

## ASX Announcement

29 September 2023

### Symbio receives non-binding and conditional competing proposal from Aussie Broadband

Symbio Holdings Limited (ASX:SYM, “**Symbio**” or “**the Company**”) advises that it has today received a non-binding indicative conditional proposal from Aussie Broadband Limited (ASX:ABB or “**Aussie Broadband**”) to acquire all of the shares in Symbio via a scheme of arrangement (“**ABB Indicative Proposal**”).

Under the terms of the ABB Indicative Proposal, Symbio shareholders would receive \$2.36 in cash and 0.192 Aussie Broadband shares for each Symbio share (75% Cash and 25% Scrip Structure) as a default consideration. Based on the closing price of Aussie Broadband shares of \$4.11 per share on 28 September 2023, the ABB Indicative Proposal values Symbio at \$3.15<sup>1</sup> per share (“**ABB Proposed Purchase Price**”).

In addition, Symbio shareholders would have the ability to receive the consideration in cash or scrip by way of a mix and match facility, where each Symbio shareholder will be able to choose to maximise either cash or ABB scrip, subject to a scale back as appropriate. The offer also contemplates a fully franked dividend to Symbio shareholders prior to scheme implementation of up to \$0.35 per ordinary share (“**Special Dividend**”), implying a release of franking credits of up to \$0.15 per share.<sup>1</sup>

The ABB Proposed Purchase Price represents a premium to Symbio’s trading price prior to the announcement of the Superloop proposal on 31 July 2023 (“**Undisturbed Share Price**”) as detailed below, and a 10.5% premium to Superloop’s revised indicative proposal disclosed to the market on 22 September 2023 of \$2.85 per share (“**Superloop Revised Indicative Proposal**”).

	Symbio Undisturbed Share Price (as at 31 July 2023)	Premium represented by ABB Proposed Purchase Price of \$3.15 per share	Premium represented by ABB Proposed Purchase Price (including franking credits of \$0.15) (\$3.30 per share)
Close Price	\$2.38	32.4%	38.7%
1 Month VWAP	\$2.02	56.3%	63.8%
3 Month VWAP	\$1.94	62.6%	70.3%

The ABB Indicative Proposal is subject to the following conditions:

- Completion of confirmatory due diligence satisfactory to Aussie Broadband;
- Upon public announcement of the ABB Indicative Proposal, a statement from the Symbio Board that they intend to recommend the ABB Indicative Proposal should it be presented in a binding form
- Aussie Broadband and Symbio entering into a Scheme Implementation Deed (“**SID**”) in mutually acceptable form (which would be expected to contain customary deal protection mechanisms);
- Unanimous recommendation of the Symbio Board and a commitment from all Symbio directors to vote any Symbio shares they hold or control in favour of the ABB Indicative Proposal (subject to customary carve outs regarding a superior proposal and the independent expert’s opinion); and
- That Symbio and Aussie Broadband enter into an exclusivity and process deed on or before 29 September 2023 and that Symbio terminates its discussions with Superloop.

ABB’s intention is to fund the cash component of the transaction via a new debt facility and it has provided Symbio with a highly confident letter from a reputable financial institution.

The Board of Symbio and its advisers have undertaken a review of the ABB Indicative Proposal. Given the value premium of the ABB Indicative Proposal relative to the value of the consideration offered under

<sup>1</sup> The ABB Proposed Purchase Price would be reduced by the amount of the Special Dividend.

the Superloop Revised Indicative Proposal and the limited diligence conditionality, the Symbio Board on balance considers it to be superior.

The Symbio Board has:

- Provided notification of the ABB Indicative Proposal to Superloop;
- Entered into the exclusivity and process deed (**Exclusivity Deed**) to enable ABB to undertake a period of exclusive due diligence for 15 NSW business days following opening of the data room, which will occur today (**Exclusivity Period**); and
- Confirmed its intention to recommend the ABB Indicative Proposal, subject to entry into the SID, the findings of the independent expert and in the absence of a superior proposal.

Under the Exclusivity Deed, Symbio has agreed to (among other things) terminate discussions with other third parties in relation to any potential competing proposal, and adhere to customary "no shop", "no talk" and notification obligations.

Aussie Broadband will also be entitled to receive a work fee of \$1,350,000 in the event that Aussie Broadband executes and delivers a Scheme Implementation Deed reflecting the terms of the ABB Indicative Proposal and other market standard terms, to Symbio and Symbio fails to return a signed counterpart to Aussie Broadband within 4 NSW business days of delivery.

The Exclusivity Deed is appended to this announcement.

#### **Update on Superloop Updated Indicative Proposal**

Pursuant to the announcement made to the market on 22 September 2023, Symbio has continued to engage with Superloop in relation to its Revised Indicative Proposal.

Symbio notes that Superloop's Revised Indicative Offer is still subject to a number of conditions, including entering into of a scheme implementation agreement by 29 September 2023, which will not occur as a result of Symbio entering into exclusivity with Aussie Broadband.

There is no certainty at this stage that the ABB Indicative Proposal will result in a binding proposal.

In the meantime, shareholders **do not** need to take any action and the Board will update shareholders as appropriate

This announcement has been authorised for release by the Board.

**ENDS**

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# Exclusivity Deed

Dated 29 September 2023

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# Exclusivity Deed

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# Exclusivity Deed

## Details

<b>Parties</b>	<b>Aussie Broadband and Symbio</b>	
<b>Aussie Broadband</b>	Name	<b>Aussie Broadband Limited</b>
	ACN	132 090 192
	Address	3 Electra Avenue, Morwell VIC 3840
	Email	[REDACTED]
	Attention	[REDACTED]
<b>Symbio</b>	Name	<b>Symbio Holdings Limited</b>
	ACN	118 699 853
	Address	Level 4, 580 George Street, Sydney NSW 2000
	Email	[REDACTED]
	Attention	[REDACTED]
<b>Business Day place</b>	New South Wales	
<b>Recitals</b>	<b>A</b>	On 20 September 2023, the parties entered into a confidentiality deed governing the handling of confidential information disclosed by each party for the purpose of considering a potential transaction pursuant to which Aussie Broadband may acquire all of the issued shares of Symbio.
	<b>B</b>	On 29 September 2023, Aussie Broadband submitted a non-binding indicative proposal to acquire 100% of the share capital of Symbio (" <b>NBIO</b> ").
	<b>C</b>	The parties wish to continue discussions in relation to the NBIO and agree to exclusivity on the terms and conditions set out in this document.
	<b>D</b>	In particular, given Symbio has been the subject of a potential acquisition transaction for a reasonable time, being in respect of the proposal received from Superloop Limited on 1 August 2023, and which has since been declared a 'best and final offer', the Symbio Board considers that the exclusivity arrangements provided by this deed are appropriate having regard to the short period of exclusivity being offered to Aussie

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Broadband and would potentially enable the proposal from Aussie Broadband to progress to binding status.

# Exclusivity Deed

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

Words and phrases which are capitalised in this document have the meaning set out in clause 12.1.

#### 1.2 Interpretation

This document will be interpreted in accordance with the provisions of clause 12.2.

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### 2 Confidentiality Deed

The parties agree that the Confidentiality Deed continues to have full force and effect.

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### 3 Symbio's obligations

#### 3.1 Data Room

Subject to the terms of the Confidentiality Deed and the information sharing protocol referred to in that document, Symbio must procure that, as soon as reasonably practicable after execution of this deed, a virtual data room is made available to the Representatives of Aussie Broadband nominated by Aussie Broadband, which virtual data room must:

- (a) be substantially populated with the due diligence materials customary for a transaction of the nature of the Transaction and Symbio must provide Aussie Broadband with written notice once this has occurred;
- (b) provide for a facility for Aussie Broadband or its Representatives to request further information from Symbio during the Exclusivity Period and track the progress of responses to those requests; and
- (c) be populated with any information reasonably requested under clause 3.1(b) within a reasonable period.

#### 3.2 Scheme Implementation Deed

- (a) Symbio must prepare and procure that a complete first draft of the Scheme Implementation Deed is delivered to Aussie Broadband as soon as practicable after execution of this deed and, in any event, within 5 Business Days of the date of this Deed.
- (b) Symbio and Aussie Broadband agree that, during the Exclusivity Period, they will negotiate in good faith a Scheme Implementation Deed and any other transaction documents required to implement the Transaction.
- (c) Symbio and Aussie Broadband each acknowledge that this deed does not create a binding obligation on either party to proceed or to enter into



any documents in connection with the Transaction, and that the Transaction will not become binding upon either party until such time as the Scheme Implementation Deed is duly executed by each of them.

- (d) Symbio acknowledges that, as part of the Scheme Implementation Deed, Aussie Broadband will require the Symbio Board to, to the extent permitted by law:
- (i) unanimously recommend that Symbio's shareholders vote in favour of the Transaction, and
  - (ii) publicly state their intention to vote in favour of the Transaction in respect of any Symbio Shares owned or controlled by them,
- in each case, subject to:
- (iii) no Superior Proposal emerging; and
  - (iv) an independent expert concluding (and continuing to conclude) that the Transaction is in the best interests of Symbio's shareholders.

### 3.3 Intention to recommend Transaction

Symbio represents and warrants that as at the date of this deed, each of its directors has confirmed that he or she intends, upon, and subject to, entry into the Scheme Implementation Deed to:

- (a) unanimously recommend to Symbio's shareholders to vote; and
- (b) vote or procure that any Symbio Shares in which they have a relevant interest (as defined in section 608 of the Corporations Act) are voted,

in favour of any resolutions to implement a scheme of arrangement in relation to the Transaction, in the absence of a Superior Proposal and subject to an independent expert concluding (and continuing to conclude) that the scheme of arrangement is in the best interests of Symbio's shareholders.

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## 4 Exclusivity

### 4.1 Termination of existing discussions

- (a) Symbio represents and warrants in favour of Aussie Broadband that as at the date of this deed, each of Symbio, its Related Bodies Corporate and each of their Representatives has:
  - (i) terminated all other negotiations and discussions with each Third Party in relation to any actual, anticipated, proposed or potential Competing Proposal;
  - (ii) ceased the provision of any due diligence access and the making available of any non-public information in relation to Symbio and its business to any Third Party, where the due diligence access and provision of non-public information was for the purposes of, or related to, a potential Competing Proposal; and
  - (iii) required any Third Party to whom non-public information has been provided or made available to immediately return or destroy that non-public information in accordance with, and

subject to, any agreed terms of confidentiality, where the information was provided or made available for the purposes of, or related to, a potential Competing Proposal.

- (b) During the Exclusivity Period, Symbio agrees not to waive, and to use its reasonable endeavours to enforce in full, any standstill obligations of any Third Parties.

#### **4.2 No shop**

During the Exclusivity Period, Symbio must not, and must ensure that none of its Related Bodies Corporate and none of their Representatives, directly or indirectly:

- (a) solicit, invite, encourages or initiates any enquiries, discussions or proposals with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Proposal; or
- (b) communicate to any person an intention to do any of the things referred to in clause 4.2(a).

#### **4.3 No talk**

During the Exclusivity Period, Symbio must not, and must ensure that none of its Related Bodies Corporate and none of their Representatives, directly or indirectly:

- (a) participate in or continue any discussions or negotiations;
- (b) provide or make available any information (including by way of providing information and access to perform due diligence);
- (c) enter into any agreement, arrangement or understanding; or
- (d) communicate any intention to do any of those things,

in relation to, or which may reasonably be expected to lead to, a Competing Proposal, even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Symbio or any of its Representatives or the person has publicly announced the Competing Proposal.

#### **4.4 Notification of approaches**

During the Exclusivity Period, Symbio must notify Aussie Broadband and provide Aussie Broadband with all material details of the following actions promptly (and in any event within 24 hours) if:

- (a) Symbio receives any unsolicited approach with respect to any Competing Proposal; or
- (b) Symbio receives any request for information relating to Symbio or any of its Related Bodies Corporate or any of their respective businesses or operations or any request for access to any non-public information of Symbio or any of its Related Bodies Corporate or any of their respective businesses or operations, which Symbio has reasonable grounds to suspect may relate to a current or future Competing Proposal; or
- (c) a proposal is put to Symbio or any of its Related Bodies Corporate or any of their Representatives by any person to engage in any activity that would, if carried out, breach Symbio's obligations in clauses 4.2 or 4.3.

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## 5 Work Fee

### 5.1 Background

- (a) This clause 5 has been agreed in circumstances where:
- (i) Aussie Broadband and Symbio believe that the Transaction will provide significant benefits to Aussie Broadband, Symbio and their respective shareholders, and Aussie Broadband and Symbio acknowledge that, if they enter into this deed and the Transaction is subsequently not implemented, Aussie Broadband will incur significant costs;
  - (ii) Aussie Broadband requested that provision be made for the Work Fee, without which Aussie Broadband would not have pursued the Transaction;
  - (iii) both Symbio Board and Aussie Broadband's board of directors believe that it is reasonable and appropriate for both parties to agree to the payment referred to in this clause 5 to secure Aussie Broadband's participation in the Transaction; and
  - (iv) both parties have received legal advice on this deed and the operation of this clause 5.

### 5.2 Payment by Symbio to Aussie Broadband

Symbio agrees to pay Aussie Broadband the Work Fee if, during the Exclusivity Period, Aussie Broadband (or its nominated Related Body Corporate) executes and delivers a Scheme Implementation Deed in Agreed Form, to Symbio and Symbio fails to return a signed counterpart to Aussie Broadband within 4 Business Days of delivery.

### 5.3 No amount payable if Scheme Implementation Deed executed

Clause 5.2 will be superseded, and cease to apply, on Aussie Broadband and Symbio entering a Scheme Implementation Deed.

### 5.4 Nature and timing of payment

- (a) The amount payable under clause 5.2 is an amount to compensate Aussie Broadband for all costs and expenses incurred by Aussie Broadband in relation to the Transaction.
- (b) A demand by Aussie Broadband for payment of the Work Fee under clause 5.2 must:
- (i) be in writing;
  - (ii) be made after the occurrence of the event in clause 5.2 giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Aussie Broadband into which Symbio must pay the Work Fee.
- (c) Symbio must pay the Work Fee to Aussie Broadband under clause 5.2 without withholding or set off within 10 Business Days of receipt by

Symbio of a valid demand for payment from Aussie Broadband under clause 5.4(b).

## 5.5 Limitation

Where the Work Fee is paid to Aussie Broadband (or would be payable if a demand was made):

- (a) Aussie Broadband cannot make any claim against Symbio or its Representatives under or in connection with this document, or in relation to any loss to Aussie Broadband arising from the Transaction not proceeding; and
- (b) any and all liability of Symbio in relation to any breach by Symbio of its obligations under this deed is limited to the Work Fee, and in no event will the aggregate liability of Symbio under or in connection with this document exceed the Work Fee.

## 5.6 Compliance with law

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Australian Takeovers Panel or a court that all or any part of the amount payable under clause 5.2:
  - (i) is unlawful or would if performed be, unlawful;
  - (ii) involves a breach of the duties of the Symbio Board; or
  - (iii) constitutes unacceptable circumstances within the meaning of the Corporations Act,

### **(Impugned Amount),**

then Symbio's obligation to pay the amount payable under clause 5.2 does not apply to the extent of the Impugned Amount and if Aussie Broadband has received any part of the Impugned Amount it must refund it within 5 Business Days of final determination.

- (b) The parties must not make or cause or permit to be made any application to a court, arbitral tribunal or the Australian Takeovers Panel for or in relation to a determination referred to in this clause 5.6.

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## 6 Notices

Notices and other communications in connection with this document must be in writing. They must be sent to the address or email address referred to in the Details and (except in the case of email) marked for the attention of the person referred to in the Details. If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

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## 7 No binding contract

Each party agrees that:

- (a) this document is not intended to constitute, and does not constitute, an offer capable of acceptance or to otherwise give rise to a binding contract to proceed with the Transaction;

- (b) there is no certainty that the Transaction will proceed; and
- (c) this document does not constitute a proposal to make a takeover bid for the purposes of section 631 of the Corporations Act.

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## 8 Announcements

Each party agrees that, to the extent practicable and permitted by law and the rules of any stock exchange, it will consult with the other party as to the form of any public announcement about this document, the Transaction or the content or existence of negotiations between the parties prior to making any such announcement.

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## 9 GST

For the purposes of this clause 9:

- (a) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) words and phrases which have a defined meaning in the GST Act have the same meaning when used in this clause 9, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies is to be treated as if it were a separate supply.

### 9.2 GST exclusive

Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST.

### 9.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply made in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (“**GST Amount**”).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause 9.3 does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

### 9.4 Adjustment events

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

## 9.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 9.3 applies to the reduced payment.

Unless expressly stated otherwise in this document, all amounts payable or consideration to be provided under this document are exclusive of GST. If GST is payable on any supply made under this document, for which the consideration is not expressly stated to include GST, then subject to receiving a valid tax invoice Symbio agrees to pay to Aussie Broadband an additional amount equal to the GST payable at the same time that the consideration for the supply is to be provided.

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## 10 Termination

This document, and the parties' obligations under it, will terminate at the expiry of the Exclusivity Period, but each party retains any rights that accrued before such termination.

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## 11 General

### 11.1 Further assurances

Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this document and the transactions contemplated by this document.

### 11.2 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

### 11.3 Consents, approvals or waivers

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

### 11.4 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

### 11.5 Partial exercising of rights

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

### 11.6 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

### 11.7 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given in any other document or by law independently of this document.

### 11.8 Indemnities and reimbursement obligations

Any indemnity, reimbursement, payment or similar obligation in this document:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document or any other document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

### 11.9 Supervening law

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### 11.10 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

### 11.11 Entire agreement

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

### 11.12 Rules of construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

### 11.13 Severability

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

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## 12 Definitions and interpretation

### 12.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Agreed Form** means, in relation to the Scheme Implementation Deed, a Scheme Implementation Deed in a form that reflects the material terms of the Transaction (including in respect of form of consideration and price) and, in all other respects, in a form that Aussie Broadband can demonstrate by reference to market practice in Australia, reflects a standard market position on matters ordinarily addressed in a scheme implementation deed for a transaction such as the Transaction (but for the avoidance of doubt, excludes any condition precedent relating to completion of Aussie Broadband's due diligence enquiries, or any regulatory approval other than from ASIC or ASX).

**Business Day** means a day on which banks are open for general banking business in New South Wales (not being a Saturday, Sunday or public holiday in that place).

**Competing Proposal** means any proposal, agreement, arrangement or transaction, which, if entered into or completed, would result in a Third Party (either alone or together with any one or more of its associates):

- (a) directly or indirectly acquiring a relevant interest (as defined in section 608 of the Corporations Act) in, or having a right to acquire a legal, beneficial or economic interest in, or control of, more than 20% of Symbio Shares;
- (b) acquiring control (for the purposes of section 50AA of the Corporations Act) of Symbio or any of its Related Bodies Corporate;
- (c) directly or indirectly acquiring or becoming the holder of, or otherwise acquiring or having a right to acquire a legal, beneficial or economic interest in, or control of, all or a substantial part of the business conducted by or assets of Symbio and its Related Bodies Corporate; or
- (d) otherwise directly or indirectly acquiring, merging or amalgamating with Symbio or any of its Related Bodies Corporate; or
- (e) implementing any reorganisation of capital, dissolution or any proposal which affects, prejudices or jeopardises, or might reasonably be expected to affect, prejudice or jeopardise, the completion of the Transaction (except as previously announced prior to the date of this deed),

whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger), or other transaction or arrangement.

**Confidentiality Deed** means the confidentiality deed between the parties dated 20 September 2023.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Data Room Open Date** means the first Business Day after the date on which Symbio gives notice under clause 3.1(a) that the data room contemplated by clause 3.1 is open and made available to Aussie Broadband.



**Details** means the section of this document headed "Details".

**Exclusivity End Date** means the date which is 15 Business Days after the Data Room Open Date, but if the SID Delivery Date is delayed, then the Exclusivity End Date will be extended for a corresponding period.

**Exclusivity Period** means the period from and including the date of this document until the earlier of:

- (a) the Exclusivity End Date;
- (b) the execution of a Scheme Implementation Deed between Aussie Broadband and Symbio in respect of the Transaction; and
- (c) any agreement between Aussie Broadband and Symbio not to proceed with the Transaction.

**NBIO** means the confidential and non-binding indicative offer letter from Aussie Broadband to Symbio in relation to the Transaction dated 28 September 2023.

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act.

**Representative** means, in respect of a party, each director, officer, employee, advisor, agent or representative of that party and its Related Bodies Corporate (in each case, to the extent acting on behalf of the relevant party or its Related Bodies Corporate).

**Scheme Implementation Deed** means the scheme implementation deed to be entered into by Aussie Broadband and Symbio in relation to the implementation of the Transaction.

**SID Delivery Date** means the date on which Symbio delivers a first draft of the Scheme Implementation Deed to Aussie Broadband in accordance with clause 3.2(a).

**Superior Proposal** means a Competing Proposal which the Symbio Board, acting in good faith, and after having received written advice from Symbio's legal and financial advisers, determines:

- (a) is reasonably capable of being completed taking into account all aspects of the Competing Proposal; and
- (b) if implemented substantially in accordance with its terms, is more favourable to Symbio's shareholders than the Transaction, taking into account all aspects of the Competing Proposal, including the identity, reputation and financial condition of the person making the Competing Proposal, legal, regulatory and financial matters, certainty and any other matters affecting the probability of the relevant proposal being completed in accordance with its terms.

**Symbio Board** means the board of directors of Symbio.

**Symbio Share** means a fully paid ordinary share in Symbio.

**Third Party** means any person other than Aussie Broadband or any of its Related Bodies Corporate.

**Transaction** means a potential transaction pursuant to which Aussie Broadband may acquire 100% of the issued share capital of Symbio, the terms and conditions of which are set out in the NBIO.

**Work Fee** means \$1,350,000.

## 12.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (m) an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (n) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (o) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (p) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (q) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day; and

- (r) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next preceding Business Day.

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## **13 Governing law**

### **13.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

### **13.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out in the Details.

**EXECUTED** as a deed

For personal use only

# Signing page

For personal use only

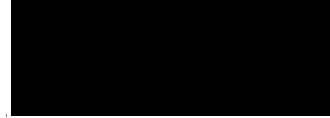
**EXECUTED** by **Aussie Broadband Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by a director and secretary/director:



Signature of director

Phillip Britt

Name of director (please print)



Signature of ~~director~~/ secretary

Brian Maher

Name of ~~director~~/ secretary (please print)

**EXECUTED** by **Symbio Holdings Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by a director and secretary/director:

Signature of director

Name of director (please print)

Signature of director/ secretary

Name of director/ secretary (please print)

# Signing page

For personal use only

**EXECUTED by Aussie Broadband Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by a director and secretary/director:

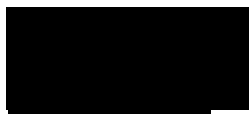
.....  
Signature of director

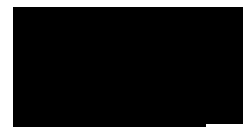
.....  
Signature of director/ secretary

.....  
Name of director (please print)

.....  
Name of director/ secretary (please print)

**EXECUTED by Symbio Holdings Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by a director and secretary/director:

  
.....  
Signature of director

  
.....  
Signature of director/ secretary

Anne Ward  
.....  
Name of director (please print)

Rene Sugo  
.....  
Name of director/ secretary (please print)