

**NOMINEE DEED POLL  
RELATING TO SHARES IN [COMPANY] LIMITED**

## NOMINEE DEED POLL

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THIS DEED is made by **SNOWBALL NOMINEES LIMITED** (company number 6104522 ) (**Nominee**) on the            day of            2016.

## INTRODUCTION

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Pursuant to the Governing Documents, the Nominee is required to hold the Shares allocated to each Beneficiary as nominee and bare trustee on and subject to the terms set out in this deed.

## AGREED TERMS

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### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

The following definitions apply in this deed:

**Beneficiaries** means any persons who are issued Shares by the Company pursuant to the Governing Documents, and **Beneficiary** means any one of them.

**Companies Act** means the Companies Act 1993.

**Company** means [Company] Limited (company number xxxxx).

**Distribution** has the meaning given to that term in section 53 of the Companies Act.

**Dividend** has the meaning given to that term in section 2(1) of the Companies Act.

**Governing Documents** means:

- a. the subscription agreement relating to the Offer;
- b. the shareholders' agreement relating to the Company;
- c. the constitution for the time being of the Company; and
- d. any other offer documents made available by the Company in respect of the Offer on the website of Snowball Effect at [www.snowballeffect.co.nz](http://www.snowballeffect.co.nz),

and **Governing Document** means any one of those documents.

**Offer** means the offer of Shares by the Company on the website of Snowball Effect at [www.snowballeffect.co.nz](http://www.snowballeffect.co.nz).

**Proceeds** means, in respect of any Shares:

- a. the proceeds from those Shares, whether in the form of Dividends, Distributions or other sale proceeds; or
- b. any other identifiable or traceable property from those Shares.

**Register of Beneficiaries** means a register of Beneficiaries containing the information set out in clause 3.

**Shareholders** means any person whose name is entered in the Company's share register as the holder (whether individually or jointly) for the time being of at least one share.

**Shares** means fully paid Preferred Shares in the Company, with “Preferred Shares” having the meaning given in the Governing Documents.

## 1.2 Interpretation

The following rules of interpretation apply in this deed:

- a. References to **persons** include natural persons, companies and any other body corporates (wherever incorporated) and unincorporated bodies (wherever formed).
- b. References to **property** means real and personal property, and any estate, share and interest in any real or personal property, and any debt, thing, chose in action or other right or interest, whether in possession or not.
- c. **Headings** and **subheadings** have been inserted for convenience only and will not affect the interpretation of this deed.
- d. References to **this deed** means this deed as amended and/or replaced from time to time.
- e. References to **clauses** are to those in this deed.
- f. References to a **statute** or **statutory provision** means a New Zealand statute or statutory provision as amended, consolidated and/or replaced from time to time.
- g. References to the words **including**, **include** or similar words are not to be construed as implying any limitation and are deemed to have the words **without limitation** following them.
- h. A **gender** includes each other gender and the **singular** includes the plural and vice versa.
- i. References to **written** or **in writing** shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).

## 2. NOMINEE AND BARE TRUSTEE

### 2.1 Declaration

The Nominee hereby declares that it shall:

- a. **nominal ownership of Shares:** acquire the nominal ownership of the Shares (but not for the avoidance of doubt the beneficial ownership of the Shares, which will be and remain vested in the Beneficiary); and
- b. **hold Shares and Proceeds:** hold the Shares and all Proceeds as nominee and bare trustee for the benefit of the relevant Beneficiaries in accordance with the terms set out in this deed.

### 2.2 Privity

For the purposes of section 4 of the Contracts (Privity) Act 1982, this deed is made for the express benefit of, and is intended to be enforceable by, each Beneficiary.

## 3. REGISTER OF BENEFICIARIES

### 3.1 Nominee to establish and maintain Register of Beneficiaries

The Nominee must establish and maintain a Register of Beneficiaries that records the following information:

- a. **Names and addresses:** The names and addresses of all Beneficiaries.
- b. **Shares:** The Shares held by the Nominee for each Beneficiary.
- c. **Date of commencement of holding:** The date on which the Nominee commenced its holding of Shares for each Beneficiary.
- d. **Transfers:** Details of any transfer of Shares.

### 3.2 Provision of Register of Beneficiaries upon request

The Nominee must promptly make available a copy of the Register of Beneficiaries to any Beneficiary that requests a copy in writing.

## 4. OBLIGATIONS OF THE NOMINEE

### 4.1 Obligations

The Nominee agrees that it will do the following:

- a. **Shareholders' meetings:** Attend and vote at, or procure that a proxy attends and votes at, Shareholders' meetings in such manner and for such purpose as directed by each Beneficiary to the Nominee in writing.
- b. **Written resolutions in lieu of Shareholders' meetings:** Sign any written resolutions pursuant to section 122 of the Companies Act in respect of the Shares in such manner as directed by each Beneficiary to the Nominee in writing.
- c. **Entitled persons agreements:** Sign, agree or concur to any entitled persons agreements pursuant to section 107 of the Companies Act in respect of the Shares in such manner as directed by each Beneficiary to the Nominee in writing.
- d. **Other consents and approvals:** Give any consent, approval, agreement, waiver, ratification or other authorisation required of or requested from the Nominee in its capacity as the holder of the Shares under any Governing Document in such manner as directed by each Beneficiary to the Nominee in writing.
- e. **Acquire further Shares or securities:** Exercise the right as the legal title holder of the Shares to acquire further Shares or other securities in the Company to which the Nominee may become entitled under the Governing Documents and hold those Shares or securities subject to the terms of this deed, but only if:
  - i. expressly directed in writing by a Beneficiary to the satisfaction of the Nominee; and
  - ii. the Beneficiary has made arrangements satisfactory to the Nominee to make full payment for such Shares or securities.
- f. **Notices and documents:** Deliver to each of the Beneficiaries (as soon as reasonably practicable after receipt) all notices, letters, reports, demands, offers, agreements and other documents and communications received in its capacity as the registered holder of the Shares and, where relevant, seek and act upon the written instructions of the Beneficiaries in respect of them.
- g. **Proceeds:** Account to each of the Beneficiaries for all Proceeds as soon as reasonably practicable after receipt of the same.

- h. **Exercise of rights:** Only exercise any right attaching to Shares that it holds for the relevant Beneficiary in accordance with the express written instructions from that Beneficiary.
- i. **Record keeping:** Keep and maintain, or cause to be kept and maintained, a full and complete record of all voting directions and other instructions given by each Beneficiary and all Proceeds received, held and paid or transferred to Beneficiaries.

#### 4.2 **Directions deemed to be irrevocable**

Any direction or instruction given to the Nominee by a Beneficiary under this deed shall be deemed to be irrevocable in all respects (except with the written consent of the Nominee).

#### 4.3 **Nominee's discretion to act**

If any Beneficiary does not:

- a. request the Nominee to act under this clause 4; or
- b. respond to the Nominee's request for instructions under this clause 4 within any reasonable timeframe required by the Nominee,

the Nominee may act in its absolute and uncontrolled discretion in respect of the Shares that it holds for that Beneficiary.

#### 4.4 **Other obligations**

Other than the above or as otherwise expressly set out in this deed, the Nominee will have no other duties, obligations or liabilities to the Beneficiaries.

### 5. **INDEMNITY**

#### 5.1 **Indemnity in favour of the Nominee**

The Nominee shall be indemnified from and against any and all losses, damages, costs, actions, proceedings, claims and demands which may be claimed, made against or incurred by the Nominee as a result of it holding the Shares under this deed.

#### 5.2 **Exclusion**

The indemnity in clause 5.1 will not apply to the extent that any losses, damages, costs, actions, proceedings, claims and demands which the Nominee incurs are proven to have arisen from the Nominee's own fraud or gross negligence.

#### 5.3 **Satisfaction of liabilities**

The Nominee is deemed to be directed by all Beneficiaries to satisfy any liability owing to it as a result of any losses, damages, costs, actions, proceedings, claims and demands contemplated by clause 5.1 out of the Shares or the Proceeds.

### 6. **LIABILITY OF THE NOMINEE**

#### 6.1 **Exclusion**

In exercising its powers set out in this deed, and to the maximum extent permitted by law, the Nominee shall not be liable for or in respect of:

- a. **liability for investment:** the investment made by the Beneficiary in any Shares held by the Nominee on that Beneficiary's behalf; and

- b. **losses:** any loss, damages, costs or expenses incurred by any Beneficiary under this deed, except to the extent that the Nominee knowingly acted in breach of law or knowingly breached its obligations to the relevant Beneficiary under this deed.

## 7. DISCLOSURE BY THE NOMINEE

### 7.1 Permitted disclosure

The Nominee may disclose the details of its appointment under this deed as nominee and bare trustee for each of the Beneficiaries (including the identity of any Beneficiary), the Shares or information regarding the acquisition or disposition of the Shares by a Beneficiary to the Company or such other persons as the Nominee thinks fit.

## 8. TERMINATION

### 8.1 Termination upon sale

Upon the sale, transfer or disposal of any Shares held by the Nominee in accordance with this deed, the nomination and bare trusteeship established by this deed between the Nominee and that Beneficiary will be at an end and the Nominee will have no further liability or duties to that Beneficiary.

### 8.2 Termination with the Company's written agreement

The Nominee may terminate this deed with the written agreement of the Company. On such termination, and at the written direction of the Company, the Nominee will transfer each Beneficiary's Shares to:

- a. **Beneficiary:** the relevant Beneficiary of those Shares; or
- b. **replacement nominee:** a replacement nominee appointed in writing by the Company to hold each Beneficiary's Shares on terms that are either the same as or substantially similar to the terms of this deed.

## 9. RESIGNATION

### 9.1 Resignation of the Nominee

Subject to this clause 9, the Nominee may resign its nomination and bare trusteeship under this deed at any time by giving written notice of resignation to the Company and Beneficiaries (with or without giving any reason for such resignation).

### 9.2 Obligations on resignation

As soon as reasonably practicable following the Nominee's resignation, the Nominee agrees to transfer all Shares it holds for Beneficiaries to:

- a. **Beneficiaries:** the relevant Beneficiaries (or the nominee of each Beneficiary); or
- b. **Replacement nominee:** if the Company directs the Nominee in writing, a replacement nominee appointed in writing by the Company,

in either case by delivering a share transfer form in respect of those Shares to that relevant Beneficiary's last known address or (if applicable) to the replacement nominee appointed by the Company.

### 9.3 Acceptance of transfer by the Beneficiary

If the resigning Nominee is transferring Shares to the Beneficiaries under clause 9.2(a), the relevant Beneficiary agrees to (or will procure that its nominee agrees to) accept

any such transfer pursuant to this clause 9 for nil consideration.

#### 9.4 **Effect of transfer of Shares following resignation**

Upon delivery of the share transfer under clause 9.2, the nomination and bare trusteeship established by this deed between the Nominee and that Beneficiary will be at an end and the Nominee will have no further liability or duties to that Beneficiary.

### 10. **NOTICES**

#### 10.1 **Written notice**

All notices and other communications to be given under this deed between the Nominee and any Beneficiary must be:

- a. **in writing:** in writing, either typed or legibly printed;
- b. **language:** in the English language; and
- c. **address:** addressed to the person to whom it is to be sent at the physical address or email address from time to time designated by that person in writing.

#### 10.2 **Designated address**

Until any other designation is given, for the purposes of this clause 10 the physical address and email address of the Nominee is as follows:

**Snowball Nominees Limited**

**Address:** c/- Wynn Williams, Level 11, AIG Building, 41 Shortland Street, Auckland, 1010, New Zealand.

**Attention:** Simeon Burnett (CEO)

**Email:** simeon.burnett@snowballeffect.co.nz

#### 10.3 **Deemed delivery**

Any notice or communication given under this deed shall be deemed to have been received:

- a. **by hand:** if delivered by hand, at the time of delivery;
- b. **by post in New Zealand:** if sent by ordinary post within New Zealand, three Business Days after the date of mailing;
- c. **by post from overseas:** if posted or delivered from overseas, 10 Business Days after the date of mailing; and
- d. **by email:** if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if necessary) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.

Any notice or communication received or deemed received after 5.00pm or on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.

### 11. **GENERAL PROVISIONS**

#### 11.1 **Entire agreement**

This deed, together with the Governing Documents, constitutes the entire agreement and understanding relating to the matters dealt with in this deed and supersedes and

extinguishes any previous agreement (whether oral or written) in relation to such matters. Nothing in this clause 11.1 operates to limit or exclude any liability for fraud.

#### 11.2 **Amendments to this deed**

The Nominee may, from time to time, amend or modify all or any of the provisions of this deed by deed poll executed by the Nominee and forwarded to the Company and all Beneficiaries, provided that no amendment or modification may be made which adversely affects or may prejudice the interests of a Beneficiary without that Beneficiary's prior written consent.

#### 11.3 **Authority and approvals**

The Nominee warrants and represents that:

- a. **power and authority:** it has full power and authority to enter into this deed;
- b. **authorisations and approvals:** all authorisations and approvals that are necessary or required in connection with the execution of this deed, and the assumption of rights and obligations under it, have been obtained or effected; and
- c. **no breach or default:** the execution, delivery and performance of this deed does not constitute a breach of any law or obligation and will not cause or result in any default or breach under any other agreement or arrangement by which it is bound and which would prevent it from entering into or performing its obligations under this deed.

#### 11.4 **Rights and remedies**

Unless otherwise expressly provided in this deed, the rights and remedies set out in this deed are in addition to, and not in limitation of, any other rights and remedies under or relating to this deed (whether at law or in equity), and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy.

#### 11.5 **No waiver**

No waiver in respect of this deed shall be effective unless it is given in writing by the party granting the waiver.

#### 11.6 **Severability**

If any provision of this deed is found by a court or other competent authority to be invalid, void or unenforceable, such provision will be deemed to be deleted from this deed and the remaining provisions of this deed will continue in full force and effect.

#### 11.7 **Governing law and jurisdiction**

This deed, and any claims arising out of or in connection with it or its subject matter or formation (including non-contractual claims), will be governed by and construed in accordance with the laws of New Zealand and the Nominee irrevocably submits to the exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to this deed or its subject matter or formation or the relationships established by it (including non-contractual claims).

## **EXECUTION**

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**Executed and delivered** as a deed poll.

**SIGNED by SNOWBALL NOMINEES LIMITED**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Full name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation