

# **DEED OF SETTLEMENT**

**RAFFAELE WEBB**

**GETSWIFT LIMITED**

ACN 604 611 556

**JOEL MACDONALD**

**GETSWIFT TECHNOLOGIES LIMITED**

BC1250648

**THERIUM LITIGATION FINANCE A IC**

IC125471

**PHI FINNEY MCDONALD PTY LTD**

ACN 618 727 905

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**DATE:** 9 August 2021

## **RECITALS**

- A The Applicant commenced the Proceeding against the Respondents, being a representative proceeding under Part IVA of the Act.
- B The Funder has provided litigation funding to the Applicant to facilitate the prosecution of the Proceeding.
- C The Applicant's Solicitors are the Applicant's solicitors on record in the Proceeding.
- D In the Proceeding, the Applicant on his own behalf and on behalf of all Group Members claims relief from the Respondents on alleged causes of action in the Third Further Amended Statement of Claim.
- E The Respondents deny they are liable to the Applicant or any Group Members and deny that the Applicant or any Group Member is entitled to the relief sought or any relief against them.
- F The Applicant and the Respondents have agreed, without admission of liability by the Respondents, that the Applicant's and Group Members' Claims shall be settled upon the terms set out in this Deed, and the Funder and the Applicant's Solicitors have agreed to be Parties to and be bound by this Deed.
- G The settlement is subject to the Parties obtaining Court approval of the settlement pursuant to Part IVA of the Act.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Deed the following definitions apply:

**Act** means the *Federal Court of Australia Act 1976* (Cth).

**Administration Costs** means the fees, expenses and disbursements incurred by the Applicant's Solicitors, calculated in accordance with the hourly rates in the costs agreements entered into by them with their clients in respect of the Proceeding, in connection with the administration of the Settlement Distribution Scheme.

**Applicant** means the Representative Applicant.

**Applicant's and Group Members' Claims** means all Claims made against the Respondents at any time in the Proceeding by the Applicant on his own behalf and/or on behalf of Group Members and all common Claims that the Applicant and any or all Group Members now have, at any time had, or may have or, but for this Deed, could or might have had directly arising out of, relating to or in connection with the subject matter of the Proceeding or any part of the Proceeding. For the avoidance of doubt, matters which are the subject matter of the Proceeding are those described in the Third Further Amended Statement of Claim, and include the facts and circumstances giving rise to those alleged causes of action and the relief sought.

**Applicant's Costs** means the Applicant's legal costs, expenses and disbursements on a solicitor and client basis, calculated in accordance with the rates in the costs agreements entered into by the Applicant and the Applicant's Solicitors in respect of the Proceeding (including the costs of obtaining the Settlement Approval Orders), incurred in connection with the Proceeding on his own behalf and on behalf of any Group Member (including, for the avoidance of doubt, the costs of the Settlement Approval Application).

**Applicant's Solicitors** means Phi Finney McDonald Pty Ltd (ACN 618 727 905).

**Applicant's Solicitors Trust Account** means the general trust account of the Applicant's Solicitors with the following details

|               |                                   |
|---------------|-----------------------------------|
| BSB:          | 013 259                           |
| Acc:          | 305171636                         |
| Bank:         | ANZ                               |
| Account Name: | Phi Finney McDonald Trust Account |

**Business Day** means a day on which banks are open for business in the city of Sydney excluding a Saturday, Sunday or public holiday in the city of Sydney.

**Claim** means all claims, actions, arbitrations, demands, debts, dues, causes of action, liabilities, allegations, losses, suits or proceedings for damages, compensation, interest and legal and administrative costs, expenses and disbursements (present and future) of any description, debt, restitution, equitable compensation, account, interest, injunction, specific performance, judgments, decisions and orders or any other remedy, whether arising at common law, in equity, under statute or otherwise.

**Consequential Orders** means orders that:

- (a) all outstanding costs orders in the Proceeding be vacated;

- (b) all orders requiring the provision of security for costs to be vacated and/or any security furnished be returned;
- (c) there be no order as to costs of the Proceeding; and
- (d) the Proceeding be dismissed upon completion of the administration of the Settlement Distribution Scheme.

**Court** means the Federal Court of Australia.

**Deed** means this document, including its schedules.

**Final Settlement Approval** means when the orders sought in the Settlement Approval Application have been granted and:

- (a) the appeal period in respect of the Settlement Approval Orders has expired without any appeal being filed; or
- (b) all appeals in respect of the Settlement Approval Orders have been determined in such manner that the Settlement Approval Orders are upheld,

whichever is earlier.

**First Orders** is defined in clause 4.2.

**First Respondent** means GetSwift.

**Funder** means Therium.

**GetSwift** means GetSwift Limited (ACN 604 611 556).

**Group Member** means a person falling within the definition of a group member in the Third Further Amended Statement of Claim who has not opted out of the Proceeding.

**GTL** means GetSwift Technologies Limited (BC 1250648).

**GTL Group** means GTL and its subsidiaries.

**NEO** means the Canadian NEO Exchange.

**Notice** means a notice or communication under this Deed (but excluding any notice to Group Members).

**Party** means a party to this Deed and in respect of the Applicant, both in his own capacity and in his capacity as representative of Group Members pursuant to Part IVA of the Act and for and on behalf of Group Members.

**Proceeding** means Federal Court of Australia Proceeding No. NSD 580 of 2018.

**Related Parties** means the related bodies corporate of a Party as defined in the *Corporations Act 2001* (Cth), and its past and present directors and officers.

**Representative Applicant** means Mr Raffaele Webb.

**Respondents** means the First Respondent and Second Respondent.

**Respondents' Solicitors Trust Account** means

BSB: 062 000  
Acc: 16035335  
Bank: Commonwealth Bank of Australia  
Account Name: Quinn Emanuel Urquhart & Sullivan Law Practice Trust Account

**Second Respondent** means Mr Joel Macdonald.

**Settlement Approval Application** means an application made by the Applicant to the Court seeking the First Orders, the Settlement Approval Orders and the Consequential Orders (or a form of orders that the Court approves and are agreed by all of the Parties).

**Settlement Approval Orders** means

- (a) orders under s 33V(1) of the Act approving the settlement of this Proceeding on the terms of this Deed and the Settlement Distribution Scheme;
- (b) to the extent necessary having regard to the Settlement Distribution Scheme, orders under s 33V(2) of the Act for:
  - (i) approval of reimbursement or payment of the Applicant's Costs; and
  - (ii) approval of payment of an amount of remuneration by way of commission to be paid to the Funder,from the Settlement Fund;
- (c) orders under s 33ZB of the Act that the settlement is binding upon the Applicant, the Respondents and Group Members; and
- (d) orders appointing suitable and qualified persons as administrators of the Settlement Distribution Scheme.

**Settlement Distribution Scheme** means a document prepared by the Applicant detailing the scheme for the distribution of the Settlement Sum (together with any interest earned on such amount) to the Applicant and Group Members and payment of the Applicant's Costs, Administration Costs, the Funder's commission and any such reasonable deductions as the Court may approve), and which provides that the Applicant and each Group Member accept and receive such payment in accordance with the document in substitution of their Claim against the Respondents.

**Settlement Formula** means the formula set out in Schedule 1.

**Settlement Fund** means a controlled monies account opened by the Applicant's Solicitors (which, at the discretion of the Applicant's Solicitors, may be interest bearing) with any body corporate authorised by the Australian Prudential Regulation Authority under section 9 of the *Banking Act 1959* (Cth) to carry on banking business, to hold monies on trust in accordance with this Deed, and where the context admits, will include a reference to all monies in the account, for disposition in accordance with this Deed and the Settlement Distribution Scheme.

**Settlement Sum** means the amounts to be paid in accordance with the processes contained within the Settlement Formula including as to timing of payment, inclusive of legal costs, expenses and disbursements, interest and any entitlements of the Funder to commission or fees under any common fund order or other order made by the Court with respect to the funding of the Proceeding by the Funder.

**Therium** means Therium Litigation Finance A IC IC125471.

**Third Further Amended Statement of Claim** means the Third Further Amended Statement of Claim filed on 19 February 2021 in the Proceeding.

## 1.2 Interpretation

Unless expressed to the contrary in this Deed:

- (a) words denoting the singular include the plural and vice versa;
- (b) words denoting a gender include any other gender;
- (c) words importing natural persons include corporations, unincorporated associations, partnerships, governments and local authorities, trusts and any other entities or groups recognised by law;
- (d) where a word or phrase is defined, other grammatical forms of that word or phrase have corresponding meanings;
- (e) a reference to a person includes a reference to that person's executors, successors and permitted assigns;
- (f) a reference to any thing is a reference to the whole and any part of it;
- (g) where a party is defined to include more than one party, a reference to that party is a reference to each defined party jointly and severally;
- (h) a reference to any legislation or to any provision of any legislation includes any amendment, consolidation or re-enactment of, or any legislative provision substituted for, and all legislative and statutory instruments issued under, that legislation or provision;
- (i) a reference to any agreement, deed or document includes any amendment or supplement to, or replacement or novation of it;
- (j) a reference to a section (other than a section of legislation), clause, schedule and annexure is a reference to a section, clause, schedule and annexure of this Deed;
- (k) headings to sections, clauses, schedules and annexures are for ease of reference only and do not affect interpretation;
- (l) 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;
- (m) a reference to a time or date in connection with the performance of an obligation by a party, is a reference to the time and date in Sydney, New South Wales;
- (n) a reference to anything done by a person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Deed;
- (o) if a day specified for the performance of an act or for the payment of money falls on a day which is not a Business Day, that act or payment will be due on the next Business Day;
- (p) a reference to writing includes any mode of representing or reproducing words in tangible and visible form and includes facsimile transmissions and electronic mail;
- (r) **includes** or **including** does not limit the meaning of the words preceding it; and
- (s) if a time fixed is to be calculated by reference to a particular day or event, and the time fixed is one day or more, the particular day or the day of the particular event is not to be counted.

## 2 SETTLEMENT PAYMENT

- 2.1 Subject to clauses 3.1 and 3.2(d), the Parties agree that, without admission of liability by the Respondents, in full and final settlement of the Applicant's and Group Members' Claims, the Respondents and GTL shall pay the Settlement Sum to the Applicant (for the benefit of the Applicant in his representative capacity pursuant to Part IVA of the Act).

- 2.2 The First Respondent and GTL are jointly and severally liable to pay the Settlement Sum.
- 2.3 Subject to clause 10.3, the Second Respondent is also jointly and severally liable to pay the Settlement Sum other than where clauses 4 and 5 of the Settlement Formula apply and the First Respondent and GTL are liable to make a revenue payment:
- (a) if GTL reasonably considers that payment within 4 weeks of the expiry of the relevant 12 month period would cause it to be unable to pay its debts incurred in the ordinary course of business as they fall due, it may request from the Applicant an extension of time to pay within that 4 week period and provide adequate supporting documentation for the request;
  - (b) the Applicant is to consider the request in good faith, and grant an extension of time to pay for a period of up to 6 months if the Applicant reasonably considers that payment will cause GTL to be unable to pay its debts incurred in the ordinary course of business as and when they fall due; and
  - (c) in the event that payment is not made within the 4 week period or any extension of time granted, Macdonald is jointly and severally liable for the payment, capped at an amount of AU\$2.0 million.
- 2.4 The Respondents and GTL will pay by electronic funds transfer the Settlement Sum and any parts thereof as follows:
- (a) any payment due prior to the First Orders being made will be paid into the Respondents' Solicitors Trust Account, held on trust for Group Members, the Applicant and the Funder;
  - (b) if the payment in clause 1.b. of the Settlement Formula is due after the First Orders are made and prior to Final Settlement Approval, it will be paid into the Applicant's Solicitors Trust Account, held on trust for the Respondents;
  - (c) if the payment in clause 1.c. of the Settlement Formula is due prior to Final Settlement Approval, it will be paid into the Respondents' Solicitors Trust Account, held on trust for Group Members, the Applicant and the Funder;
  - (d) any payments due falling outside of clauses 2.4(a) – (c) above will be paid into the Applicant's Solicitors Trust Account and held on trust in accordance with clause 2.7 below.
- 2.5 Within:
- (a) 24 hours of any payment being made under clause 2.4, the Respondents will give Notice to the Applicant's Solicitors that such payment has been made;
  - (b) 2 Business Days after Final Settlement Approval, all funds held in the Respondents' Solicitors Trust Account pursuant to clauses 2.4(a) and (c) will be paid into the Applicant's Solicitors Trust Account.
- 2.6 Any payment the subject of clause 2.4, that is received by the Applicant's Solicitors, shall be paid into the Settlement Fund by the Applicant's Solicitors within 3 Business Days of such payments being received in cleared funds into the Applicant's Solicitors Trust Account.
- 2.7 Except as stated in clause 2.4 above, all monies held in the Applicant's Solicitors Trust Account and Settlement Fund (including any interest) as applicable, shall be held by the Applicant's Solicitors on trust for the Respondents until Final Settlement Approval, and thereafter on trust for the Funder, Applicant and Group Members until the funds in the Settlement Fund are distributed in accordance with this Deed and the Settlement Distribution Scheme.



2.8 The Applicant's Solicitors shall be indemnified from amounts that are or were held in the Applicant's Solicitors Trust Account or Settlement Fund (as applicable) in respect of any taxation, costs or reasonably incurred expenses (other than arising as a result of negligence, fraud or misconduct by the Applicant's Solicitors) arising from or relating to the requirement for the Applicant's Solicitors to hold funds in accordance with clause 2.7 (including, for the avoidance of doubt, in the event of termination under clause 3) and the Applicant's Solicitors shall be entitled to deduct any such amounts from the Applicant's Solicitors Trust Account or Settlement Fund (as applicable).

### 3 **TERMINATION OF THIS DEED**

3.1 Subject to clauses 3.3 and 3.4, in the event that the Court "finally declines" to make the Settlement Approval Orders within the meaning of clause 3.3, this Deed (other than the clauses referred to in clause 3.5 below) will be terminated automatically unless the Parties agree in writing that this Deed will continue.

3.2 If this Deed is terminated for any reason:

- (a) in the event that any information about this Deed has been disclosed to the public or to the Court, the Parties shall use their best endeavours to agree upon a form of NEO announcement and communication to the Court advising that the Parties are agreed that the Deed was entirely without prejudice and should be treated as never having been made;
- (b) the Parties agree that this Deed may not be adduced in evidence or otherwise referred to or relied on in any proceeding other than the clauses specified to survive termination;
- (c) subject to clause 3.5, the Deed will cease to have any effect and shall be treated for all purposes as never having been made and never having had any effect, save that taxable costs and disbursements incurred in connection with this Deed shall be reserved costs in the cause in the Proceeding; and
- (d) if, as at the date of termination of this Deed, the Settlement Sum (or any portion thereof) has been paid into the Applicant's Solicitors Trust Account or Settlement Fund, then within 5 Business Days of the date of termination of this Deed, all such monies in the Applicant's Solicitors Trust Account or Settlement Fund, including any accrued interest, but excluding any amounts to be paid, withheld or deducted from the Applicant's Solicitors Trust Account or Settlement Fund in accordance with this Deed or any law, will be repaid to the Respondents' Solicitors Trust Account.

3.3 For the purpose of clause 3.1, the Court will "finally decline" to make the Settlement Approval Orders if any one of the following occurs:

- (a) the Court at first instance declines to make the Settlement Approval Orders, and no application for leave to appeal or appeal from that decision is commenced within the period provided for an appeal from that decision;
- (b) the Court at first instance declines to make the Settlement Approval Orders, and an application for leave to appeal or an appeal from that decision is commenced, and the ultimate outcome of that application or appeal and any subsequent appeal or application for leave to appeal is that the Settlement Approval Orders are not made; or
- (c) the Court at first instance makes the Settlement Approval Orders and an application for leave to appeal or an appeal from that decision is commenced and the ultimate outcome of that application or appeal and any subsequent appeal or application for leave to appeal is that the decision at first instance is set aside and the Settlement Approval Orders are not made.

- 3.4 Further to clause 3.3 above and for the avoidance of doubt, the Court will not be taken to have “finally declined” to make the Settlement Approval Orders if it invites or requires any Party to submit further evidence, make further submissions or provide further information, and, in that event, clause 3.1 does not operate until the Court makes a decision having considered such further evidence, submissions or information.
- 3.5 If this Deed is terminated pursuant to clauses 3.1, the following clauses survive such termination: clauses 1, 2.6, 2.7, 3.2, this clause 3.5, 5, 10, 11, 12, 13 and 14.

#### 4 **NOTICE OF PROPOSED SETTLEMENT AND SETTLEMENT APPROVAL**

- 4.1 The settlement of the Proceeding is subject to Court approval pursuant to section 33V of the Act.
- 4.2 Within 10 Business Days after this Deed comes into effect in accordance with clause 14.3 the Applicant will apply to the Court for:
- (a) orders that, or to the effect that, notice be given to Group Members informing them of:
    - (i) a settlement having been reached subject to Court approval pursuant to section 33V of the Act;
    - (ii) the provisions of this Deed;
    - (iii) the Applicant’s intention to make the Settlement Approval Application;
    - (iv) the registration deadline (for Group Members who are required to register their claims in order to participate in the settlement);
    - (v) the date of the approval hearing (if a date has been set); and
    - (vi) the right of Group Members to apply to be heard on the question of whether the Settlement Approval Application should be granted;
  - (b) approval of the method of provision of the notice to Group Members;
  - (c) interim confidentiality orders in respect of evidence and submissions to be filed/served by the Applicant in support of the Settlement Approval Application; and
  - (d) such further or other orders as may be agreed or the Court may deem appropriate (together, **First Orders**).
- 4.3 As soon as practicable after this Deed comes into effect in accordance with clause 14.3, the Applicant will apply to the Court for the Settlement Approval Orders and the Consequential Orders.
- 4.4 At any hearing of the Settlement Approval Application the Respondents will:
- (a) support the Settlement Approval Application (including the First Orders and the Settlement Approval Orders) to the extent that they are able to do so having regard to the information to be made available to them in relation to the Settlement Distribution Scheme; and
  - (b) instruct their legal representatives to take all reasonable steps (consistent with their professional obligations and having regard to the information to be made available to the Respondents in relation to the Settlement Distribution Scheme) to support the Settlement Approval Application (including the First Orders and Settlement Approval Orders).

## 5 **CONFIDENTIALITY**

- 5.1 Subject to clauses 5.2 and 5.3, the Parties agree to keep the terms of this Deed confidential except:
- (a) as required by law (including any applicable Canadian securities laws or British Columbia Securities Commission rules or requirements), a court order, or the NEO rules;
  - (b) as required for the purpose of obtaining the Settlement Approval Orders (including, for the avoidance of doubt, the obligation to notify Group Members);
  - (c) as required to enforce the terms of this Deed; or
  - (d) as expressly provided for in this Deed.
- 5.2 The Parties are at liberty to disclose:
- (a) the fact of the existence of this Deed and the Settlement Sum;
  - (b) the terms of the Settlement Formula;
  - (c) the fact that this Deed is conditional upon Final Settlement Approval;
  - (d) the fact that this Deed has been executed with no admissions as to liability; and
  - (e) in the event that Final Settlement Approval is obtained, that the Proceeding has been settled or resolved with no admissions as to liability.
- 5.3 Nothing in clause 5.1 of this Deed prohibits:
- (a) any Party from disclosing the terms of this Deed on a confidential basis to the Party's financiers, accountants, or legal or financial advisers, or financial service providers (including insurers and those insurers' reinsurers and legal advisers), for the purpose of obtaining legal, accounting or financial advice, or financial services (and "Party" for the purposes of this clause shall include Group Members), subject to those advisors agreeing to, or owing a professional obligation to, keep the terms of this Deed confidential, except as required by law; and
  - (b) any Party from disclosing any matter with the consent of each other Party, or which is in the public domain.
- 5.4 The Parties acknowledge that, for the purposes of clause 5.3(b), information is in the public domain only if it is publicly known, other than as a result of a breach of any confidentiality obligation by a Party.

## 6 **RELEASES AND COVENANTS**

- 6.1 Upon Final Settlement Approval, and subject to the other provisions of this Deed and the parties' rights to enforce those terms,
- (a) the Proceeding and all of the Applicant's and Group Members' Claims are fully and finally settled with no admissions as to liability;
  - (b) the Applicant, on his own behalf and on behalf of all Group Members, releases and discharges the Respondents and their Related Parties jointly and severally from any costs incurred by the Applicant in relation to the Proceeding;
  - (c) the Respondents and its Related Parties release and discharge the Applicant and Group Members jointly and severally from any costs incurred by the Respondents and its Related Parties in relation to the Proceeding;

- (d) the Applicant, on his own behalf and on behalf of all Group Members, releases and discharges the Respondents and their Related Parties jointly and severally from the Applicant's and Group Members' Claims;
- (e) the Applicant (on his own behalf and on behalf of each Group Member) covenants not to sue the Respondents or their Related Parties in respect of any Applicant's and Group Members' Claims;
- (f) the Applicant's Solicitors covenant:
  - (i) not to bring or otherwise aid, abet, counsel or procure the bringing of any Claim against the Respondents or their Related Parties, which relates to or arises out of any of the matters which are or were at any time the subject of the Proceeding; and
  - (ii) subject to clause 6.1(g) of this Deed, not to take any steps to assist or encourage the Applicant or any Group Member to:
    - (A) cease to be the Applicant or a Group Member;
    - (B) object to the First Orders or Settlement Approval Orders; or
    - (C) appeal from the First Orders or the Settlement Approval Orders;
- (g) the Applicant's Solicitors may respond to questions from Group Members about the objection or approval process where their professional obligations require them to do so and may inform Group Members that they have the option of seeking independent legal advice; and
- (h) the Funder covenants on its own behalf and on behalf of its Related Parties:
  - (i) not to fund (either directly or indirectly) or otherwise aid, abet, encourage, counsel or procure any Claim against the Respondents or any of their Parties which relates to or arises out of any of the matters which are or were at any time the subject of the Proceeding; and
  - (ii) not to take any steps to assist or encourage the Applicant or any Group Member to:
    - (A) cease to be the Applicant or a Group Member;
    - (B) object to the First Orders or Settlement Approval Orders; or
    - (C) appeal from the First Orders or the Settlement Approval Orders.

6.2 Each Party to this Deed acknowledges that each other Party receives the releases and covenants set out in clause 6.1 on its own behalf and as trustee of the benefit of the releases or covenants for the recipient's Related Parties.

6.3 Following Final Settlement Approval any Party and any Related Party may plead this Deed in bar to any Claim by any other Party or Related Party or any Group Member brought in breach of the terms of this Deed.

## 7 NO ADMISSION AND NO DISPARAGEMENT

7.1 The Parties agree and acknowledge that nothing in this Deed constitutes an admission that, but for the terms of this Deed, any Party would have had any liability to any other Party.

7.2 Each Party severally promises to each other Party (on its own behalf and as trustee for its Related Parties) not to make any adverse statements, publicly or otherwise, about any other Party in respect of any matter the subject of, or related to, or giving rise to the Proceeding or its conduct of the Proceeding.

7.3 Without limiting the generality of clause 7.2, for the avoidance of doubt, any statement which:

- (a) disparages, denigrates or otherwise criticises any other Party in respect of matters anyway connected with the circumstances and subject matter of the Proceeding, or its conduct of the Proceeding; and/or
- (b) suggests that the settlement of the Proceeding is a positive result for that Party, other than;
  - (i) in the context of the Applicant and/or Funder making the Settlement Approval Application;
  - (ii) in the context of the Applicant's Solicitors and/or Funder advising Group Members in respect of the Settlement Approval Application; or
  - (iii) any Party being able to make, at any time, a statement to the effect that the Proposed Settlement is fair and reasonable and in the interests of all Group Members; and/or
- (c) suggests that the settlement of the Proceeding is a negative result for any other Party, will be considered to be an adverse statement for the purposes of clause 7.2.

## 8 NO FURTHER STEP IN THE PROCEEDING

- 8.1 No further step is to be taken in the Proceeding by the Parties bound by this Deed, other than those provided for in this Deed or ordered by the Court or otherwise required by law.

## 9 COSTS

- 9.1 Except as otherwise provided by this Deed or agreed between the Parties, a Party must not seek orders for its costs of or incidental to the Proceeding or the Settlement Approval Application (or any appeal therefrom).
- 9.2 The Parties agree that there will be no order as to costs of the Proceeding and a Party must not take any step to enforce any outstanding costs order in the Proceeding.

## 10 WARRANTIES

- 10.1 The Applicant, in his own capacity, and each other Party signing this Deed warrants that:
- (a) they have the legal capacity and power to enter into this Deed and have obtained all necessary consents and approvals to do so;
  - (b) each person signing this deed as an authorised officer, agent or attorney of any Party, by doing so, warrants to the other Parties that, as at the date of signing, he or she has full authority to execute the deed on behalf of that Party and has obtained all necessary consents and approvals, which have not been revoked;
  - (c) if this deed is executed on behalf of Party by an attorney, the attorney is duly authorised to enter into this deed on the Party's behalf and that the power to do has not been revoked; and
  - (d) they have not entered into this Deed in reliance upon any representations by or on behalf of any Party which are not set out in this Deed.
- 10.2 The Respondents and GTL warrant that GTL Group's consolidated cash and cash equivalents position as at 30 June 2021 is an amount less than US\$8m.
- 10.3 The Second Respondent warrants that he does not hold any assets, beneficially or otherwise, beyond his shares in GTL and those disclosed in his statutory declaration dated 6 August 2021. A breach of this warranty renders null and void those parts of clause in 2.3 which limit the Second Respondent's joint and several liability.

10.4 The Respondents will provide, on a confidential basis:

- (a) a copy of the FY21 management accounts within 2 weeks after this Deed comes into effect in accordance with clause 14.3; and
- (b) a copy of the FY21 audited accounts once available.

## 11 WAIVER

11.1 No right under this Deed is waived or deemed to be waived except by Notice in writing to all other Parties by the Party waiving the right. In particular, a Party does not waive its rights under this Deed because it grants an extension of time or other forbearance to another Party.

11.2 A waiver by a Party under clause 11.1 of this Deed does not prejudice the Party's rights in respect of any subsequent breach of this Deed by any other Party.

## 12 TAXATION

12.1 The Parties agree that all payments made under this Deed are inclusive of any GST, as that term is defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

12.2 Except as otherwise provided in this Deed, all amounts referred to in this Deed are inclusive of tax and no additional amounts are payable by the Parties on account of tax or GST.

12.3 Except as provided in this Deed, the Parties to this Deed and Group Members will be responsible for their own taxation obligations arising from the transactions contemplated by this Deed.

## 13 GOVERNING LAW AND JURISDICTION

13.1 This Deed is governed by the law in force in New South Wales and each Party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales.

## 14 GENERAL

### 14.1 Entire Agreement

- (a) Except as expressly provided in this Deed, this Deed constitutes the sole and entire agreement between the Parties in respect of the settlement of the Proceeding and the Applicant's and Group Members' Claims and no warranties, representation, guarantees, or other terms and conditions not contained, recorded or expressly referred to in this Deed shall be of any force or effect.
- (b) Without limiting the generality of clause 14.1(a), each Party warrants that in entering into this Deed it has not relied upon, or otherwise been caused to act by, any act or omission, representation, statement or other conduct of the other Party or agent of or adviser to any other Party apart from any matter expressly recorded in this Deed.

### 14.2 Notice and Delivery

- (a) A Notice must be in writing and delivered by hand or sent by express post or email to a Party at the address or email address for that Party in Schedule 2 or as specified by a Party by Notice.
- (b) A delivery of a document or any communication under this Deed will be effective:
  - (i) if, by way of email, when received; or
  - (ii) if, by way of post or courier, when it has been left at the relevant address.

### 14.3 Counterparts

- (a) This Deed may be executed in any number of counterparts and all counterparts taken together will be deemed to constitute the one instrument. An executed counterpart may be delivered by e-mail. A scanned copy of this Deed sent by email will be sufficient proof of the execution of the Deed by the signing Party.
- (b) If this agreement is executed in counterparts, it takes effect when each Party has received the counterpart executed by each other Party, or would be deemed to have received it.
- (c) This Deed is enforceable as a contract from the date of its execution by all Parties, or from the date on which it takes effect in accordance with clause 14.3(b) if executed in counterparts, in accordance with its terms, and in accordance with the laws of the State of New South Wales.
- (d) The Parties agree that this Deed may be executed by a Party's solicitor on the record in the Proceeding, by that solicitor signing the execution page on behalf of that Party in the presence of a witness, and the Parties intend that execution in that way is binding in the same way and to the same extent as if executed by the Party personally (in the case of a Party that is an individual) or in accordance with section 127 of the *Corporations Act 2001* (Cth) (in the case of a Party that is a corporation).
- (e) Any Party that executes this Deed by their solicitor in accordance with clause 14.3(d) shall as soon as is practicable afterward execute and deliver to the other Parties a counterpart of the Deed executed by the Party personally (in the case of a Party that is an individual) or in accordance with section 127 of the *Corporations Act 2001* (Cth) (in the case of a Party that is a corporation), and the Parties agree that:
  - (i) such counterpart is taken to have been executed on the date the Party's solicitor executed the Deed in accordance with clause 14.3(d); and
  - (ii) failure to deliver such counterpart does not impact on the enforceability of this Deed.

### 14.4 Variation

Any variation of this Deed must be agreed in writing and duly executed by each Party.

### 14.5 Reasonableness and Severability

The Parties agree and acknowledge that:

- (a) all provisions of this Deed are reasonable; and
- (b) if any provision of this Deed is judged to be void or unenforceable in whole or in part, it will be deemed to be severed from this Deed and will not affect the validity or enforceability of the remainder of this Deed.

### 14.6 Further Acts

Each Party must promptly execute and deliver (at its own expense) any document or do any act reasonably necessary to give full effect to this Deed and the rights and obligations of the Parties under it.

### 14.7 Deed poll

The releases, covenants, representations, warranties and indemnities given within this Deed in favour of persons not a Party to this document are intended to be, and are, directly

enforceable by each of those persons, and this document operates as a deed poll in favour of those persons.



## EXECUTION

Executed as a deed.

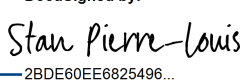
Executed by **GetSwift Limited ACN 604 611 556** in accordance with Section 127 of the *Corporations Act 2001* (Cth):

DocuSigned by:  
  
384C73B93B46426...

Signature of Director

Bane Hunter

Name of Director (please print)

DocuSigned by:  
  
2BDE60EE6825496...

Signature of Director/Company Secretary

Stan Pierre-Louis

Name of Director/Company Secretary (please print)

Executed by **Joel Macdonald**

DocuSigned by:  
  
C252F73796C5428...

Signature of Witness

Rob Bardunias

Name of Witness (please print)

DocuSigned by:  
  
538D733364B64B8...

Signature of Joel Macdonald

Joel Macdonald

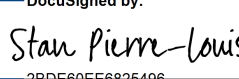
Executed by **GetSwift Technologies Limited BC1250648**:

DocuSigned by:  
  
384C73B93B46426...

Signature of Director

Bane Hunter

Name of Director (please print)

DocuSigned by:  
  
2BDE60EE6825496...

Signature of Director/Company Secretary

Stan Pierre-Louis

Name of Director/Company Secretary (please print)

Executed by **Raffaele Webb**

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

\_\_\_\_\_  
Signature of Raffaele Webb

\_\_\_\_\_  
Name of Witness (please print)

Executed by **Phi Finney McDonald ACN 618 727 905** in accordance with Section 127 of the *Corporations Act 2001* (Cth):





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

\_\_\_\_\_  
Signature of Director/Company Secretary

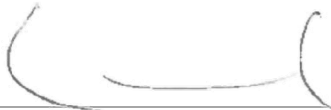
\_\_\_\_\_  
Timothy Finney

\_\_\_\_\_  
Ben Phi

\_\_\_\_\_  
Name of Director (please print)

\_\_\_\_\_  
Name of Director/Company Secretary (please print)

Executed by **Therium Litigation Finance A IC IC125471**:





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

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Luke Aubert

\_\_\_\_\_  
David Middleton

\_\_\_\_\_  
Name of Director (please print)

\_\_\_\_\_  
Name of Director/Company Secretary (please print)

## SCHEDULE 1 – SETTLEMENT FORMULA

The Settlement Sum to be paid by the Respondents and GTL is the aggregate amount derived from the following Settlement Formula, with each component amount (“**settlement payment**”), if payable, to be paid at or by the dates and times set out below. A reference in this Schedule to an event occurring on or by a particular date means on or by 5pm in New York, New York, United States of America, on that day.

1. A first settlement payment of AU\$1.5m, to be paid in instalments as follows:
  - a. AU\$500,000 within 7 days of the date of execution of the Deed;
  - b. AU\$500,000 due by 7 October 2021; and
  - c. AU\$500,000 due by 7 January 2022.
2. During the term of 3 years from the date of the parties executing a Deed of Settlement (“**Fundraising Term**”), settlement payments equalling 8% of any funds raised by GTL by way of capital raising, with each such amount to be paid within 6 weeks of the amount being collected by GTL.
3. During the Fundraising Term, GTL is required to raise capital equivalent to 10% to 20% of its pre-raising market capitalisation at the point in time that:
  - a. it first hits any of the following market capitalisation levels (in CAD):
    - i. \$100m;
    - ii. \$250m;
    - iii. \$400m; and
  - b. the market capitalisation remains at the level in 3.a.i – iii (as applicable) on average for 4 weeks following the date it first hit that market capitalisation.
4. In any of the three 12-month periods comprising the Fundraising Term, if no funds are raised by capital raising:
  - a. the Respondents and/or GTL will be required to make a settlement payment equal to 5% of the GTL Group’s revenue from contracts with customers (“**revenue**”) during the 12-month period ending on the most recent quarterly reporting date prior to the conclusion of the relevant 12-month period (“**revenue percentage**”) within 4 weeks of expiry of the period; however
  - b. if 4(a) applies in respect of the first year of the Fundraising Term, the required settlement payment under 4(a) will be not be payable until the conclusion of the second year of the Fundraising Term.
5. Subject to clause 6 below, during any of the three 12-month periods comprising the Fundraising Term, for any capital raising undertaken by GTL where the amount of funds raised is less than 20% of GTL’s pre-raising market capitalisation, then:
  - a. the Respondents and/or GTL will be required to make a settlement payment calculated on the same revenue percentage basis as clause 4 above within 4 weeks of expiry of the relevant 12-month period; however
  - b. the amount payable will be discounted based on the amount of funds raised applying the following formula:

1. the revenue percentage payable will be the percentage equivalent to 25% of the percentage amount by which the relevant capital raising is less than 20% of GTL's market capitalisation; such that (by way of example);
  2. if the capital raising is 10% of GTL's market capitalisation, the revenue percentage payable is 2.5%; whereas
  3. if the capital raising is 15% of GTL's market capitalisation, the revenue percentage payable is 1.25%.
6. If GTL conducts more than one capital raising during any of the 3 twelve-month periods comprising the Fundraising Term, then for the purpose of the calculation of any revenue percentage settlement payment for that period, the two or more capital raisings will be treated as one capital raising. For instance, if:
  - a. GTL conducted two capital raisings during a single 12-month period for amounts of 5% and 10% of GTL's market capitalisation at the relevant times;
  - b. GTL's market capitalisation was CAD200m at the time of the first capital raising and CAD250m at the time of the second capital raising; and
  - c. this resulted in raisings of CAD10m and CAD25m respectively; then
  - d. the weighted average revenue payment would be calculated premised on the extent to which CAD35m (the combined amount raised) fell short of being 20% of CAD225m (the weighted average market capitalisation); and
  - e. the relevant percentage per (d) would be about 15.5%, such that the revenue percentage payment for that 12-month period would be a single payment of about 1.11% of annual revenue.
7. All payments are to be made in Australian dollars. The rate of exchange to be used in calculating the amount of currency equivalent in Australian dollars is the closing exchange rate reported in The Australian Financial Review on the preceding Business Day before payment is made.

## SCHEDULE 2 – NOTICE DETAILS

### FIRST RESPONDENT

GetSwift Limited

Address

C/- Quinn Emanuel Urquhart & Sullivan, LLP  
Level 15, 111 Elizabeth Street, Sydney, NSW 2000

Email

[michaelmills@quinnemanuel.com](mailto:michaelmills@quinnemanuel.com)  
[michellefox@quinnemanuel.com](mailto:michellefox@quinnemanuel.com)

### SECOND RESPONDENT

Joel Macdonald

Address

C/- Quinn Emanuel Urquhart & Sullivan, LLP  
Level 15, 111 Elizabeth Street, Sydney, NSW 2000

Email

[michaelmills@quinnemanuel.com](mailto:michaelmills@quinnemanuel.com)  
[michellefox@quinnemanuel.com](mailto:michellefox@quinnemanuel.com)

### GETSWIFT TECHNOLOGIES LIMITED

Address

C/- Quinn Emanuel Urquhart & Sullivan, LLP  
Level 15, 111 Elizabeth Street, Sydney, NSW 2000

Email

[michaelmills@quinnemanuel.com](mailto:michaelmills@quinnemanuel.com)  
[michellefox@quinnemanuel.com](mailto:michellefox@quinnemanuel.com)

### APPLICANT

Raffaele Webb

Address

C/- Phi Finney McDonald  
Level 3, 325 Flinders Lane, Melbourne, VIC 3000

Email

[tim.finney@phifinneymcdonald.com](mailto:tim.finney@phifinneymcdonald.com)

### FUNDER

Therium Litigation Finance A IC

Address

C/- Therium Capital Management (Australia) Pty Ltd,  
Level 2, 50 Market Street, Melbourne, VIC 3000

Email

[simon.dluzniak@therium.com](mailto:simon.dluzniak@therium.com)

**APPLICANT' SOLICITORS**

Phi Finney McDonald

Address

Level 3, 325 Flinders Lane, Melbourne, VIC 3000

Email

[tim.finney@phifinney-mcdonald.com](mailto:tim.finney@phifinney-mcdonald.com)