

Dated

4 October

2023

DIGCOM UK HOLDINGS LIMITED

and

SMOOVE PLC

**CO-OPERATION
AGREEMENT**

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Between

- (1) **Digcom UK Holdings Limited** (No. 12829486) whose registered office is at 85 Great Portland Street, First Floor, London, England, W1W 7LT (**Bidco**); and
- (2) **Smooove PLC** (No. 07466574) whose registered office is at Masters Court, Church Road, Thame, Oxfordshire, England, OX9 3FA (**Smooove**),

together referred to as the **Parties** and each as a **Party** to this Agreement.

Recitals

- (A) Bidco and Smooove propose to announce a recommended cash acquisition of Smooove by Bidco, an indirect subsidiary undertaking of PEXA Group Limited (**PEXA**) (**Acquisition**) on the terms and subject to the conditions set out in the Announcement (as defined below).
- (B) The Parties intend the Acquisition to be implemented by means of the Scheme (as defined below), provided that as set out in the Announcement, Bidco reserves the right, if the Panel consents, to elect to implement the Acquisition by means of an Offer.
- (C) The Parties have agreed to enter into this Agreement to set out their respective rights, obligations and commitments to regulate the basis on which they are willing to implement the Acquisition.

It is agreed as follows:

1 Definitions and interpretation

- 1.1 In this Agreement (including the Recitals and the Schedules other than Schedule 1), each of the following words and expressions has the following meanings unless expressly stated otherwise:

Acceptance Condition means the acceptance condition to the Offer;

Acquisition has the meaning given in Recital A;

Acquisition Documents means: (i) if the Acquisition is to be implemented by way of a Scheme, the Scheme Document; or (ii) if the Acquisition is to be implemented by way of an Offer, the Offer Document;

Agreed Switch has the meaning given in clause 6.1(a);

Agreement means this co-operation agreement;

Announcement means the announcement of Bidco's firm intention to make an offer for Smooove in the agreed form set out in Schedule 1;

Bidco Directors means the directors of Bidco from time to time;

Business Day means a day, other than a Saturday or Sunday, on which banks are open for general business in London and Melbourne;

CLC means the Council for Licensed Conveyancers;

CLC Condition means the Condition set out in paragraph 3(A) of Part A of Appendix 1 to the Announcement;

Clearance(s) means all consents, clearances, permissions, waivers and/or filings that are required and/or (following consultation between the Parties) expedient in order to satisfy the Regulatory Conditions and all waiting periods that may need to have expired, from or under the laws, regulations or practices applied by any relevant Regulatory Authority in connection with the implementation of the Acquisition, to satisfy the Regulatory Conditions and any reference to Clearances having been satisfied shall be construed as meaning that the foregoing have been obtained or, where appropriate, made or expired in accordance with the relevant Regulatory Condition;

Code means the City Code on Takeovers and Mergers;

Companies Act means the Companies Act 2006 (as amended from time to time);

Competing Proposal means:

- (a) an offer (including a partial, exchange or tender offer and any revised offer), merger, acquisition, scheme of arrangement, reverse takeover, whitewash transaction and/or business merger (or the announcement of a firm intention to do the same), the purpose of which is to acquire, directly or indirectly, 30% or more of the issued or to be issued share capital of Smoove (when aggregated with any shares already held by the acquirer and any person acting or deemed to be acting in concert with the acquirer) or any arrangement or series of arrangements which results in any party acquiring, consolidating or increasing control (as defined in the Code) of Smoove (in each case, whether or not subject to the satisfaction of waiver of any pre-conditions);
- (b) the acquisition or disposal, demerger or reorganisation, directly or indirectly, of all or a significant proportion (being 25% or more) of the business, assets and/or undertakings of the Smoove Group calculated by reference to any of its revenue, profits or value taken as a whole (or the announcement of a firm intention to do the same); or
- (c) any other transaction which would be alternative to, or inconsistent with, or would be reasonably likely materially to preclude, impede or delay or prejudice the implementation of the Acquisition,

in each case which is not effected by Bidco (or a person acting in concert with Bidco) or at Bidco's direction, whether implemented in a single transaction or a series of transactions and whether conditional or otherwise;

Conditions means:

- (a) for so long as the Acquisition is being implemented by means of the Scheme, the conditions to the implementation of the Acquisition (including the Scheme) as set out in Appendix 1 of the Announcement and to be set out in the Scheme Document; and
- (b) for so long as the Acquisition is being implemented by means of a Takeover Offer, the conditions referred to in (a) above, as amended by replacing the Scheme Conditions with the Acceptance Condition,

in each case as may be amended by Bidco with the consent of the Panel and **Condition** shall be construed accordingly;

Confidentiality Agreement means the confidentiality agreement dated 9 August 2023 between Smoove and PEXA;

Court means the High Court of England and Wales;

Court Meeting means the meeting of the holders of Scheme Shares (and any adjournment, postponement or reconvening thereof) to be convened under section 896 of the Companies Act for the purpose of considering, and if thought fit, approving (with or without modification), the Scheme;

Court Sanction Hearing means the Court hearing to sanction the Scheme under section 899 of the Companies Act (or any adjournment or postponement thereof);

Effective Date means the date upon which either:

- (a) the Scheme becomes effective in accordance with its terms; or
- (b) if Bidco elects to implement the Acquisition by means of an Offer, the Offer becoming or being declared unconditional in accordance with the requirements of the Code;

FCA means the Financial Conduct Authority;

General Meeting means the general meeting of Smoove Shareholders (and any adjournment thereof) to be convened in connection with the Scheme for the purpose of considering, and, if thought fit, approving, the Resolutions;

Law means any applicable statutes, common law, rules, ordinances, regulations, codes, orders, judgments, injunctions, writs, decrees, directives, governmental guidelines or interpretations having the force of law or bylaws, in each case, of a Regulatory Authority;

Long Stop Date means the date set out in the Announcement by which the Scheme must become effective (or such other later date as may be agreed by the Parties, in accordance with this Agreement and the Code and, if required, the Court and the Panel may allow);

Offer means, in the event that Bidco exercises its right, as set out in the Announcement, to elect to implement the Acquisition by means of a takeover offer within the meaning of section 974 of the Companies Act, such offer, including any subsequent revision, amendment, variation, extension or renewal;

Offer Document means an offer document (including any form of acceptance) published by or on behalf of Bidco in connection with any Offer, including (as the context requires) any revised offer document;

Offer Price means 54 pence in cash being offered by Bidco in consideration for the acquisition of each Scheme Share under the terms of the Acquisition;

Panel means the Panel on Takeovers and Mergers in the UK;

PEXA means PEXA Group Limited, an Australian public company limited by shares with company number 629193764 whose registered office is Docklands, Victoria 3008, Australia;

Recipient has the meaning given in clause 9.3;

Regulatory Authority means any merger control authority, any court or competition, antitrust, national, supranational or supervisory body or other government, governmental, trade or regulatory agency or body, in each case in any jurisdiction;

Regulatory Conditions means the Conditions set out in sub-paragraphs 3(A) and 3(B) of Part A of Appendix 1 to the Announcement;

Relevant Third Party has the meaning given in clause 12.4(a);

Representative has the meaning given in clause 9.3;

Resolutions means such shareholder resolution(s) of Smoove as are necessary to approve, implement and effect the Scheme and Acquisition;

Responsible Persons means the Bidco Directors, those directors of PEXA taking responsibility as set out in the Offer Document, and, to the extent relevant, any other person required by the Panel pursuant to Rule 19.2 of the Code to take responsibility for the information in the Scheme Document for which an offeror is required to accept responsibility under the Code;

RIS means an information service authorised from time to time by the FCA for the purpose of disseminating regulatory announcements;

Resolutions(s) has the meaning given to it in the Announcement;

Scheme means the scheme of arrangement under Part VIII of the Companies Act by means of which the Parties intend to implement the Acquisition including any subsequent revision, modification or amendment either agreed upon between the Parties, or approved or imposed by the Court and agreed to on behalf of the Parties;

Scheme Conditions means the Conditions set out in paragraph 2(A), (B) and (C) of Part A of Appendix 1 to the Announcement;

Scheme Document means the circular relating to the Scheme to be dispatched to Smoove Shareholders, setting out, among other things, the full terms and conditions to the implementation of the Scheme as well as the Scheme itself and containing the notices of the Court Meeting and the General Meeting;

Scheme Order means the order of the Court sanctioning the Scheme in accordance with the Companies Act;

Scheme Sanction Condition means the Condition set out in paragraph 2(C) of Part A of Appendix 1 to the Announcement;

Scheme Shareholders has the meaning given to it in the Announcement;

Scheme Shares has the meaning given to it in the Announcement;

Scheme Voting Record Time has the meaning given to it in the Announcement;

Smoove Board Recommendation means the unanimous and unqualified recommendation of the Smoove Directors to the Smoove Shareholders to vote in favour of the Scheme at the Court Meeting and the Resolutions at the General Meeting, or if Bidco proceeds by way of the Offer, to accept the Offer (as the case may be), including the statement in the Announcement that the Smoove Directors intend to make such recommendation;

Smooove Board Recommendation Change means:

- (a) any failure to include the Smooove Board Recommendation in the Scheme Document and (if different) the circular convening the General Meeting, or where a Switch has occurred, the Smooove Directors do not consent to the Smooove Board Recommendation being included in the Offer Document;
- (b) any announcement by Smooove:
 - (i) that it will not convene the Court Meeting or General Meeting (except where a Switch has occurred);
 - (ii) that the Smooove Directors no longer intend to make the Smooove Board Recommendation or intend adversely to modify or qualify such recommendation or (except where a Switch has occurred) no longer intend to publish the Scheme Document; or
 - (iii) that it does not intend to post the Scheme Document or (if different) the document convening the Court Meeting or the General Meeting (except where a Switch has occurred);
- (c) any withdrawal (which, for the avoidance of doubt, shall include the Smooove Directors publicly recommending a third party firm intention to make an offer for all or part of the issued and to be issued share capital of Smooove (whether including or excluding any Smooove Shares held in treasury)), adverse qualification or adverse modification of the Smooove Board Recommendation (including an announcement that the Smooove Directors intend to do so) without Bidco's prior written consent;
- (d) if a third party makes an announcement pursuant to Rule 2.7 of the Code in respect of the issued and to be issued share capital of Smooove which is unanimously recommended by the Smooove Directors;
- (e) if Smooove makes an announcement that it will delay the convening of, or will adjourn, the Court Meeting or the General Meeting to a date which is later than the latest date permitted by Condition 2(A)(ii) or Condition 2(B)(ii) of Part A respectively in each case without the consent of Bidco, except where such delay or adjournment is for reasons outside Smooove's control; or
- (f) if, after approval of the Scheme at the Court Meeting and the Resolutions and the General Meeting, Smooove announces that it will not implement the Scheme (other than:
 - (i) in connection with an announcement of an offer or revised offer by Bidco for Smooove;
 - or (ii) because a Condition to the Acquisition has become incapable of fulfilment);

Smooove Directors means the directors of Smooove from time to time;

Smooove Group means Smooove and its group undertakings from time to time and **member of the Smooove Group** shall be construed accordingly;

Smooove Shareholders means the holders of Smooove Shares from time to time;

Smooove Shares means the ordinary shares of 0.4 pence each in the capital of Smooove from time to time; and

Switch has the meaning given in clause 6.1.

1.2 Interpretation

- (a) In this Agreement, except where the context otherwise requires:
- (i) a reference to this Agreement includes any Recitals and Schedules to it and references to clauses and Schedules are to clauses of, and the schedules to, this Agreement unless the context requires otherwise;
 - (ii) a reference to a time of day is to London time;
 - (iii) a reference to a day (including within the defined term **Business Day**) means a period of 24 hours ending at midnight;
 - (iv) any period of time is calculated exclusive of the day from which the time period is expressed to run or the day upon which the event occurs which causes the period to start running;
 - (v) a reference to a statute, instrument or statutory provision is a reference to it as amended, extended, re-enacted, incorporated or reproduced from time to time and to any subordinate legislation made under it;
 - (vi) the words **acting in concert** shall be construed in accordance with the Code;
 - (vii) a reference to a **person** includes any company, partnership or unincorporated association, government, state, state agency, (whether or not having separate legal personality) and includes a reference to that person's legal personal representatives, successors and permitted assigns;
 - (viii) a reference to **writing** or **written** means any method of reproducing words in a legible form and shall include email but shall exclude writing in a transitory form;
 - (ix) the words and phrases **includes, including, in particular** (or any terms of similar effect) shall not be construed as implying any limitation and general words shall not be given a restrictive meaning because they are preceded or followed by particular examples;
 - (x) a reference to the singular include the plural and vice versa; and
 - (xi) a reference to the termination of this Agreement includes a reference to its expiry by effluxion of time.
- (b) The headings in this Agreement do not affect its interpretation.
- (c) The *ejusdem generis* principle of construction shall not apply to this Agreement. Accordingly, general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class of acts, matters or things or by examples falling within the general words.

1.3 Definitions incorporated from Companies Act 2006

In this Agreement, words and expressions defined in the Companies Act bear the same meaning as in that Act unless expressly stated otherwise.

2 Publication of announcement and terms of Acquisition

- 2.1 The obligations of the Parties under this Agreement, other than clause 1, this clause 2.1 and clauses 8 to 13 (inclusive), shall be conditional on the release of the Announcement via a RIS at or before 8:00 a.m. on the date of this Agreement, or such later time and date as Bidco and Smoove may agree (and, where required by the Code, approved by the Panel). This clause 2.1 and clauses 1, 8 to 13 (inclusive) shall take effect upon execution of this Agreement.
- 2.2 The principal terms of the Acquisition shall be as set out in the Announcement, together with such other terms as may be agreed by Bidco and Smoove in writing (save in the case of an improvement to the terms of the Acquisition in favour of the Smoove Shareholders, which will be at the sole discretion of Bidco and, where required by the Code, approved by the Panel). The terms of the Acquisition at the date of posting of the Scheme Document shall be set out in the Scheme Document. Should Bidco elect, subject to the consent of the Panel and terms of this Agreement, to implement the Acquisition by way of the Offer, the terms of the Acquisition shall be set out in the announcement of the Switch and in the Offer Document in accordance with the provisions of clause 6.

3 Undertakings in relation to clearances and conditions

- 3.1 Bidco shall be primarily responsible for preparing all filings, submissions, correspondence and communications required to be sent or submitted to any Regulatory Authority for the purpose of obtaining the Clearances, provided that, subject to clause 3.5, Smoove shall be primarily responsible for preparing all filings, submissions, correspondence and communications required to be sent or submitted to the CLC for the purpose of obtaining the Clearance(s) required for the purpose of satisfying the CLC Condition.
- 3.2 Without prejudice to the generality of clause 3.1, Bidco shall:
- (a) submit to the relevant Regulatory Authorities (other than the CLC, in relation to which clause 3.2(b) shall apply) in final form but for any comments the relevant regulator may have on such drafts following the date of submission, any filings, notifications or submissions as are necessary (or as Bidco determines (acting in good faith) are advisable) in connection with the satisfaction of the Regulatory Conditions (other than the CLC Condition, in relation to which clause 3.2(b) shall apply), as soon as is reasonably practicable following the receipt of such necessary information from Smoove as reasonably requested by Bidco; and
 - (b) in relation to the CLC Condition, provide to Smoove all information, co-operation and other assistance as Smoove or the other relevant member(s) of the Smoove Group may require in order to submit to the CLC (in draft or in final form, as the case may be) any filings, notifications or submissions as are necessary (or as the parties agree (acting in good faith) are advisable) in connection with the Clearance(s) required for the satisfaction of the CLC Condition which Smoove or the other relevant member(s) of the Smoove Group has a responsibility to make under the relevant applicable Laws as soon as is reasonably practicable after the signing of this Agreement and in sufficient time to assist Smoove in complying with applicable mandatory time periods where it is necessary or expedient to do so to obtain such Clearance(s) from the CLC;
- 3.3 Bidco undertakes to Smoove and Smoove undertakes to Bidco (except to the extent that to do so would lead to legal privilege being lost or waived and except to the extent that to do so is prohibited by applicable Law or the relevant Regulatory Authority):
- (a) where reasonably requested by the other Party to:

- (i) provide, or procure the provision of, to the other Party (or their advisers) draft copies of all filings, notifications, submissions and material written communications to be made to any Regulatory Authority by or on behalf of that Party in relation to obtaining any Clearances, at such time as will allow the other Party a reasonable opportunity to provide comments on such filings, notifications, submissions and communications before they are submitted or sent, provided that it is reasonably practicable to do so;
 - (ii) incorporate such comments as are reasonable, where it is reasonably practicable to do so; and
 - (iii) provide the other Party (or its nominated advisers) with copies of all such filings, notifications, submissions and communications in the form submitted or sent, and with details of material non-written communications;
- (b) to give the other Party reasonable prior notice of all meetings and/or material telephone calls with any Regulatory Authority in connection with the obtaining of all requisite Clearances in relation to the implementation of the Scheme;
 - (c) to promptly notify the other Party of and provide copies of any material written communications from any Regulatory Authority in relation to obtaining any Clearances, and with details of material non-written communications;
 - (d) to provide as promptly as is reasonably practicable to the other Party such information, documents and assistance as the other may reasonably request for the purpose of obtaining any Clearances or responding to any enquiries or requests for information from any Regulatory Authority; and
 - (e) to provide as promptly as is reasonably practicable, and in any event in accordance with any relevant time limit, to any relevant Regulatory Authority such information as it may require including attending any meetings or material calls with the relevant Regulatory Authority as may be necessary.

3.4 Bidco undertakes to Smoove that it shall:

- (a) co-operate with Smoove and take all such steps as are reasonably necessary to implement the Acquisition substantially in the form contemplated by the Announcement, together with such other terms as may be agreed by the Parties in writing (save in the case of an improvement to the terms of the Acquisition in favour of the Smoove Shareholders, which will be at the sole discretion of Bidco and, where required by the Code, approved by the Panel);
- (b) use all reasonable efforts to achieve the satisfaction of the Regulatory Conditions in sufficient time so as to enable completion of the Acquisition to occur by the Long Stop Date; and
- (c) keep Smoove informed of the progress towards satisfaction (or otherwise) of the Regulatory Conditions and the obtaining of Clearances and, if Bidco is, or becomes, aware of any matter which might reasonably be considered to be material in the context of the satisfaction or waiver of any of the Regulatory Conditions, it will as soon as reasonably practicable make the substance of any such matter known to Smoove and, so far as it is aware of the same, provide such details and further information as Smoove may reasonably request.

- 3.5 In relation to the CLC Condition:
- (a) Bidco and Smoove shall be jointly responsible for determining the strategy for obtaining the Clearance(s) required for the satisfaction of the CLC Condition and shall co-operate with each other in good faith in connection with the same; and
 - (b) Bidco and Smoove (or the relevant other member(s) of the Smoove Group) shall be jointly responsible (except when Bidco, Smoove or the relevant other member(s) of the Smoove Group is required to do so by Law) for contacting and corresponding with the CLC in relation to such Clearance(s).
- 3.6 Nothing in clauses 3.1 to 3.4 (inclusive) or 3.10 below shall require any Party to disclose any competitively sensitive or confidential information or business secrets. Such information shall be communicated between Bidco's and Smoove's advisers on an "external adviser only" basis (with a non-confidential version of the relevant filing, notification, submission or communication being provided to the other Party).
- 3.7 Nothing in clauses 3.1 to 3.4 (inclusive) shall require the Smoove Directors to maintain their recommendation of the Acquisition or to adjourn or seek to adjourn (or refrain from adjourning or seeking to adjourn) any shareholder meeting or court hearing which has been or will be convened in relation to the Acquisition or require Smoove to make any change (or refrain from making any change) to the timetable for implementing the Acquisition.
- 3.8 Bidco will not knowingly do any act, matter or thing which would, or would be likely to have the effect of materially delaying satisfaction of any of the Regulatory Conditions or agree to do such act, matter or thing without the prior approval of Smoove.
- 3.9 Notwithstanding any other provision of this Agreement to the contrary, nothing contained in this Agreement shall require Bidco (or any person acting in concert or deemed to be acting in concert with Bidco) to take, or cause to be taken, any action with respect to the divestiture of assets, properties or businesses of the Bidco Group or the Smoove Group, or agree to any conditions, measures, commitments or undertakings or any other limitations on the business of the Bidco Group, except as otherwise agreed by the parties.
- 3.10 Without prejudice to the generality of the foregoing, and except to the extent that to do so is prohibited by Law:
- (a) in relation to any filings, submissions, material correspondence or material communications which are required or intended to be submitted or sent by Smoove (or any other relevant member(s) of the Smoove Group) to any Regulatory Authority in connection with obtaining any Clearances, Smoove shall (subject to Clause 3.6): (i) provide, or procure the provision of, draft copies of all such submissions, material correspondence and material communications intended to be sent to any Regulatory Authority in relation to obtaining any Clearances to Bidco and its legal advisers at such time as will allow Bidco a reasonable opportunity to review and provide comments on such submissions and communications before they are submitted or sent; (ii) not submit or send any such submission or communication to any Regulatory Authority without the prior written consent of Bidco (except where required to do so under Law or the requirements of the Regulatory Authority); and (iii) provide Bidco with copies of all such submissions and communications in the form finally submitted or sent;
 - (b) where reasonably requested by Bidco, Smoove shall make available appropriate Smoove representatives for meetings and telephone calls requested by any Regulatory

Authority in connection with the obtaining of all Clearances and the implementation of the Transaction; and

- (c) where reasonably requested by Bidco and where permitted by the Regulatory Authority concerned, Bidco shall have the right to nominate persons to attend meetings and participate in telephone conversations (and make oral submissions in such meetings and telephone calls) between Smoove, any other relevant member(s) of the Smoove Group and any Regulatory Authority in connection with the obtaining of all Clearances and the implementation of the Transaction.

4 Scheme Document

Where the Acquisition is being implemented by way of the Scheme, Bidco agrees to:

- (a) as soon as reasonably practicable provide to Smoove (and/or its legal advisors) all such information about itself and the Bidco Directors as may be reasonably requested and which is required for the purpose of inclusion in the Scheme Document (including any information required under applicable Law or the Code regarding the intentions of Bidco);
- (b) as soon as reasonably practicable provide all other assistance and access which may be reasonably required for the preparation of the Scheme Document (and any other document required by applicable Law or under the Code to be published in connection with the Scheme, including any supplemental circular), including access to, and ensuring that reasonable assistance is provided by, Bidco's relevant professional advisers; and
- (c) procure that the Responsible Persons accept responsibility, in the terms required by the Code, for all of the information in the Scheme Document relating to themselves (and their close relatives (as defined in the Code), connected persons or related trusts) and any statements of the opinion, belief or expectation of the Responsible Persons in relation to the Acquisition or Smoove following the completion of the Acquisition and any other information in the Scheme Document for which a bidder is required to accept responsibility under the Code.

5 Implementation of the Scheme

5.1 Where the Acquisition is being implemented by way of the Scheme, Bidco undertakes that, by 11.59 pm on the day before the Court Sanction Hearing, it shall procure that Bidco shall deliver a notice in writing to Smoove either:

- (a) confirming the satisfaction or waiver of all Conditions (other than the Scheme Sanction Condition); or
- (b) confirming its intention to invoke a Condition (if permitted by the Panel) and providing reasonable details of the event which has occurred (or failed to occur), or circumstances which have arisen, which Bidco reasonably considers entitles it to invoke the Condition (and, in the case of any Condition to which Rule 13.5 of the Code applies, setting out why Bidco considers such event or circumstances to be of material significance to Bidco in the context of the Offer for the purposes of Rule 13.5),

and, in circumstances where Bidco confirms the satisfaction or waiver of all Conditions (other than the Scheme Sanction Condition) as contemplated by clause 5.1(a), Bidco agrees that

Smooove shall be permitted to take all necessary steps to procure that the Court Sanction Hearing is duly held as soon as reasonably practicable thereafter.

5.2 If the Acquisition is being implemented by way of the Scheme (and to the extent that all Conditions (other than the Scheme Sanction Condition) have been satisfied or waived prior to or on the date of the Court Sanction Hearing):

- (a) Bidco undertakes to instruct Smooove's Court counsel to appear on its behalf at the Court Sanction Hearing;
- (b) Bidco shall undertake to the Court to be bound by the terms of the Scheme in so far as they relate to Bidco; and
- (c) Bidco shall provide such documentation or information as may reasonably be required by Smooove's Court counsel or the Court, in relation to such undertakings.

5.3 Bidco confirms that as at the date of this Agreement it is not aware of any circumstances which it considers would entitle the Bidder to treat any of the Conditions as incapable of satisfaction (applying the test set out at Rule 13.5 of the Code), provided that nothing in this clause 5.3 shall be construed as confirmation from or on behalf of Bidco that any Condition can be satisfied.

6 Election to make an offer

6.1 The Parties intend that the Acquisition will be implemented by way of the Scheme. However, Bidco shall be entitled, with the consent of the Panel, to implement the Acquisition by way of the Offer, rather than the Scheme (such election being a **Switch**) if:

- (a) Smooove provides its prior written consent (**Agreed Switch**), in which case clause 6.2 shall apply;
- (b) a third party announces a firm intention to make an offer for all or part of the issued and to be issued ordinary share capital of Smooove (whether including or excluding any Smooove Shares held in treasury);
- (c) Smooove announces its intention to proceed with a Competing Proposal for Smooove;
- (d) Smooove fails to post the Scheme Document and (if different) the document convening the Court Meeting or the General Meeting within 28 days of the Announcement;
- (e) a Smooove Board Recommendation Change occurs; or
- (f) without prejudice to clause 6.1(d), any of the circumstances set out in Note 2 on Section 8 of Appendix 7 of the Code applies with respect to the Acquisition unless, in the case of any adjournment of the Court Meeting or the General Meeting, such adjournment is required by applicable Law or a Regulatory Authority or is solely caused by logistical or practical reasons beyond Smooove's reasonable control.

6.2 In the event of any Agreed Switch, unless otherwise agreed with Smooove or required by the Panel, the Parties agree that:

- (a) the Acceptance Condition shall be set at 90% of the Smooove Shares to which the Offer relates (or such lesser percentage as may be determined by Bidco after, to the extent necessary, consultation with Smooove and the Panel, being in any case more than 50% of the Smooove Shares); and

- (b) Bidco shall keep Smoove informed, on a confidential basis within two Business Days following receipt of a written request from Smoove, of the number of Smoove Shareholders that have validly returned their acceptance or withdrawal forms or incorrectly or invalidly completed their acceptance or withdrawal forms, the identity of such shareholders and the number of Smoove Shares to which such forms relate.

7 Remuneration proposals

The Parties agree that the provisions of Schedule 2 with respect to certain employee-related matters shall be implemented in accordance with that Schedule.

8 Termination

8.1 Subject to clauses 8.2 and 8.3, this Agreement shall terminate with immediate effect and all rights and obligations of the Parties under the Agreement shall cease forthwith, if one or more of the following occurs:

- (a) if such termination is agreed in writing between the Parties, at any time prior to the Effective Date;
- (b) if the Announcement is not released at or before the time specified in clause 2.1 (unless prior to that time the Parties have agreed another time and date in accordance with that clause);
- (c) if the Acquisition is being implemented by way of Scheme, the Scheme is not approved by the requisite majority of the Scheme Shareholders at the Court Meeting or the Resolutions are not passed by the requisite majority of the Smoove Shareholders at the General Meeting;
- (d) if the Acquisition is being implemented by way of Scheme, the Court refuses to sanction the Scheme or grant the Scheme Order at the Court Sanction Hearing;
- (e) upon service of written notice by either Party to the other:
 - (i) if a Competing Proposal:
 - (A) completes, becomes effective, or is declared or becomes unconditional in all respects;
 - (B) is recommended in whole or in part by the board of Smoove Directors;
or
 - (ii) if a Smoove Board Recommendation Change occurs;
- (f) upon service of written notice by Bidco to Smoove:
 - (i) stating that any Condition which has not been waived is (or has become) incapable of satisfaction by the Long Stop Date and, notwithstanding that it has the right to waive such Condition, Bidco will not do so; or
 - (ii) stating that any Condition which is incapable of waiver has become incapable of satisfaction by the Long Stop Date,

in each case in circumstances where the invocation of the relevant Condition (or confirmation that the Condition is incapable of satisfaction, as appropriate) is permitted by the Panel;

- (g) if the Acquisition (whether implemented by way of the Scheme or Offer, as the case may be) is withdrawn, lapses or terminates on or prior to the Long Stop Date (other than where such withdrawal, lapse or termination is as a result of the exercise of Bidco's right to effect a Switch); or
- (h) unless otherwise agreed by Bidco and Smoove in writing, if the Effective Date has not occurred on or before the Long Stop Date.

8.2 Termination of this Agreement shall be without prejudice to the rights of any of the Parties which have arisen before termination.

8.3 The whole of this clause 8, clauses 9 to 13 (inclusive) and the related provisions of clause 1 shall survive termination of this Agreement.

9 Warranties and undertaking

9.1 Each Party severally warrants to the other Party on the date of this Agreement that:

- (a) it has the requisite power and authority to enter into and perform its obligations under this Agreement;
- (b) this Agreement constitutes its binding obligations in accordance with its terms;
- (c) the execution and delivery of, and performance of its obligations under, this Agreement will not:
 - (i) result in a breach of any provision of its constitutional documents;
 - (ii) result in a breach of, or constitute a default under, any instrument to which it is a party or by which it is bound; or
 - (iii) result in a breach of any order, judgment or decree or any court or governmental agency to which it is a party or by which it is bound.

9.2 Each Party shall have no claim against the other Party pursuant to clause 9.1 for breach of warranty after the Effective Date (without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement).

9.3 Each Party acknowledges and agrees that any information and/or assistance provided by any of the other Party's directors, officers, employees or advisers (each a **Representative**) to it and/or any other person acting in concert with either of them, and any of their respective directors, officers, employees or advisers (each a **Recipient**), whether before, on or after the date of this Agreement:

- (a) pursuant to the obligations of the relevant Party or any member of their respective groups under or otherwise in connection with this Agreement; or
- (b) in connection with the Acquisition,

shall in each case be (and have been) given on the basis that the relevant Representative shall not incur any liability, whether in contract, tort (including negligence) or otherwise, in respect of

any loss or damage that any of the Recipients may suffer as a result of the provision of any such information and/or assistance, save, in each case for loss or damage resulting from the fraud or fraudulent misrepresentation of the relevant Representative.

10 Notices

10.1 Requirements for notices

A notice (including any approval, consent or other communication) given in connection with this Agreement and the documents referred to in it must be in writing and must be given by one of the following methods:

- (a) by hand (including by courier or process server) to the address of the addressee; or
- (b) by pre-paid registered post (or airmail if posted from a place outside the United Kingdom) to the address of the addressee; or
- (c) by email to the email address of the addressee,

being the address or email address (as applicable) specified in clause 10.2 in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified, or to such other address in the United Kingdom, or marked for the attention of such other person, as the relevant Party may from time to time specify by notice given to the other Party in accordance with this clause.

10.2 Parties' contact details

The relevant address and specified details for each of the Parties at the date of this Agreement is as follows:

Bidco

Address: 85 Great Portland Street, First Floor, London W1W 7LT

For the attention of: [REDACTED]

Email: [REDACTED]

with a copy (which shall not constitute notice) to:

Address: Addleshaw Goddard LLP, Milton Gate, 60 Chiswell Street, London, EC1Y 4AG

Email: [REDACTED]@addleshawgoddard.com

Attention: [REDACTED]

Smoove

Address: Masters Court, Church Road, Thame, Oxfordshire OX9 3FA

For the attention of: [REDACTED]

Email: [REDACTED]

with a copy (which shall not constitute notice) to:

Address: Shoosmiths LLP, 1 Bow Churchyard, London EC4M 9DQ

Email: [REDACTED]

Attention: [REDACTED]@shoosmiths.com

A Party may change its address, provided that it gives the other Party not less than five Business Days' prior notice in accordance with this clause 10. Until the end of such notice period, service on either address shall remain effective.

10.3 Deemed receipt

Unless it is proved that it was received earlier, a notice is deemed to be received and therefore to have been given;

- (a) in the case of a notice given by hand (including by courier or process server), at the time when the notice is left at the relevant address;
- (b) in the case of a notice given by registered mail, one Business Day after posting; and
- (c) if sent by email when actually received by the intended recipient in readable form.

11 Entire Agreement

11.1 The provisions of this Agreement shall be supplemental to and shall not prejudice the terms of the Confidentiality Agreement, which shall remain in full force and effect notwithstanding the execution of this Agreement.

11.2 Without prejudice to the terms of the Announcement and the Acquisition Documents, this Agreement, together with the Confidentiality Agreement, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom.

11.3 Each Party confirms that, except as provided in this Agreement and the Confidentiality Agreement, in entering into this Agreement no Party has relied on any undertaking, representation or warranty which is not contained in this Agreement or the Confidentiality Agreement and no Party shall be under any liability or shall have any remedy in respect of any misrepresentation or untrue statement relating to the subject matter of this Agreement unless and to the extent that a claim lies under this Agreement or the Confidentiality Agreement.

11.4 Nothing in this Agreement shall limit any liability for (or remedy in respect of) fraud, fraudulent misstatement or fraudulent misrepresentation.

12 Miscellaneous

12.1 Assignment

No Party may assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, hold on trust or otherwise dispose of (in any manner whatsoever) the benefit of this Agreement or sub contract or delegate in any manner whatsoever its performance under this Agreement, without the prior written consent of the other Party, and any such purported dealing in contravention of this clause 12.1 shall be ineffective,.

12.2 Code

- (a) Nothing in this Agreement shall in any way limit the Parties' obligations under the Code, and any uncontested rulings of the Panel as to the application of the Code in conflict with the terms of this Agreement shall take precedence over such terms of this Agreement.
- (b) Nothing in this Agreement shall oblige:
 - (i) Smoove to take any action which the Panel determines would not be permitted by Rule 21.2 of the Code; or
 - (ii) Smoove or Smoove Directors to recommend an Offer or a Scheme proposed by Bidco.

12.3 Legal relationship

Nothing in this Agreement or any action taken by the Parties under it shall constitute any of the Parties a partner of any other.

12.4 Third party rights

- (a) Each of the persons to whom clause 9.3 applies, (each such person being a **Relevant Third Party**) may under the Contracts (Rights of Third Parties) Act 1999 enforce the terms of clause 9.3. This right is subject to:
 - (i) the rights of the Parties to rescind or vary this Agreement without the consent of any other person (save that any amendment, waiver or variation of clause 9.3 shall require the consent of the affected Relevant Third Party); and
 - (ii) the other terms and conditions of this Agreement.
- (b) Save for as set out in clause 12.4(a) above, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

12.5 Variation and waiver

- (a) No variation of this Agreement shall be effective unless it is in writing (which for this purpose, does not include email) and signed by, or on behalf of, each of the Parties. The expression **variation** includes any variation, supplement, deletion or replacement however effected.
- (b) No waiver of any right or remedy provided by this Agreement or by law shall be effective unless it is in writing (which for this purpose, does not include email) and signed by, or on behalf of, the Party granting it.
- (c) The failure to exercise, or delay in exercising, any right or remedy provided by this Agreement or by law does not:
 - (i) constitute a waiver of that right or remedy;
 - (ii) restrict any further exercise of that right or remedy; or
 - (iii) affect any other rights or remedies.

- (d) A single or partial exercise of any right or remedy does not prevent any further or other exercise of that right or remedy or the exercise of any other right or remedy.
- (e) Without prejudice to any other rights and remedies which a Party may have, each Party acknowledges and agrees that any breach by a Party of this Agreement could cause any other Party injury for which damages may not be an adequate remedy. In the event of a breach or threatened breach by a Party of any of the provisions of this Agreement, any other Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief (and none of the Parties shall contest the appropriateness or availability thereof) in any court of competent jurisdiction.

12.6 **Counterparts**

This Agreement may be executed in any number of counterparts and by each Party on separate counterparts, each of which when executed and delivered shall be an original, but all the counterparts together constitute one instrument. Delivery of an executed signature page of a counterpart by electronic transmission shall take effect as delivery of an executed counterpart of this Agreement.

12.7 **Time of the essence**

Except as otherwise expressly provided, time shall be of the essence of this Agreement in respect of any dates, times and periods mentioned throughout this Agreement and in respect of any dates and periods which may be substituted for them in accordance with this Agreement or by agreement in writing by the Parties.

12.8 **Severance**

- (a) If any provision or part of any provision of this Agreement is or becomes invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Agreement.
- (b) If any provision of this Agreement is or becomes invalid or unenforceable in any respect but would be valid and enforceable if some part of the provision were deleted, the provision in question shall apply with such deletion as may be necessary to make it valid and enforceable.
- (c) The Parties agree that, if the Panel determines that any provision of this Agreement that requires Smoove to take or not to take action, whether as a direct obligation or as a condition to any other person's obligation (however expressed), is not permitted by Rule 21.2 of the Code, that provision shall have no effect and shall be disregarded.

12.9 **Costs**

Each Party shall bear its own costs and expenses incurred in connection with the negotiation and preparation of this Agreement and any other documents referred to in this Agreement and any other documents which are ancillary or incidental to it.

12.10 **Further assurance**

Each Party shall, at its own cost, use reasonable endeavours to, or use reasonable endeavours to procure that any Relevant Third Party shall, do and/or execute and/or perform all such further deeds, documents, assurances, acts and things as may reasonably be required to give effect to this Agreement.

13 Governing law and dispute resolution

- 13.1 This Agreement and any dispute or claim arising out of or in connection with it or its existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English law.
- 13.2 Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction in relation to any dispute or claim arising out of or in connection with this Agreement or its existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims).
- 13.3 Each Party irrevocably waives any right that it may have to object to an action being brought in the courts of England, to claim that the action has been brought in an inconvenient forum, or to claim that the courts of England do not have jurisdiction.

Schedule 1
Announcement

Schedule 2

Employee incentives

Smooove and Bidco intend that the following arrangements and acknowledgments will, subject to the Effective Date occurring, apply to the Smooove Share Plans.

In the event that the Acquisition is effected as an Offer, references to the date of the Court Sanction Hearing and the Effective Date will be read as if they referred to the date on which the Offer becomes or is declared unconditional in all respects.

1 General

1.1 Smooove currently operates the following share plans and arrangements pursuant to which employees of Smooove hold rights to acquire, or interests in, Smooove Shares:

- (a) the ULS Technology plc Enterprise Management Incentive and Non Tax-Advantaged Share Option Plan (**EMI Plan 2014**);
- (b) the Smooove Plc Share Option Scheme (**EMI Plan 2023**);
- (c) the joint share ownership agreements (**JSOP**); and
- (d) the ULS Technology plc Share Incentive Plan (**SIP**).

1.2 Smooove also operates an employee benefit trust (**EBT**) which is used to settle awards under the Smooove Share Plans.

1.3 Bidco acknowledges that before the Effective Date, Smooove may continue to operate the Smooove Share Plans in accordance with their rules, Smooove's normal practice and any other applicable terms (including, without limitation, any remuneration rules or regulations).

1.4 Bidco and Smooove agree that:

- (a) the Scheme Record Time (as defined in the Announcement) shall take place at such a time after the date of the Court Sanction Hearing, to allow those participants in the Smooove Share Plans who acquire Smooove Shares on or before the date of the Court Sanction Hearing to have those Smooove Shares acquired by Bidco pursuant to the Scheme;
- (b) subject to Rule 21 of the Code, Smooove may amend the terms of the Smooove Share Plans if the Smooove Board or Smooove Remuneration Committee considers that such amendments are necessary or desirable to implement the Scheme, to facilitate the treatment of outstanding options or awards in connection with the Scheme, to facilitate the administration of the Smooove Share Plans or to obtain or maintain favourable tax treatment for participants, for Smooove or for any company in the Smooove Group;
- (c) Bidco and Smooove intend to jointly write to participants in the Smooove Share Plans (other than those holding Underwater Awards (as defined in paragraph 2.3 below) on, or as soon as practicable after, the posting of the Scheme Document to inform them of the impact of the Scheme on their options and awards and the proposals being made to them under Rule 15 of the Code; and

(d) the approval of Smoove Shareholders will be sought for an amendment to the articles of association of Smoove, the effect of which will be that any Smoove Shares issued on or after the Effective Date will be automatically transferred to, or to the order of, Bidco in exchange for the provision by Bidco of the same consideration payable per Smoove Share under the Scheme.

1.5 Bidco acknowledges that Smoove may make any submission to the Panel which it deems necessary to implement the arrangements referred to in this Schedule 2, having consulted with Bidco before making such submission and having provided Bidco with reasonable time to review and comment on any draft submission, and Bidco agrees to co-operate as soon as possible and in good faith in the making of any such submission.

2 Outstanding awards

2.1 Bidco and Smoove acknowledge that options outstanding under the EMI Plan 2014 and EMI Plan 2023 will, in consequence of the Acquisition and in accordance with participants' contractual rights under the rules of the EMI Plan 2014 and EMI Plan 2023, be or become exercisable for a specified period following the date of the Court Sanction Hearing.

2.2 Smoove confirms that:

- (a) the exercise price of some of the options under the EMI Plan 2014 is in excess of the offer price of 54 pence per Smoove Share; and
- (b) the exercise of certain other options under the EMI Plan 2023, and the vesting of the JSOP awards, is subject to a condition that requires the price per Smoove Share to be at least either 55 pence or 58.75 pence (the **Share Price Condition**); and
- (c) the Smoove Remuneration Committee has determined that it will not waive or vary the Share Price Condition.

2.3 Therefore, the parties expect that such options described in paragraphs 2.2(a) and 2.2(b) above will not be exercised, and the JSOP awards will not vest, in connection with the Acquisition (such options and JSOP awards being the **Underwater Awards**).

2.4 The parties agree that Bidco will not make appropriate proposals under Rule 15 of the Takeover Code to the holders of Underwater Awards.

2.5 As at the date of this Agreement, the maximum number of Smoove Shares subject to outstanding options and awards under the Smoove Share Plans (**Outstanding Awards**), and the number of Smoove Shares subject to Outstanding Awards that are expected to be exercised or vest in connection with the Acquisition, is as follows:

	Maximum number of Smoove Shares subject to Outstanding Awards	Number of Smoove Shares subject to options/awards expected to be exercised/vest
EMI Plan 2014	1,735,431	857,043
EMI Plan 2023	3,439,427	818,937
JSOP	1,274,510	0
TOTAL	6,449,368	1,675,980

2.6 Smoove confirms that other than the Outstanding Awards, there are no other outstanding options or other rights to acquire, or interests in, Smoove Shares held by employees in the Smoove Group.

3 Employee benefit trust

3.1 Smoove confirms that, as at the date of this Agreement, the EBT trustee holds 357,804 Smoove Shares in the trust fund (excluding the Smoove Shares subject to JSOP awards).

3.2 Smoove confirms that the holders of JSOP awards will sign deeds of transfer such that, with effect from the Court Sanction Hearing, their beneficial interest in the Smoove Shares they hold pursuant to the JSOP awards (being in aggregate 1,274,510 Smoove Shares) will be transferred to the EBT trustee.

3.3 Therefore, on the date of the Court Sanction Hearing, it is expected that the EBT trustee will hold 1,632,314 Smoove Shares in the trust fund which will be available to satisfy the exercise of options under the 2014 EMI Plan and the 2023 EMI Plan.

3.4 Bidco and Smoove agree that the trustee of the EBT will be requested to use such Smoove Shares that it holds to satisfy Outstanding Awards as far as possible. To the extent the EBT does not hold enough Smoove Shares to satisfy Outstanding Awards, the Outstanding Awards will be satisfied by newly issued Smoove Shares.

4 Cashless exercise

Smoove and Bidco agree that arrangements will be put in place to ensure that participants may exercise any Outstanding Awards on a “cashless basis” by giving an undertaking to pay the exercise price due to Smoove out of the consideration payable to them under the Acquisition. This means they will not be required to fund the exercise price up-front from their own funds.

5 SIP

5.1 Smoove confirms that, as at the date of this Agreement, Equiniti Share Plans Trustees Limited, as trustee of the SIP trust, holds 91,958 Smoove Shares on behalf of participants in the SIP and does not hold any other Smoove Shares.

5.2 The SIP trustee will continue to make monthly allocations of partnership shares and matching shares on the 10th day of each month (the Smoove Shares subject to such awards to be purchased by the SIP trustee in the market), until such date prior to the Court Sanction Hearing as made be determined by the Smoove Board.

5.3 No further awards will be made under the SIP following the Effective Date.

5.4 Bidco and Smoove acknowledge that, following receipt of the Scheme Document, the SIP trustee will seek instructions from the participants in the SIP as to how the SIP trustee should vote on the Resolutions at the Court Meeting and the General Meeting.

Executed as a deed by
Digcom UK Holdings Limited
acting by a director in the presence of

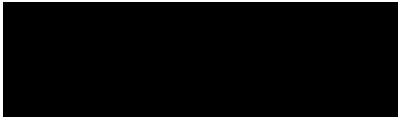
) [Redacted]
) [Redacted]
) Director

[Redacted]
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Signature of witness

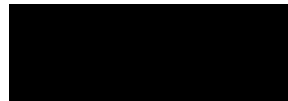
Name [Redacted]
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Address [Redacted]
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Executed as a deed by **Smooove PLC**
acting by two directors or by a director and its
secretary

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) Director

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) Director/Secretary