir (or such other evidence as the Court requests) stating whether or not the conditions referred to in clause 3.1 of the Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(e) of the Implementation Deed) have been satisfied or waived in accordance with the terms of the Implementation Deed as at 8.00am on the Second Court Date.

2.3 Termination

Without limiting any rights under the Implementation Deed, if the Implementation Deed is terminated in accordance with its terms before the Scheme becomes Effective, BigAir is released from any further obligation to take steps to implement the Scheme and any liability with respect to the Scheme.

3 The Scheme

- (a) Subject to clause 2.1, this Scheme takes effect for all purposes on the Effective Date.
- (b) This Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date.

4 Implementation of the Scheme

4.1 Lodgement of Scheme Order with ASIC

If the conditions in clauses 2.1(a) to 2.1(d) are satisfied, BigAir must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Scheme Order approving this Scheme as soon as possible after, and in any event by 5.00pm on the first Business Day after, the day on which the Court approves this Scheme.

4.2 Transfer of Scheme Shares

Subject to this Scheme becoming Effective, the following actions will occur (in the order set out below):

- (a) Superloop will provide the Scheme Consideration in the manner contemplated by clause 5; and
- (b) on the Implementation Date:
 - (i) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Superloop, without the need for any further act by any Scheme Shareholder (other than acts performed by BigAir as attorney and agent for Scheme Shareholders under clause 8.5), by BigAir effecting a valid transfer or transfers of the Scheme Shares to Superloop under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:
 - (A) BigAir delivering to Superloop a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by BigAir; and
 - (B) Superloop duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to BigAir for registration; and
 - (ii) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(b)(i)(B) or the transfer being effected under section 1074D of the Corporations Act (as the case may be), BigAir must enter, or procure the entry of, the name of Superloop in the Register in respect of all the Scheme Shares transferred to Superloop in accordance with this Scheme.

5 Scheme Consideration

5.1 Election

- (a) A Scheme Shareholder may Elect to receive:
 - (i) Scrip Consideration; or
 - (ii) Mixed Consideration,

by completing the election form which accompanies the Scheme Booklet (or is otherwise provided to the Scheme Shareholder by BigAir, including electronically) in accordance with the instructions specified on the form or set out in the Scheme Booklet (or as provided by BigAir in connection with an election that is made electronically), and returning (including by way of electronic submission) the

completed election form in accordance with those instructions so that it is received by no later than 5.00pm on the Election Date.

- (b) Any election by a BigAir Shareholder applies to all of the BigAir Shares that BigAir Shareholder holds as at the Record Date.
- (c) If an Election is not made by a BigAir Shareholder prior to the Election Date in respect of all of the BigAir Shares held by that BigAir Shareholder as at the Record Date, then that BigAir Shareholder will receive the Scrip Consideration in respect of all of their BigAir Shares.
- (d) If an Election is made by a BigAir Shareholder and that BigAir Shareholder transfers any BigAir Shares that were the subject of that Election after the Election Date and before the Record Date, then that Election will be deemed, for the purpose of this Scheme, to be valid only in respect of the BigAir Shares that the BigAir Shareholder held continuously from the Election Date until the Record Date.
- (e) A BigAir Shareholder that holds one or more parcels of BigAir Shares as trustee or nominee for, or otherwise on account of, another person, may, in the manner described in the Scheme Booklet or in a manner which is otherwise acceptable to BigAir, make separate Elections in relation to each of those parcels of BigAir Shares (and, for the purpose of calculating the Scheme Consideration to which the BigAir Shareholder is entitled each such parcel of BigAir Shares will be treated as though it were held by a separate BigAir Shareholder).
- (f) If a Scheme Shareholder has made an Election to receive the Scrip Consideration, or is deemed to have made an Election to receive the Scrip Consideration, then that Scheme Shareholder will receive the Scrip Consideration.
- (g) If a Scheme Shareholder has made an Election to receive the Mixed Consideration, then that Scheme Shareholder will receive the Mixed Consideration determined in accordance with clause 5.2.

5.2 Mixed Consideration payable for Scheme Shares

- (a) If a Scheme Shareholder has made a valid Election to receive the Mixed Consideration, the Scheme Shareholder will be entitled to receive for each Scheme Share held by that Scheme Shareholder at the Record Date:
 - (i) if the cash component of the Mixed Consideration is not required by clause 5.2(b) to be pro-rated among Scheme Shareholders who validly Elect to receive the Mixed Consideration:
 - (A) \$0.70 cash;plus
 - (B) 0.118 New Superloop Shares; or
 - (ii) if the cash component of the Mixed Consideration is required by clause 5.2(b) to be pro-rated among Scheme Shareholders who validly Elect to receive the Mixed Consideration:
 - (A) an amount of cash per Scheme Share (**A**) calculated as follows:

$$A = \frac{B}{C} \times \$0.70$$

where:

- A is the amount of cash to be paid to the Scheme Shareholder for each Scheme Share (in dollars rounded to 3 decimal places)
- B is the Cash Cap, being \$95,000,000
- C is \$0.70 multiplied by the number of Scheme Shares held by all Scheme Shareholders who validly Elect to receive the Mixed Consideration;

plus

- (B) that number of New Superloop Shares per Scheme Share (**X**) calculated as follows:

$$X = ((\$0.70 - A) \times Y) + 0.118$$

where:

- X is the number of New Superloop Shares to be issued to the Scheme Shareholder (rounded to 4 decimal places)
- A is the amount determined under clause 5.2(a)(ii)(A)
- Y is 0.337.

- (b) For the purposes of clause 5.2(a), the cash component of the Mixed Consideration is required to be pro-rated amongst the Scheme Shareholders who validly Elect to receive the Mixed Consideration if the amount determined by multiplying \$0.70 by the number of Scheme Shares held by all Scheme Shareholders who validly Elect to receive the Mixed Consideration exceeds the Cash Cap.

5.3 Ineligible Foreign Shareholders

- (a) Superloop will be under no obligation under the Scheme to issue, and will not issue, any New Superloop Shares to any Ineligible Foreign Shareholder, and instead, unless Superloop and BigAir otherwise agree, Superloop will issue on the Implementation Date the New Superloop Shares to which that Ineligible Foreign Shareholder would otherwise have been entitled (if they were a Scheme Shareholder who was not an Ineligible Foreign Shareholder) to a nominee appointed by Superloop.
- (b) Where New Superloop Shares are issued to a nominee pursuant to clause 5.3(a), Superloop will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date, the nominee:
 - (i) sells on the ASX or another prescribed financial market all of the New Superloop Shares issued to the nominee in accordance with clause 5.3(a) in such manner, at such price and on such other terms as the nominee determines in good faith, and at the risk of the Ineligible Foreign Shareholders; and
 - (ii) remits to Superloop the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).

- (c) Where New Superloop Shares are issued to a nominee pursuant to clause 5.3(a), promptly after the last remittance in accordance with clause 5.3(b), Superloop will pay to each Ineligible Foreign Shareholder the proportion of the net proceeds of sale received by Superloop pursuant to clause 5.3(b)(ii) to which that Ineligible Foreign Shareholder is entitled.

5.4 Fractional entitlements

- (a) Any fractional entitlement of a Scheme Shareholder to a part of a New Superloop Share will be rounded up or down to the nearest whole number of New Superloop Shares.
- (b) If clause 5.2(a)(ii) results in a Scheme Shareholder being entitled to a part of a cent in relation to the aggregate cash consideration payable for all of the Scheme Shares held by that Scheme Shareholder, the amount of cash payable to that Scheme Shareholder will be rounded up or down to the nearest whole cent.

5.5 Share splitting

If Superloop or BigAir are of the opinion that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares that results in rounding in accordance with clauses 5.2 or 5.4) have, before the Record Date, been party to Share Splitting or division in an attempt to obtain unfair advantage by reference to such rounding, then Superloop and BigAir must consult in good faith to determine whether such matters have arisen and if agreement is reached between Superloop and BigAir following such consultation BigAir must give notice to those Scheme Shareholders:

- (a) setting out their names and registered addresses as shown in the BigAir Register;
- (b) stating that opinion; and
- (c) attributing the Scheme Shares held by all of them to one of them as specifically identified in the notice,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the Scheme, be taken to hold no Scheme Shares. Superloop, in complying with the other provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

5.6 Provision of Scheme Consideration – Cash component of Mixed Consideration

- (a) Superloop must, by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the Aggregate Cash Consideration in an Australian dollar denominated trust account operated by BigAir as trustee of the Scheme Shareholders who validly Elect to receive the Mixed Consideration, provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Superloop's account.
- (b) Subject to Superloop having complied with clause 5.6(a), BigAir must, on the Implementation Date and from the trust account referred to in clause 5.6(a), pay or procure the payment to each Scheme Shareholder who has Elected to receive the Mixed Consideration, the cash component of the Mixed Consideration attributable

to that Scheme Shareholder, based on the number of Scheme Shares held by that Scheme Shareholder as at the Record Date.

- (c) BigAir's obligation under clause 5.6(b) will be satisfied by BigAir:
 - (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the BigAir Share Registry to receive dividend payments from BigAir by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount of Australian currency by electronic means in accordance with that election; or
 - (ii) otherwise, dispatching, or procuring the dispatch of, a cheque in Australian currency to the Scheme Shareholder by prepaid post to their address shown in the Register as at the Record Date, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.8), for the relevant amount.

5.7 Provision of Scheme Consideration – Allotment and issue of New Superloop Shares

Subject to clauses 5.3 and 5.4, Superloop will:

- (a) on the Implementation Date, allot and issue to the Scheme Shareholders the New Superloop Shares that comprise the Scheme Consideration on terms such that each New Superloop Share will rank equally in all respects with each existing fully paid ordinary share in the capital of Superloop;
- (b) no later than 7 Business Days after trading starts in New Superloop Shares on a deferred settlement basis, send or procure the dispatch to each Scheme Shareholder (other than Ineligible Foreign Shareholders), to their address recorded in the Register on the Record Date, a holding statement for the New Superloop Shares issued to that Scheme Shareholder;
- (c) apply to ASX for the commencement of trading of the New Superloop Shares that comprise the Scheme Consideration on the ASX on a deferred settlement basis as from the Business Day after the Effective Date (or such later date as the ASX requires) and on an ordinary settlement basis as from the Business Day after the Implementation Date (or such later date as the ASX requires); and
- (d) ensure that, on issue, each New Superloop Share that comprises the Scheme Consideration will be fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

5.8 Joint holders

In the case of Scheme Shares held in joint names:

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

5.9 Surplus funds

- (a) Subject to clause 5.9(a), to the extent that, following satisfaction of BigAir's obligations under clauses 5.6(b) and 5.6(c), there is a surplus in the amount held by BigAir as trustee for the Scheme Shareholders in the trust account referred to in that clause, that surplus may be paid by BigAir to Superloop.
- (b) If:
 - (i) in the case of a payment under clause 5.6(c)(i), the transfer is rejected or refunded or a bank account which has been nominated is no longer valid; or
 - (ii) in the case of a dispatch of a cheque under clause 5.6(c)(ii) is:
 - (A) returned to BigAir (or its agents) as undelivered;
 - (B) not presented by a Scheme Shareholder within six months after the Implementation Date; or
 - (C) BigAir reasonably believes that a Scheme Shareholder is not known at a Scheme Shareholder's registered address,

then BigAir may cancel the relevant cheque and credit the amount payable to the relevant Scheme Shareholder to a separate bank account of BigAir to be held until the Scheme Shareholder claims the amount, or the amount is dealt with in accordance with any applicable unclaimed moneys legislation. An amount credited to the account is to be treated as having been paid to the Scheme Shareholder when credited to the account. BigAir must maintain records (for the minimum period required by applicable law) of the amounts paid, the people who are entitled to the amounts, and any transfers of the amounts.

6 Dealings in BigAir Shares

6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in BigAir Shares or other alterations to the Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Register as the holder of the relevant BigAir Shares on or before the Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before the Record Date at the place where the Register is kept,

and BigAir must not accept for registration, nor recognise for any purpose (except a transfer to Superloop pursuant to this Scheme and any subsequent transfer by Superloop or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

6.2 Register

- (a) BigAir must register all registrable transmission applications or transfers of the Scheme Shares in accordance with clause 6.1(b) on or before the Record Date.

- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that Scheme Shareholder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and BigAir shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, BigAir must maintain the Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for BigAir Shares (other than statements of holding in favour of Superloop) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from the Record Date, each entry on the Register (other than entries on the Register in respect of Superloop) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the BigAir Shares relating to that entry.
- (e) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, BigAir will ensure that details of the names, registered addresses and holdings of BigAir Shares for each Scheme Shareholder as shown in the Register as at the Record Date are available to Superloop in the form Superloop reasonably requires.

7 Quotation of BigAir Shares

- (a) BigAir will apply to ASX to suspend trading of BigAir Shares on the ASX with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Superloop, BigAir will apply:
 - (i) for termination of the official quotation of BigAir Shares on the ASX; and
 - (ii) to have itself removed from the official list of the ASX.

8 General Scheme provisions

8.1 Appointment of agent and attorney

- (a) On this Scheme becoming Effective, each Scheme Shareholder, without the need for any further act, irrevocably appoints BigAir as its agent and attorney for the purposes of:
 - (i) in the case of Scheme Shares in a CHESS holding:
 - (A) causing a message to be transmitted to ASPL in accordance with the ASX Settlement Rules to transfer the Scheme Shares held by the Scheme Shareholder from the CHESS subregister of BigAir to the issuer sponsored subregister operated by BigAir or the BigAir Share Registry at any time after Superloop has paid or procured the payment of the Scheme Consideration which is due under this Scheme to Scheme Shareholders; and
 - (B) completing and signing on behalf of Scheme Shareholders any required form of transfer of Scheme Shares;

- (ii) in the case of Scheme Shares registered in the issuer sponsored subregister operated by BigAir or the BigAir Share Registry, completing and signing on behalf of Scheme Shareholders any required form of transfer;
 - (iii) in all cases, executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including, without limitation, the execution of the Share Transfer and the giving of the Scheme Shareholder's consent under clause 8.3; and
 - (iv) enforcing the Deed Poll against Superloop,
and BigAir accepts such appointment.
- (b) BigAir, as agent and attorney of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

8.2 Enforcement of Deed Poll

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

8.3 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably consents to BigAir and Superloop doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme.

8.4 Scheme Shareholders' agreements

Under this Scheme:

- (a) each Scheme Shareholder agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Superloop in accordance with the terms of this Scheme;
- (b) each Scheme Shareholder agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) each Scheme Shareholder acknowledges that this Scheme binds BigAir and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of BigAir; and
- (d) each Scheme Shareholder agrees to become a holder of New Superloop Shares and to have its name entered in the Superloop share register, and accepts the New Superloop Shares issued to it under the Scheme on the terms and conditions of the Superloop constitution, without the need for any further act by the Scheme Shareholder.

8.5 Warranty by Scheme Shareholders

Each Scheme Shareholder is deemed to have warranted to Superloop that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to Superloop, be fully paid and free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares, and all rights and entitlements attaching to those Scheme Shares, to Superloop.

8.6 Title to Scheme Shares

- (a) Immediately upon provision of the Scheme Consideration in accordance with clauses 5.6 and 5.7, Superloop will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by BigAir of Superloop in the Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Superloop will, at the time of transfer of them to Superloop, vest in Superloop free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.

8.7 Appointment of sole proxy

Immediately upon provision of the Scheme Consideration in accordance with clauses 5.6 and 5.7, and until BigAir registers Superloop as the holder of all Scheme Shares in the Register, each Scheme Shareholder:

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

8.8 Notices

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

8.9 Inconsistencies

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

8.10 No liability when acting in good faith

None of Superloop, BigAir nor any director, officer, secretary or employee of BigAir will be liable for anything done or omitted to be done in good faith in the performance of this Scheme or the Deed Poll.

8.11 Further assurance

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

8.12 Alterations and conditions

If the Court proposes to approve this Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act, BigAir may, by its counsel on behalf of all persons concerned consent to only such of those conditions or alterations to this Scheme to which Superloop has consented, such consent not to be unreasonably withheld or delayed.

8.13 Stamp Duty

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

8.14 Governing Law

- (a) This Scheme is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

Schedule 1 Glossary

1.1 Defined terms

In this Scheme, except where the context otherwise requires:

ASPL means ASX Settlement Pty Ltd (ABN 49 008 504 532).

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

ASX Settlement Rules means the ASX Settlement Operating Rules.

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

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

BigAir Shareholder means each person who is registered in the BigAir Register as a holder of BigAir Shares.

BigAir Share Registry means Boardroom Pty Limited.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales.

Cash Cap means \$95,000,000.

CHES means the Clearing House Electronic Subregister System operated by ASPL and ASX Clear Pty Limited.

Conditions means the conditions set out in clause 3.1 of the Implementation Deed and **Condition** means any one of them.

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

Court means the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Deed Poll means the deed poll executed by Superloop under which Superloop covenants in favour of the Scheme Shareholders to perform all actions attributed to it under this Scheme.

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

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

Election means an election made by a Scheme Shareholder to receive the Mixed Consideration. **Elect** has a corresponding meaning.

Election Date means the last date for receipt of an election form in order to make an Election in accordance with the terms of the Scheme, being that date that is five Business Days before the date of the Scheme Meeting or such other date as BigAir and Superloop agree in writing.

End Date means the later of:

- (a) 15 March 2017; and
- (b) such other date and time agreed in writing between Superloop and BigAir.

Excluded Shareholder means any BigAir Shareholder who is Superloop or a wholly-owned subsidiary of Superloop.

First Court Date means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act.

Implementation Deed means the scheme implementation deed dated 13 September 2016 between Superloop and BigAir, as amended or varied from time to time.

Implementation Date means the fifth Business Day, or such other Business Day as the parties agree, following the Record Date.

Ineligible Foreign Shareholder means a Scheme Shareholder whose address as shown in the BigAir Register (as at the Record Date) is in a place which Superloop reasonably determines is a place that it is unlawful or unduly onerous to issue that Scheme Shareholder with New Superloop Shares when the Scheme becomes Effective (provided that a Scheme Shareholder whose address shown in the BigAir Register is within Australia and its external territories and New Zealand will not be an Ineligible Foreign Shareholder).

Listing Rules means the official listing rules of ASX as amended from time to time.

Mixed Consideration means the consideration per Scheme Share determined in accordance with clause 5.2.

New Superloop Shares means fully paid ordinary shares in the capital of Superloop to be issued under the Scheme.

Record Date means, in respect of the Scheme, 5.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

Scrip Consideration means 0.371 New Superloop Shares for each Scheme Share held by a Scheme Shareholder who does not validly Elect to receive the Mixed Consideration.

Scheme means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between BigAir and the BigAir Shareholders as set out in this document together with, subject to clause 8.12, any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act.

Scheme Booklet means the disclosure document which accompanies and includes the notice of Scheme Meeting.

Scheme Consideration means the consideration payable to Scheme Shareholders under the Scheme, being comprised of the Scrip Consideration and the Mixed Consideration.

Scheme Meeting means the meeting of BigAir Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any adjournment of that meeting.

Scheme Order means the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable and subject to clause 8.12, section 411(6) of the Corporations Act) in relation to this Scheme.

Scheme Share means an BigAir Share on issue as at the Record Date other than any BigAir Share then held by an Excluded Shareholder (but including any such BigAir Share held on behalf of one or more third parties or otherwise in a fiduciary capacity).

Scheme Shareholder means each person who holds one or more Scheme Shares.

Scheme Transfer means a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

Share Splitting means the splitting by a holder of BigAir Shares into two or more parcels of BigAir Shares whether or not it results in any change in beneficial ownership of the BigAir Shares.

Superloop means Superloop Limited (ACN 169 263 094) of Level 17, 333 Ann Street, Brisbane, QLD, 4000.

takes effect or taking effect means on and from the first time when an office copy of the Scheme

Order approving the Scheme pursuant to section 411(4)(b) of the Corporations Act is lodged with ASIC pursuant to section 411(10) of the Corporations Act.

1.2 Interpretation

In this Scheme, except where the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;

- (iii) a party includes its agents, successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Scheme;
 - (vi) this Scheme includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
 - (ix) an agreement other than this Scheme includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (x) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
 - (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
 - (i) a reference to time is to Sydney, Australia time;

no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Scheme or any part of it;

Schedule 4 Deed Poll

Deed Poll

Parties

This deed poll is made by:

Name	Superloop Limited
ACN	169 263 094
Short name	Superloop
Address	Level 17, 333 Ann Street, Brisbane, QLD, 4000

in favour of:

Each Scheme Shareholder.

Background

- A On 13 September 2016, Superloop and BigAir Limited (**BigAir**) entered into a scheme implementation deed with respect to the Scheme and associated matters (**Implementation Deed**).
- B The effect of the Scheme will be to transfer all Scheme Shares to Superloop in exchange for the Scheme Consideration.
- C Superloop is entering into this deed poll to covenant in favour of the Scheme Shareholders that it will perform all actions attributed to it under the Scheme.

The parties agree

1 Defined terms and interpretation

1.1 Defined terms

In this deed poll, unless otherwise defined, capitalised words and phrases have the same meaning as given to them in the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between BigAir and Scheme Shareholders in respect of all Scheme Shares (**Scheme**).

1.2 Interpretation

In this deed poll, headings are for convenience only and do not affect its interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) a reference to any document (including the Scheme) is to that document as varied, novated, ratified or replaced; and

a reference to a clause, party, annexure or schedule is a reference to a clause of, and a party, annexure and schedule to, this deed poll and a reference to this deed poll includes any annexure and schedule.

1.3 Nature of deed poll

Superloop acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms, even though the Scheme Shareholder is not party to it; and
- (b) each Scheme Shareholder irrevocably appoints BigAir and each of its directors and officers (jointly and severally) as its agent and attorney to enforce this deed poll against Superloop on behalf of that Scheme Shareholder.

2 Condition precedent and termination

2.1 Condition precedent to obligations of the Scheme

The obligations of Superloop under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of Superloop under this deed poll will automatically terminate, and the terms of this deed poll will be of no force or effect, if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective by the End Date.

2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Superloop is released from its obligations to further perform this deed poll, except those obligations under clause 6.7; and
- (b) each Scheme Shareholder retains the rights it has against Superloop in respect of any breach of this deed poll which occurs before it is terminated.

3 Scheme obligations

Subject to clause 2, Superloop covenants in favour of each Scheme Shareholder to perform all actions attributed to it under, and otherwise comply with, the Scheme as if it were a party to the Scheme.

4 Warranties

Superloop represents and warrants in favour of each Scheme Shareholder that:

- (a) it is a corporation validly existing under the laws of its place of registration;

- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of the constitution of Superloop or any material term or provision of any agreement, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or by which it is bound.

5 Continuing obligations

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

- (a) Superloop has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

6 General

6.1 Notices

Any notice or other communication to Superloop in respect of this deed poll (**Notice**):

- (a) is only effective if:
 - (i) it is in writing, signed by or on behalf of the party giving it;
 - (ii) it is directed to the recipient's address for notices as follows:

Address: Level 17, 333 Ann Street, Brisbane, QLD 4000
 Facsimile: +61 7 3088 7398
 E-mail: paul.jobbins@superloop.com and bevan.slattery@superloop.com
 Attn: Paul Jobbins and Bevan Slattery

with a copy to Gilbert+Tobin:

Address: Level 35, Tower 2, International Towers Sydney,
 200 Barangaroo Avenue, Barangaroo, NSW 2000
 Facsimile: +61 2 9263 4111
 E-mail: ccondoleon@gtlaw.com.au
 Attn: Costas Condoleon

- (b) must be signed by the person making the communication or by a person duly authorised by that person;
- (c) takes effect when received (or at a later time specified in it), and is taken to be received:
 - (i) if hand delivered, on delivery;

- (ii) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia);
- (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice; or
- (iv) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

but if the delivery or transmission under clause 6.1(c)(i) or 6.1(c)(ii) is not on a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

6.2 Governing law

- (a) This deed poll is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

6.3 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

6.4 Variation

This deed poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to by BigAir; or
- (b) if on or after the First Court Date, the variation is agreed to by BigAir and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event Superloop will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.

6.5 Cumulative rights

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

6.6 Assignment

The rights created by this deed poll are personal to Superloop and each Scheme Shareholder and may only be assigned with the prior written consent of Superloop.

6.7 Stamp duty

Superloop must pay any stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under or pursuant to this deed poll.

6.8 Further assurances

Superloop must promptly do all things necessary or expedient to be done by it in connection with the matters referred to in this deed poll and to implement the Scheme.

Executed as a **deed poll**.

Executed by **Superloop Limited** in accordance
with the provisions of section 127(1) of the
Corporations Act

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

Schedule 5 Underlying EBITDA

1.1 FY15 and FY16 underlying earnings adjustments

Underlying EBITDA		
\$ million	FY15	FY16
EBITDA	15.4	23.2
Adjustments:		
(i) Deal and restructure costs		
Deal related costs	0.4	0.1
Retrenchment costs	0.9	1.7
Carrier costs terminated	0.0	1.2
Surplus office space	0.2	0.3
<i>Total deal and restructure costs</i>	1.6	3.3
(ii) Contingent consideration		
Contingent consideration	1.9	(4.3)
Underlying EBITDA	18.9	22.2

1.2 Adjustment principles

- (a) EBITDA shall be calculated in accordance with:
- (i) the accounting policies used by BigAir in the preparation its consolidated financial statements for the year ended 30 June 2016; and
 - (ii) to the extent not covered by paragraph (i), the Accounting Standards in force at 30 June 2016.
- (b) EBITDA shall be adjusted to exclude items of a nature consistent with those items excluded by BigAir in its calculation of Underlying EBITDA for the years ended 30 June 2016 and 30 June 2015 and disclosed to the ASX, and as set out in the table above and described below:
- (i) Deal and restructure costs, being expenses recorded in EBITDA and directly incurred in respect of:
 - (A) investigating or consummating business combinations;
 - (B) terminating BigAir employees;
 - (C) duplicate or redundant carrier supplier contracts that have been terminated (cost to be measured as the expense incurred up to termination, plus any one-time termination costs, net of any ongoing replacement costs);
 - (D) surplus office space for which leases have been terminated (cost to be measured as the expense incurred up to termination, plus any one-time termination costs, net of any ongoing replacement costs).
 - (ii) Contingent consideration, being expenses or profits recorded in EBITDA that are directly incurred or realised in relation to earn-out obligations pertaining to business combinations.

Execution page

Executed as an agreement.

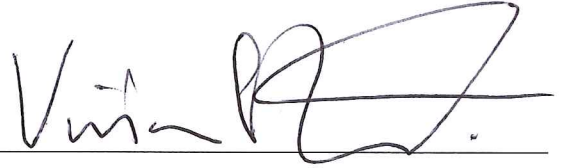
Signed by **BigAir Group Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



Signature of director

JASON ASHTON

Name of director (print)

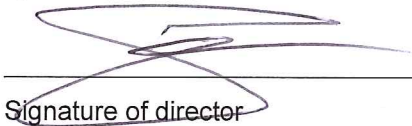


Signature of director/secretary

VIVIAN STEWART

Name of director/secretary (print)

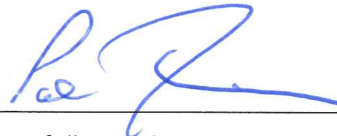
Signed by **Superloop Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



Signature of director

BEVAN SLATTERY

Name of director (print)



Signature of director/secretary

PAUL JOBBINS

Name of director/secretary (print)