

DUPLICATE

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY  
I TE KŌTI MATUA O AOTEAROA  
ŌTAUTAHI ROHE

CIV 2023-409-664

Under Part 19 of the High Court Rules

In the matter of A scheme of arrangement under Part 15 of the Companies Act 1993

Application by **MHM Automation Limited**, a duly incorporated company having its registered office at 53 Lunns Road, Middleton, Christchurch, 8024, New Zealand

Applicant

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**FINAL ORDERS APPROVING SCHEME OF ARRANGEMENT  
UNDER PART 15 OF THE COMPANIES ACT 1993**

Dated: *21 February* 2024

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**BUDDLE FINDLAY**

Barristers and Solicitors  
Christchurch

Solicitor Acting: **Olly Peers**

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Filed In Court

21 FEB 2024

To: the Applicant

And to: any other person who may be affected by this order

1. The originating application made by MHM Automation Limited for approval of the Scheme of Arrangement under Part 15 of the Companies Act 1993 dated 8 December 2023, was determined by Associate Judge Lester on 21 February 2024.
2. The determination was made following a hearing held on 21 February 2024. Mr Peers and Ms Elliott appeared as counsel for the Applicant. Mr Walker appeared as counsel for Merlin NZ Bidco Limited (**Bettcher NZ**). The Court received memoranda of counsel for the Applicant in support of the interim orders, dated 8 December 2023, and submissions dated 15 February 2024. The Court read the originating application for orders approving the scheme of arrangement under Part 15 of the Companies Act 1993 dated 8 December 2023; the interlocutory application for initial orders under Part 15 of the Companies Act dated 8 December 2023; the affidavits of Trevor John Burt dated 7 December 2023 and 15 February 2024; and the affidavit of Alexandra Maree Lusty dated 15 February 2024.
3. The following orders were made:
  - (a) The proposed scheme of arrangement (the **Scheme**) between the applicant, MHM Automation Limited, and its shareholders as described in the **Scheme Plan** (as annexed to these Orders), is approved and binding upon MHM Automation Limited, all of its shareholders, Bettcher Industries, Inc., Merlin NZD Bidco Limited and all such other persons as are necessary to give effect to the Scheme; and
  - (b) MHM is granted leave to apply to the Court for approval of any amendment, modification or supplement to the Scheme.



DATED this 21<sup>st</sup> day of February 2024

A blue handwritten signature, likely of D. Brensell, written over a horizontal line.

D. BRENSSELL

(Deputy) Registrar

## SCHEME PLAN

### SCHEME OF ARRANGEMENT PURSUANT TO PART 15 OF THE COMPANIES ACT 1993

#### PARTIES

- (1) **MHM AUTOMATION LIMITED (Company)**
- (2) **BETTCHER INDUSTRIES, INC. (Acquirer)**
- (3) Each person who is registered in the Register as the holder of one or more Scheme Shares (together, the **Scheme Shareholders**)

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 **Definitions:** In this scheme plan:

**Acquirer Nominee** has the meaning given to that term in clause 1.5.

**Business Day** means any day (other than a Saturday, Sunday or a statutory public holiday) in Auckland or Christchurch, New Zealand and excluding any day between 27 December 2023 and 12 January 2024;

**Companies Act** means the Companies Act 1993;

**Conditions** means the conditions precedent set out in the first column of the table of clause 3.1 of the Scheme Implementation Agreement;

**Consideration** means NZ\$1.70 in cash in respect of each Scheme Share held by a Scheme Shareholder or such other amount notified to the Company by the Acquirer in accordance with clause 7.1;

**Court** means the High Court of New Zealand, Christchurch Registry;

**Deed Poll** means the deed poll entered into by the Acquirer and, if applicable, the Acquirer Nominee in favour of the Scheme Shareholders dated 30 November 2023;

**Encumbrance** means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing;

**End Date** has the meaning given to that term in the Scheme Implementation Agreement;

**Final Orders** means orders of the Court on application of the Company, that the Scheme be binding on the Company, the Acquirer, the Acquirer Nominee (if applicable), the Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

**Final Orders Date** means the day on which the Final Orders are granted by the Court;

**Funds** has the meaning given to that term in clause 3.1;



**Government Agency** means any government, department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity;

**Implementation Date** means the date on which the Scheme is to be implemented, being five Business Days after the Record Date, or such other date agreed between the parties in writing;

**Initial Orders** means, on application by the Company, orders by the Court for the purposes of section 236(2) of the Companies Act;

**LINK** means Link Market Services Limited;

**NZX** means NZX Limited and, where the context requires, the main board financial market that it operates;

**NZX Listing Rules** means the NZX Listing Rules for the NZX Main Board;

**OIO Condition** has the meaning given to that term in the Scheme Implementation Agreement;

**Record Date** means 7.00pm on the date which is five Business Days after the later of:

- (a) the Final Orders Date; and
  - (b) the date on which the OIO Condition is satisfied,
- or such other date agreed between the parties in writing;

**Register** means the register of Shares maintained by LINK on behalf of the Company;

**Registered Address** means, in relation to a Shareholder, the address shown in the Register as at the Record Date;

**Scheme** means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by the Acquirer and the Company in writing;

**Scheme Implementation Agreement** means the scheme implementation agreement between the Acquirer and the Company dated 3 November 2023;

**Scheme Meeting** means the meeting of Shareholders which (as applicable) is to be, or has been, ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting;

**Scheme Shareholder** means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date;

**Scheme Shares** means all of the Shares on issue at 7.00pm on the Record Date;

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

**Shareholder** means a person who is registered in the Register as the holder of one or more Shares from time to time;

**Trading Halt Date** means the date which is two Business Days after the later of:

- (a) the Final Orders Date; and
- (b) the date on which the OIO Condition is satisfied,



or such other date as the Company and the Acquirer agree in writing;

**Trust Account** has the meaning given to that term in clause 3.1; and

**Unconditional** means the satisfaction or, if capable of waiver, waiver of each of the conditions in clause 2.

1.2 **Interpretation:** In this scheme plan, unless the context otherwise requires:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
  - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this scheme plan;
  - (ii) any legislation which that legislation re-enacts with or without modification; and
  - (iii) any subordinate legislation made before or after execution of this scheme plan under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.2(a)(i), or under any legislation which it re-enacts as described in clause 1.2(a)(ii);
- (b) a reference to the NZX Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (c) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (d) references to an individual or a natural person include his her or its estate and personal representatives;
- (e) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this scheme plan (and the schedules and annexures form part of this scheme plan);
- (f) subject to clause 20.2 of the Scheme Implementation Agreement, references to a party to this scheme plan include the successors or assigns (immediate or otherwise) of that party;
- (g) a reference to any instrument or document includes any variation or replacement of it;
- (h) a reference to any time is a reference to that time in New Zealand;
- (i) unless otherwise stated, a reference to \$, or dollars is to New Zealand currency;
- (j) singular words include the plural and vice versa;
- (k) a word of any gender includes the corresponding words of any other gender;
- (l) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (m) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words; and
- (n) headings are to be ignored in construing this scheme plan.



- 1.3 **Things required to be done other than on a Business Day:** Unless otherwise indicated, if the day on or by which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.
- 1.4 **No contra proferentem:** No term or condition of this scheme plan will be construed adversely to a party solely because that party was responsible for the preparation of this scheme plan or a provision of it.
- 1.5 **Acquirer Nominee:** The Acquirer may elect a directly or indirectly wholly-owned subsidiary of the Acquirer (or a directly or indirectly wholly-owned subsidiary of a holding company of the Acquirer) (**Acquirer Nominee**) to acquire all of the Scheme Shares under the Scheme by giving written notice to the Company of the relevant subsidiary at least five Business Days before the First Court Date. If the Acquirer nominates an Acquirer Nominee to acquire all of the Scheme Shares pursuant to the Scheme Implementation Agreement, the Acquirer will procure that the Acquirer Nominee completes the acquisition of the Scheme Shares, and the Acquirer will pay the Consideration on behalf of the Acquirer Nominee, each in accordance with the terms of the Scheme Implementation Agreement and the Deed Poll.

## 2. CONDITIONS

- 2.1 **Conditions:** The implementation of the Scheme is conditional in all respects on:
- (a) all of the Conditions having been satisfied or, if capable of waiver, waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date;
  - (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their respective terms before 8.00am on the Implementation Date; and
  - (c) such other conditions made or required by the Court under section 236(1) and 237 of the Companies Act and agreed to in writing by the Company and the Acquirer in accordance with clause 3.2 of the Scheme Implementation Agreement having been satisfied or waived (to the extent capable of waiver) before 8.00am on the Implementation Date.

## 3. PAYMENT OF CONSIDERATION INTO TRUST ACCOUNT

- 3.1 **Obligation to pay Consideration into Trust Account:** Subject to:
- (a) the Scheme Implementation Agreement not having been terminated; and
  - (b) the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(e) to 3.1(g) of the Scheme Implementation Agreement),

the Acquirer must, by no later than 5.00pm on the Business Day before the Implementation Date, deposit, or procure the deposit of, in immediately available cleared funds an amount equal to the aggregate amount of the Consideration payable to the Scheme Shareholders in a New Zealand dollar denominated trust account operated by LINK and notified by LINK to the Acquirer no later than 5.00pm on the Business Day falling at least five Business Days before the Implementation Date (the **Funds** and that account, the **Trust Account**).



**3.2 Trust Account:**

- (a) Subject to clauses 3.2(b), 5.4, 5.5 and 5.6, the Trust Account will be held and operated by LINK on the basis that the Funds are held on trust for the Acquirer and to its order, such that only the Acquirer may direct how the Funds will be paid from the Trust Account.
- (b) Clause 3.2(a) is subject to a standing written direction from the Acquirer to the Company and to LINK to make payment of the Consideration to Scheme Shareholders in accordance with this scheme plan upon transfer of the Scheme Shares to the Acquirer under clause 4.1(c).
- (c) The details of the Trust Account will be provided to the Acquirer by (or on behalf of) LINK not less than five Business Days before the Implementation Date.

**3.3 Interest:** Any interest earned on the amounts deposited by the Acquirer into the Trust Account is payable to the Acquirer as directed by the Acquirer, less any bank fees or other third party costs or withholdings or deductions required by law.

**3.4 Scheme not implemented: If**

- (a) the Scheme is not implemented for any reason by 5.00pm on the Implementation Date; or
- (b) this Scheme becomes void under clause 7.5,

LINK will immediately repay the Funds to the Acquirer less any bank fees or other third party costs or withholdings or deductions required by law.

**4. IMPLEMENTATION OF THE SCHEME**

**4.1 Implementation obligations:** Subject to:

- (a) the Scheme becoming Unconditional (to be confirmed to LINK by written notice from the Acquirer and the Company prior to 9.00am on the Implementation Date, which written notice must be so given immediately after 8.00am on the Implementation Date upon the conditions in clause 2 being satisfied); and
- (b) the Consideration having been deposited into the Trust Account in accordance with clause 3.1,

commencing at 9.00am on the Implementation Date, the following steps will occur sequentially:

- (c) without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to the Acquirer or, if nominated pursuant to clause 1.5, the Acquirer Nominee, and the Company must enter, or procure that LINK enters, the name of the Acquirer or, if nominated pursuant to clause 1.5, the Acquirer Nominee in the Register in respect of all of the Scheme Shares; and
- (d) in accordance with the direction set out in clause 3.2(b), subject to compliance in full with clause 4.1(c), the Company must instruct LINK to pay or procure the payment from the Trust Account of the Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Register on the Record Date in accordance with clause 5.



## 5. PAYMENT OF THE CONSIDERATION

5.1 **Method of payment:** The payment under clause 4.1(d) will be satisfied by:

- (a) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable LINK and the Company to make payments of New Zealand dollars by electronic funds transfer, LINK must pay the Consideration in New Zealand dollars to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder;
- (b) where a Scheme Shareholder has not, prior to the Record Date, provided bank account details to enable LINK and the Company to make payments of New Zealand dollars by electronic funds transfer, the following and clause 5.7 will apply. Where a Scheme Shareholder with a Registered Address outside of New Zealand has, prior to the Record Date, provided sufficient written instructions (to LINK's satisfaction) to enable LINK to make payment in a currency other than New Zealand dollars (and LINK is able to make payment in that currency), LINK must pay the Consideration (less any applicable costs, exchange rate spread and fees) to the Scheme Shareholder by electronic funds transfer of the relevant amount in the applicable currency to the bank account nominated by that Scheme Shareholder; or
- (c) where a Scheme Shareholder has not provided the information and/or taken the steps contemplated by clauses 5.1(a) or 5.1(b) to enable payment to be made to such Scheme Shareholder in a manner contemplated by one of those clauses (or if an electronic payment to such Scheme Shareholder is rejected by the recipient bank) LINK must retain the Consideration owed to that Scheme Shareholder in the Trust Account to be claimed by the Scheme Shareholder in accordance with clause 5.5.

If a Shareholder has given more than one payment direction, then the later direction in time of receipt will be followed.

5.2 **Joint holders:** In the case of Scheme Shares held in joint names:

- (a) the Consideration is payable to the bank account nominated by the joint holders or, at the sole discretion of the Company, nominated by the holder whose name appears first in the Register as at the Record Date; and
- (b) any other document required to be sent under this scheme plan will be sent to either, at the sole discretion of the Company, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

5.3 **Surplus in Trust Account:** To the extent that, following satisfaction of the obligations under clause 4.1(d), there is a surplus in the Trust Account, LINK must pay that surplus, less:

- (a) any amount retained under clauses 5.1(c) or 5.6(b); and
- (b) any bank fees or other third party costs or withholdings or deductions required by law,

to the Acquirer in accordance with the Acquirer's written instructions to LINK.

5.4 **Holding on trust:** The Company must, in respect of any monies retained by LINK pursuant to clauses 5.1(c) or 5.6(b), instruct LINK to hold such monies in the Trust Account on trust for the





relevant Scheme Shareholders for a period of 24 months and thereafter, subject to clause 5.5, to pay any remaining money in the Trust Account to the Company.

5.5 **Unclaimed monies:** During the period of 24 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder that has not received payment of the Consideration in accordance with clause 5.1(a) or 5.1(b), LINK must, if such Scheme Shareholder has taken the necessary steps required to effect payment to such Scheme Shareholder in a manner contemplated by clause 5.1(a) or 5.1(b), pay to that Scheme Shareholder the Consideration held on trust for that Scheme Shareholder in a manner contemplated by clause 5.1(a) or 5.1(b) (or in any other manner approved by LINK and agreed to by that Scheme Shareholder).

5.6 **Orders of a court or Government Agency:** Notwithstanding any other provision of this scheme plan, if written notice is given to the Company on or prior to the Record Date of an order or direction made by a court of competent jurisdiction or a Government Agency that:

- (a) requires Consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 4.1(d), the Company will be entitled to procure, and the Acquirer will be deemed to have instructed LINK to ensure, that provision of that Consideration is made in accordance with that order or direction; or
- (b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 4.1(d), or the payment of such Consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Consideration) will be retained in the Trust Account until such time as provision of the Consideration to the Scheme Shareholder in accordance with clause 4.1(d) or clause 5.5 (as applicable) is permitted by that order or direction or otherwise by law, and such provision or retention (as the case may be) will constitute the full discharge of the Acquirer's and the Company's obligations under clause 4.1(d) with respect to the amount so provided or retained.

5.7 **Exchange rate:** If a Scheme Shareholder elects to be paid in a currency other than New Zealand dollars, the conversion of the Consideration from New Zealand dollars into the relevant currency will be undertaken in a manner and at an exchange rate determined by LINK (in LINK's discretion) and neither the Acquirer nor the Company will be responsible for, or have any liability of any nature, in connection with that conversion.

## 6. DEALING IN SHARES

### 6.1 Recognition of dealings:

- (a) Following the sealing of the Final Orders, the Company will advise NZX of the grant of the Final Orders and, once known, the Trading Halt Date and Record Date and use its reasonable endeavours to procure that the NZX suspend trading in the Shares from the close of trading on the Trading Halt Date.

(b) The Company must not accept for registration, nor recognise for any purpose (except a transfer pursuant to this scheme plan and any subsequent transfer by the Acquirer or its successors in title), any Share transfer or Share transmission application or other similar



request received after 7.00pm on the Record Date or received prior to such time but not in registrable or actionable forms.

**6.2 Register:**

- (a) The Company must register registrable transmission applications or registrable transfers of Shares received prior to the close of trading on the Trading Halt Date before 7.00pm on the Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires the Company to register a transfer that relates to a transfer of Shares on which the Company has a lien.
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them, after 7.00pm on the Trading Halt Date otherwise than pursuant to this scheme plan, and any attempt to do so will have no effect and the Company and the Acquirer are entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Consideration, but subject to the requirements of the NZX Listing Rules, the Company must maintain the Register in accordance with the provisions of this clause 6.2 until the Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Consideration.
- (d) From 7.00pm on the Record Date, each entry that is current on the Register, will cease to have effect except as evidence of entitlement to the Consideration in respect of the Scheme Shares relating to that entry.
- (e) As soon as possible on the first Business Day after the Record Date and in any event by 7.00pm on that day, the Company must make available to the Acquirer in the form the Acquirer reasonably requires, details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Register on the Record Date.

**7. GENERAL PROVISIONS**

**7.1 Amendments to Consideration:** The Acquirer may increase the Consideration by written notice at any time to the Company prior to the Scheme Meeting, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to the date on which the Acquirer is required to deposit the aggregate Consideration in the Trust Account under clause 3.1.

**7.2 Title to and rights in Scheme Shares:**

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this scheme plan to the Acquirer (or, if nominated pursuant to clause 1.5, the Acquirer Nominee) will, at the time of transfer of them to the Acquirer or, if applicable, the Acquirer Nominee, vest in the Acquirer or the Acquirer Nominee (as applicable) free from all Encumbrances and free from any restrictions on transfer of any kind.

- (b) Each Scheme Shareholder is taken to have warranted to the Acquirer or, if nominated pursuant to clause 1.5, the Acquirer Nominee on the Implementation Date that all their



Scheme Shares (including any rights and entitlements attaching to those Shares) which are transferred under this scheme plan will, at the time of transfer, be fully paid and free from all Encumbrances and restrictions on transfer of any kind, and that the Scheme Shareholder has full power and capacity to transfer the Scheme Shareholder's Shares to the Acquirer or the Acquirer Nominee (as applicable) together with any rights and entitlements attaching to those Shares.

7.3 **Authority given to the Company:** Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date irrevocably appoints the Company as the Scheme Shareholder's attorney and agent for the purpose of enforcing the Deed Poll against the Acquirer and the Acquirer Nominee (if applicable) (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints the Company as the Scheme Shareholder's attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and the Company, for itself and on behalf of each of its directors, accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 7.3 to one or more of the Company's directors or senior executives.

7.4 **Binding effect of Scheme:**

- (a) The Scheme binds:
  - (i) the Company;
  - (ii) the Acquirer;
  - (iii) the Acquirer Nominee (if applicable); and
  - (iv) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting).
- (b) In the event of any inconsistency, this scheme plan overrides the constitution of the Company.

7.5 **When this Scheme becomes void:** If the Scheme has not become Unconditional on or before the End Date, or if the Scheme Implementation Agreement is terminated in accordance with its terms at any time, this Scheme Plan is immediately void and of no further force or effect (other than clauses 3.3 and 3.4).

7.6 **No liability when acting in good faith:** Each Scheme Shareholder agrees that none of the directors, officers, employees or advisers of the Company or the Acquirer will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.

7.7 **Governing law:** This scheme plan is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this scheme plan. The parties irrevocably waive any objection to the



venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

7.8 **Service of process:** The Acquirer appoints Matthew Olsen of Mayne Wetherell as its agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this agreement and will ensure that at all times prior to the Implementation Date or termination of this agreement, Mayne Wetherell or a replacement appointed by the Acquirer and approved by the Company, is authorised and able to accept service of process and other documents on its behalf in New Zealand.

7.9 **Successor obligations:** To the extent that any provision of the Scheme or this scheme plan imposes any obligation on the Acquirer or the Company that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of the Acquirer or the Company (as applicable) in which case the obligation will be satisfied as if performed by the Acquirer or the Company (as applicable).

