



**MEDIACLOUD PTY LTD (ADMINISTRATORS APPOINTED) ABN 13 641 575 304 (Company)**

**PROPOSAL FOR A DEED OF COMPANY ARRANGEMENT (DOCA)**

**Term Sheet**

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**1. PROPOSAL**

- 1.1 The Proponent puts forward this proposal for a Deed of Company Arrangement (**Proposed DOCA**) for consideration by the creditors of the Company at a meeting to be convened in accordance with the Court Orders made on Tuesday, 6 April 2021 and section 439A of the Act (**Supplementary Creditors' Meeting**).
- 1.2 Telstra Broadcast Services Pty Ltd (ACN 079 173 961) (the **Proponent**) is proposing to acquire all assets, intellectual property rights, employees, customer contracts and supplier contracts of the Company relevant to the MediaCloud solution business in Australia (**Business**) under an Asset Sale Agreement (**Australian Asset Sale Agreement**), with the purchase price payable under the Australian Asset Sale Agreement to become the Deed Contribution which is to be distributed to admitted pre-appointment creditors under the terms of the Proposed DOCA.
- 1.3 Further, the Proponent is proposing to acquire various assets (including intellectual property rights, employment contracts, customer contracts and supplier contracts) relevant to the Business from a UK entity called Deluxe Broadcast Services Ltd under an Asset Sale Agreement (**UK Asset Sale Agreement**).
- 1.4 The Proposed DOCA, the Australian Asset Sale Agreement and the UK Asset Sale Agreement are inter-conditional.
- 1.5 The Administrators will be the Deed Administrators of the Proposed DOCA.

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**2. PURPOSE OF DOCA**

- 2.1 The purpose of the Proposed DOCA is to:
- 2.1.1 provide certainty to the Company's creditors and provide a better and more timely return to the Company's creditors than a winding up of the Company;
- 2.1.2 facilitate an orderly and cost effective transition of the Business to the sole control of the Proponent, in a way that minimises disruption and enables Transferring Employees to:
- (a) maintain their employment with the Business; and
  - (b) receive payment from the Deed Contribution in respect of Historical Employee Underpayment Claims which are admitted to proof by the Administrators.
- 2.1.3 with the exception of the Excluded Claims: (1) pay all Claims against the Company which are admitted to proof by the Deed Administrators from the Deed Contribution to be made by the Proponent, and (2) pay all of the fees and costs of the administration and deed administration from the Company Fund Amount. The Deed Contribution and the Company Fund Amount will together comprise the **Deed Fund**; and

- 2.1.4 discharge in full all Claims against the Company (other than Transferring Employee Claims which are being assumed by the Proponent under the Australian Asset Sale Agreement), restoring the Company to solvency.

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### **3. CONDITIONS PRECEDENT**

- 3.1 Completion of the Australian Asset Sale Agreement will be conditional upon the following conditions precedent being satisfied or waived on or prior to the Sunset Date:
- 3.1.1 the UK Asset Sale Agreement being duly executed and the Proponent being satisfied that completion under the UK Asset Sale Agreement can occur;
  - 3.1.2 the Proposed DOCA being duly executed;
  - 3.1.3 at least 80% of the Employees of the Company accepting the Proponent's offer of employment in the Business;
  - 3.1.4 all counterparties to the material customer and supplier contracts of the Company consenting to a transfer of the relevant contracts to the Proponent; and
  - 3.1.5 various other transaction documents necessary to effect the transaction being executed.
- 3.2 Completion will occur once all conditions precedent have been satisfied or waived, and the Deed Contribution has been paid to the Company.
- 3.3 Effectuation of the Proposed DOCA will occur once the Deed Fund has been distributed to admitted pre-appointment creditors, the administrators and the deed administrators in accordance with the terms of the Proposed DOCA, including in line with the order of priority under section 556 of the Act. To the extent there are insufficient funds to pay a class of creditors in full, that class will receive a pari passu distribution.
- 3.4 On effectuation of the Proposed DOCA, the Company will be restored to solvency and will be returned to its directors, in order for them to proceed with the Company's deregistration.

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### **4. GOVERNING LAW**

- 4.1 The Proposed DOCA will be governed by the laws in force in the state of New South Wales, Australia.

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### **5. BOILERPLATE PROVISIONS**

- 5.1 The Proposed DOCA will include all the customary terms and conditions generally found in a deed of company arrangement of this type, and otherwise required under the Act.

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### **6. DOCA TO SUPERSEDE**

- 6.1 The terms of the Proposed DOCA will supersede the terms of this document.

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## 7. DEFINED TERMS

Defined terms in the Proposed DOCA will include, but not be limited to:

- 7.1 **Act** means the *Corporations Act 2001* (Cth).
- 7.2 **Administration Account** means a bank account created and controlled by the Administrators in the name of MediaCloud Pty Ltd Administrators Appointed, with account number 200019992763.
- 7.3 **Administration Liabilities** means all amounts, debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments in respect of which the Administrators and Deed Administrators are entitled to be indemnified under the Proposed DOCA and includes Trading Liabilities.
- 7.4 **Administrators** means Barry Frederic Kogan and Jonathan Philip Henry of McGrathNicol in their capacity as joint and several voluntary administrators of the Company.
- 7.5 **Appointment Date** means 9 November 2020.
- 7.6 **Administration Period** means the period commencing 9 November 2020 and ending on the Completion Date.
- 7.7 **Claim** includes without limitation any debt payable and any claim against, the Company (whether present or future, certain or contingent, ascertained or sounding only in damages, expenses, environmental liability, tax, duty, liability, loss, obligation, suit, action, demand, cause of action, prayer for relief, proceeding, judgment, whether direct or indirect, consequential, incidental or economic, known or unknown as at the Appointment Date, being debts or claims arising, wherever and whenever arising and whether:
- (a) under statute, equity or common-law;
  - (b) under contract (including this agreement), in tort (including negligence) or under an indemnity;
  - (c) regarding any past, present or future conduct;
  - (d) actual or contingent;
  - (e) known or unknown at execution of the Deed;
  - (f) a debt or claim arising pursuant to any guarantee or indemnity (including contingent claims);
  - (g) subject to section 444D(3) of the Act, as a debt or claim of an owner or lessor of property;
  - (h) subject to section 444D(2) of the Act, a debt or claim of a secured creditor;
  - (i) all debts or claims provable in a winding up of the Company pursuant to section 553 of the Act;
  - (j) all claims of a lessor to a continuing lease as at the Appointment Date;
  - (k) all claims of a counterparty to a continuing contract as at the Appointment Date; or
  - (l) all claims of a holder of any promissory note, any other promise to pay or any Guarantee issued or given by the Company.

- 7.8 **Company Fund Amount** means:
- (a) the total of the funds held in the Administration Account on the Deed Effective Date; and
  - (b) the funds held in the Company Pre-appointment Account on the Deed Effective Date; and
  - (c) any amounts in relation to GST, insurance or other refunds that relate to the Administration Liabilities.
- 7.9 **Company Pre-appointment Account** means a bank account in the name of MediaCloud Pty Ltd, with account number 200019914933.
- 7.10 **Completion** means completion of the transfer of the Business under the Australian Asset Sale Agreement.
- 7.11 **Deed Contribution** means the purchase price payable by the Proponent to the Company under the Australian Asset Sale Agreement, being \$***TBD based on the Administrators' pre-appointment creditor estimates at Completion, intended to provide a full return to all pre-appointment eligible employees and external creditors whose Claim is admitted to proof by the Administrators***].
- 7.12 **Deed Fund** means the fund established by the Deed Administrators, comprised of the Deed Contribution and the Company Fund Amount.
- 7.13 **Deluxe Group Member** means:
- (a) A.P. Facilities Pty Ltd;
  - (b) Deluxe 142 Limited;
  - (c) Deluxe Broadcast Services Limited;
  - (d) Deluxe Digital Cinema Inc;
  - (e) Deluxe Digital Studios;
  - (f) Deluxe Entertainment Services Group Inc.;
  - (g) Deluxe Entertainment Services Inc.;
  - (h) Deluxe Media Audio Services;
  - (i) Deluxe Media Burbank Subtitling, Inc;
  - (j) Deluxe Media Inc.;
  - (k) TS HoldCo Limited;
  - (l) Vericom AB; and
  - (m) Any other entity that is or was formerly part of the Deluxe Entertainment Group.
- 7.14 **Directors** mean the directors of the Company from time to time.
- 7.15 **Employee** has the same meaning as "eligible employee creditor" has in section 9 of the Act as though reference to "company" was to the Company.

- 7.16 **Employee Claims** means all Claims of Employees (including but not limited to wages, overtime, penalties, bonuses, expense reimbursements, accrued leave entitlements and any related on-costs) excluding the Historical Employee Underpayment Claims. For the avoidance of doubt, Employee Claims do not include any wages, overtime, penalties, expense reimbursements and any related on-costs that relate to the Administration Period.
- 7.17 **Excluded Claim** means:
- (a) any Claim which a Deluxe Group Member has against the Company; and
  - (b) any Claim which a current or former Director or current or former Officer of the Company, or any of their related bodies corporate, relatives or associated entities, has against the Company; and
  - (c) Transferring Employee Claims.
- 7.18 **Historical Employee Underpayment Claims** means amounts owing to employees in relation to incorrectly or underpaid wages, overtime, penalties and related on-costs. For the avoidance of doubt, it does not include pre-appointment wages, overtime, penalties, bonuses and related on-costs for the period from 22 October 2020 to 8 November 2020, SGC amounts for the period from 10 September to 8 November 2020, or any accrued annual leave or long service leave entitlements.
- 7.19 **Non-Transferring Employee** means an Employee who is not a Transferring Employee.
- 7.20 **Officer** has the meaning as defined in section 9 of the Act.
- 7.21 **Sunset Date** means 30 days from the Supplementary Creditors' Meeting, or such later date as is agreed in writing between the Proponent, the Company and the Voluntary Administrators (or Deed Administrators).
- 7.22 **Trading Liabilities** means all liabilities, costs and expenses of the Administrators and Deed Administrators incurred in connection with operating the business of the Company during the Administration Period and the Deed Period, including in connection with the payment of Claims of suppliers as at the Appointment Date which the Administrators or Deed Administrators determine need to be paid during the Administration Period.
- 7.23 **Transferring Employees** means each Employee who accepts an offer of employment with the Proponent with effect from Completion pursuant to the Australian Asset Sale Agreement.
- 7.24 **Transferring Employee Claims** means all Employee Claims of Transferring Employees.