

# **FACILITY AGREEMENT**

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Between

Mayfair 101 Ltd (UK Company No. 10527210)

and

101 Investments Ltd (BVI Company No. 2005594)

**THIS AGREEMENT** is effective from the Commencement Date.

**BETWEEN**

**Mayfair 101 Ltd**, UK Company Number 10527210 (the '**Lender**').

and

**101 Investments Ltd**, BVI Company Number 2005594 (the '**Borrower**').

**RECITALS**

- A. On 16 July 2018 the Lender entered into a Convertible Loan Agreement with Accloud Switzerland AG and Mr Ross James (the '**Convertible Loan**'). AUD2,889,501.80 was invested in the Convertible Loan by the Lender.
- B. On 29 June 2019 the Lender entered into an Amendment Agreement (Extension) to Convertible Loan Agreement.
- C. On 6 March 2020 the Lender wrote to Accloud PLC confirming its intention to convert the Convertible Loan to shares at GBP0.50 per share.
- D. 3,048,000 ordinary fully paid Accloud PLC shares (the "**Shares**") were issued to the Lender's nominated entity (101 Investments Ltd) shortly after the conversion instruction was provided by the Lender.
- E. The Lender and the Borrower have agreed to enter into this loan agreement (the "**Agreement**") to record in writing the obligation for the Borrower to pay the Lender for the Shares subject to the terms of this agreement.
- F. Upon execution of this Agreement the Borrower is deemed to have drawn down the Facility in full as consideration for the Shares.

**OPERATIVE PROVISIONS**

**1 Definitions and interpretation**

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**1.1 Definitions**

The following definitions apply in this Agreement unless the context otherwise requires:

**Advances** means each amount provided for or, where the context requires, to be provided at any time pursuant to this Agreement by the Lender to, or at the direction of, the Borrower;

**Amount Owing** means the sum of Advances made by the Lender to the Borrower, less the sum of any repayment of the Advances made by the Borrower to the Lender;

**Business Day** means any day other than a Saturday, Sunday or public holiday in England;

**Commencement Date** means 30 December 2020;

**Drawdown Date** means such date(s) as the Lender and the Borrower agree as the drawdown of Advances;

**Event of Default** each of the following events, as applicable, is an Event of Default:

- (a) **payment default:** if the Borrower fails to repay the Repayment Amount on the expiry of the Term or fails to pay any other money payable under this Agreement on the due date for payment of that money and such failure continues for more than ninety (90) Business Days;  
or

- (b) **other default:** if the Borrower fails to perform or observe any of the covenants or provisions of this Agreement on the part of the Borrower to be performed or observed (other than a failure of the type contemplated above by paragraph (a) and (if capable of remedy) such default continues for more than ninety (90) Business Days (or such longer period as the Lender in its absolute discretion permits) after notice from the Lender requiring the Borrower to remedy the default, unless the non-performance or non-observance has been waived or excused by the Lender in writing; or
- (c) **false or misleading statement:** if the Lender ascertains that the Borrower has made any false, inaccurate or misleading statement having, in the Lender's opinion, a material effect on the provision by the Lender of each Advance or the maintenance of the Agreement; or
- (d) **winding up:** if an application for the winding up or bankruptcy of the Borrower is presented and the Borrower cannot within ninety (90) Business Days reasonably satisfy the Lender that the application is frivolous or vexatious or an order is made for the winding up or bankruptcy, or any resolution is passed for the winding up, of the Borrower, except that it will not be an Event of Default where the winding up of the Borrower is for the purpose of reconstruction or amalgamation and has the Lender's prior written consent (which consent will not be unreasonably withheld); or
- (e) **receiver, etc:** if a receiver or receiver and manager or provisional liquidator of the assets and undertaking or any part of the assets and undertaking of the Borrower is appointed; or
- (f) **ceasing to carry on business:** if without the Lender's prior written consent, the Borrower suspends payment generally or ceases to carry on its business or is insolvent; or
- (g) **continued registration:** if any action is initiated by any competent authority with a view to striking the name of the Borrower off the register of companies; or
- (h) **insolvency schemes:** if without the Lender's prior written consent, the Borrower enters into any arrangement, reconstruction or composition with its creditors or any of them; or
- (i) **administrator or inspector:** if the Borrower appoints an administrator to the Borrower or takes steps to do so or if an inspector is appointed to investigate the affairs of the Borrower; or
- (j) **reduction of capital:** if without the Lender's prior written consent, the Borrower reduces its share capital or attempts to do so; or
- (k) **change of control:** if without the Lender's prior written consent effective control of the Borrower changes. For the purposes of this paragraph '**effective control**' of the Borrower means:
  - (i) control of the composition of the board of directors of the Borrower;
  - (ii) control of more than half of the voting power of the Borrower; or
  - (iii) control of more than half of the issued share capital of the Borrower, excluding any part of it which carries no right to participate beyond a specified Amount in the distribution of either profit or capital; or
- (l) **listing:** if the shares of the Borrower are listed on any stock exchange, the listing is suspended or revoked, and that suspension or revocation remains in force for ninety (90) Business Days; or
- (m) **loss of capacity:** if the authority or power of the Borrower to perform their obligations under this Agreement is revoked or so amended that the Borrower (as the case requires) is unable to fully and duly perform and observe those obligations or, if the Borrower is a natural person, the Borrower dies or becomes incapable of managing his or her own affairs; or
- (n) **illegality:** the continued performance of the obligations of the Borrower under this

Agreement contravenes, or might in the Lender's opinion contravene, any applicable statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority; or

- (o) **material adverse change:** if there is a material adverse change, in the Lender's opinion, in the business or financial condition of the Borrower;

**Expiry Date** 10 years with an option to extend;

**Facility** means the facility provided to the Borrower by the Lender pursuant to this Agreement for an unsecured loan by the Lender to the Borrower up to the Loan Amount plus interest;

**Facility Limit** means AUD2,889,501.80;

**Interest** means the amount calculated in accordance with clause 4;

**Interest Rate** means 4.0% per annum;

**Investment Services** means all expenses associated with making, managing and increasing the value of the investments made by the Borrower;

**Related Body Corporate** means any body corporate which is related to the Borrower by being:

- (a) a holding company of the Borrower; or
- (b) a subsidiary of another body corporate; or
- (c) a subsidiary of a holding company of another body corporate;

**Repayment Amount** means the Amount Owing plus Interest;

**Term** means 60 months with an option to extend subject to the Expiry Date and subject to the Lender providing the Borrower with three (3) months written notice to extend the Term; and

## 1.2 Interpretation

In this Agreement unless the contrary intention appears:

- (a) words denoting the singular include the plural and vice versa;
- (b) a reference to any gender includes all genders;
- (c) a reference to any one of an individual, corporation, partnership, joint venture, association, authority, trust or government includes (as the context requires) any other of them;
- (d) any table of contents and headings are for convenience only and do not affect interpretation;
- (e) a reference to any instrument (such as a deed, agreement or document) is to that instrument (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time and from time to time;
- (f) references to any agreement or document are to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (g) a reference to a party is a reference to a party to this Agreement and includes that party's executors, administrators, successors and permitted assigns;
- (h) a reference to "\$" or "AUD" is a reference to Australian dollars;

- (i) a reference to a recital, clause, schedule or annexure is to a recital, clause, (including sub-clause, paragraph, sub-paragraph or further subdivision of a clause) schedule or annexure of or to this Agreement and a reference to a paragraph is to a paragraph in a schedule;
- (j) a reference to any books or records includes a reference to such documents in all formats including electronic, disk, magnetic or written format;
- (k) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or substitution for, and any subordinate legislation under, that legislation or legislative provision; and
- (l) including and similar expressions are not and must not be treated as words of limitation.

## **2 Facility**

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### **2.1 Facility Agreement**

The Lender agrees, on the terms and subject to the conditions set out in this Agreement, that it has provided, and will provide, Advances to the Borrower by way of cash advances up to the Facility Limit for the Term.

### **2.2 Advances**

- (a) Subject to the prior and continuing satisfaction of the Borrower's obligations under this Agreement, the Lender shall, upon request by the Borrower, provide an Advance to the Borrower by way of cash advance on the Drawdown Date on the terms and subject to the conditions set out in this agreement. Such a request may be made in any manner agreed upon by the parties.
- (b) The Borrower may only request an Advance under clause 2.2 where the amount requested will not result in the sum of all Advances (less any repayments) exceeding the Facility Limit.

### **2.3 Expiry**

This Agreement ends on the Expiry Date as defined in clause 1.1.

## **3 Repayment of Facility**

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### **3.1 Repayment**

- (a) The Borrower must repay and finally discharge the Repayment Amount to the Lender by no later than the Expiry Date unless otherwise agreed in writing by the Lender and the Borrower.
- (b) Notwithstanding the Term, the Lender agrees that the Borrower may repay the whole or any part of the Amount Owing including the Interest accrued then outstanding at any time and from time to time provided:

### **3.2 Payments**

- (a) All payments by the Borrower to the Lender under this Agreement must be made in Australian Dollars in freely and immediately available funds at such office or bank as may be notified to the Borrower from time to time by the Lender.
- (b) The parties acknowledge and agree that any payments made by the Borrower to the Lender pursuant to this Agreement will be applied firstly in payment of Interest and secondly in repayment of the Amount Owing outstanding at that time.

## **4 Interest**

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#### **4.1 Rate of Interest**

The Amount Owing will bear Interest at the Interest Rate which will be calculated Quarterly on the balance of the amount owing at the end of each quarter until the Expiry Date.

#### **4.2 Payment of Interest**

The Borrower must pay and finally discharge all Interest accrued on the Amount Owing prior to the expiry of the Term. The Payment of Interest can be discharged through the issuing of share capital in the Borrower at the Borrower's discretion.

### **5 Costs**

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Each party shall bear its own costs and expenses in connection with the preparation, execution, completion and carrying into effect of this Agreement.

### **6 Notices**

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#### **6.1 Method of Giving Notices**

A notice, consent, approval or other communication under this Agreement must be signed by or on behalf of the party giving it, addressed to the party to whom it is to be given and:

- (a) delivered to that party's address;
- (b) sent by pre-paid air mail to that party's address; or
- (c) sent by email to that party's email address.

#### **6.2 Time of Receipt**

A notice given to a party in accordance with this clause is treated as having been given and received:

- (a) if delivered to a recipient's address, by 3:00pm on the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid air mail to a recipient's address, by the third Business Day after posting;
- (c) if sent by email, the time the email enters the recipient's mail server.

References to days and times are references in all cases to days and times at the address of the recipient.

### **7 General**

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#### **7.1 Amendment**

This Agreement may only be amended or supplemented in writing, signed by the parties.

#### **7.2 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

#### **7.3 Entire agreement**

This Agreement constitutes the entire agreement between the parties in relation to its subject matter. No understanding, arrangement or provision not expressly set out in this Agreement will bind the parties.

#### **7.4 Severability**

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction, unless it materially alters the nature or any material term of this Agreement.

#### **7.5 No Assignment**

No party may assign or transfer any of its rights or obligations under this Agreement without the prior consent in writing of all the other parties.

#### **7.6 Further Assurance**

Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to effectively carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

#### **7.7 Counterparts**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

#### **7.8 Attorneys**

Each attorney who executes this Agreement on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this Agreement and has no notice of the death of the grantor.

### **8 Law and Jurisdiction**

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#### **8.1 Governing Law**

This Agreement is governed by the laws of England.

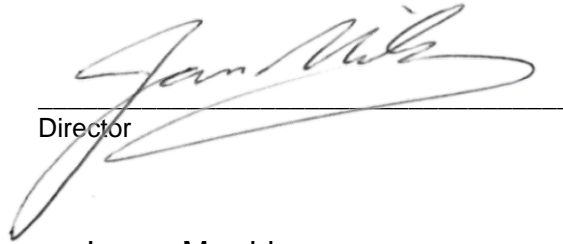
#### **8.2 Submission to jurisdiction**

The parties submit to the non-exclusive jurisdiction of the courts in England and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Agreement.

**EXECUTED AS AN AGREEMENT**

**Dated: 30 December 2020**

Executed by **Mayfair 101 Ltd** (UK  
Company Number 10527210) by its duly  
authorised officer(s):



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Director

**James Mawhinney**

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Executed by **101 Investments Ltd** (BVI  
Company Number 2005594) by its duly  
authorised officers:



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Director

**Nicholas Cook**

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