



THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 66 OF 2025 (IKJ)

IN THE MATTER OF SECTION 86 OF THE COMPANIES ACT (2025 REVISION)

AND

IN THE MATTER OF PENGUIN SOLUTIONS, INC.

ORDER

UPON THE PETITION dated 21 March 2025 of Penguin Solutions, Inc. (the "**Company**") seeking the sanction of a proposed scheme of arrangement pursuant to Section 86 of the Companies Act (2025 Revision) (the "**Companies Act**") between the Company and the Scheme Shareholders (as defined in the Scheme, as defined below)

AND UPON reading the First Affidavit of Mark Adams sworn on 10 April 2025 with Exhibit "MA-1" thereto; the First Affidavit of Anne Kuykendall sworn on 10 April 2025 with Exhibit "AK-1" thereto; and the First Affidavit of Nate Olmstead sworn on 18 June 2025 with Exhibit "NO-1" thereto

AND UPON hearing Counsel for the Company

IT IS HEREBY ORDERED AND DIRECTED THAT:

1. The scheme of arrangement in respect of the Company scheduled hereto (the "**Scheme**") (as was approved at the meeting of the shareholders of the Company held at 10.00 am (Pacific Time) on 16 June 2025 (being 12.00 pm (Cayman Islands time) on 16 June 2025) and convened pursuant to the Order of this Honourable Court dated 29 April 2025) be and is hereby sanctioned pursuant to Section 86(2A) of the Companies Act.



2. The Company shall deliver a sealed copy of this Order to the Registrar of Companies for registration pursuant to Section 86(3) of the Companies Act.
3. The Company shall have liberty to apply generally.
4. There be no order as to costs.

DATED this 25 day of June 2025

FILED this 25 day of June 2025



**THE HONOURABLE JUSTICE KAWALEY
JUDGE OF THE GRAND COURT**

This **ORDER** was filed by Walkers, Attorneys-at-Law for the Company, whose address for service is that of their said Attorneys, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, Cayman Islands.



SCHEDULE
SCHEME OF ARRANGEMENT

IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 66 of 2025 (IKJ)

IN THE MATTER OF SECTION 86 OF THE COMPANIES ACT (2025 REVISION)

AND

IN THE MATTER OF PENGUIN SOLUTIONS, INC.

SCHEME OF ARRANGEMENT

(under Section 86 of the Cayman Islands Companies Act (2025 Revision))

BETWEEN

PENGUIN SOLUTIONS, INC.

(an exempted company incorporated with limited liability and registered under the laws of the Cayman Islands with registration number 255221)

AND

THE SCHEME SHAREHOLDERS

(as hereinafter defined)



PART 1: PRELIMINARY

1. DEFINITIONS

- 1.1 In this Scheme, unless inconsistent with the subject or context, the following expressions shall bear the meanings respectively set out opposite them:

“\$, “US\$” or “USD”	the lawful currency of the United States of America;
“Cayman Companies Act”	the Companies Act (2025 Revision) of the Cayman Islands, as amended, modified or re-enacted from time to time;
“Cayman Court”	the Grand Court of the Cayman Islands and any court capable of hearing appeals therefrom;
“Cayman Islands Registrar of Companies”	the Registrar of Companies in the Cayman Islands;
“CEDE”	CEDE & Co., as nominee of The Depository Trust Company;
“Completion Date”	1.30 p.m. (Pacific Time in the United States) on 30 June 2025;
“Conditions”	the following conditions: <ol style="list-style-type: none"> (a) the Scheme is approved by the affirmative vote of at least 75% or more of the nominal value of the Scheme Shares voted at the Scheme Meeting by holders of the Scheme Shares as at the Voting Record Time who are entitled to vote and who are present and who vote (in person (including via webcast) or by proxy) at the Scheme Meeting; (b) the Cayman Court grants the Sanction Order; (c) the Sanction Order having been duly delivered to the Cayman Islands Registrar of Companies; (d) no statute, rule or regulation is enacted or promulgated by any governmental entity of competent jurisdiction that prohibits or makes illegal the consummation of the Scheme; (e) no order or injunction of a court of competent jurisdiction is in effect that prevents consummation of the Scheme; (f) permission having been granted by Nasdaq to admit the Penguin Solutions Delaware Common Stock for trading; and (g) any regulatory approval or consent that may be required in connection with the Scheme;



"Effective Time"	the time at which this Scheme becomes effective in accordance with Clause 6 (<i>Application and Effectiveness of this Scheme</i>), which is expected to be at or around 3.00 p.m. (Pacific Time in the United States) on 25 June 2025;
"Exchange Agent"	Computershare Inc., a Delaware corporation, and its wholly owned subsidiary Computershare Trust Company, N.A., a federally chartered trust company;
"Longstop Date"	31 December 2025 (or such later date as the Cayman Court may allow);
"Nasdaq"	the Nasdaq Global Select Market;
"Penguin Solutions Cayman"	Penguin Solutions, Inc., a company incorporated in the Cayman Islands as an exempted company with limited liability with registration number 255221, whose registered office is at Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands;
"Penguin Solutions Cayman Convertible Preferred Shares"	the issued and outstanding convertible preferred shares of Penguin Solutions Cayman with a par value of US\$0.03 each;
"Penguin Solutions Cayman Ordinary Shares"	the issued and outstanding ordinary shares of Penguin Solutions Cayman with a par value of US\$0.03 each;
"Penguin Solutions Delaware"	Penguin Solutions, Inc., a corporation incorporated under the laws of the State of Delaware, the United States;
"Penguin Solutions Delaware Common Stock"	the common stock of Penguin Solutions Delaware with a par value of US\$0.03 each;
"Penguin Solutions Delaware Convertible Preferred Stock"	the convertible preferred stock of Penguin Solutions Delaware with a par value of US\$0.03 each;
"Penguin Solutions Delaware Stock"	collectively, the Penguin Solutions Delaware Common Stock and the Penguin Solutions Delaware Convertible Preferred Stock;
"Penguin Solutions Group"	the Penguin Solutions group of companies, comprising Penguin Solutions Cayman and its subsidiaries;
"Register of Members"	the register of members of Penguin Solutions Cayman kept in accordance with Section 40 of the Cayman Companies Act;
"Sanction Hearing"	the hearing by the Cayman Court of the petition seeking the sanction of the Scheme under Section 86 of the Cayman Companies Act;
"Sanction Order"	the order of the Cayman Court sanctioning this Scheme under Section 86 of the Cayman Companies Act;



"Scheme"	this scheme of arrangement in respect of Penguin Solutions Cayman and the Scheme Shareholders proposed to be made under Section 86 of the Cayman Companies Act in its present form or with or subject to any modifications, additions or conditions which the Cayman Court may think fit to approve or impose and agreed to by Penguin Solutions Cayman;
"Scheme Consideration"	has the meaning given to it in Clause 7.2 below;
"Scheme Meeting"	the meeting of the shareholders of Penguin Solutions Cayman as at the Voting Record Time to be held (in person and broadcast via live webcast) at 10 a.m. (Pacific Time in the United States) on 16 June 2025, convened pursuant to an Order of the Cayman Court dated 29 April 2025 for the purposes of considering and, if thought fit, approving the Scheme (with or without amendment);
"Scheme Record Time"	1.29 p.m. (Pacific Time in the United States) on 30 June 2025;
"Scheme Shareholders"	holders of Scheme Shares appearing on the Register of Members as at the Scheme Record Time;
"Scheme Shares"	all the Penguin Solutions Cayman Ordinary Shares and the Penguin Solutions Cayman Convertible Preferred Shares issued and outstanding;
"US" or "United States"	the United States, its territories and possessions, including any State of the United States;
"US Securities Act"	United States Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder; and
"Voting Record Time"	1.15 p.m. (Pacific Time in the United States) on 25 April 2025, the record date for the Scheme Meeting.

2. INTERPRETATION

2.1 In this Scheme, unless the context otherwise requires or otherwise expressly provides:

- (a) references to Parts, Clauses and Sub-Clauses are references to parts, clauses and sub-clauses respectively of this Scheme;
- (b) references to a "person" include references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or state agency;
- (c) references to a statute, statutory provision, enactment or subordinate legislation include the same as subsequently modified, amended or re-enacted from time to time;
- (d) references to an agreement, deed or document shall be deemed also to refer to such agreement, deed or document as amended, supplemented, restated, verified, replaced and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;



- (e) the singular includes the plural and vice-versa and words importing one gender shall include all genders;
- (f) headings to, Parts, Clauses and Sub-Clauses are for ease of reference only and shall not affect the interpretation of this Scheme; and
- (g) all references to time are references to Cayman Islands Time unless otherwise stated.

3. PENGUIN SOLUTIONS CAYMAN

- 3.1 Penguin Solutions Cayman is a company incorporated in the Cayman Islands as an exempted company with limited liability with registration number 255221, whose registered office is at Walkers Corporate Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9008, Cayman Islands.
- 3.2 The authorised share capital of Penguin Solutions Cayman is US\$6,900,000 divided into: (i) 200,000,000 ordinary shares with a par value of US\$ 0.03 each; and (ii) 30,000,000 convertible preferred shares with a par value of US\$ 0.03 each.
- 3.3 As at April 30, 2025, being the latest practicable date prior to the date of this document, 52,756,646 Penguin Solutions Cayman Ordinary Shares and 200,000 Penguin Solutions Cayman Convertible Preferred Shares were issued and remain outstanding.

4. PENGUIN SOLUTIONS DELAWARE

- 4.1 Penguin Solutions Delaware was formed in the United States in the State of Delaware as a corporation, whose registered office is at The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. Prior to the Completion Date, Penguin Solutions Delaware will not engage in any business or other activities other than in connection with the Scheme and its organisational activities.
- 4.2 Penguin Solutions Delaware has undertaken to the Cayman Court to be bound by the Scheme, and will execute and do and procure to be executed and done all such documents, acts and things as may be necessary or desirable to be executed or done by it for the purpose of giving effect to the terms of this Scheme.

5. PURPOSE OF SCHEME

- 5.1 The purpose of the Scheme is to implement a new corporate structure for the Penguin Solutions Group to result in a change in jurisdiction of incorporation of the ultimate parent company of the Penguin Solutions Group from the Cayman Islands to the State of Delaware, United States. This is anticipated to, among other benefits, simplify and streamline the organisational, statutory and regulatory structure of the Penguin Solutions Group for the benefit of its shareholders and align the legal framework governing the Penguin Solutions Group with its operational footprint.
- 5.2 This will be achieved by the transfer, on the Completion Date, of the Scheme Shares by the Scheme Shareholders to Penguin Solutions Delaware fully paid, free and clear of any liens, pledges, security interests or other encumbrances, in consideration for which Penguin Solutions Delaware will issue an equal number of shares of Penguin Solutions Delaware Stock to the Scheme Shareholders (as more fully described below in Clause 7) with Penguin Solutions Delaware becoming the publicly traded ultimate parent company of the Penguin Solutions Group.
- 5.3 After the Completion Date, the Scheme Shareholders will continue to own an interest in the ultimate parent company of the Penguin Solutions Group, which will indirectly conduct the same business operations as currently conducted by the Penguin Solutions Group prior to the Completion Date. The



number of shares of Penguin Solutions Delaware Stock owned by each Scheme Shareholder will be the same as the number of Scheme Shares owned by each Scheme Shareholder immediately prior to the Completion Date, and their relative ownership interest in the Penguin Solutions Group will remain unchanged as a result of the Scheme.

- 5.4 The issuance of Penguin Solutions Delaware Stock to the Scheme Shareholders pursuant to the Scheme will not be registered under the US Securities Act in reliance upon Section 3(a)(10) of the US Securities Act. Section 3(a)(10) of the US Securities Act exempts securities issued in exchange for one or more outstanding securities from the general requirement of registration where the terms and conditions of the issuance and exchange of such securities have been approved by any court of competent jurisdiction, after a hearing upon the fairness of the terms and conditions of the issuance and exchange at which all persons to whom such securities will be issued have a right to appear and to whom adequate notice of the hearing has been given. The parties intend to rely on the Section 3(a)(10) exemption under the US Securities Act in entering into this Scheme and the parties shall so advise the Cayman Court.

PART 2: THE SCHEME**6. APPLICATION AND EFFECTIVENESS OF THIS SCHEME**

- 6.1 The compromise and arrangement effected by this Scheme shall apply to all Scheme Shares and shall be binding on all Scheme Shareholders.
- 6.2 Subject to the Conditions having been first satisfied or, to the extent permitted by law, waived by Penguin Solutions Cayman, this Scheme shall become effective as soon as the Sanction Order (sanctioning the Scheme under Section 86 of the Cayman Companies Act) shall have been duly delivered to the Cayman Islands Registrar of Companies for registration pursuant to Section 86(3) of the Cayman Companies Act, at which time this Scheme shall become effective in accordance with its terms.
- 6.3 Penguin Solutions Cayman shall give notification of this Scheme having become effective in accordance with its terms by providing notice to all holders of the Scheme Shares that exist immediately prior to the Effective Time, within 5 business days of the Effective Time having occurred. Such notice shall enclose a copy of the Sanction Order.
- 6.4 The terms of the Scheme will be implemented on the Completion Date, at which time the Scheme Shareholders will transfer their Scheme Shares to Penguin Solutions Delaware and the Scheme Consideration will be issued to the Scheme Shareholders pursuant to Clause 7 (*The Scheme and Scheme Consideration*). Penguin Solutions Cayman shall give notification of the implementation of the terms of the Scheme by providing notice to all Scheme Shareholders, within 5 business days of the Completion Date.
- 6.5 On and from the Effective Time, the Scheme Shares and the rights of any holders of the Scheme Shares (and any person who acquires any interests in or arising out of the Scheme Shares after the Scheme Record Time) shall be subject to the compromises and arrangements set out in the Scheme.
- 6.6 Unless the Completion Date occurs on or before the Longstop Date, the terms of, and obligations on Penguin Solutions Cayman under or pursuant to, the Scheme shall lapse and all compromises and arrangements provided for by the Scheme shall have no force or effect.

7. THE SCHEME AND SCHEME CONSIDERATION

- 7.1 On the Completion Date, all of the Scheme Shares will be transferred from the Scheme Shareholders to Penguin Solutions Delaware:
- (a) fully paid;
 - (b) free and clear of any liens, pledges, security interests or other encumbrances; and
 - (c) together with all rights, benefits and entitlements as at the Completion Date and thereafter attaching thereto, including the right to receive and retain all dividends and other distributions (if any) which may be declared, paid or made thereon by Penguin Solutions Cayman on or after the Completion Date, but excluding the right to receive and retain all dividends and distributions (if any), the record date of which falls before the Completion Date, together with all interest accrued thereon.
- 7.2 In consideration for the transfer of the Scheme Shares pursuant to Clause 7.1, on the Completion Date and subject to the provisions of Clause 8 (*Allotment and issue of Penguin Solutions Delaware Stock*) and Clause 9 (*Mandated Payments and other Instructions*), Penguin Solutions Delaware shall



issue to each Scheme Shareholder fully paid and non-assessable shares of Penguin Solutions Delaware Common Stock and/or Penguin Solutions Delaware Convertible Preferred Stock (as applicable), on the following one-to-one basis:

- (a) for every one (1) Penguin Solutions Cayman Ordinary Share transferred, one (1) share of Penguin Solutions Delaware Common Stock shall be issued; and
- (b) for every one (1) Penguin Solutions Cayman Convertible Preferred Share transferred, one (1) share of Penguin Solutions Delaware Convertible Preferred Stock shall be issued, (Clause 7.2 (a) and (b) together, the **"Scheme Consideration"**).

- 7.3 For the purpose of giving effect to the transfer of the Scheme Shares provided for in Clause 7.1, Penguin Solutions Cayman shall authorise any person to execute or effect on behalf of all the Scheme Shareholders, as well as on behalf of CEDE, an instrument or instruction of transfer of all the Scheme Shares held by such Scheme Shareholders (whether directly or held in the name of CEDE) and every such instrument or instruction of transfer so executed shall be effective as if it had been executed by such Scheme Shareholders and by CEDE, respectively.
- 7.4 On the Completion Date, Penguin Solutions Delaware will deposit with the Exchange Agent, acting as exchange agent and solely for the account and benefit of the Scheme Shareholders, book-entry shares representing the full number of shares of Penguin Solutions Delaware Stock to be issued as the Scheme Consideration. As promptly as practicable thereafter, Penguin Solutions Delaware will cause the Exchange Agent to deliver the Scheme Consideration to the Scheme Shareholders without any further action on the part of the Scheme Shareholders.
- 7.5 The shares of Penguin Solutions Delaware Stock constituting the Scheme Consideration will only be registered in the name of those persons in whose name the Scheme Shares were transferred from as registered in the Register of Members of Penguin Solutions Cayman as of the Scheme Record Time. In the case of Scheme Shares for which CEDE is the registered holder at the Scheme Record Time, the entitlement to the relevant shares of Penguin Solutions Delaware Stock shall be credited to CEDE.
- 7.6 In the case of joint holders of Scheme Shares in issue as of the Scheme Record Time, the Scheme Consideration shall be issued to all such holders of Scheme Shares jointly.
- 7.7 For the purposes of determining the identity of the Scheme Shareholders, Penguin Solutions Cayman shall be under no obligation to recognize any transfer of Scheme Shares after the Scheme Record Time.
- 7.8 The transfer of the Scheme Shares shall be recorded by removing the name of each Scheme Shareholder from the Register of Members of Penguin Solutions Cayman as at the Scheme Record Time, and recording Penguin Solutions Delaware on the Register of Members of Penguin Solutions Cayman as the sole member of Penguin Solutions Cayman as of the Completion Date, who shall thereafter be the legal and beneficial owner of all Scheme Shares.
- 7.9 From and after the Completion Date, the Scheme Shareholders shall cease to have any rights with respect to the Scheme Shares, except their rights under the Scheme.

8. ALLOTMENT AND ISSUE OF PENGUIN SOLUTIONS DELAWARE STOCK

- 8.1 The Penguin Solutions Delaware Common Stock to be issued pursuant to Clause 7 (*The Scheme and Scheme Consideration*) shall rank equally, but junior to the Penguin Solutions Delaware Convertible Preferred Stock for all dividends or distributions made, paid or declared in respect of Penguin Solutions Delaware after the Completion Date.



- 8.2 The Penguin Solutions Delaware Convertible Preferred Stock to be issued pursuant to Clause 7 (*The Scheme and Scheme Consideration*) shall rank equally, but senior to the Penguin Solutions Delaware Common Stock for all dividends or distributions made, paid or declared in respect of Penguin Solutions Delaware after the Completion Date.
- 8.3 The provisions of Clause 7 shall be subject to any prohibition or condition imposed by law. Without prejudice to the generality of the foregoing, if, in respect of any Scheme Shareholder who is a citizen, resident or national of any jurisdiction outside the Cayman Islands or the United States, Penguin Solutions Delaware is advised that the allotment and issue of Penguin Solutions Delaware Stock pursuant to Clause 7 would infringe the laws of any jurisdiction outside the Cayman Islands or the United States or would require Penguin Solutions Delaware to observe any governmental or other consent or effect any registration, filing or other formality with which, in the opinion of Penguin Solutions Delaware, it would be unable to comply or which it regards as unduly onerous, then Penguin Solutions Delaware may in its sole discretion either:
- (a) determine that such Penguin Solutions Delaware Stock shall be sold, in which case the Penguin Solutions Delaware Stock shall be issued to such Scheme Shareholder and Penguin Solutions Delaware shall appoint a person to act pursuant to this Clause 8.3(a) as an authorised person on behalf of such Scheme Shareholder to procure that any such Penguin Solutions Delaware Stock in respect of which Penguin Solutions Delaware has made such determination shall, as soon as practicable following the Scheme Record Time, be sold at the best price which can reasonably be obtained at the time of sale. The net proceeds of such sale (after the deduction of all expenses and commissions, including any amount in respect of any tax payable thereon) shall be paid to such Scheme Shareholder by cheque or such other form of payment as determined by the authorised person in its sole discretion. To give effect to any such sale, the authorised person shall be authorised on behalf of such Scheme Shareholder to execute and deliver a form of transfer and to give such instructions and do all such things which such authorised person may consider necessary or expedient in connection with such sale. None of Penguin Solutions Cayman, Penguin Solutions Delaware or the authorised person shall have any liability for any loss or damage arising as a result of the timing or terms of any such sale; or
 - (b) determine that no such Penguin Solutions Delaware Stock shall be issued to such Scheme Shareholder under Clause 7, but instead the applicable Penguin Solutions Delaware Stock shall be issued to a nominee appointed by Penguin Solutions Delaware as trustee for such Scheme Shareholder, on terms that such Penguin Solutions Delaware Stock shall, as soon as practicable following the Scheme Record Time, be sold on behalf of such Scheme Shareholder at the best price which can reasonably be obtained at the time of sale. The net proceeds of such sale (after the deduction of all expenses and commissions, including any amount in respect of any tax payable thereon) shall be paid to such Scheme Shareholder by cheque or such other form of payment as determined by the nominee in its sole discretion. None of Penguin Solutions Cayman, Penguin Solutions Delaware or the nominee shall have any liability for any loss arising as a result of the timing or terms of any such sale.

9. MANDATED PAYMENTS AND OTHER INSTRUCTIONS

- 9.1 Each mandate in force at the Scheme Record Time relating to the payment of dividends on the Scheme Shares and each instruction then in force as to notices and other communications from Penguin Solutions Cayman shall, unless and until varied or revoked, be deemed as from the Completion Date to be a valid and effective mandate or instruction to Penguin Solutions Delaware in relation to the corresponding shares of Penguin Solutions Delaware Stock to be allotted and issued pursuant to this Scheme.

10. MODIFICATION AND SEVERABILITY

- 10.1 Penguin Solutions Cayman may consent for and on behalf of all persons concerned to any modification of or addition to this Scheme or to any condition which the Cayman Court may think fit to approve or impose.
- 10.2 When under any provision of this Scheme a matter is to be determined by Penguin Solutions Cayman and/or Penguin Solutions Delaware then they or it will have discretion to interpret such matter under this Scheme in a manner that they or it considers fair and reasonable, and their/its decisions will be binding on all concerned.
- 10.3 If any provision (or any part of any provision) of this Scheme is found by the Cayman Court to be illegal or unenforceable, it shall be severed from this Scheme and, to the extent practicable, the remaining provisions of this Scheme shall continue in force.

11. COSTS

- 11.1 Penguin Solutions Cayman is authorised and permitted to pay all the costs and expenses relating to the negotiation, preparation and implementation of the Scheme.

12. GOVERNING LAW

- 12.1 The operative terms of this Scheme shall be governed by, and construed in accordance with, the laws of the Cayman Islands and the courts of the Cayman Islands shall have exclusive jurisdiction to hear and determine any proceeding and to settle any dispute which arises out of or in connection with the terms of this Scheme or its implementation or out of any action taken or omitted to be taken under this Scheme or in connection with the administration of this Scheme and for such purposes, the parties irrevocably submit to the exclusive jurisdiction of the courts of the Cayman Islands, provided, however, that nothing in this Clause shall affect the validity of other provisions determining governing law and jurisdiction between the parties whether contained in any contract or otherwise.
- 12.2 The terms of this Scheme and the obligations imposed on Penguin Solutions Cayman and Penguin Solutions Delaware hereunder shall take effect subject to any prohibition or condition imposed by any applicable law.

Dated: 25 June 2025

