

**ASX ANNOUNCEMENT**

**GRAYS ECOMMERCE GROUP LIMITED/ ECLIPX GROUP LIMITED:**

**SCHEME BOOKLET REGISTERED WITH ASIC**

**21 June 2017, Sydney, Australia:** Further to the Company's announcement on 4 May 2017, Grays eCommerce Group Limited (**GEG**) today announces that the Australian Securities and Investments Commission (**ASIC**) has registered the scheme booklet (**Scheme Booklet**) in relation to the proposed acquisition of all the shares in GEG by Leasing Finance (Australia) Pty Limited (ACN 121 167 824), a wholly-owned subsidiary of Eclipx Group Limited (ACN 131 557 901) (**ECX**), via a Scheme of Arrangement (the **Scheme**). This follows the issuance of orders by the Federal Court of Australia (the **Court**) today approving dispatch of the Scheme Booklet to GEG shareholders and the convening of a meeting of GEG shareholders to consider and vote on the Scheme (**Scheme Meeting**), which was announced by GEG earlier today.

A copy of the Scheme Booklet, including the Notice of Meeting convening the Scheme Meeting, Proxy Form, the Independent Expert's Report and the Investigating Accountant's Report is attached to this announcement and will be sent to GEG shareholders by Monday, 26 June 2017.

Those GEG shareholders who have previously elected to receive notifications from GEG's share registry in electronic format will also receive an email where they can download the Scheme Booklet and lodge their proxy votes online.

If the Scheme is approved by GEG shareholders at the Scheme Meeting, and all other conditions precedent are satisfied or waived (where capable of waiver), GEG shareholders (other than certain foreign ineligible shareholders) will receive 0.3656 (rounded)<sup>1</sup> ECX shares for each GEG share held on the Record Date in respect of the Scheme (**Scheme Consideration**). The Scheme Consideration is expected to be paid on Friday, 11 August 2017 being the expected Implementation Date in respect of the Scheme.

The Board of Directors of GEG continues to unanimously recommend that GEG shareholders vote in favour of the Scheme at the upcoming Scheme Meeting, in the absence of a Superior Proposal.

- **ENDS** -

**For more information please contact:**

**Investors and media**

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**About Grays eCommerce Group Limited**

*Grays eCommerce Group Limited (ASX: GEG) is one of Australia's leading eCommerce groups. By leveraging existing operations, sourcing capabilities, and eCommerce experience, Grays eCommerce Group is well positioned to be the leading online international auctioneer by unlocking real value for our business partners, vendors and*

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<sup>1</sup> The fixed exchange ratio is 0.365588962370616.

customers.

*The Company's B2B business comprises the business-facing components of the graysonline brand, the graysasset and graysmining brands, as well as DMS Davlan and Bryan Andrews Auctions. Collectively, these brands are the largest B2B online auction marketplace in the Asia Pacific region for used plant and equipment. The B2B business provides a full range of valuation and project-management functions for a range of clients including major corporations, insolvency practitioners, financiers and banks.*

*The Company also provides an auction based site for wine and other consumer product categories.*

*For further information go to [www.graysecommercegroup.com.au](http://www.graysecommercegroup.com.au) or [www.graysonline.com.au](http://www.graysonline.com.au).*

grays ecommercgroup

**Grays eCommerce Group Limited**

ABN 94 125 736 914

# SCHEME BOOKLET

REGISTERED PURSUANT TO SUBSECTION 412(6)  
OF THE CORPORATIONS ACT 2001 ON

21 June 2017

Jessica Reid

AS A DELEGATE OF THE  
AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

*For the scheme of arrangement in relation to the proposed acquisition of all of your  
Grays Shares by a wholly-owned Subsidiary of Eclix Group Limited*

The Notice of Scheme Meeting is included in Appendix 4 to this Scheme Booklet.  
The proxy form for the Scheme Meeting accompanies this Scheme Booklet.  
The Scheme Meeting will be held at 11.30am on 26 July 2017 at the offices of  
MinterEllison, Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney,  
New South Wales, 2000.

## VOTE IN FAVOUR

YOUR VOTE IS IMPORTANT IN DETERMINING WHETHER THE SCHEME  
PROCEEDS.

YOUR DIRECTORS UNANIMOUSLY RECOMMEND THAT YOU VOTE IN  
FAVOUR OF THE SCHEME IN THE ABSENCE OF A SUPERIOR PROPOSAL.

THE INDEPENDENT EXPERT HAS CONCLUDED THAT THE SCHEME IS IN  
THE BEST INTERESTS OF GRAYS SHAREHOLDERS IN THE ABSENCE OF  
A SUPERIOR PROPOSAL.

**THIS IS AN IMPORTANT DOCUMENT AND REQUIRES YOUR URGENT ATTENTION.**

If you are in any doubt as to how to deal with this Scheme Booklet, please consult your legal,  
financial, taxation or other professional adviser immediately. If after reading this Scheme  
Booklet you have any questions about the Scheme, please call the Grays information line  
on 1300 103 188 (within Australia) or +61 3 9415 4232 (outside Australia) Monday to Friday  
between 9.00am and 5.00pm (AEST).

FINANCIAL ADVISER



**MOELIS**  
AUSTRALIA

LEGAL ADVISER

**MinterEllison**

# IMPORTANT NOTICES

## General

You should read the whole of this Scheme Booklet before making a decision on how to vote on the Scheme Resolution. The notice convening the Scheme Meeting is contained in Appendix 4 to this Scheme Booklet. The proxy form for the Scheme Meeting is enclosed with this Scheme Booklet.

## Defined terms

Capitalised terms in this Scheme Booklet are defined either in the Glossary in Section 12 of this Scheme Booklet or where the relevant term is first used in this Scheme Booklet.

## Purposes of this Scheme Booklet

The purposes of this Scheme Booklet are to:

- explain the terms and effect of the Scheme to Grays Shareholders;
- explain the manner in which the Scheme will be considered and, if approved, implemented;
- state any material interests of the Grays Directors, whether as directors or members of Grays or otherwise, and the effect on those interests of the Scheme as far as that effect is different from the effect on similar interests of other persons; and
- provide the information as is prescribed by the Corporations Act and the regulations to that Act or as is otherwise material to the decision of Grays Shareholders whether to approve the Scheme.

This Scheme Booklet constitutes the explanatory statement for the Scheme as required by section 412(1) of the Corporations Act.

## No financial product advice

The information contained in this Scheme Booklet is not financial product or investment advice. This Scheme Booklet has been prepared without taking into account your investment objectives, financial situation, taxation position or other particular needs. Before deciding how to vote or act, Grays Shareholders and others should consider the appropriateness of the information having regard to their own investment objectives, financial situation, taxation position and other particular needs and seek legal, taxation and financial advice appropriate to their jurisdiction and circumstances. Neither Grays nor Eclipx is licensed to provide financial product advice in respect of Grays Shares, Eclipx Shares or any other financial products.

## Responsibility for information

The Grays Information contained in this Scheme Booklet has been prepared by and is the responsibility of Grays. Eclipx does not assume any responsibility for the accuracy or completeness of the Grays Information.

The Eclipx Information contained in this Scheme Booklet has been prepared by and is the responsibility of Eclipx. Grays does not assume any responsibility for the accuracy or completeness of the Eclipx Information.

Loneragan Edwards & Associates Limited has prepared the Independent Expert's Report in relation to the Scheme in Appendix 1 and takes responsibility for that report.

KPMG Transaction Services has prepared the Investigating Accountant's Report in relation to the Scheme in Appendix 2 and takes responsibility for that report.

## Grays Shareholders outside Australia, New Zealand and the United States of America

This Scheme Booklet has been prepared having regard to Australian law disclosure requirements. These requirements may be different from those in other jurisdictions. This Scheme Booklet and the Scheme do not in any way constitute an offer of securities in any place in which, or to any person to whom, it would not be lawful to make such an offer.

Restrictions in jurisdictions outside Australia, New Zealand and the United States of America may make it impractical or unlawful for New Eclipx Shares to be issued under the Scheme to, or be received under the Scheme by Grays Shareholders in those jurisdictions. Grays Shareholders whose registered addresses in the Grays Share Register are outside Australia, New Zealand or the United States of America should refer to Section 10.5(f) for more information as to how the New Eclipx Shares to which they would otherwise be entitled will be dealt with.

Grays Shareholders resident outside Australia for tax purposes should also seek specific taxation advice in relation to the Australian and overseas taxation implications of their participation in the Scheme.

## Grays Shareholders resident in New Zealand

The offer of New Eclipx Shares to New Zealand resident Grays Shareholders will comply with the laws of Australia applicable to the offer of New Eclipx Shares and be made in reliance on clause 6 of the *Financial Markets Conduct (Incidental Offers) Exemption Notice 2016*. Therefore, Eclipx is not required to register, prepare and distribute to New Zealand resident Grays Shareholders a New Zealand product disclosure statement in respect of the offer of New Eclipx Shares.

It is a term of the offer of the New Eclipx Shares to New Zealand resident Grays Shareholders that such offer will comply with the laws of Australia and any code, rules, or other requirements relating to the offer of the New Eclipx Shares applicable in Australia.

## Grays Shareholders resident in the United States of America

This Scheme Booklet is neither an offer to sell nor a solicitation of an offer to buy securities as such terms are defined under the Securities Act of 1933 (**Securities Act**).

The New Eclipx Shares have not been and will not be registered under the Securities Act.

Grays and Eclipx intend to rely on an exemption from the registration requirements of the Securities Act provided by section 3(a)(10) of the Securities Act in connection with the implementation of the Scheme and the issue of Eclipx Shares. Approval of the Scheme by the Court will be relied upon by Grays and Eclipx for the purpose of qualifying for the section 3(a)(10) exemption.

None of the US Securities and Exchange Commission, any US state securities commission or any other US regulatory authority has passed comment upon or endorsed the merits of the Scheme or the accuracy, adequacy or completeness of this Scheme Booklet. Any representation to the contrary may be a criminal offence.

## ASIC and ASX

A copy of this Scheme Booklet has been provided to ASIC for the purpose of section 411(2) of the Corporations Act, and registered by ASIC for the purpose of section 412(6) of the Corporations Act.

ASIC has examined a copy of this Scheme Booklet. ASIC has been requested to provide a statement, in accordance with section 411(17)(b) of the Corporations Act, that ASIC has no objection to the Scheme. If ASIC provides that statement, it will be produced to the Court at the time of the Second Court Hearing to approve the Scheme.

Neither ASIC nor any of its officers take any responsibility for the contents of this Scheme Booklet.

A copy of this Scheme Booklet has been provided to ASX. Neither ASX nor any of its officers take any responsibility for the contents of this Scheme Booklet.



### **Important notice associated with Court order under section 411(1) of the Corporations Act**

The fact that under section 411(1) of the Corporations Act the Court has ordered on 21 June 2017 that a meeting of Grays Shareholders be convened by Grays to consider and vote on the Scheme and that the Court has approved this Scheme Booklet does not mean that the Court:

- has formed any view as to the merits of the proposed Scheme or as to how Grays Shareholders should vote on the Scheme (on this matter Grays Shareholders must reach their own decision); or
- has prepared, or is responsible for, the content of this Scheme Booklet.

### **Notice of Second Court Hearing**

At the Second Court Hearing, the Court will consider whether to approve the Scheme following the vote at the Scheme Meeting.

Any Grays Shareholder may appear at the Second Court Hearing expected to be held at 9.30am on 31 July 2017 at the Federal Court of Australia, 184 Phillip Street, Sydney.

Any Grays Shareholder who wishes to oppose approval of the Scheme at the Second Court Hearing may do so by filing with the Court and serving on Grays a notice of appearance in the prescribed form together with any affidavit that the Grays Shareholder proposes to rely on.

### **Forward-looking statements**

Certain statements in this Scheme Booklet are about future matters, including forward-looking statements. These forward-looking statements and information, including statements and information relating to Grays, Eclix, the Combined Group and the transactions contemplated by the Scheme Implementation Deed, are not based solely on historical facts, but rather reflect the current expectations of Grays or, in relation to Eclix Information, Eclix, concerning future results, events or other matters. These statements may sometimes be identified by the use of forward-looking words or phrases such as *if, when, believe, aim, will, expect, anticipate, intend, foresee, likely, should, could, plan, may, estimate, budget, forecast, envisage, target, potential* or other similar words or phrases. Similarly, statements that describe Grays' or Eclix's objectives, plans, goals or expectations, estimates of future costs, and expenditure are, or may be, forward-looking statements.

The statements contained in this Scheme Booklet about the impact that the Scheme may have on the results of Grays' operations and on the operations of the Combined Group, or the advantages and disadvantages of the Scheme, are also forward-looking statements.

These forward-looking statements involve known and unknown risks, uncertainties, assumptions and other important factors that could cause the actual results of Grays, Eclix or the Combined Group (as the case may be) to be materially different from future results, performance or achievements expressed or implied by such statements. These statements are and this information is based on numerous assumptions regarding present and future business strategies and the environment in which Grays, Eclix or the Combined Group will operate in the future, including anticipated costs and ability to achieve strategic objectives. See Section 8 for a discussion of potential risk factors underlying, and other information relevant to, the forward-looking statements and information. Therefore, forward-looking statements and information should be construed in light of those limitations and undue reliance should not be placed on them.

You should note that the historical performance of Grays and Eclix provides no assurance as to their respective future financial performance or (if the Scheme is approved and implemented) that of Grays, Eclix or the Combined Group. None of Grays, Eclix, their respective Related Bodies Corporate, their respective directors, nor any other person gives any representation, assurance or guarantee

that the occurrence of the results or events expressed or implied in any forward-looking statements and information in this Scheme Booklet will actually occur.

The forward-looking statements and information in this Scheme Booklet reflect views held only at the date of this Scheme Booklet.

Subject to any continuing obligations under law, Grays, Eclix, their respective Related Bodies Corporate, and their respective directors disclaim any obligation or undertaking to disseminate after the date of this Scheme Booklet any updates or revisions to any forward-looking statements and information to reflect any change in expectations in relation to them or any change in the events, conditions or circumstances on which they are based.

### **Rounding of numerical information**

Any discrepancies between totals in tables and sums of components contained in this Scheme Booklet and between those figures and figures referred to in other parts of this Scheme Booklet are due to rounding. Often rounded numbers have been rounded either to two decimal places or to the nearest whole number.

### **Implied value**

The Scheme Consideration consists wholly of New Eclix Shares. The value of the Scheme Consideration will therefore vary depending on movement in the trading price of Eclix Shares on the ASX. Any reference to the implied value of the Scheme Consideration should not be taken to indicate that the implied value is fixed.

If you are an Ineligible Foreign Scheme Shareholder, this also applies to the New Eclix Shares which will be issued to the Sale Agent to sell on your behalf.

### **Privacy and personal information**

Grays and Eclix will need to collect the personal information of Grays Shareholders to implement the Scheme. This information may include the name, contact details and security holding of Grays Shareholders, and the name of persons appointed by Grays Shareholders to act as proxy, corporate representative or attorney at the Scheme Meeting. The primary purpose of collection of the personal information is to assist Grays in the conduct of the Scheme Meeting and to enable the Scheme to be implemented by Grays in the manner described in this Scheme Booklet. Without this information, Grays may be hindered in its ability to carry out these purposes to full effect. The collection of certain personal information is authorised by the Corporations Act.

Personal information may be disclosed to the Grays Share Registry, print and mail service providers, authorised securities brokers and to Related Bodies Corporate of Grays and the parties to the Scheme Implementation Deed.

Grays Shareholders have certain rights to access personal information that has been collected. Grays Shareholders should contact Grays' company secretary in the first instance if they wish to request access to their personal information.

Grays Shareholders who appoint a named person to act as their proxy, corporate representative or attorney at the Scheme Meeting should ensure that they inform that person of the matters outlined above.

### **No internet site is part of this Scheme Booklet**

Grays and Eclix each maintain internet sites at <http://www.graysecommercegroup.com> and <http://eclixgroup.com>. Any references in this Scheme Booklet to those or other internet sites are for information purposes only and do not form part of this Scheme Booklet.

### **Date of Scheme Booklet**

This Scheme Booklet is dated 21 June 2017.

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# IMPORTANT DATES AND TIMES

All references to time in this Scheme Booklet are references to the time in Sydney, Australia unless otherwise stated.

Event	Date (and time)
First Court Hearing at which the Court made orders convening the Scheme Meeting	9.30am on 21 June 2017
Grays to announce to ASX the implied value of the Scheme Consideration based on the closing price of Eclipx Shares on ASX on the prior trading day	21 July 2017
Last time and date by which proxy forms for the Scheme Meeting must be received by the Grays Share Registry (whether in person, by mail or by fax)	11.30am on 24 July 2017
Time and date for determining eligibility to vote at the Scheme Meeting	7.00pm on 24 July 2017
Scheme Meeting	11.30am on 26 July 2017
Second Court Hearing to obtain orders approving the Scheme	31 July 2017
Lodgment by Grays of the Court orders approving the Scheme with ASIC	1 August 2017
Suspension of trading in Grays Shares on ASX	1 August 2017
Record Date: time and date for determining entitlements to Scheme Consideration	7.00pm on 4 August 2017
Implementation Date: date on which the New Eclipx Shares are issued under the Scheme	11 August 2017
Commencement of trading on ASX of New Eclipx Shares	14 August 2017

All times and dates in the above timetable are subject to change. Any changes will be announced by Grays through ASX and notified on Grays' website at <http://www.graysecommercegroup.com.au/>

# OVERVIEW OF THIS SCHEME BOOKLET

## What is this Scheme Booklet for?

This Scheme Booklet has been sent to you to help you understand the terms of a proposed scheme of arrangement between Grays and all Grays Shareholders under which all of your Grays Shares will be acquired by a wholly-owned Subsidiary of Eclix, Eclix BidCo, in exchange for the Scheme Consideration.

The effect of the Scheme is that Eclix, through Eclix BidCo, will acquire 100% ownership and control of Grays.

The Scheme is subject to the approval of Grays Shareholders. This Scheme Booklet includes information relevant to your decision as a Grays Shareholder whether or not to vote in favour of the Scheme.

# WHAT YOU SHOULD DO NEXT

## 1. Read this Scheme Booklet

This Scheme Booklet contains information that is relevant to your decision as a Grays Shareholder whether or not to vote in favour of the Scheme. Accordingly, you should read and carefully consider the information in this Scheme Booklet to help you make an informed voting decision.

Grays Shareholders should refer in particular to Section 1 for guidance on reasons to vote in favour or against the Scheme and other considerations relevant to the Scheme. Answers to some frequently asked questions are included in Section 3.

This Scheme Booklet does not take into account the financial situation, investment objectives and particular needs of any individual Grays Shareholder. If you have any queries in relation to how the Scheme may affect your specific financial situation, investment objectives or other particular needs, you should consult your legal, financial, taxation or other professional adviser before making any decision in relation to your Grays Shares and how to vote at the Scheme Meeting.

## 2. Vote on the Scheme

As a Grays Shareholder, you have a say in whether or not the Scheme proceeds.

You can vote at the Scheme Meeting:

- by proxy, using the enclosed Proxy Form; or
- in person, by attending the Scheme Meeting to be held on 26 July 2017 at the offices of MinterEllison, Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 commencing at 11.30am (AEST).

If you vote by proxy, your proxy form must be received by the Grays Share Registry (whether in person, by mail, by fax or online at [www.investorvote.com.au](http://www.investorvote.com.au)) by 11.30am (AEST) on 24 July 2017, for your vote to be counted.

Further information relating to voting is contained in Section 2, in the notice of meeting in Appendix 4 to this Scheme Booklet and in the Proxy Form for the Scheme Meeting which accompanies this Scheme Booklet.

## Is the Scheme in the best interests of Grays Shareholders?



The Independent Expert has concluded that the Scheme is **FAIR AND REASONABLE** and in the **BEST INTERESTS** of Grays Shareholders in the absence of a superior proposal.

The Independent Expert's Report is included in Appendix 1 to this Scheme Booklet.

## What do Grays Directors recommend?



Your Directors **UNANIMOUSLY RECOMMEND** that you vote **IN FAVOUR OF** the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders.



Your Directors intend to vote all Grays Shares they hold or control **IN FAVOUR OF** the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders.



# LETTER FROM THE CHAIRMAN OF GRAYS

Dear Grays Shareholder,

On behalf of the Grays Board, I am pleased to present this Scheme Booklet containing information about the proposed acquisition of Grays eCommerce Group Limited by Eclipx Group Limited, an ASX-listed provider of fleet and equipment leasing and management.

## **Overview of transaction**

On 4 May 2017, Grays announced that it had entered into a Scheme Implementation Deed with Eclipx under which, subject to certain conditions including the approval of Grays Shareholders, 100% of Grays Shares will be acquired by Eclipx BidCo under a members' scheme of arrangement.

If the Scheme is implemented, Grays Shareholders (other than Ineligible Foreign Scheme Shareholders) will receive 0.3656 (rounded)<sup>1</sup> New Eclipx Shares for each Grays Share that they hold. This implies a value per Grays Share of<sup>2</sup>:

- \$1.39 (based on Eclipx's closing price on 3 May 2017, being the day before announcement of the Scheme); and
- \$1.34 (based on Eclipx's closing price on 15 June 2017, being the Last Practicable Date).

## **Your directors' recommendation**

Your Directors believe the Scheme recognises the strategic value of the Grays business, our success in becoming a leading online auction site, and the investment we have made to position our Business to Business (B2B) division for sustainable growth.

**Your Directors unanimously recommend that you vote in favour of the Scheme at the Scheme Meeting, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders.<sup>3</sup>**

**Subject to these same qualifications, each Director intends to vote all of the Grays Shares held or controlled by them in favour of the Scheme.<sup>3</sup>**

In arriving at this unanimous recommendation, your Directors have given consideration to:

- the Independent Expert's conclusion that the Scheme is fair and reasonable and in the best interests of Grays Shareholders in the absence of a superior proposal;
- the significant implied premium based on share prices before announcement of the Scheme on 4 May 2017. The implied value of the Scheme Consideration represents a significant premium of:
  - 32.3% based on each of Eclipx's and Grays' last closing price on ASX on 3 May 2017;<sup>4</sup>
  - 31.7% based on the 1 month VWAPs of each of Eclipx and Grays to 3 May 2017;<sup>5</sup> and
  - 35.7% based on the 3 month VWAPs of each of Eclipx and Grays to 3 May 2017;<sup>6</sup>
- the ability for Grays Shareholders (other than Ineligible Foreign Scheme Shareholders) to participate in the longer-term performance of the Combined Group;
- the opportunity for Grays Shareholders to more readily monetise their investment, if they choose to do so, given the historically higher trading liquidity of Eclipx Shares; and
- the statement made by Caledonia on 4 May 2017 as follows:

"Caledonia (Private) Investments Pty Limited, which, with its associates, has a relevant interest at the date of this announcement in 18,399,533 Grays shares (14.43%), intends to vote the shares in favour of the proposed Scheme, in the absence of a superior proposal and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Grays shareholders."

1 The fixed exchange ratio is 0.365588962370616.

2 The implied value of the Scheme Consideration may increase or decrease prior to when the New Eclipx Shares are issued under the Scheme on the Implementation Date based on movements in the share price of Eclipx. See Section 1.4(a) for more details.

3 Grays Shareholders' attention is drawn to Section 5.8 which details the interests of Grays Directors in Grays Securities and in Eclipx Securities.

4 Eclipx closing price of \$3.80 on 3 May 2017 and Grays closing price of \$1.05 on 3 May 2017 implies a value of the Scheme Consideration of \$1.39.

5 Eclipx 1 month VWAP of \$3.80 and Grays 1 month VWAP of \$1.05. VWAPs calculated based on cumulative value traded on ASX and CHI-X divided by cumulative volume traded on ASX and CHI-X. In this Scheme Booklet, neither ASX, CHI-X nor IRESS have consented to the use of trading data.

6 Eclipx 3 month VWAP of \$3.84 and Grays 3 month VWAP of \$1.04. VWAPs calculated based on cumulative value traded on ASX and CHI-X divided by cumulative volume traded on ASX and CHI-X.

## What to do next

You should read this Scheme Booklet carefully in its entirety, including reasons to vote in favour or against the Scheme and other considerations relevant to the Scheme set out in Section 1, before making any decision on how to vote on the Scheme. I also encourage you to read the Independent Expert Report and seek independent legal, financial, taxation or other professional advice before making an investment decision in relation to your Grays Shares.

Your vote is important in determining whether the Scheme proceeds. If the Scheme is not approved at the Scheme Meeting by the required statutory majorities, the Scheme will not be implemented and you will not receive the Scheme Consideration.

I strongly encourage you to read this Scheme Booklet and cast an informed vote on the Scheme at the Scheme Meeting. If you are unable to attend the Scheme Meeting in person, I encourage you to vote by completing the enclosed personalised Proxy Form and returning it to the Grays Share Registry so that it is received by no later than 11.30am (AEST) on 24 July 2017.

If you have any questions regarding the Scheme, please contact the Grays information line on 1300 103 188 (within Australia) or +61 3 9415 4232 (outside Australia) Monday to Friday between 9.00am and 5.00pm (AEST).

On behalf of the Grays Board, I would like to reiterate our support for the Scheme.

We believe that the Scheme represents a compelling opportunity for Grays Shareholders, and encourage you to vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders.

I would also like to take this opportunity to thank you for your continued support of Grays.

Yours sincerely,

Jonathan Pinshaw  
Chairman  
Grays eCommerce Group Limited

## LETTER FROM THE CHAIRMAN OF ECLIX

Dear Grays Shareholder,

### **Proposed acquisition of Grays eCommerce Group Limited by Eclix Group Limited**

The directors of Eclix are pleased to provide you with the opportunity to participate in the combination of Eclix and Grays, which is to be effected by way of a scheme of arrangement under which Eclix BidCo will acquire all the shares in Grays.

Eclix has a proven track record of delivering strong shareholder returns. Since listing on ASX on 22 April 2015 at an offer price per share of \$2.30, Eclix is proud to have since generated a total shareholder return of approximately 71%<sup>7</sup>.

As a result of receiving New Eclix Shares as your Scheme Consideration, you will gain exposure to Eclix's business and will have the opportunity to benefit from the potential synergies anticipated to be generated by the Combined Group, including extracting significant operating efficiencies and capitalising on cross-selling opportunities.<sup>8</sup> Further, Eclix's senior management have proven ability to grow newly acquired businesses, as seen in the performance of its "FleetPartners" business under current management.

The Scheme has been unanimously recommended by the Grays Board, and each Grays Director has also indicated that they intend to vote their shares in favour of the Scheme, in each case in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders. Subject to the same qualifications, each director of Grays intends to vote all the Grays shares held or controlled by that director in favour of the Scheme.

Further, the Independent Expert has concluded that the Scheme is in the best interest of Grays Shareholders, in the absence of a Superior Proposal. In addition, on 4 May 2017, Caledonia (Private) Investments Pty Limited stated as follows:

"Caledonia (Private) Investments Pty Limited, which, with its associates, has a relevant interest at the date of this announcement in 18,399,533 Grays shares (14.43%), intends to vote the shares in favour of the proposed Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Grays Shareholders."

Further details of the anticipated benefits of the Scheme to Grays Shareholders are provided in the "Reasons to vote in favour of the Scheme" section at the front of this Scheme Booklet.

As a Grays Shareholder, your vote is important to ensure the Scheme is implemented and that those benefits can be realised.

This Scheme Booklet provides important information in relation to the Scheme, and on behalf of the Eclix Board, I encourage you to vote in favour of the Scheme at the Scheme Meeting.

As Chairman of the Eclix Board, I am excited by the future of the Combined Group and I look forward to welcoming you as a shareholder of Eclix on the successful implementation of the Scheme.

Yours sincerely,



**Kerry C D Roxburgh**  
Independent Chairman  
Eclix Group Limited

<sup>7</sup> As at the Last Practicable Date.

<sup>8</sup> See Section 7.2 for further information relating to these potential synergies.

# 1. KEY CONSIDERATIONS RELEVANT TO YOUR VOTE

## 1.1 Introduction

The Scheme has a number of advantages and disadvantages which may impact Grays Shareholders in different ways, depending on their individual circumstances. Grays Shareholders should seek professional advice on their particular circumstances, as appropriate.

Section 1.2 provides a summary of some of the reasons why the Grays Directors have unanimously recommended you vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders.<sup>9</sup> Section 1.2 should be read in conjunction with Section 1.3 which sets out reasons why you may wish to vote against the Scheme, and Section 1.4 which sets out some other considerations that are relevant to the Scheme.

You should read this Scheme Booklet in full, including the Independent Expert's Report, before deciding how to vote at the Scheme Meeting. While the Grays Directors acknowledge the reasons to vote against the Scheme, they believe the advantages of the Scheme outweigh its disadvantages and risks.

## 1.2 Why you should vote in favour of the Scheme

### **a. The Grays Directors unanimously recommend that you vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders<sup>9</sup>**

The Grays Directors believe that the advantages of the Scheme outweigh its disadvantages and risks.

Each Grays Director recommends that Grays Shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders.<sup>9</sup>

The Grays Directors intend to vote the Grays Shares they hold or control in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders.<sup>9</sup>

In making their recommendation, the Grays Directors have considered the:

- other reasons to vote in favour of or against the Scheme in this Section 1.2 and in Section 1.3;
- risks associated with the Scheme, Eclix and the Combined Group referred to in Section 8; and
- opinion of the Independent Expert, whose report is reproduced in Appendix 1.

### **b. The Independent Expert has concluded that the Scheme is fair and reasonable and in the best interests of Grays Shareholders in the absence of a superior proposal**

Grays appointed Lonergan Edwards as the Independent Expert to provide an independent assessment of the Scheme.

In the Independent Expert's Report, the Independent Expert has concluded that the Scheme is fair and reasonable and, therefore, in the best interests of Grays Shareholders in the absence of a superior proposal.

The Independent Expert has assessed the value of Grays Shares to be \$1.25 to \$1.36 and the value of the Scheme Consideration to be in the range of \$1.28 to \$1.37. As the estimated range of value of the Scheme Consideration falls within or exceeds the estimated range of value of Grays Shares, the Independent Expert has concluded that the Scheme is fair. As the Scheme is fair, it is also reasonable and in the best interests of Grays Shareholders.

A full copy of the Independent Expert's Report is included in Appendix 1. You should carefully read the Independent Expert's Report in its entirety before making a decision on how to vote on the Scheme.

### **c. The implied value of the Scheme Consideration represents a significant premium**

The implied value of the Scheme Consideration represents a significant premium over historical trading prices of Grays Shares.

Based on the closing price of Eclix Shares on ASX of \$3.80 on 3 May 2017, being the last trading day prior to announcement of the Scheme, the implied value of the Scheme Consideration is \$1.39 per Grays Share, which represents a 32.3% premium to the closing price of Grays Shares on ASX on 3 May 2017 of \$1.05.

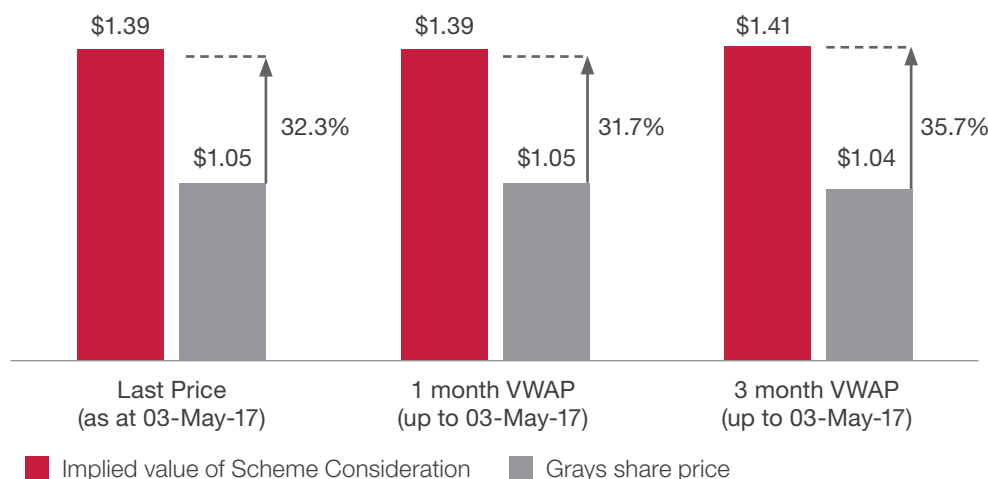
<sup>9</sup> Grays Shareholders' attention is drawn to Section 5.8 which details the interests of Grays Directors in Grays Securities and in Eclix Securities.



The Scheme Consideration also represents a:

- 31.7% premium based on Grays' 1 month VWAP to 3 May 2017 of \$1.05 and Eclix's 1 month VWAP to 3 May 2017 of \$3.80;<sup>10</sup> and
- 35.7% premium based on Grays' 3 month VWAP to 3 May 2017 of \$1.04 and Eclix's 3 month VWAP to 3 May 2017 of \$3.84.<sup>10</sup>

#### Implied Scheme Consideration value and premia<sup>10</sup>



The implied value of the Scheme Consideration may increase or decrease based on movements in the price of Eclix Shares, including between the date of this Scheme Booklet, the date of the Scheme Meeting and when the New Eclix Shares are issued under the Scheme on the Implementation Date. See Section 1.4(a) for more details.

The implied value of the Scheme Consideration based on the closing price of an Eclix Share on the ASX on the Last Practicable Date is \$1.34 per Grays Share.

On 21 July 2017, being the Business Day prior to the last date on which Proxy Forms for the Scheme Meeting must be received, Grays will announce to ASX the implied value of the Scheme Consideration based on the closing price of an Eclix Share on the ASX on the prior trading day.

#### d. You can participate in the longer-term performance of a larger group through the continued ownership of Eclix Shares

Scheme Shareholders who receive New Eclix Shares under the Scheme will have the opportunity to retain their exposure to Grays while participating in the longer-term performance of the Combined Group following implementation of the Scheme.<sup>11</sup>

Scheme Shareholders will hold, in aggregate, approximately 15.1% of all Eclix Shares following implementation of the Scheme (disregarding Ineligible Foreign Scheme Shareholders). As noted in Section 6, the Eclix business has achieved significant earnings growth in recent years.

Further details of Eclix are set out in Section 6 and the Combined Group are set out in Section 7. Further details of the risks associated with owning New Eclix Shares and the Combined Group are set out in Section 8.

#### e. Opportunity to more readily monetise your investment, should you choose to do so, given the historically higher trading liquidity of Eclix Shares

Eclix Shares also trade on the ASX. Accordingly, those Scheme Shareholders who receive New Eclix Shares under the Scheme and who do not wish to remain invested in the Combined Group will have the option to trade those New Eclix Shares on the ASX.

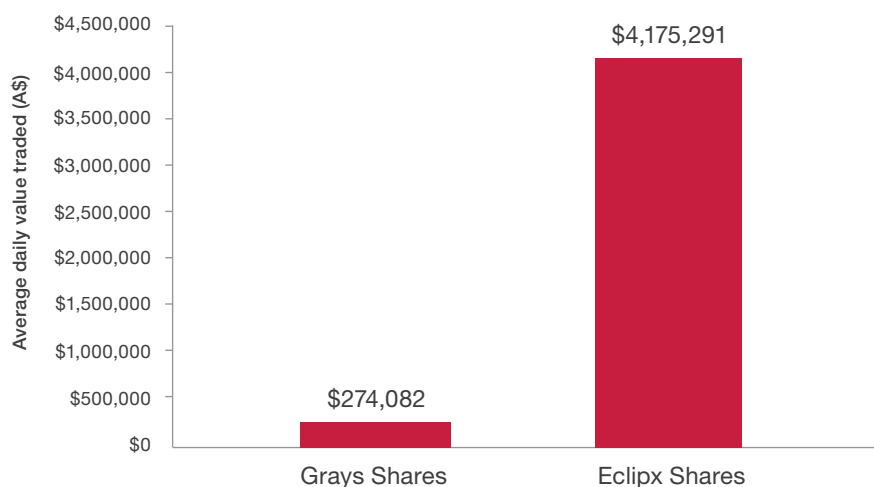
Historically, Eclix Shares have been more liquid than Grays Shares on a stand-alone basis. For the period 12 months to 3 May 2017, being the last trading day prior to announcement of the Scheme, the average daily value of all Eclix Shares traded was \$4.18 million, relative to an average daily value of all Grays Shares traded of \$0.27 million.

<sup>10</sup> VWAPs calculated based on cumulative value traded on ASX and CHI-X divided by cumulative volume traded on ASX and CHI-X.

<sup>11</sup> Ineligible Foreign Scheme Shareholders will not be entitled to receive any New Eclix Shares and will instead receive cash for any New Eclix Shares that they would otherwise have been entitled to receive. See Section 4.3 for further information.

Eclix Shares over that period have enjoyed superior liquidity, being 15 times greater than Grays Shares on an average daily value traded basis. The relative average daily value traded of each company's shares is represented graphically below.

**Average daily value traded for Grays Shares and Eclix Shares between 4 May 2016 and 3 May 2017<sup>12</sup>**



If the historical superior liquidity of Eclix Shares continues following implementation of the Scheme, the ability of Scheme Shareholders who receive New Eclix Shares under the Scheme to monetise their investment, should they wish to do so, is enhanced.

**f. Since the announcement of the Scheme, no Superior Proposal has been received by the Grays Board**

The announcement of the Scheme followed considerable negotiations between Grays and Eclix as to price and terms.

No Superior Proposal has been received by the Grays Board since the announcement of the Scheme on 4 May 2017.

The Grays Board is not currently aware of any Superior Proposal and notes that, since Grays announced the Scheme, there has been a significant period of time and ample opportunity for a Superior Proposal to emerge.

**g. Grays Shares may trade at lower levels in the absence of the Scheme**

Since 3 May 2017, the last trading day prior to announcement of the Scheme, Grays' share price has increased 26.7% from \$1.05 to a closing price of \$1.33 on the Last Practicable Date.

If the Scheme is not implemented, Grays Shares will remain quoted on the ASX and will continue to be subject to market volatility, including general stock market movements, the impact of general economic conditions and demand for listed securities. As such, whilst there are many factors that affect the Grays Share price, if the Scheme is not implemented, the price at which Grays Shares trade may fall, including to a price that is below the implied value of the Scheme Consideration.

The Independent Expert states on page 55 of the Independent Expert's Report that:

*"If the Scheme is not implemented we expect that, at least in the short-term, Grays shares will trade at a significant discount to our valuation and the Scheme Consideration due to the difference between the value of Grays shares on a portfolio basis and their value on a 100% controlling interest basis."*

**Closing price of Grays Shares on ASX over the 12 month period to the Last Practicable Date<sup>13</sup>**



<sup>12</sup> Based on cumulative value traded on ASX and CHI-X.

<sup>13</sup> Source: IRESS. IRESS has not consented to the use of this trading data.

## **h. Major shareholder support**

On 4 May 2017, Caledonia stated as follows:

“Caledonia (Private) Investments Pty Limited, which, with its associates, has a relevant interest at the date of this announcement in 18,399,533 Grays shares (14.43%), intends to vote the shares in favour of the proposed Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Scheme is in the best interests of Grays Shareholders.”

## **i. Grays Shareholders may be eligible for CGT rollover relief**

If the Scheme is implemented, Grays Shareholders who receive New Eclix Shares under the Scheme and who are Australian residents may be entitled to scrip-for-scrip capital gains tax rollover relief on the disposal of Grays Shares in exchange for New Eclix Shares.

The benefit of electing scrip-for-scrip rollover relief upon receiving New Eclix Shares will depend primarily on the individual circumstances of each Grays Shareholder. Further details regarding the general Australian tax consequences of the Scheme are contained in Section 9.

## **1.3 Why you may consider voting against the Scheme**

### **a. You may disagree with the Grays Directors and the Independent Expert in relation to the Scheme**

Notwithstanding the unanimous recommendation of the Grays Directors and the favourable conclusion of the Independent Expert,<sup>14</sup> you may believe that the Scheme is not in your best interests.

### **b. You may wish to maintain your current investment and risk profile**

Eclix's business is focused on providing fleet and equipment leasing and management and vehicle rental to corporates, SMEs and consumers. While these activities are complementary to the Grays business, they are of a different nature to the core Grays online auction business. In addition, the operational profile, size, capital structure and dividend policy of the Combined Group will be different to that of Grays on a stand-alone basis.

You may wish to maintain an interest in Grays as an independent company because you are seeking an investment in a publicly listed company with the specific characteristics of Grays. You may consider a change in investment profile to be disadvantageous to you.

If the Scheme is implemented you will be exposed to risk factors specific to Eclix, and to certain additional risk factors relating to the Combined Group and the integration of the two companies. In some cases, those risks are different from or additional to those related to Grays.

The key risks associated with the Scheme, Eclix and the Combined Group are described in detail in Section 8.

### **c. You may believe there is a potential for a Superior Proposal to emerge**

You may consider that a Superior Proposal may emerge in the future which is more attractive for Grays Shareholders than the Scheme.

The implementation of the Scheme would mean that Grays Shareholders would not obtain the benefit of any such proposal.

The Grays Board is not currently aware of any Superior Proposal and notes that, since Grays announced the Scheme on 4 May 2017, there has been a significant period of time and ample opportunity for a Superior Proposal to emerge.

However, if a Competing Proposal is received, this will be considered by the Grays Directors in accordance with their fiduciary duties, and the provisions of the Scheme Implementation Deed. Depending on the circumstances, if the Grays Directors withdraw or adversely modify their recommendation to vote in favour of the Scheme, Grays may be required to pay the Grays Break Fee of \$1.79 million (exclusive of GST) to Eclix (see Section 4.7 for other information relating to the Grays Break Fee).

### **d. The Scheme may be subject to conditions that you consider to be unacceptable**

The Scheme is subject to a number of Conditions including, Grays Shareholder approval, Court approval, no Grays Material Adverse Change occurring, and no Grays Prescribed Occurrences occurring.

All of the Conditions to implementation of the Scheme are set out in full in clause 3.1 of the Scheme Implementation Deed.

If these Conditions are not satisfied or waived (where capable of waiver), the Scheme will not proceed (even if it has been approved by Grays Shareholders) and Grays Shareholders will not receive the Scheme Consideration as contemplated by the Scheme. You may consider the uncertainty created by the Conditions to be unacceptable.

### **e. The value of the Eclix Shares that form the Scheme Consideration is not certain**

If the Scheme is implemented, Scheme Shareholders will receive New Eclix Shares.<sup>15</sup> The value of these New Eclix Shares will depend on the price at which Eclix Shares trade on ASX after the Implementation Date.

<sup>14</sup> Grays Shareholders' attention is drawn to Section 5.8 which details the interests of Grays Directors in Grays Securities and in Eclix Securities.

<sup>15</sup> Ineligible Foreign Scheme Shareholders will not be entitled to receive any New Eclix Shares and will instead receive cash for any New Eclix Shares that they would otherwise have been entitled to receive. See Section 4.3 for further information.

Following implementation of the Scheme, the price of Eclix Shares may rise or fall based on market conditions and the Combined Group's financial and operational performance. Accordingly, there is no guarantee as to the future value of New Eclix Shares.

Further, following implementation of the Scheme, there is a risk that a significant number of Grays Shareholders may seek to sell their New Eclix Shares, including the Sale Agent who will sell any New Eclix Shares issued on behalf of any Ineligible Foreign Scheme Shareholders, which may adversely impact the price of Eclix Shares.

**f. You will have smaller percentage voting interests in the Combined Group than your current percentage voting interests in Grays**

If implemented, the Scheme will result in Scheme Shareholders having smaller percentage voting interests in the Combined Group than their current percentage voting interests in Grays.

Scheme Shareholders will in aggregate, through their holding of New Eclix Shares, go from holding 100% of Grays Shares to holding approximately 15.1% of the Combined Group on the Implementation Date (disregarding Ineligible Foreign Scheme Shareholders). This will give Scheme Shareholders, collectively, less influence over the future direction of Grays and its business and assets (which will be owned by Eclix as part of the Combined Group).

**g. The tax consequences of the Scheme may not be suitable to your financial position**

Depending on your taxation position, the Scheme may have unfavourable taxation consequences for you.

A general outline of the potential Australian tax implications for the Scheme for Grays Shareholders is set out in Section 9.

**1.4 Additional considerations**

**a. The value of the Scheme Consideration may fluctuate before New Eclix Shares are issued under the Scheme**

The Scheme Consideration consists solely of New Eclix Shares.<sup>16</sup> Also, the number of New Eclix Shares that comprise the Scheme Consideration is a fixed number of Eclix Shares, being 0.3656 (rounded)<sup>17</sup> New Eclix Shares for each Grays Share, rather than a number of New Eclix Shares with a specified market value.

As a result, the implied value of the Scheme Consideration before the New Eclix Shares are issued will fluctuate with any movements in the trading price of Eclix Shares on ASX. Such fluctuations could occur at any point in time after the date of this Scheme Booklet, including before the date of the Scheme Meeting or after the date of the Scheme Meeting but prior to the issuance of the New Eclix Shares under the Scheme on the Implementation Date.

The trading price of Eclix Shares on ASX is subject to fluctuations due to a number of different factors, including but not limited to general economic conditions, changes in the value of underlying assets, fluctuations in domestic and international financial markets, movements in interest rates and market expectations. Any fluctuation in price will directly impact the value of the Scheme Consideration to which Scheme Shareholders will be entitled to be issued on the Implementation Date.

Importantly, if the trading price of Eclix Shares on ASX falls or rises materially, the implied value of the New Eclix Shares to be issued under the Scheme may fall outside the valuation range of the Independent Expert of \$1.25 to \$1.36 per Grays Share.

Set out below is a representation of the implied value of 0.3656 (rounded)<sup>18</sup> New Eclix Shares based on movements in the market price of Eclix Shares on ASX.

Eclix Share price	\$3.55	\$3.60	\$3.65	\$3.70	\$3.75	\$3.80	\$3.85	\$3.90	\$3.95
Implied value of 0.3656 (rounded) <sup>18</sup> New Eclix Shares	\$1.30	\$1.32	\$1.33	\$1.35	\$1.37	\$1.39	\$1.41	\$1.43	\$1.44

Under the Scheme, any fractional entitlements to New Eclix Shares will be rounded down to the nearest whole number of New Eclix Shares. This is not accounted for in the above representation of the implied value of New Eclix Shares.

Given this, Grays Shareholders should carefully consider the then current trading price of Eclix Shares on ASX, as well as the potential for that price to fall or rise at all times between now and when the New Eclix Shares are issued under the Scheme on the Implementation Date (including, for the avoidance of doubt, between the date of the Scheme Meeting and Implementation), before deciding whether to vote in favour of the Scheme Resolution. Grays Shareholders should also read and consider the important information regarding Eclix Shares set out in Section 6 and the risks associated with owning Eclix Shares set out in Section 8.

On 21 July 2017, being the Business Day prior to the last date on which Proxy Forms for the Scheme Meeting must be received, Grays will announce to ASX the implied value of the Scheme Consideration based on the closing price of an Eclix Share on the ASX on the prior trading day.

16 Ineligible Foreign Scheme Shareholders will not be entitled to receive any New Eclix Shares and will instead receive cash for any New Eclix Shares that they would otherwise have been entitled to receive. See Section 4.3 for further information.  
17 The fixed exchange ratio is 0.365588962370616.  
18 The fixed exchange ratio is 0.365588962370616.



#### **b. You should consider the risks associated with the Scheme, Eclipx and the Combined Group**

The Scheme and the creation of the Combined Group presents risks including:

- that the Conditions to the Scheme may not be satisfied or waived (where capable of waiver);
- that the Court may not approve the Scheme or the Court's approval may be delayed; and
- that counterparties may not provide their consent (if required) to the Scheme under material contracts, which may then impact the Combined Group's performance.

By holding New Eclipx Shares, you will be exposed to risk factors specific to Eclipx and to certain additional risk factors relating to the Combined Group and the integration of the two companies. In some cases, those risks are different from or additional to those related to Grays. These risks include:

- risks that affect Eclipx that may not affect Grays in the same way, such as exposure to movements in exchange rates, funding costs, access to funding, adverse changes to fringe benefits tax legislation and successful integration of recent and future acquisitions; and
- Grays and Eclipx may not be able to achieve some or all of the expected benefits of the Scheme.

The key risks associated with the Scheme, Eclipx and the Combined Group are described in detail in Section 8.

#### **c. The Scheme may be implemented even if you do not vote at the Scheme Meeting or you vote against the Scheme**

Even if you do not vote on, or vote against, the Scheme, the Scheme will still be implemented if it is approved by the requisite majorities of Grays Shareholders at the Scheme Meeting, and the Court, and all other Conditions to the Scheme are satisfied or waived (where capable of waiver). If this occurs:

- your Grays Shares will be transferred to Eclipx BidCo;
- you will receive the Scheme Consideration even though you did not vote on, or voted against, the Scheme;<sup>19</sup> and
- Grays will become a wholly-owned subsidiary of Eclipx BidCo and be delisted from ASX.

#### **d. Implications if the Scheme is not approved**

If the Scheme is not approved by the requisite majorities of Grays Shareholders at the Scheme Meeting, or by the Court, or any other Condition to the Scheme is not satisfied or waived (where capable of waiver):

- you will not receive the Scheme Consideration;
- your Grays Shares will not be transferred to Eclipx BidCo (they will be retained by you);
- Grays will continue to operate as a stand-alone entity;
- the existing Grays Board and management will continue to operate Grays' business;
- the advantages of the Scheme, as outlined in Section 1.2 will not be realised and equally, some of the disadvantages of the Scheme, as outlined in Section 1.3, will no longer be relevant; and
- you will continue to be exposed to the benefits and risks associated with an investment in Grays (which you are already exposed to as a Grays Shareholder).

Grays is expected to have incurred one-off transaction costs of approximately \$2.0 million, which will be payable by Grays regardless of whether the Scheme is implemented or not. These costs are expected to comprise adviser, legal, accounting and expert fees, employee payments and various other costs. These costs exclude success-based fees and other costs which are contingent upon the successful implementation of the Scheme.

#### **e. A break fee may be payable by Grays in some circumstances**

If the Scheme is not implemented, the parties will incur significant costs, including opportunity costs. To reflect this, a Grays Break Fee may be payable by Grays to Eclipx or a Eclipx Break Fee by Eclipx to Grays in certain circumstances.

The Grays Break Fee and the Eclipx Break Fee are each \$1.79 million (exclusive of GST). This is an amount to compensate either Grays or Eclipx (as applicable) for any advisory costs, costs of management and directors' time, out of pocket expenses and reasonable opportunity costs incurred in pursuing the Scheme.

For further information regarding the Break Fees, including the circumstances in which Grays or Eclipx must pay the Grays Break Fee and the Eclipx Break Fee (as applicable), see Section 4.7.

#### **f. Selling your Grays Shares**

The existence of the Scheme does not preclude you from selling your Grays Shares, if you wish, provided a transfer form in respect of that sale is received by the Grays Share Registry on or before the Record Date. On-market trading in Grays Shares will cease at close of trading of the ASX on the Effective Date, which is expected to be 1 August 2017.

<sup>19</sup> Ineligible Foreign Scheme Shareholders will not be entitled to receive any New Eclipx Shares and will instead receive cash for any New Eclipx Shares that they would otherwise have been entitled to receive. See Section 4.3 for further information.

## 2. HOW TO VOTE

### 2.1 Scheme Meeting

The notice convening the Scheme Meeting is contained in Appendix 4 to this Scheme Booklet. A personalised Proxy Form for the Scheme Meeting is enclosed with this Scheme Booklet.

The Scheme Meeting will be held at the offices of MinterEllison, Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 on 26 July 2017, at 11.30am (AEST).

For the Scheme to be agreed to by Grays Shareholders, votes in favour of the Scheme must be received from:

- a majority in number (more than 50%) of the holders of Grays Shares voting at the Scheme Meeting (in person or by proxy, corporate representative or attorney); and
- the holders of Grays Shares who together hold at least 75% of the total number of Grays Shares voted at the Scheme Meeting (in person or by proxy, corporate representative or attorney).

The Court has a statutory discretion to disregard the Headcount Test at the Scheme Meeting.

The purpose and effect of the Scheme are as summarised earlier and is more particularly described in Section 4 of this Scheme Booklet.

### 2.2 Your vote is important

Your Directors urge all Grays Shareholders to vote on the Scheme at the Scheme Meeting. The Scheme affects your shareholding and your vote at the Scheme Meeting is important in determining whether the Scheme proceeds.

In the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders, Your Directors encourage all Grays Shareholders to vote in favour of the Scheme either by submitting a completed proxy form for the Scheme Meeting to Grays by 11.30am (AEST) on 24 July 2017 or by attending the Scheme Meeting on 26 July 2017 at 11.30am.

### 2.3 How to vote

#### a. Voting entitlements

If you are registered as a Grays Shareholder by the Grays Share Registry at 7.00pm (AEST) on 24 July 2017, you will be entitled to vote at the Scheme Meeting, unless you are an Excluded Shareholder.

Voting at the Scheme Meeting will be conducted by poll, meaning that you will have one vote for each Grays Share you hold as at 7.00pm (AEST) on 24 July 2017.

#### b. Voting in person

Grays Shareholders or their proxies, attorneys or representatives (including representatives of corporate proxies) wishing to vote in person should attend the Scheme Meeting and bring a form of personal identification (such as their driver's licence).

Grays Shareholders, their attorneys or representatives (including proxies and their representatives) who plan to attend the Scheme Meeting in person are asked to arrive at the venue 30 minutes prior to the time designated for the commencement of the Scheme Meeting, so that their shareholding can be checked against the Grays Share Register and attendances noted. Attorneys should bring with them the original or a certified copy of the power of attorney under which they have been authorised to attend and vote at the meetings.

To vote in person at the Scheme Meeting, you, your proxy, your attorney, your representative or your corporate proxy's representative must attend the Scheme Meeting to be held at the offices of MinterEllison, Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 on 26 July 2017, at 11.30am (AEST).

#### c. Voting by proxy

Grays Shareholders wishing to vote by proxy at the Scheme Meeting must complete and sign or validly authenticate the personalised proxy form which is enclosed with this Scheme Booklet. A person appointed as a proxy may be an individual or a body corporate.

A Grays Shareholder who is entitled to attend and vote at the Scheme Meeting is entitled to appoint not more than two proxies to attend and vote in place of the Grays Shareholder.

Completed proxy forms must be delivered to Grays Share Registry by 11.30am (AEST) on 24 July 2017 (**Proxy Deadline**) in any of the following ways:

- **By mail** to Computershare Investor Services Pty Limited using the reply paid envelope or to GPO Box 242, Melbourne, Victoria, 3001. Please allow sufficient time so that it reaches Computershare Investor Services Pty Limited by the Proxy Deadline;
- **By fax** to Computershare Investor Services Pty Limited on +1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia);
- **Online** via the Grays' Share Registry website at [www.investorvote.com.au](http://www.investorvote.com.au). Please refer to the Proxy Form for more information; or
- **By hand delivery** to Computershare Investor Services Pty Limited at Level 4, 60 Carrington Street, Sydney, New South Wales, 2000.

#### **d. Undirected proxies**

If a Grays Shareholder nominates the chairman of the Scheme Meeting as its proxy, the person acting as chairman of the Scheme Meeting must act as proxy under the appointment in respect of any or all items of business to be considered at the Scheme Meeting.

If a proxy appointment is signed or validly authenticated by a Grays Shareholder but does not name the proxy or proxies in whose favour it is given, or their named proxy or proxies do not attend the meeting, the person acting as chairman of the Scheme Meeting may at his or her election:

- act as proxy in respect of any or all items of business to be considered at the Scheme Meeting; or
- complete the proxy appointment by inserting the name or names of one or more Grays Directors or the Company Secretary to act as proxy under the appointment, in respect of any or all items of business to be considered at the Scheme Meeting.

Proxy appointments in favour of the chairman of the Scheme Meeting, the Company Secretary or any Grays Director which do not contain a direction will be voted in favour of the Scheme Resolution at the Scheme Meeting (in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders).

#### **e. Voting by attorney**

Grays Shareholders wishing to vote by attorney at the Scheme Meeting must, if they have not already presented an appropriate power of attorney to Grays Share Registry for notation, deliver to the Grays Share Registry (at the address or facsimile number provided in Section 2.3(c) of this Scheme Booklet) the original instrument appointing the attorney or a certified copy of it by 11.30am (AEST) on 24 July 2017.

Unless the contrary is evident from the express terms of the power of attorney, any power of attorney granted by a Grays Shareholder will, as between Grays and that Grays Shareholder, continue in force and may be acted on, unless express notice in writing of its revocation or the death of the relevant Grays Shareholder is lodged with Grays.

#### **f. Voting by corporate representative**

To vote in person at the Scheme Meeting, a Grays Shareholder or proxy which is a body corporate may appoint an individual to act as its representative.

To vote by corporate representative at the Scheme Meeting, a corporate Grays Shareholder or proxy should attend the meeting by providing that person with:

- a letter or certificate authorising him or her as the corporation's representative, executed in accordance with the corporation's constitution; or
- a copy of the resolution appointing the representative, certified by a secretary or director of the corporation.

## **2.4 Further information**

Please refer to the notices of meeting in Appendix 4 to this Scheme Booklet for further information on voting procedures and details of the resolutions to be voted on at the Scheme Meeting.

### 3. FREQUENTLY ASKED QUESTIONS

Set out below are summary answers to some questions that Grays Shareholders may have in relation to the Scheme. This information is a summary only and should be read in conjunction with the remainder of this Scheme Booklet.

Question	Answer	Further Information
<b>A. Details of the Scheme</b>		
1. What are Grays Shareholders being asked to consider?	<p>If you are a Grays Shareholder you are being asked to consider and vote on a proposal under which a wholly-owned Subsidiary of Eclix, Eclix BidCo, will acquire all of your Grays Shares on the Implementation Date pursuant to a members' scheme of arrangement between Grays and all persons who hold Grays Shares as at the Record Date. The proposal is referred to in this Scheme Booklet as the Scheme.</p> <p>The consideration that you will receive (unless you are an Ineligible Foreign Scheme Shareholder) in exchange for the transfer of your Grays Shares on the Implementation Date will be 0.3656 (rounded)<sup>20</sup> New Eclix Shares for each Grays Share you own on the Record Date.</p> <p>If the Scheme proceeds, Grays Shareholders will in aggregate, through their holding of New Eclix Shares, own approximately 15.1% of the Combined Group on the Implementation Date (disregarding Ineligible Foreign Scheme Shareholders).</p>	Section 4
2. Why have I received this Scheme Booklet?	<p>The Scheme Booklet has been sent to you because you are a Grays Shareholder. The purpose of this Scheme Booklet is to explain the terms of the proposed acquisition by Eclix BidCo of all of your Grays Shares and the manner in which the acquisition will be considered and implemented, and to assist you in making a decision as to whether or not to vote in favour of the Scheme at the Scheme Meeting.</p> <p>This Scheme Booklet contains important information, including:</p> <ul style="list-style-type: none"> <li>the reasons for the Grays Directors' unanimous recommendation;</li> <li>the reasons why you may choose to vote for or against the Scheme;</li> <li>information about the Scheme Consideration;</li> <li>information about Grays, Eclix and the Combined Group;</li> <li>key risks associated with the Scheme, Eclix and the Combined Group; and</li> <li>the Independent Expert's Report.</li> </ul>	Section 4
3. If the Scheme is approved, what will be the effect?	<p>If the Scheme proceeds:</p> <ul style="list-style-type: none"> <li>your Grays Shares will be transferred to Eclix BidCo;</li> <li>you will receive the Scheme Consideration;</li> <li>Grays will become a wholly owned subsidiary of Eclix BidCo and Eclix will control Grays;</li> <li>Grays will be delisted from ASX; and</li> <li>Grays Shareholders will in aggregate, through their holding of New Eclix Shares, own approximately 15.1% of the Combined Group on the Implementation Date (disregarding Ineligible Foreign Scheme Shareholders).</li> </ul>	Sections 4.1 and 10.5
4. Will I be entitled to receive the Scheme Consideration?	You will be entitled to receive the Scheme Consideration if you are a Grays Shareholder (other than an Excluded Shareholder) as at the Record Date and the Scheme is approved and is implemented (whether you voted for or against the Scheme, or did not vote).	Sections 4 and 10.5

<sup>20</sup> The fixed exchange ratio is 0.365588962370616.



Question	Answer	Further Information
5. Who is Eclipx?	Eclipx supplies, finances and manages vehicles on behalf of corporate and small and medium enterprise customers and consumers in Australia and New Zealand. It also provides commercial equipment financing solutions in Australia and medium term accident replacement vehicles in Australia and New Zealand.  For further information on Eclipx, see Section 6.	Section 6
6. What are Eclipx's intentions regarding Grays?	If the Scheme is implemented, Eclipx intends to operate the business of the Grays Group substantially the same manner as at the date of this Scheme Booklet as part of the Combined Group.  Full details of Eclipx's intentions are outlined in Section 7.3.	Section 7.3
7. What should I do?	You should take two steps in relation to the Scheme: <ul style="list-style-type: none"> <li>carefully read this Scheme Booklet in its entirety and seek advice if you have any questions; and</li> <li>vote on the Scheme.</li> </ul>	See Overview of this Scheme Booklet
8. Is this a takeover bid?	No. However, if the Scheme is approved by Grays Shareholders and the Court, and if all of the other Conditions and approvals are satisfied or waived (if capable of waiver), the outcome will be equivalent to a successful 100% scrip takeover bid in that: <ul style="list-style-type: none"> <li>all of your Scheme Shares will be transferred to Eclipx BidCo; and</li> <li>you will be entitled to receive consideration in exchange for the transfer of your Scheme Shares,</li> </ul> whether you voted for or against the Scheme, or did not vote.	Section 1.4(c)
9. What is the timing for implementation of the Scheme?	The Implementation Date is currently scheduled to be 11 August 2017. Please note however this date is indicative only and subject to change.	Section 10
10. What is the form accompanying this Scheme Booklet?	The Scheme Meeting Proxy Form accompanies this Scheme Booklet.  If you are unable or do not wish to attend the Scheme Meeting in person, you should complete and lodge Proxy Form in accordance with the instructions specified in this Scheme Booklet and in the Scheme Meeting Proxy Form accompanying this Scheme Booklet.	Appendix 4

## B. Questions about the Scheme consideration

11. What consideration will I receive if the Scheme is implemented?	If the Scheme is implemented, Scheme Shareholders will receive 0.3656 (rounded) <sup>21</sup> New Eclipx Shares for each Grays Share they hold.  If you are an Ineligible Foreign Scheme Shareholder, you will not be issued with any New Eclipx Shares. Instead, the New Eclipx Shares that would otherwise have been issued to you will be sold via the Sale Agent and you will receive the net sale proceeds.  Under the Scheme, any fractional entitlements to New Eclipx Shares will be rounded down to the nearest whole number of New Eclipx Shares.	Section 4.2
12. When will I receive my Scheme Consideration?	If the Scheme becomes Effective, Grays anticipates that the New Eclipx Shares will be issued on or about the Implementation Date, which is expected to be 11 August 2017.  Ineligible Foreign Scheme Shareholders will receive cash proceeds from the sale of the New Eclipx Shares issued to the Sale Agent as soon as practicable after the last sale of New Eclipx Shares by the Sale Agent.  If the Scheme Meeting is adjourned or the Effective Date is otherwise delayed, the timing of the issue of those New Eclipx Shares as Scheme Consideration and the payment of the cash proceeds from the New Eclipx Shares attributable to the Ineligible Foreign Scheme Shareholders (as applicable) will also be delayed.	Section 10.5

<sup>21</sup> The fixed exchange ratio is 0.365588962370616.

Question	Answer	Further Information
13. What will the value of my New Eclix Shares be?	<p>The implied value of the Scheme Consideration on the Last Practicable Date is \$1.34 per Grays Share.</p> <p>However, the number of New Eclix Shares that Scheme Shareholders (other than Ineligible Foreign Scheme Shareholders) will receive as Scheme Consideration is a fixed number of New Eclix Shares, being 0.3656 (rounded)<sup>22</sup> New Eclix Shares for each Grays Share, rather than a number of New Eclix Shares with a specified market value.</p> <p>As a result, the implied value of the Scheme Consideration will fluctuate with any movements in the trading price of Eclix Shares on ASX. Such fluctuations could occur at any point in time after the date of this Scheme Booklet, including before the date of the Scheme Meeting or after the date of the Scheme Meeting but prior to the issuance of the New Eclix Shares under the Scheme on the Implementation Date.</p> <p>Importantly, if the trading price of Eclix Shares on ASX falls materially, the implied value of the New Eclix Shares to be issued under the Scheme may fall outside the valuation range of the Independent Expert of \$1.25 to \$1.36 per Grays Share.</p> <p>On 21 July 2017, being the Business Day prior to the last date on which Proxy Forms for the Scheme Meeting must be received, Grays will announce to ASX the implied value of the Scheme Consideration based on the closing price of an Eclix Share on the ASX on the prior trading day.</p>	Section 1.4(a)

### C. Ineligible Foreign Scheme Shareholders

14. Who is classified as an Ineligible Foreign Scheme Shareholder?	<p>A Scheme Shareholder will be an Ineligible Foreign Scheme Shareholder for the purposes of the Scheme if their address as at the Record Date is not in Australia, its external territories, New Zealand or the United States of America (unless Eclix is satisfied, acting reasonably that it is lawful, either unconditionally or after compliance with conditions that Eclix reasonably regards as acceptable and not unduly onerous or impracticable, to issue that Scheme Shareholder with New Eclix Shares under the Scheme).</p> <p>Please contact the Grays information line on 1300 103 188 (within Australia), or +61 3 9415 4232 (outside Australia), Monday to Friday between 9.00am and 5.00pm (AEST) if you have any questions regarding what jurisdictions are impacted by the treatment of Ineligible Foreign Scheme Shareholders.</p>	Section 4.3
15. What will Ineligible Foreign Scheme Shareholders receive under the Scheme?	<p>The New Eclix Shares which would otherwise be required to be issued to Ineligible Foreign Scheme Shareholders under the Scheme will be issued instead to the Sale Agent on the Implementation Date. The Sale Agent holds an Australian Financial Services Licence and is authorised to deal in securities.</p> <p>Eclix will procure that, as soon as reasonably practicable and, in any event, not more than 15 Business Days after the Implementation Date, the Sale Agent:</p> <ul style="list-style-type: none"> <li>▪ sells on-market all of the New Eclix Shares issued to it under the Scheme in such manner, at such price or prices and on such other terms, as the Sale Agent determines in good faith; and</li> <li>▪ pays to Eclix the aggregate proceeds of sale for the sale of the relevant New Eclix Shares (after deduction of any applicable brokerage, stamp duty and other selling costs, taxes and charges).</li> </ul>	Section 4.3
16. When will Ineligible Foreign Scheme Shareholders receive their Scheme Consideration?	<p>As soon as reasonably practicable after the last sale of New Eclix Shares by the Sale Agent, and in any event by no later than the date being 5 Business Days after receipt of the proceeds of the sale of the New Eclix Shares from the Sale Agent, Eclix will remit to each Ineligible Foreign Scheme Shareholder the amount equal to that Ineligible Foreign Scheme Shareholder's respective proportion of those aggregate proceeds (rounded down to the nearest cent), reflecting the proceeds of sale of the number of New Eclix Shares which would have been issued to the Ineligible Foreign Scheme Shareholder but for the application of this process.</p>	Section 4.3

<sup>22</sup> The fixed exchange ratio is 0.365588962370616.

Question	Answer	Further Information
<b>D. Questions about your directors' recommendations and intentions</b>		
17. What do the Grays Directors recommend?	The Grays Directors unanimously recommend that Grays Shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders. <sup>23</sup>	Section 1.2(a)
18. How are the Grays Directors going to vote?	Each Grays Director intends to vote all Grays Shares they hold or control in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders. <sup>23</sup>	Section 1.2(a)
19. What is the opinion of the Independent Expert?	<p>The Grays Board appointed Lonergan Edwards as Independent Expert to undertake an independent assessment of the Scheme.</p> <p>The Independent Expert has concluded that the Scheme is fair and reasonable and in the best interests of Grays Shareholders in the absence of a superior proposal.</p> <p>The Independent Expert has assessed the value of Grays Shares to be \$1.25 to \$1.36 and the value of the Scheme Consideration to be in the range of \$1.28 to \$1.37.</p> <p>The Independent Expert's Report accompanies this Scheme Booklet as Appendix 1.</p>	Section 1.2(b) Appendix 1
20. What are the reasons to vote in favour of the Scheme?	The reasons to vote in favour of the Scheme are described in detail in Section 1.2.	Section 1.2
21. What are the reasons why I may not want to vote in favour of the Scheme?	The reasons why you may not want to vote in favour of the Scheme are described in detail in Section 1.3.	Section 1.3
22. What are the potential risks associated with the Scheme, Eclix and the Combined Group?	<p>The potential risks associated with the Scheme, Eclix and the Combined Group are described in detail in Section 8.</p> <p>The Scheme and the creation of the Combined Group presents risks including:</p> <ul style="list-style-type: none"> <li>▪ that the Conditions to the Scheme may not be satisfied or waived (where capable of waiver);</li> <li>▪ that the Court may not approve the Scheme or the Court's approval may be delayed; and</li> <li>▪ that counterparties may not provide their consent under material contracts, which may then impact the Combined Group's performance.</li> </ul> <p>By holding New Eclix Shares, you will be exposed to risk factors specific to Eclix and to certain additional risk factors relating to Combined Group and the integration of the two companies. In some cases, those risks are different from or additional to those related to Grays. Those risks include:</p> <ul style="list-style-type: none"> <li>▪ risks that affect Eclix that may not affect Grays in the same way, such as exposure to movements in exchange rates, funding costs, access to funding, adverse changes to fringe benefits tax legislation and successful integration of recent and future acquisitions; and</li> <li>▪ Grays and Eclix may not be able to achieve some or all of the expected benefits of the Scheme.</li> </ul>	Section 8

<sup>23</sup> Grays Shareholders' attention is drawn to Section 5.8 which details the interests of Grays Directors in Grays Securities and in Eclix Securities.

Question	Answer	Further Information
<b>E. Questions about voting</b>		
23. When and where will the Scheme Meeting be held?	The Scheme Meeting will be held at the offices of MinterEllison, Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 on 26 July 2017 at 11.30am (AEST).	Section 2.1 Appendix 4
24. What am I being asked to vote on?	You are being asked to vote on whether to approve the Scheme.	Section 4.1
25. Who is entitled to vote?	Grays Shareholders who are recorded as members on the Grays Register as at 7.00pm (AEST) on 24 July 2017 are entitled to vote at the Scheme Meeting, unless they are an Excluded Shareholder.	Sections 2.3 and 4.3
26. Is voting compulsory? Why should I vote?	No, voting is not compulsory. However, your vote is important in deciding whether the Scheme is approved. The Grays Directors strongly encourage all Grays Shareholders to vote at the Scheme Meeting.	Section 1.4
27. When are proxy forms due?	If you cannot attend the Scheme Meeting, you are encouraged to complete the Proxy Form accompanying this Scheme Booklet and return it in accordance with that instructions on the form so that it is received by no later than 11.30am on 24 July 2017.	Section 1.4 and Appendix 4
28. How do I vote?	You may vote: <ul style="list-style-type: none"> <li>in person, by attending the Scheme Meeting;</li> <li>by proxy, by completing and lodging the proxy form accompanying this Scheme Booklet; or</li> <li>in the case of a corporate Grays Shareholder, by a corporate representative.</li> </ul>	Section 2.3
29. What voting majority is required to approve the Scheme? What are the voting thresholds?	For the Scheme to be approved by Grays Shareholders, votes in favour of the Scheme must be received from: <ul style="list-style-type: none"> <li>(unless the Court orders otherwise), a majority in number of Grays Shareholders present and voting at the Scheme Meeting (in person or by proxy, corporate representative or attorney); and</li> <li>at least 75% of the total number of votes which are cast at the Scheme Meeting (in person or by proxy, corporate representative or attorney).</li> </ul> <p>The Court has the discretion to waive the requirement for a majority in number of Grays Shareholders to vote in favour of the Scheme (whether in person or by proxy). If the Scheme is not agreed to by Grays Shareholders, or is not approved by the Court, the Scheme will not proceed.</p>	Section 4
30. What should I do if I wish to support the Scheme?	You should attend the Scheme Meeting, in person or by proxy, and vote in favour of the Scheme.	Section 2.3
31. What should I do if I wish to oppose the Scheme?	If, despite the unanimous recommendation of the Grays Directors and the favourable conclusion of the Independent Expert, you do not support the Scheme, you should vote against the Scheme at the Scheme Meeting.	Section 2.3
32. Can I be bound by the Scheme if I do not vote or if I vote against its approval?	Yes, if the Scheme is approved and becomes Effective, any Grays Shares held by you at Record Date will be transferred to Eclix BidCo and you will receive the Scheme Consideration, even if you did not vote on the Scheme, or you voted against it.	Section 4.1(b)
33. What are my alternatives?	As a Grays Shareholder, your principal alternatives are to: <ul style="list-style-type: none"> <li>vote in favour of the Scheme at the Scheme Meeting (this is the course of action unanimously recommended by the Grays Directors and whose recommendation is consistent with the Independent Expert's opinion);</li> <li>vote against the Scheme at the Scheme Meeting; or</li> <li>do nothing - that is, neither vote in favour of, nor against, the Scheme.</li> </ul>	Section 1.4

Question	Answer	Further Information
34. When will the results of the Scheme Meeting be known?	The results of the Scheme Meeting will be available shortly after the conclusion of the Scheme Meeting on 26 July 2017 and will be announced to ASX as soon as practicable.	
35. Can I oppose the Scheme at the Second Court Hearing?	You have the right as a Grays Shareholder to appear and make submissions at the Second Court Hearing which is scheduled to be held at 9.30am on 31 July 2017 at the Federal Court of Australia, 184 Phillip Street, Sydney. Any change to this date will be announced through ASX and will be available on Grays' website, <a href="http://www.graysecommercegroup.com.au/">http://www.graysecommercegroup.com.au/</a> .	Section 10.3

## F. Conditions

36. What are the key conditions that need to be satisfied before the Scheme can proceed?	<p>There are a number of conditions that will need to be satisfied or waived (where capable of waiver) before the Scheme can proceed.</p> <p>In summary, as at the date of this Scheme Booklet, the outstanding conditions include:</p> <ul style="list-style-type: none"> <li>the Scheme being approved by Grays Shareholders at the Scheme Meeting;</li> <li>the Scheme being approved by the Court;</li> <li>all necessary regulatory waivers and approvals being obtained (including from ASIC and ASX);</li> <li>no restraints being imposed by any court or government agency;</li> <li>New Eclipx Shares to be issued pursuant to the Scheme are approved for official quotation;</li> <li>no Grays Material Adverse Change occurs;</li> <li>no Grays Prescribed Occurrences occur;</li> <li>no breach of any Grays Representation and Warranty occurs;</li> <li>no Eclipx Material Adverse Change occurs;</li> <li>no Eclipx Prescribed Occurrences occur; and</li> <li>no breach of any Eclipx Representation and Warranty occurs.</li> </ul> <p>Grays will make a statement in an announcement to ASX before the commencement of the Scheme Meeting regarding the status of the Conditions.</p>	Section 4.8
37. What happens if there is a delay in satisfying any of the Conditions?	<p>While any Conditions (other than Court approval of the Scheme) remain unsatisfied and have not been waived (where capable of waiver), there is a risk that the Second Court Hearing (currently scheduled for 31 July 2017) may be delayed, until as soon as reasonably practicable after those Conditions have been satisfied or waived (where capable of waiver).</p> <p>If the Second Court Hearing is delayed, this may in turn delay the Implementation Date, which is currently scheduled to be 11 August 2017.</p> <p>The Scheme will not proceed if the Conditions are not satisfied or waived (where capable of waiver) by the End Date. The End Date is 31 December 2017, subject to that date being extended in certain circumstances.</p>	

## G. Further information on the Scheme

38. What happens if a Competing Proposal for Grays emerges? When is the Break Fee payable?	<p>If a Competing Proposal for Grays emerges prior to the Second Court Hearing, your Grays Directors will carefully consider the proposal to determine whether it is a Superior Proposal and will inform you of any material developments.</p> <p>If Grays Directors withdraw or adversely modify their recommendation to vote in favour of the Scheme, Grays may be obliged to pay the Grays Break Fee of \$1.79 million (exclusive of GST) to Eclipx.</p>	Sections 4.9 and 1.4(e)
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Question	Answer	Further Information
39. Is a Superior Proposal likely?	<p>Until the Scheme is approved by the Court, there is nothing preventing other parties from making unsolicited acquisition or merger proposals for Grays.</p> <p>The Grays Board is not currently aware of any Superior Proposal and notes that, since Grays announced the Scheme on 4 May 2017, there has been a significant period of time and ample opportunity for a Superior Proposal to emerge.</p>	Section 4.7(a)
40. Are there any risks for me if the Scheme proceeds?	<p>Yes. This is because you will receive New Eclipx Shares as your Scheme Consideration.</p> <p>There are risks associated with an investment in the Combined Group. The value of your investment in the Combined Group will depend on the financial performance of the Combined Group's business which is subject to the general and specific risks noted in Section 8.</p>	Section 8
41. If the Scheme is not approved, what will be the effect?	<p>If the Scheme is not approved by Grays Shareholders or is not approved by the Court and you still hold any Grays Shares at either of those points in time:</p> <ul style="list-style-type: none"> <li>▪ you will not receive the Scheme Consideration;</li> <li>▪ your Grays Shares will not be transferred to Eclipx BidCo (they will be retained by you);</li> <li>▪ Grays will continue to operate as a stand-alone entity;</li> <li>▪ the existing Grays Board and management will continue to operate Grays' business;</li> <li>▪ the advantages of the Scheme, as outlined in Section 1.2 will not be realised and equally, some of the disadvantages of the Scheme, as outlined in Section 1.3, will no longer be relevant; and</li> <li>▪ you will continue to be exposed to the benefits and risks associated with an investment in Grays (which you are already exposed to as a Grays Shareholder).</li> </ul>	Sections 1.4(d), 1.1 and 1.3
42. Under what circumstances can Eclipx terminate the Scheme Implementation Deed?	<p>Eclipx may terminate the Scheme Implementation Deed if (without limitation):</p> <ul style="list-style-type: none"> <li>▪ Grays materially breaches any of its material obligations under the Scheme Implementation Deed;</li> <li>▪ a Condition under the Scheme Implementation Deed is not satisfied and that Condition is not waived (if capable of waiver) by Grays or Eclipx or both (as applicable);</li> <li>▪ Grays causes a prohibited action to occur (for example, returning any capital to the Grays Shareholders or paying a dividend (other than the Grays Permitted Special Dividend if paid), making changes to its constitution, commencing or undertaking business activities materially different to existing business activities carried out by the Grays Group); or</li> <li>▪ a majority of the Grays Directors change or withdraw their recommendation that Grays Shareholders vote in favour of the Scheme.</li> </ul> <p>In addition, there are also other circumstances where either Eclipx or Grays may terminate the Scheme Implementation Deed. For further details please refer to Section 4.9.</p>	Section 4.9
43. Do I need to make any payments to Eclipx or Grays to participate in the Scheme?	No.	



Question	Answer	Further Information
44. Will I be giving any warranties in respect of my Grays Shares?	Each Scheme Shareholder will be taken to have warranted to Grays, Eclipx and Eclipx BidCo, and will be taken to have appointed and authorised Grays, as its attorney and agent to warrant to Eclipx and Eclipx BidCo, that all of their Grays Shares (including any rights and entitlements attaching to those Grays Shares) which are transferred under the Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer the Grays Shares held by them to Eclipx BidCo, together with any rights and entitlements attaching to those Grays Shares.	Section 4.5
45. What is a members' scheme of arrangement?	A members' scheme of arrangement is a statutory procedure that is commonly used to enable one company to acquire another. In this case, the Scheme is the mechanism by which Eclipx BidCo proposes to acquire all of your Grays Shares. The Scheme requires the agreement of Grays Shareholders by the majorities described below and also the approval of the Court.	
46. Why has this proposed transaction been structured as a scheme of arrangement?	Grays and Eclipx consider that the Scheme represents the most efficient structure to effect the proposed acquisition by Eclipx BidCo of all of your Grays Shares.  This structure provides the greatest certainty that if the Scheme is approved by Grays Shareholders by the majorities described below and approved by the Court and proceeds to implementation, 100% ownership and control of Grays will be acquired by Eclipx BidCo within a specific timeframe that meets the commercial objectives of Eclipx as the intended acquirer and of Grays as the target company.	
47. What are the transaction costs associated with the Scheme?	Grays is expected to have incurred one-off transaction costs of approximately \$2.0 million, which will be payable by Grays regardless of whether the Scheme is implemented or not.  These costs are expected to comprise adviser, legal, accounting and expert fees, employee payments and various other costs. These costs exclude success-based fees and other costs which are contingent upon the successful implementation of the Scheme.	Section 1.4(d)
<b>H. Trading</b>		
48. Can I sell my Grays Shares now?	Yes. Grays Shareholders may sell their Grays Shares at the prevailing market price on-market at any time before suspension from quotation on ASX of Grays at close of trading on the Effective Date, which is expected to be 1 August 2017.  If you sell your Grays Shares before the Effective Date of the Scheme (the last day of trading in Grays Shares on ASX before suspension from quotation on ASX): <ul style="list-style-type: none"> <li>▪ you will not receive any New Eclipx Shares;</li> <li>▪ you may pay brokerage fees; and</li> <li>▪ there may be different tax consequences compared to those that would arise under the implementation of the Scheme.</li> </ul>	Section 1.4(f)
49. When can I start trading my New Eclipx Shares on ASX?	The New Eclipx Shares to be issued as Scheme Consideration will commence trading on ASX on the trading day after the Implementation Date (that is, it is currently expected that trading in those shares will commence on 14 August 2017, however this date may change).	Section 10.7
50. When will Grays Shares cease trading on ASX?	Provided the Scheme becomes Effective, Grays Shares are expected to be suspended from trading on the ASX from the close of trading on the Effective Date (which is currently scheduled to be 1 August 2017).	

Question	Answer	Further Information
<b>I. Treatment of Performance Rights</b>		
51. How will Grays Performance Rights be treated under the Scheme?	Grays currently has 4,375,636 Grays Performance Rights on issue. To enable the Scheme to proceed, the Grays board has determined that a total of 1,309,732 Grays Performance Rights will vest on or before the Effective Date and the balance of the Grays Performance Rights will lapse. Section 11.2 describes in further detail the proposed treatment of the Grays Performance Rights.	Section 11.2
52. Will I be entitled to participate in the Scheme if I acquired my Grays Shares under the Grays Performance Share Plan?	Grays Shares acquired on the exercise of the Grays Performance Rights will participate in the Scheme on the same basis as all other Grays Shares, provided those Grays Shares were held as at the Record Date.	Section 11.2
<b>J. Questions about Eclix and the Combined Group</b>		
53. What will the Combined Group be called?	The Combined Group will continue to be named Eclix Group Limited.	Section 7
54. Who will be on the Combined Group's Board?	If the Scheme proceeds, the Combined Group board will continue to comprise the current members of the Eclix board.	Section 7.1(c)
55. What are Eclix's intentions for Grays and the Combined Group?	See Section 7 for further details in relation to the Combined Group's intentions for Grays and the Combined Group.	Section 7
56. Will I be entitled to receive Eclix dividends before Implementation?	No. Only after implementation of the Scheme, when you become a holder of New Eclix Shares, you will obtain the right to receive future Eclix dividends.	
<b>K. General questions</b>		
57. Do I have to sign anything in relation to the Scheme?	No. If the Scheme is approved, Grays will automatically have authority to sign a transfer on your behalf, and then the Scheme Consideration will be paid to you.	Section 10.5
58. Will Grays declare a dividend before the Implementation Date?	<p>On 4 May 2017, Grays announced an intention to apply the proceeds received under the variation of the lease for its Sydney premises to pay the Grays Permitted Special Dividend, being a fully franked dividend estimated to equate to 5.6 cents per Grays Share.</p> <p>However, as at the date of this Scheme Booklet, no final decision has been made in respect of whether to declare the Grays Permitted Special Dividend or the amount of any such dividend.</p> <p>Whether any Grays Permitted Special Dividend is declared and paid is entirely independent of the Scheme. If the Grays Board determines to pay the Grays Permitted Special Dividend before the Implementation Date, the Scheme Consideration will not be adjusted for the amount of the Grays Permitted Special Dividend.</p>	Section 5.13

Question	Answer	Further Information
59. What happens after the Implementation Date?	<p>On the Implementation Date, Eclipx BidCo will become the owner of all Grays Shares and Scheme Shareholders (other than Ineligible Foreign Scheme Shareholders) will be issued 0.3656 (rounded)<sup>24</sup> New Eclipx Shares for each Grays Share they own as at the Record Date.</p> <p>The Implementation Date is currently expected to be 11 August 2017 (however, this is subject to change).</p>	Section 10.5
60. Will I have to pay brokerage fees or stamp duty?	Scheme Shareholders will not be required to pay brokerage or stamp duty on the transfer of their Grays Shares or the issue of the New Eclipx Shares in connection with the Scheme.	Section 9
61. What are the tax implications of the Scheme?	A general outline of the taxation implications for Australian resident Grays Shareholders in relation to participating in the Scheme is provided in Section 9. Grays Shareholders should seek their own professional advice regarding the taxation implications relevant to them.	Section 9
62. What other information is available and who can help answer my questions about the Scheme?	If you have any questions, you should contact your broker, financial or legal advisor immediately. Alternatively you can call the Grays information line on 1300 103 188 (within Australia) or +61 3 9415 4232 (outside Australia) Monday to Friday between 9.00am and 5.00pm (AEST) or visit Grays' website at <a href="http://www.graysecommercegroup.com.au">http://www.graysecommercegroup.com.au</a> .	

<sup>24</sup> The fixed exchange ratio is 0.365588962370616.

## 4. SUMMARY OF THE SCHEME

### 4.1 Background

#### a. Purpose

On 4 May 2017, Grays announced it had entered into the Scheme Implementation Deed in respect of a proposal under which a wholly-owned Subsidiary of Eclipx, Eclipx BidCo, will acquire all Grays Shares on the Implementation Date pursuant to a members' scheme of arrangement between Grays and all persons who hold Grays Shares as at the Record Date.

The purpose of the Scheme is to give effect to this proposed arrangement between Grays and the Scheme Shareholders. Under the Scheme, the consideration that Scheme Shareholders will receive in exchange for the transfer of their Scheme Shares on the Implementation Date will be 0.3656 (rounded)<sup>25</sup> New Eclipx Shares for every Grays Share held as at the Record Date.<sup>26</sup>

If the Scheme becomes Effective, Grays will become a wholly-owned subsidiary of Eclipx BidCo and will be delisted from ASX.

The terms of the Scheme Implementation Deed are set out in full in Appendix 5 to this Scheme Booklet.

#### b. Legal effect

If the Scheme becomes Effective, it will constitute a binding arrangement between Grays and each Scheme Shareholder under which:

- all Scheme Shares held by each Scheme Shareholder (including those who do not vote on the Scheme and those who vote against it) together with all rights and entitlements attaching to those Grays Shares as at the Implementation Date, will be transferred to Eclipx BidCo on the Implementation Date, without the need for any action on the part of the Scheme Shareholders (other than acts performed by Grays or its officers as agent and attorney of the Scheme Shareholders); and
- each Scheme Shareholder (including those who do not vote on the Scheme and those who vote against it) will receive the Scheme Consideration for each Scheme Share held by the Scheme Shareholder, as consideration in full for the transfer of all of their Scheme Shares to Eclipx BidCo.

### 4.2 What you will receive under the Scheme

Under the Scheme, Scheme Shareholders will be issued 0.3656 (rounded)<sup>27</sup> New Eclipx Shares for each Grays Share they hold on the Record Date.

Under the Scheme, Ineligible Foreign Scheme Shareholders will not be issued with any New Eclipx Shares. Instead, the New Eclipx Shares that would otherwise have been issued to Ineligible Foreign Scheme Shareholders will be sold by the Sale Agent and each Ineligible Foreign Scheme Shareholder will receive a proportionate share of the net sale proceeds. See Section 4.3 below for more information.

### 4.3 Ineligible Foreign Scheme Shareholders

Eclipx will be under no obligation to issue, and will not issue, any New Eclipx Shares to Ineligible Foreign Scheme Shareholders.

If a Scheme Shareholder's address in the Grays Share Register as at the Record Date is not in Australia, its external territories, New Zealand or the United States of America, the Scheme Shareholder will be regarded as a Ineligible Foreign Scheme Shareholder (unless Eclipx is satisfied, acting reasonably that it is lawful, either unconditionally or after compliance with conditions that Eclipx reasonably regards as acceptable and not unduly onerous or impracticable, to issue that Scheme Shareholder with New Eclipx Shares under the Scheme).

The New Eclipx Shares which would otherwise be required to be issued to Ineligible Foreign Scheme Shareholders under the Scheme will be issued instead to the Sale Agent on the Implementation Date. Eclipx will procure that, as soon as reasonably practicable and, in any event, not more than 15 Business Days after the Implementation Date, the Sale Agent:

- sells all of the New Eclipx Shares issued to it under the Scheme in such manner, at such price or prices and on such other terms as the Sale Agent determines in good faith; and
- pays to Eclipx the aggregate proceeds of sale for the sale of the relevant New Eclipx Shares (after deduction of any applicable brokerage, stamp duty and other selling costs, taxes and charges) (**Proceeds**).

As soon as reasonably practicable after the last sale of New Eclipx Shares by the Sale Agent, and in any event by no later than the date being 5 Business Days after receipt of the Proceeds from the Sale Agent, Eclipx will remit to the Ineligible Foreign Scheme Shareholder the amount equal to that Ineligible Foreign Scheme Shareholder's respective proportion of the Proceeds (rounded down to the nearest cent), reflecting the proceeds of sale of the number of New Eclipx Shares which would have been issued to the Ineligible Foreign Scheme Shareholder but for the application of this process.

<sup>25</sup> The fixed exchange ratio is 0.365588962370616.

<sup>26</sup> Ineligible Foreign Scheme Shareholders will not be entitled to receive any New Eclipx Shares and will instead receive cash for any New Eclipx Shares that they would otherwise have been entitled to receive. See Section 4.3 for further information.

<sup>27</sup> The fixed exchange ratio is 0.365588962370616.

## 4.4 Scheme Meeting

### a. General information

At the First Court Hearing on 21 June 2017, the Court ordered Grays to convene a meeting of Grays Shareholders to consider and vote on the Scheme.

The notice convening the Scheme Meeting is set out in Appendix 4 to this Scheme Booklet. The fact that the Court has ordered that the Scheme Meeting be convened is no indication that the Court has a view as to the merits of the Scheme or as to how Grays Shareholders should vote. On these matters, Grays Shareholders must reach their own decision.

If all of the Conditions to the Scheme are satisfied or waived (where capable of waiver), the holders of Scheme Shares will be bound by the Scheme whether or not they:

- attend the Scheme Meeting;
- vote at the Scheme Meeting; or
- vote against the Scheme at the Scheme Meeting.

### b. Eligibility to vote at the Scheme Meeting

Each person who is registered on the Grays Share Register as a Grays Shareholder on 7.00pm on 24 July 2017, other than an Excluded Shareholder, is entitled to vote at the Scheme Meeting, either in person, by proxy or attorney or, in the case of a Grays Shareholder that is a corporate entity or proxy, by a representative.

Section 2 provides full details of how to vote at the Scheme Meeting. The Proxy Form for the Scheme Meeting is enclosed with this Scheme Booklet.

### c. Voting majority required

The Scheme will only become Effective and be implemented if it is:

- approved by the requisite majority of holders of Grays Shareholders at the Scheme Meeting; and
- all other Conditions have been satisfied or waived (where capable of waiver); and
- approved by the Court at the Second Court Hearing.

For the Scheme to be approved by the requisite majority of holders of Grays Shareholders at the Scheme Meeting, the resolution at the Scheme Meeting to be passed by:

- a majority in number (more than 50%) of Grays Shareholders present and voting at the Scheme Meeting (in person or by proxy, corporate representative or attorney) (i.e. the Headcount Test); and
- at least 75% of the total number of votes cast on the resolution by Grays Shareholders present and voting (in person or by proxy, corporate representative or attorney) at the Scheme Meeting.

The Court has the power to approve the Scheme even if the Headcount Test has not been satisfied. For example, the Court may do so if there is evidence that the result of the vote has been unfairly influenced by activities such as Share Splitting.

## 4.5 Your warranties under the Scheme

The Scheme provides that each Scheme Shareholder is deemed to have warranted to Grays, Eclix and Eclix BidCo, and appointed and authorised Grays as its attorney and agent to warrant to the Eclix and to Eclix BidCo on the Implementation Date that, as at the Implementation Date:

- all Scheme Shares registered in its name (including any rights and entitlements attaching to those shares) which are transferred to Eclix BidCo under the Scheme will, on the date on which they are transferred to Eclix BidCo, be free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the PPSA) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;
- all Scheme Shares registered in its name which are transferred to Eclix BidCo under this Scheme will, on the date on which they are transferred to Eclix BidCo, be fully paid;
- it has full power and capacity to transfer Scheme Shares registered in its name to Eclix BidCo together with any rights and entitlements attaching to those shares; and
- it has no existing right to be issued any Grays Shares or any other Grays securities, other than, in the case of any Scheme Shareholder who is also the holder of Grays Performance Rights, the right to be issued Grays Shares on the exercise or vesting of those the Grays Performance Rights in accordance with their terms.

## 4.6 Deed Poll

Eclix and Eclix BidCo have executed a Deed Poll in favour of the Scheme Shareholders under which they have promised to acquire and provide consideration for all of Grays Shares under the Scheme subject to the satisfaction of certain conditions precedent. A copy of the Deed Poll is set out in Appendix 6 to this Scheme Booklet.

## 4.7 Exclusivity and break fee arrangements

Under the Scheme Implementation Deed:

- Grays has agreed to certain exclusivity arrangements in favour of Eclipx;
- Grays has agreed in certain circumstances to pay Eclipx a break fee of \$1.79 million (exclusive of GST) (**Grays Break Fee**); and
- Eclipx has agreed in certain circumstances to pay Grays a break fee of \$1.79 million (exclusive of GST) (**Eclipx Break Fee**).

A summary of these arrangements is set out below. Please refer to clauses 10, 11 and 12 of the Scheme Implementation Deed in Appendix 5 to this Scheme Booklet for complete descriptions of these arrangements.

### a. Exclusivity arrangements

The following is a summary only of the exclusivity arrangements agreed to in the Scheme Implementation Deed. The full terms of these exclusivity arrangements are set out in clause 10 of the Scheme Implementation Deed which is included as Appendix 5 to this Scheme Booklet.

- **No Shop:** During the Exclusivity Period, the Scheme Implementation Deed contains certain exclusivity restrictions that prevent Grays (and its Subsidiaries, employees and advisers) from soliciting, inviting, initiating or encouraging any enquiry, expression of interest, proposal, offer, discussion or negotiation in relation to, or that could reasonably be expected to encourage or lead to, the making of an actual, proposed or potential Competing Proposal.
- **No Talk:** During the Exclusivity Period, Grays (and its Subsidiaries, employees and advisers) must not:
  - negotiate or enter into or participate in negotiations or discussions;
  - negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding; or
  - communicate to any person an intention to do anything referred to above,

in relation to, or which may reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal.

- **No Due Diligence:** During the Exclusivity Period, Grays (and its Subsidiaries, employees and advisers) must not directly or indirectly, disclose, provide or otherwise make available to any third party, or permit any such person to receive, any non-public information relating to Grays or any other Grays Group Member (or any of their respective businesses or operations) in connection with, with a view to obtaining or which could reasonably be expected to lead to, the formulation, development, finalisation or announcement of an actual, proposed or potential Competing Proposal, including providing such information for the purposes of the conduct of due diligence investigations in respect of the Grays, any other Grays Group Member or the business of the Grays Group.
- **Fiduciary out:** The 'No Talk' and 'No Due Diligence' prohibitions do not apply if the Competing Proposal is bona fide, and in the opinion of the Grays Board, formed in good faith after consultation with Grays' financial advisers in respect of the financial aspects of the Competing Proposal, is or would reasonably be expected to lead to a Superior Proposal, and after receiving written advice from its external legal advisers, compliance with the exclusivity arrangements would constitute a breach of a fiduciary or statutory duty of the Grays Directors, provided that there has been no breach of the exclusivity arrangements in the Scheme Implementation Deed in relation to the Competing Proposal.
- **Notifications:** During the Exclusivity Period, Grays must as soon as possible and, in any event, by no later than 10.00am on the day being 2 Business Days after becoming aware of any such matters) notify Eclipx in writing if it becomes aware of any:
  - negotiations or discussions, approach or attempt to initiate any negotiations or discussions, in relation to a Competing Proposal; or
  - proposal in connection with, or in respect of any exploration or completion of a Competing Proposal,

whether such matters are solicited or unsolicited, and in writing or otherwise.

A notification to Eclipx must include the identity of the third party making the Competing Proposal, together with all other material terms and conditions of the Competing Proposal.

- **Matching right:** If Grays receives a Competing Proposal and any Grays Director proposes to either change, withdraw or modify their recommendation of the Scheme or approve or recommend the entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal, Grays must ensure that no Grays Director does so until:
  - the Grays Board, acting in good faith and after consultation with its financial advisers, determines that the Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal;
  - Grays has provided Eclipx written notice of the Grays Director's proposal to change, withdraw or modify their recommendation of the Scheme or approve or recommend the Competing Proposal;
  - Grays has provided Eclipx with the identity of the third party making the Competing Proposal, together with all other material terms of the Competing Proposal; and
  - Grays has given Eclipx at least 5 Business Days after the provision of the information referred to above to provide a matching or Superior Proposal to the terms of the Competing Proposal.



## b. Grays Break fee

Grays has agreed to pay Eclix a 'break fee' of \$1.79 million (exclusive of GST) in certain circumstances.

The Grays Break Fee is an amount to compensate Eclix for any advisory costs, costs of management and directors' time, out of pocket expenses and reasonable opportunity costs incurred in pursuing the Scheme.

The circumstances in which the Grays Break Fee is payable are in summary:

- **Competing Proposal:** a Competing Proposal is publicly announced prior to the Delivery Time (whether or not such proposal is stated to be subject to any preconditions) and, within 12 months from the date of the public announcement of that Competing Proposal, the proponent of that Competing Proposal (alone or with Associates) or any Associate of that proponent, amongst other things, completes a Competing Proposal which would acquire control of Grays or require Grays to abandon implementation of the Scheme or becomes the legal holder of at least 50% of Grays Shares;
- **Recommendation:** if at any time prior to the Delivery Time, any Grays Director:
  - fails to recommend the Scheme, withdraws or adversely modifies or adversely qualifies his or her recommendation of the Scheme or support for it, makes any public statement to the effect that the Scheme is not, or is no longer, recommended or supported by that Grays Director, except:
  - where the Independent Expert concludes in any update of, or revision, amendment or addendum to, the Independent Expert's Report, that the Scheme is not in the best interests of Grays Shareholders or a right arises for Grays to terminate the Scheme Implementation Deed due to Eclix materially breaching its material obligations under the Scheme Implementation Deed; and
- **Material Breach:** if Grays is in material breach:
  - of any material obligations of the Scheme Implementation Deed or in breach of any prohibited actions set out in clause 7.2 of the Scheme Implementation Deed (in either case, other than a wilful, deliberate or reckless breach of a Target Excluded Obligation as defined in the Scheme Implementation Deed); or
  - of any Grays Representations and Warranties,and Eclix terminates the Scheme Implementation Deed.

See clause 11.3 of the Scheme Implementation Deed for further details on the Grays Break Fee.

## c. Eclix Break Fee

Eclix has agreed to pay Grays a 'break fee' of \$1.79 million (exclusive of GST) in certain circumstances.

The Eclix Break Fee is an amount to compensate Grays for any advisory costs, costs of management and directors' time, out of pocket expenses and reasonable opportunity costs incurred in pursuing the Scheme.

The circumstances in which the Eclix Break Fee is payable are where Eclix is in material breach of any:

- material obligations of Eclix under the Scheme Implementation Deed (other than a wilful, deliberate or reckless breach of a certain specified obligation considered fundamental to Eclix's performance of the Scheme Implementation Deed); or
- Eclix Representations and Warranties,

and Grays terminates the Scheme Implementation Deed.

## 4.8 Scheme Conditions

The Scheme is subject to the conditions summarised in paragraphs (a), (b) and (c) below, all of which must be satisfied or waived (where capable of waiver) by 8.00am on the Second Court Date. The full terms of the conditions are set out in clause 3.1 of the Scheme Implementation Deed.

### a. Joint conditions

The following conditions apply for the mutual benefit of Eclix and Grays and may only be waived by agreement between them (noting that those relating to Grays Shareholder approval and Court approval are not capable of waiver):

- the Scheme being approved by Grays Shareholders at the Scheme Meeting by:
  - (unless the Court orders otherwise), a majority in number of Grays Shareholders present and voting at the Scheme Meeting (in person or by proxy, corporate representative or attorney); and
  - at least 75% of the total number of votes which are cast at the Scheme Meeting (in person or by proxy, corporate representative or attorney);
- the Scheme being approved by the Court;
- all necessary regulatory waivers and approvals (including from ASIC and ASX) being obtained;
- no restraints being imposed by any court or government agency; and
- New Eclix Shares to be issued pursuant to the Scheme being approved for official quotation by ASX by the Delivery Time.

#### **b. Scheme conditions that apply for the benefit of Eclipx**

The following conditions apply under the Scheme Implementation Deed for the sole benefit of Eclipx and can only be waived by Eclipx:

- no Grays Material Adverse Change occurs;
- no Grays Prescribed Occurrences occur; and
- no breach of any Grays Representation and Warranty occurs.

#### **c. Scheme conditions that apply for the benefit of Grays**

The following conditions apply for the sole benefit of Grays and can only be waived by Grays:

- no Eclipx Material Adverse Change occurs;
- no Eclipx Prescribed Occurrences occur;
- no breach of any Eclipx Representation and Warranty occurs; and
- the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of Scheme Shareholders.

### **4.9 Termination rights**

The termination rights are set out in clause 15 of the Scheme Implementation Deed and are summarised below.

#### **a. Mutual termination rights**

Either party may terminate the Scheme Implementation Deed by written notice to the other at any time prior to the Delivery Time if:

- the other party has:
  - materially breached any of its material obligations under the Scheme Implementation Deed including any Grays Representation and Warranty or Eclipx Representation and Warranty (as applicable); and
  - the relevant circumstances continue to exist for 5 Business Days from the time the notice of intention to terminate is given (or any shorter period ending on the Delivery Time);
- any event occurs which would, or in fact does, prevent a Condition under the Scheme Implementation Deed being satisfied and that Condition is not waived by Grays or Eclipx or both (as applicable), except where the failure to satisfy the condition precedent occurs as a result of a breach of the Scheme Implementation Deed by the party wishing to terminate or a deliberate act or omission of that party;
- the Court refuses to make any order directing Grays to convene the Scheme Meeting;
- the Scheme has not become Effective by the End Date; or
- a majority of the Grays Directors change or withdraw their recommendation that Grays Shareholders vote in favour of the Scheme (or makes any public statement to that effect) or makes a public statement recommending a Competing Proposal and do not within 3 Business Days reinstate their respective recommendations of the Scheme.

#### **b. Eclipx termination rights**

In addition to the mutual termination rights, Eclipx may terminate the Scheme Implementation Deed by written notice to Grays if Grays has breached any of its obligations under clause 7.2 (prohibited actions) of the Scheme Implementation Deed.

#### **c. Automatic termination**

Without limiting any other term of the Scheme Implementation Deed, the Scheme Implementation Deed will terminate automatically if the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii)(B) of the Corporations Act (i.e. at least 75% of the total number of votes cast on the resolution by Shareholders present and voting (in person or by proxy, corporate representative or attorney) at the Scheme Meeting).

### **4.10 Current status of conditions and termination rights**

As at the date of this Scheme Booklet, neither Grays nor Eclipx is aware of any circumstances which would cause any of the Conditions summarised in Section 4.8 not to be satisfied or which would result in termination of the Scheme Implementation Deed.

Grays will make a statement regarding the status of the Conditions at the commencement of the Scheme Meeting.

### **4.11 Implementation timetable**

If all necessary approvals and conditions for the Scheme are satisfied or waived (where capable of waiver), it is expected that the Scheme will be fully implemented by 11 August 2017. The key dates and times in relation to the Scheme are set out at the beginning of this Scheme Booklet. Section 10 describes in further detail the procedural aspects of the Scheme and how it will be implemented.

#### **4.12 Directors' recommendation and intentions**

The Grays Directors unanimously recommend that Grays Shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Grays Shareholders.<sup>28</sup> Subject to those same qualifications, each Grays Director intends to vote in favour of the Scheme in respect of the Grays Shares owned or controlled by them.

As at the date of this Scheme Booklet, no Superior Proposal has been received and the Independent Expert has not changed its conclusion that the Scheme is fair and reasonable and in the best interests of Grays Shareholders in the absence of a superior proposal.

In forming their unanimous recommendation, your Directors have carefully considered the matters described in detail in Section 1 of this Scheme Booklet and the Independent Expert's Report in Appendix 1 to this Scheme Booklet. Your Directors consider that the advantages of the Scheme outweigh its disadvantages and risks.

#### **4.13 Independent Expert's conclusion**

Grays engaged the Independent Expert, Lonergan Edwards to prepare a report expressing an opinion on whether the Scheme is in the best interests of Shareholders.

The Independent Expert has concluded that the Scheme is fair and reasonable and in the best interests of the Grays Shareholders in the absence of a superior proposal.

The Independent Expert's Report is included as Appendix 1 to this Scheme Booklet. You should read that report as part of your assessment of the Scheme. Section 1.2(b) of this Scheme Booklet contains a summary of the key conclusions of the Independent Expert in relation to the Scheme.

#### **4.14 Grays Performance Rights**

Grays currently has 4,375,636 Grays Performance Rights on issue. To enable the Scheme to proceed, the Grays Board determined that a total of 1,309,732 Grays Performance Rights will vest on or before the Effective Date and the balance of the Grays Performance Rights will lapse. Section 11.2 describes in further detail the proposed treatment of the Grays Performance Rights.

#### **4.15 Taxation implications**

A general outline of the taxation implications for Australian resident Grays Shareholders in relation to participating in the Scheme is provided in Section 9. Grays Shareholders should seek their own professional advice regarding the taxation implications relevant to them.

<sup>28</sup> Grays Shareholders' attention is drawn to Section 5.8 which details the interests of Grays Directors in Grays Securities and in Eclixp Securities.

## 5. INFORMATION ABOUT GRAYS

The information set out in this Section 5 contains information in relation to Grays and was prepared by Grays. Additional information about Grays is included in the Independent Expert's Report in Appendix 1 to this Scheme Booklet, which Grays Shareholders are encouraged to read. Further information regarding Grays is also available on the Grays website at <http://www.graysecommercegroup.com.au>.

### 5.1 Overview

Grays is one of Australia's largest online auction marketplaces through its flagship website, [graysonline.com](http://graysonline.com).

Grays is focused on providing online auctioneering and associated services in the Business to Business (**B2B**) market segment together with online auctioneering in the Business to Consumer (**B2C**) market segment.

Grays earns revenues by capturing a margin on sales through its platform and by providing ancillary services such as valuation and project management services. It facilitates efficient transactions using its own auction technology platform.

#### Key statistics



**Largest Australian B2B online auctioneer specialising in commercial assets, plant and equipment**



**Market leading consumer auctions in wine, homewares, electronics and more**



**\$622 million** Gross Sales<sup>29</sup> in FY16



**38.5 million** visits from 1 July 2015 to 30 June 2016



**2.1 million** customer database as at 30 June 2016



**710,000** email subscribers as at 30 June 2016



**11%** member growth from 30 June 2015 to 30 June 2016



**40%** growth in new registrations 1 July 2015 to 30 June 2016

### 5.2 History

In 1989, Grays was established as a traditional auction house in Sydney for fixed and mobile plant and equipment. Today, the majority of auctions are conducted through the online format, and Grays has grown to become a leading online auctioneer in Australia.

In 2013, Grays acquired the business and net assets of OO.com.au, a fixed price online department store.

In December 2014, Grays merged with ASX listed Mnemon Limited (MNZ), an online retail business comprising the [dealsdirect.com.au](http://dealsdirect.com.au) and [topbuy.com.au](http://topbuy.com.au) websites offering products in a range of household categories, effecting a back-door listing of Grays on to the ASX.

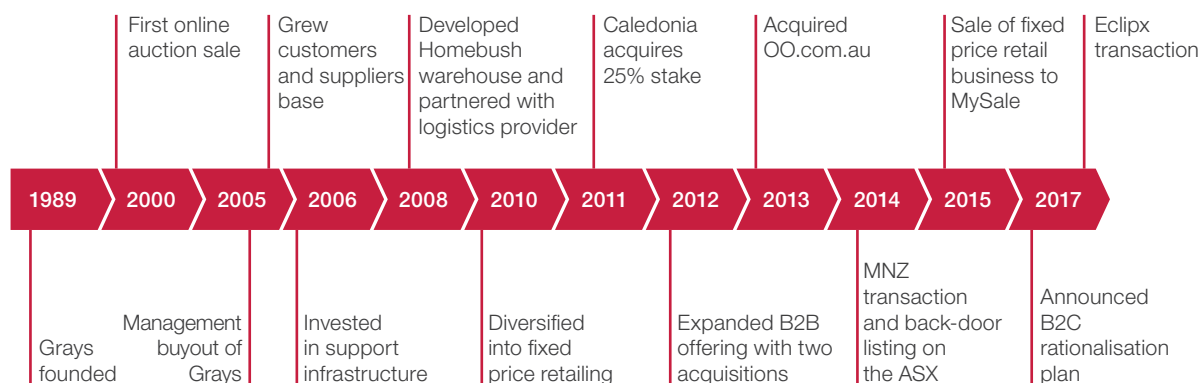
In July 2015, Grays acquired the business of DMS Davlan for \$3 million plus earnout payments linked to future earnings contributions. DMS Davlan is a leading agricultural machinery auctioneer and has expertise in the transport and civil construction industries.

In October 2015, Grays sold its fixed price retail business to MySale Group for \$5.2 million. The decision to exit the fixed price retail business was made in response to challenging business conditions and in order to focus the business on its core online auction operations.

In February 2017, Grays announced its intention to further rationalise the B2C business division to focus only on a narrower range of categories that support the B2B business division.

In May 2017, Grays announced that it had entered into the Scheme Implementation Deed with Eclix.

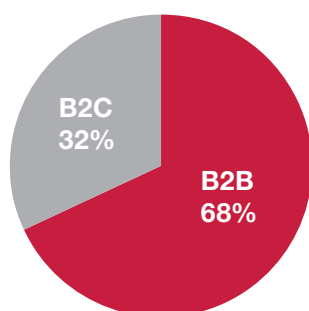
<sup>29</sup> Gross Sales is a non statutory measure that is reported to provide greater understanding of the performance of the underlying business. The measure represents the gross sale value of consignment assets auctioned, plus sales of owned inventory. It does not include recoveries which are statutory revenue items (e.g. freight recoveries).



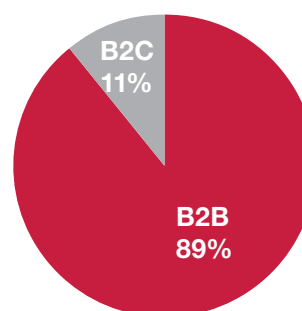
### 5.3 Business divisions

Grays operates through two business divisions: B2B and B2C. The relative financial contributions of these business divisions to Grays in FY16 are set out below:<sup>30</sup>

**Grays Net Revenue by business division (FY16: \$102.0m)**



**Grays EBITDA by business division (FY16: \$18.6m)**



#### a. B2B business division

##### Key features

Grays' B2B business division comprises the business-facing components of the GraysOnline brand and the auto product category, the Grays Asset Services and GraysMining brands, as well as DMS Davlan. Collectively, these brands are the largest B2B online auction marketplace in the Asia Pacific region for used plant and equipment.

The B2B business division provides a full range of valuation, project-management and workplace health and safety services for a range of clients including major corporations, insolvency practitioners, financiers and banks.

The B2B business division has a significant national presence across 37 locations in Australia and New Zealand.



Offers over 80 categories in consumer, industrial and commercial goods direct from the manufacturer and distributors. A collection of brand new, refurbished, end-of-line and excess stock are available. Most auctions start from \$9.



Provides extensive experience in all mining sectors, offering a wide range of disposal options plus a strategic partnership with Iron Planet, which enables Australian and New Zealand sellers to reach a larger buyer base internationally.



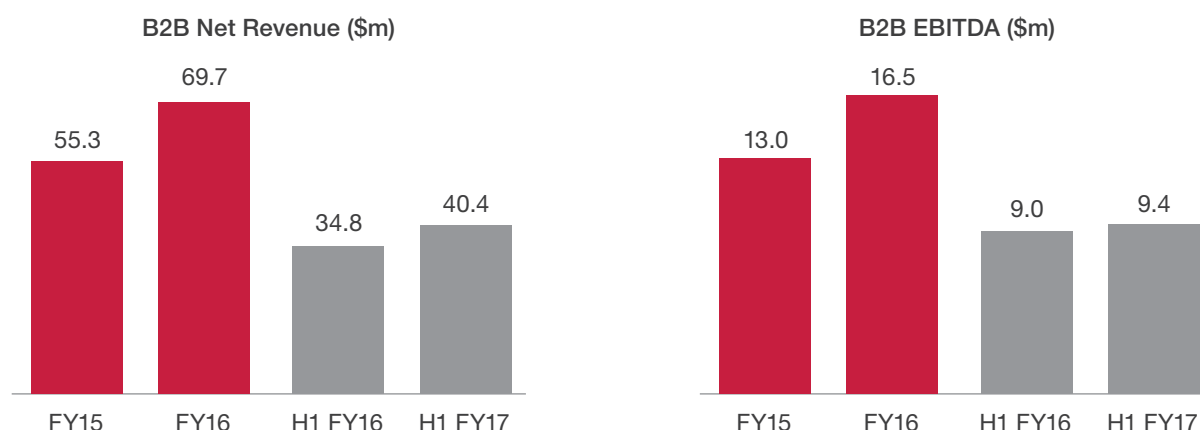
Provides equipment valuation and commercial advice to financiers, insolvency companies as well as government departments and multinational companies.



One of Australia's leading regional B2B Asset Services and Auction Houses with a focus on agricultural machinery.

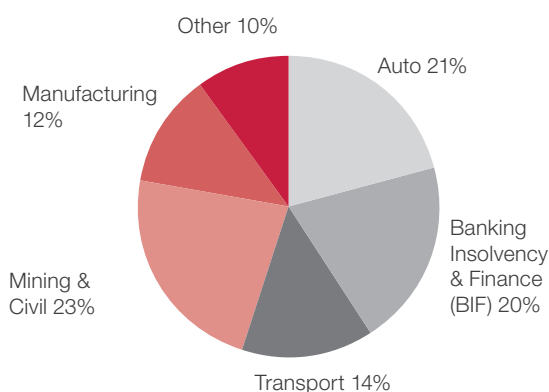
<sup>30</sup> Financial contributions by business division exclude Corporate costs and Disposed Operations.

The B2B business division has experienced significant growth since FY15. This is illustrated below:



The B2B business division services a diverse range of product categories. These are illustrated in the B2B net revenue mix for H1 FY17 below:

**B2B Net Revenue mix (H1 FY17: \$40.4m)**



### Auto Segment

Grays' auto business is a part of the B2B business division. Grays' auto business sources vehicles from car dealerships, finance companies, direct corporates and government entities and auctions the cars via its online platform. Grays focuses on the \$8,000 to \$15,000 price segment of the automotive market.

Automotive is a relatively new category for Grays, with a focused effort to grow the category having commenced less than two years ago. In H1 FY17, Grays sold over 13,500 cars, compared to 8,800 cars sold in H1 FY16.

Grays has continued to invest in new yards, people and technology in the auto category. Expanded facilities in New South Wales, Victoria, Queensland and South Australia became available in Q4 FY16. Grays has also invested in a larger business development team, securing a broad range of higher value cars, across all mainland states. The growth in the Grays' auto business is supported by successful car buyer marketing efforts, including targeting specific market segments with growth potential and a dedicated digital marketing campaign.

### New business initiatives

Grays continuously investigates ways to leverage its platform and capabilities for growth through new business initiatives.

Grays has commenced a measured expansion of its B2B business division into offshore markets, including the launch of [graysmid-eastplant.com](http://graysmid-eastplant.com) in Dubai through a low cost and low capital investment joint venture. This will focus on online auctions of mining and civil plant and equipment and target the Middle East and African markets.

Grays also expects to expand its B2B business division into adjacent service lines through the commencement of GEG Capital, an asset based lending trial (sale and lease back).

Grays also intends to expand its auto finance, insurance and warranty options in alliance with financiers.



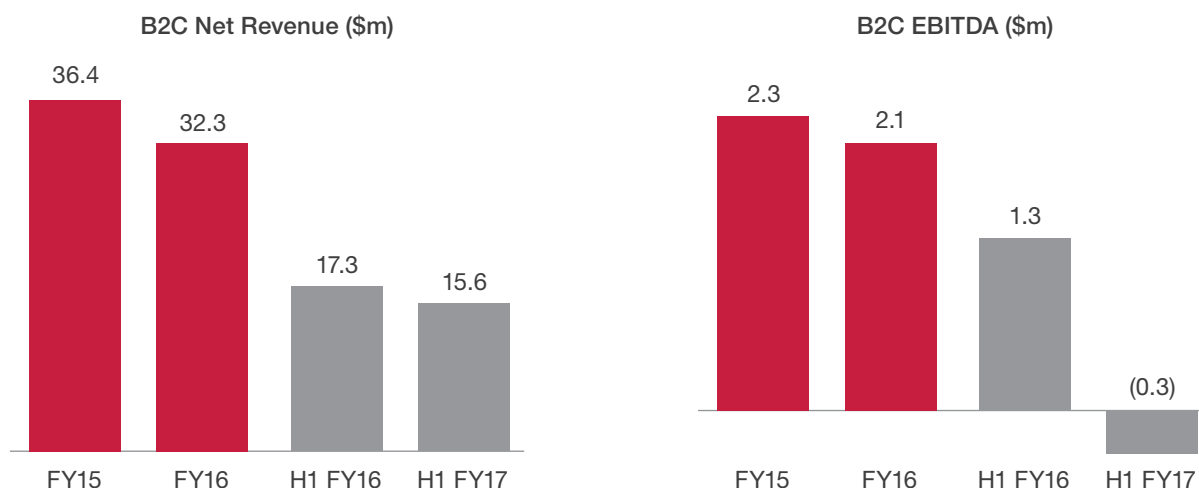
## b. B2C business division

### Key features

Grays' B2C business division provides an auction and fixed price based site for wine and other consumer product categories (e.g. hardware, whitegoods, homeware, jewellery, consumer electronics and IT categories).

As recently announced by Grays, the B2C business division is to be rationalised to focus on a narrower range of consumer categories that support the B2B business division. The rationalisation will be undertaken through an orderly run-down of Grays-owned inventory. See Section 5.4 for further details.

The decision to rationalise the B2C business division is largely a result of the deteriorating performance of the B2C business, as illustrated below:



### GraysWine

GraysWine is part of the B2C business division. GraysWine offers over 2,000 wines from winemakers from Australia and abroad.

Grays' wine offering provides an alternative route to market for wine growers and distributors and services more than 250 wineries from Australia and New Zealand. Wine is increasingly being sourced by Grays direct from Europe and the Americas. Grays sells wine through both the [grayswine.com.au](http://grayswine.com.au) and [graysonline.com](http://graysonline.com) websites.

Wine is Grays B2C business division's strongest category in both profitability and brand awareness. It sells approximately 42,000 cases of wine per month direct to consumers, over 70% (by volume) of which are sold via auction on a consignment basis.

The proposed rationalisation of the B2C business division is not expected to impact Grays Wine.

## 5.4 Grays' strategy

### a. Key strategic priorities

In November 2016, Grays announced that its key priorities for FY17 were to achieve a growing and sustainable business from:

- continued delivery of the B2B business division growth strategy across the key categories of auto, mining and contracting, agriculture and transport;
- measured offshore expansion in the B2B business division;
- enhanced offering for the B2C business division and a further reduction in operating expenses;
- upgraded marketing capability to leverage Grays' marketplace; and
- continued investment in technology to improve customer experience and scalability of Grays' operations.

### b. Strategic decision to rationalise B2C business division

On 23 February 2017, Grays announced that the underperformance of the B2C business division over the two key trading months in November and December 2016 led to a re-assessment of the longer term strategic relevance of the B2C business division to Grays.

Following the re-assessment, and continued poor trading performance of the B2C business division in January 2017, the decision was taken to rationalise B2C categories to those that support the B2B business division.

The impact of the rationalisation of the B2C business division will include a reduction of the fixed cost base and an orderly run-down of Grays-owned inventories.

### c. Sydney premises

On 2 May 2017, Grays announced a variation to the terms of the current lease in respect of its Sydney premises to allow for an early exit. In compensation, Grays received a payment from the landlord of \$7.5 million (plus GST).

The early exit of the Sydney premises is consistent with, and a key part of, Grays' announced rationalisation of the B2C business division. Grays is seeking more suitable office and warehouse premises that supports reduced size requirements as the B2C business division is rationalised. Grays anticipates that new premises will be located, and the transition to those new premises completed, by the end of the 2017 calendar year.

When the transition to new premises is complete, Grays expects that its occupancy costs will reduce with a consequent improvement in underlying profitability. Until suitable alternative premises are found and the current premises are exited, Grays will continue to incur the existing occupancy costs.

## 5.5 Board and senior management

The Grays Board consists of the following people:

Name	Position
Jonathan Pinshaw	Independent Non-Executive Chairman
Will Vicars	Non-Executive Director
Bernie Campbell	Independent Non-Executive Director
Nicolette Maury	Independent Non-Executive Director
Mark Bayliss	Executive Director and Chief Executive Officer

The key members of Grays senior management team are:

Name	Position
Mark Bayliss	Executive Director and Chief Executive Officer
David Grbin	Chief Financial Officer
Josh Sanders	Executive General Manager – Sales & Operations
Sue Klose	Executive General Manager – Chief Marketing Officer
Anthony Coorey	Executive General Manager – Information Systems
Mark Cox	Executive General Manager – People & Culture

## 5.6 Grays issued securities

The capital structure of Grays as at the date of this Scheme Booklet is as follows:

- Number of Grays Shares: 127,477,311
- Number of Grays Performance Rights: 4,375,636

## 5.7 Substantial holders

As at the Last Practicable Date, according to substantial holder notices filed with the ASX, the substantial holders in Grays are set out in the table below:

Substantial holder	Date of last notice	Number of Grays Shares disclosed in last notice	Voting power (%) disclosed in last notice
Caledonia (Private) Investments Pty Limited	13 September 2016	19,413,966	15.23%
Perpetual Limited	9 May 2017	15,604,746	12.24%
BT Investment Management Limited (BTT)	7 June 2017	6,734,148	5.28%
Alceon Liquid Strategies Pty Ltd	5 May 2017	6,696,940	5.25%

## 5.8 Interests of Grays Directors

### a. Interests in Grays Securities

As at the Last Practicable Date, Grays Directors had the following Relevant Interests in Grays Securities:

Director	Class of Grays Security	Number
Mr Jonathan Pinshaw	Grays Shares	1,018,235
	Grays Performance Rights	Nil
Mr Will Vicars	Grays Shares	12,048,816
	Grays Performance Rights	Nil
Mr Bernie Campbell	Grays Shares	58,037
	Grays Performance Rights	Nil
Ms Nicolette Maury	Grays Shares	7,000
	Grays Performance Rights	Nil
Mr Mark Bayliss	Grays Shares	3,928,773
	Grays Performance Rights	1,481,643

A total of 450,201 Grays Performance Rights held by Mr Bayliss will vest on or before the Effective Date and the remaining 1,031,442 Grays Performance Rights held by Mr Bayliss will lapse. Section 11.2 describes in further detail the proposed treatment of the Grays Performance Rights.

### b. Interests in Eclixp Securities

As at the Last Practicable Date, the following Grays Director had a Relevant Interest in Eclixp Securities:

Director	Class of Eclixp Security	Number
Mr Will Vicars	Eclixp Shares	2,200,000

No other Grays Director had any Relevant Interest in Eclixp Securities as at the Last Practicable Date.

## 5.9 Dealings in Grays Securities

The following Grays Directors provided or agreed to provide consideration for Grays Securities during the period of four months before the date of this Scheme Booklet:

Director	Class of Grays Security	Number	Transaction
Mr Jonathan Pinshaw	Grays Shares	200,000	On market purchase on 4 May 2017
Mr Will Vicars	Grays Shares	1,000,000	On market purchase on 4 May 2017

## 5.10 Interests in Eclixp

As at the Last Practicable Date, neither Grays nor any of its Associates had a Relevant Interest in any Eclixp Securities.

## 5.11 No dealings in Eclixp Securities

Except for the consideration to be provided under the Scheme, neither Grays nor any of its Associates has provided or agreed to provide consideration for any Eclixp Securities under any purchase or agreement during the period of four months before the date of this Scheme Booklet.

## 5.12 Historical financial information

### a. Basis of presentation

This Section 5.12 presents:

- Grays' historical consolidated statements of profit or loss for the years ended 30 June 2015 and 30 June 2016, and the six months ended 31 December 2016;
- Grays' historical consolidated statements of cash flows for the years ended 30 June 2015 and 30 June 2016, and the six months ended 31 December 2016; and
- Grays' historical consolidated statement of financial position as at 31 December 2016,

(collectively referred to as the **Grays Historical Financial Information**).

The Grays Historical Financial Information has been derived from:

- Grays' financial statements for the financial years ended 30 June 2015 and 30 June 2016, which were audited by Ernst & Young;
- Grays' financial statements for the half-year ended 31 December 2016, which were reviewed by Ernst & Young (being the last financial statements published by Grays before the date of this Scheme Booklet); and
- certain accounting records underlying the abovementioned audited and reviewed financial statements.

The Grays Historical Financial Information in this Section 5.12 is presented in an abbreviated form and does not contain all the disclosures, statements or comparative information that are usually provided in an annual report prepared in accordance with the Corporations Act. Grays considers that for the purposes of this Scheme Booklet the historical financial information presented in an abbreviated form is more meaningful to Grays Shareholders.

As the historical financial information below does not represent the complete financial statements, it should therefore be read in conjunction with the financial statements for the respective periods, including the description of the accounting policies contained in those financial statements and the notes to those financial statements, all of which are available at [www.graysecommercegroup.com.au](http://www.graysecommercegroup.com.au) or the ASX website at [www.asx.com.au](http://www.asx.com.au).

The Grays Historical Financial Information has been prepared in accordance with the recognition and measurement principles of the Australian Accounting Standards (AAS) including the Australian Accounting Interpretations, issued by the Australian Accounting Standards Board (AASB) which are consistent with the International Financial Reporting Standards and Interpretations issued by the International Accounting Standards Board, other than the Grays historical consolidated statements of profit or loss and Grays historical consolidated statements of cash flows, which include adjustments to separately present the impact of certain significant items. Details of these significant items are set out in Section 5.12(d) below.

#### b. Grays historical consolidated statement of financial position

Set out below is the Grays historical consolidated statement of financial position as at 31 December 2016.

Grays historical consolidated statement of financial position	
\$m	31-Dec-16
<b>Current assets</b>	
Cash and cash equivalents	1.9
Trade receivables and other assets	7.1
Inventory	7.8
Prepayments	7.4
Total current assets	24.1
<b>Non-current assets</b>	
Property, plant and equipment	3.2
Deferred tax assets	8.0
Intangibles	17.6
Total non-current assets	28.7
<b>Total assets</b>	<b>52.8</b>
<b>Current liabilities</b>	
Trade and other liabilities	(14.3)
Provisions	(6.9)
Total current liabilities	(21.3)
<b>Non-current liabilities</b>	
Borrowings	(3.6)
Provisions	(3.4)
Total non-current liabilities	(6.9)
<b>Total liabilities</b>	<b>(28.2)</b>
<b>Net assets</b>	<b>24.6</b>
<b>Equity</b>	
Contributed equity	45.6
Reserves	(6.5)
Retained earnings	(14.5)
<b>Total equity</b>	<b>24.6</b>

### c. Grays historical consolidated statements of profit or loss

Set out below are the Grays historical consolidated statements of profit or loss for the financial years ended 30 June 2015 and 30 June 2016, and for the six months ended 31 December 2016.

Grays historical consolidated statements of profit or loss				
\$m		Year ended 30 Jun-15	Year ended 30 Jun-16	Half-year ended 31 Dec-16
<b>Revenue</b>		<b>109.9</b>	<b>124.9</b>	<b>71.3</b>
Cost of revenue	i	(33.5)	(37.3)	(21.7)
<b>Gross profit</b>	ii	<b>76.4</b>	<b>87.6</b>	<b>49.5</b>
Employee benefit expense		(44.4)	(47.5)	(25.9)
Operating overheads		(21.2)	(25.8)	(16.6)
<b>Underlying EBITDA</b>	ii	<b>10.8</b>	<b>14.3</b>	<b>7.1</b>
Depreciation and amortisation expense		(2.5)	(1.7)	(0.9)
<b>Underlying EBIT</b>	ii	<b>8.3</b>	<b>12.6</b>	<b>6.2</b>
Operating finance costs		0.4	(0.1)	(0.3)
<b>Underlying PBT</b>	ii	<b>8.7</b>	<b>12.5</b>	<b>5.9</b>
Income tax expense		(2.5)	(2.6)	(1.9)
<b>Underlying NPAT</b>	ii	<b>6.2</b>	<b>9.9</b>	<b>4.0</b>
Amortisation and impairment of intangible assets (post-tax)		1.0	0.7	0.3
<b>Underlying NPATA</b>	ii	<b>7.2</b>	<b>10.6</b>	<b>4.3</b>
Significant items (post-tax)		(7.4)	(29.9)	-
Amortisation and impairment of intangible assets (post-tax)		(1.0)	(0.7)	(0.3)
<b>Statutory NPAT</b>		<b>(1.2)</b>	<b>(20.0)</b>	<b>4.0</b>

### Notes to the Grays historical consolidated statements of profit or loss

- Cost of sales includes the following line items, reported in Grays' financial statements: changes in inventory and finished goods, freight and transport, and merchant fees and bank charges.
- Gross profit, EBITDA, EBIT and NPATA are financial measures not prescribed by the AAS. Gross profit represents revenue less costs of revenue. EBITDA represents earnings before depreciation, amortisation, interest income and expense, and tax expense. EBIT represents earnings before interest income and expense, and tax expense. NPATA represents earnings before amortisation of acquired intangibles on an after-tax basis.  
Underlying EBITDA, Underlying EBIT, Underlying PBT, Underlying NPAT and Underlying NPATA are financial measures which are not prescribed by the AAS and reflect earnings before the significant items set out in Section 5.12(d).

### Management discussion and analysis of Grays historical financial performance

#### Half year ended 31 December 2016

In the half year ended 31 December 2016, revenue increased 14.6% to \$71.3 million (relative to the half year ended 31 December 2015). Significant planned investments in people and facilities assisted in growing B2B revenues in all categories with the B2B division experiencing a 19.9% growth in revenue to \$43.2 million and a 16.3% growth in net revenue to \$40.4 million (relative to the half year ended 31 December 2015). Whilst B2C revenue increased 6.7% to \$27.9 million, net revenue declined 9.8% to \$15.6 million due to unsatisfactory trading performance in November and December 2016 as a result of subdued consumer demand and increased competition.

Despite revenue increasing, Underlying EBITDA declined 12.4% to \$7.1 million (relative to the half year ended 31 December 2015). This was largely driven by a decline in the B2C division. Whilst B2B EBITDA increased 3.8% to \$9.4 million, B2C EBITDA declined \$1.7 million to \$(0.3) million.

#### Year ended 30 June 2016

In FY16, revenue increased 13.7% to \$124.9 million and Underlying EBITDA grew 32.8% to \$14.3 million. This growth was led by the significant growth in B2B, with B2B revenue growing 30.7% to \$73.4 million and B2B EBITDA growing 27.7% to \$16.5 million. The B2B division experienced strong growth in the key corporate categories of auto, mining & contracting and transport and the DMS Davlan acquisition was successfully integrated, facilitating growth in the agriculture category. However, the B2C division declined, with B2C revenue declining 4.3% to \$51.2 million and B2C EBITDA declining 8.8% to \$2.1 million. This decline in B2C was due to a reduction of less profitable categories and vendors, a re-weighting of stock levels to match key B2C categories, reduced retail channel cross-sell following the disposal of fixed price retail and fewer major event sales in the year ended 30 June 2016 compared with the year ended 30 June 2015.

#### d. Grays significant items

Grays significant items				
\$m		Year ended 30 Jun-15	Year ended 30 Jun-16	Half-year ended 31 Dec-16
Disposed operations	i	4.1	10.5	-
Disposal costs	ii	-	25.0	-
Acquisition and merger integration costs	iii	6.5	0.3	-
Tax effect of the above		(3.2)	(5.9)	-
<b>Significant items (post-tax)</b>		<b>7.4</b>	<b>29.9</b>	<b>-</b>

#### Notes to the Grays significant items

- Disposed operations reflects the removal of the results associated with the fixed price retail business which was disposed of in 23 November 2015.
- Disposal costs relate to the costs of disposing of the fixed price retail business, which were largely non-cash. Costs include the loss recognised on disposal (\$13.1 million), recognition of an onerous lease (\$6.6 million), inventory provisioning (\$1.5 million) and other business closure costs (\$3.8 million).
- Acquisition and merger costs of \$6.5 million in the year ended 30 June 2015 relate to the reverse acquisition of Mnemon Limited, as part of the listing of Grays. Costs of \$0.3 million in the year ended 30 June 2016 relate to the acquisition of DMS Davlan.

#### e. Grays historical consolidated statements of cash flows

Set out below are the Grays historical consolidated statements of cash flows for the financial years ended 30 June 2015 and 30 June 2016, and for the six months ended 31 December 2016.

Grays historical consolidated statements of cash flows				
\$m	Note	Year ended 30 Jun-15	Year ended 30 Jun-16	Half-year ended 31 Dec-16
<b>Underlying PBT</b>	i	<b>8.7</b>	<b>12.5</b>	<b>5.0</b>
Significant items (pre-tax)	ii	(10.6)	(35.8)	0.9
<b>PBT</b>		<b>(1.9)</b>	<b>(23.3)</b>	<b>5.9</b>
Depreciation and amortisation		2.6	2.5	0.9
Non-cash items		6.5	13.6	0.4
Change in working capital		(8.8)	1.6	(7.2)
Tax paid		(0.7)	(1.3)	0.0
<b>Net cash flow from operating activities</b>		<b>(2.2)</b>	<b>(6.9)</b>	<b>(0.0)</b>
Purchase of PPE/intangibles		(2.6)	(1.9)	(1.0)
Payments for purchase of business net of cash acquired		5.9	(2.7)	(1.1)
Payments for acquisition and merger integration costs		(6.5)	(0.3)	-
Proceeds from disposal of business		-	5.2	-
Proceeds from disposal of assets		0.1	-	-
<b>Net cash flow from investing activities</b>		<b>(3.2)</b>	<b>0.3</b>	<b>(2.0)</b>
Proceeds from issue of shares		17.0	-	-
Buy-back of shares		(3.5)	-	-
Net drawdown/(repayment) of borrowings		(4.5)	2.4	1.1
Loans received from shareholders		5.5	-	-
Dividends paid		(3.6)	-	-
<b>Net cash flow from financing activities</b>		<b>10.9</b>	<b>2.4</b>	<b>1.1</b>
<b>Net cash flow</b>		<b>5.5</b>	<b>(4.2)</b>	<b>(0.9)</b>



## Notes to the Grays historical consolidated statements of cash flows

- i. Underlying PBT is a financial measure which is not prescribed by the AAS. Underlying PBT excludes the impact of the significant items set out in Section 5.12(d).
- ii. The cash flow impact of significant items could not be reliably quantified, given the incorporation of fixed price retail balances within the working capital of the B2C division during the historical periods. Significant items presented in the Grays historical consolidated statements of cash flows therefore reflect the profit before tax impact of those items, not the cash flow impact, which would differ due to non-cash items and the timing of cash payments and receipts.

## f. Material change in Grays' financial position since its last published accounts (31 December 2016)

Other than:

- the payment of the 1.2 cents per share fully franked dividend on 21 April 2017;
- the receipt by Grays of \$7.5 million (plus GST) in connection with the variation of the lease for Grays' Sydney premises; and
- the accumulation of earnings in the ordinary course of trading or as otherwise disclosed in this Scheme Booklet or to ASX by Grays,

within the knowledge of the Grays Board as at the date of this Scheme Booklet, the financial position of Grays has not materially changed since 31 December 2016, being the date of the H1 FY17 Financial Report.

## 5.13 Dividend policy

Grays has a target payout ratio of approximately 40% of NPAT. However, the decision as to whether to pay a dividend and the amount of such dividend is made by the Grays Board taking into account the circumstances at the relevant time, including the financial performance of Grays.

In April 2017, Grays paid a fully franked interim dividend of 1.2 cents per share.

On 4 May 2017, Grays announced an intention to apply the proceeds received under the variation of the lease for its Sydney premises to pay a fully franked dividend estimated to equate to 5.6 cents per share (**Grays Permitted Special Dividend**).

However, as at the date of this Scheme Booklet, no final decision has been made in respect of whether to declare the Grays Permitted Special Dividend or the amount of any such dividend.

Whether any Grays Permitted Special Dividend is declared and paid is entirely independent of the Scheme. If the Grays Board determines to pay the Grays Permitted Special Dividend before the Implementation Date, the Scheme Consideration will not be adjusted for the amount of the Grays Permitted Special Dividend.

## 5.14 Litigation

Grays is from time to time involved in disputes and litigation. As at the date of this Scheme Booklet, Grays is not aware of any litigation or dispute which Grays believes is likely to lead to a material liability in the context of the Grays Group taken as a whole.

## 5.15 Forecast financial information

Grays has given careful consideration as to whether forecast financial information for Grays on a stand-alone basis can and should be included in this Scheme Booklet. In particular, Grays has considered whether there is a reasonable basis for the preparation and disclosure in the Scheme Booklet of reliable and useful forecast financial information on a stand-alone basis.

Grays has concluded that forecast financial information for Grays on a stand-alone basis cannot be provided in this Scheme Booklet, as Grays does not have a reasonable basis for such forecasts as required by applicable law and practice, and that inclusion of such forecasts could be potentially misleading.

Factors which can have a material impact on the reliability of forecasts on a stand-alone basis include changes in variables which are beyond the control of Grays, such as volatility in the supply of goods for auction by vendors and general economic conditions.

## 5.16 Publicly available information

Grays is a listed disclosing entity for the purposes of the Corporations Act and as such is subject to certain reporting and disclosure obligations. This requires Grays to give continuous disclosure by lodging disclosures with the ASX of any information Grays has that a reasonable person would expect to have a material effect on the price or value of Grays Shares.

Information about Grays, including financial information, is available in electronic form on Grays' website.

All announcements made by Grays from 23 February 2017 (being the date that Grays' Half Year Report for H1 FY17 was announced to the ASX) to the day before the date of this Scheme Booklet are listed below:

Date	Title
7 June 2017	Becoming a substantial holder from BTT
9 May 2017	Change in substantial holding from PPT
8 May 2017	Change in substantial holding from PPT
8 May 2017	Change of Director's Interest Notice
5 May 2017	Change of Director's Interest Notice
5 May 2017	Becoming a substantial holder
4 May 2017	Board Recommended Acquisition of Grays by Eclipx
4 May 2017	ECX: ECX acquires Grays eCommerce – Media Release
2 May 2017	Variation of Lease for Sydney Premises
10 March 2017	Ceasing to be a substantial holder
23 February 2017	Dividend/Distribution – GEG
23 February 2017	Investor Presentation
23 February 2017	GEG Market Briefing H1 FY17 Results and Outlook
23 February 2017	Appendix 4D and Interim Report – 31 December 2016
23 February 2017	GEG Half-Year 2017 Results

## 6. INFORMATION ABOUT ECLIPX

### 6.1 Overview of Eclix

Eclix is an established leader in vehicle fleet leasing, fleet management and diversified financial services across Australia and New Zealand and offers consumers, businesses, and governments access to solutions including fleet leasing, fleet management services, equipment finance, novated leasing, vehicle sales, commercial equipment finance, consumer motor vehicle finance and medium term accident replacement vehicles through its suite of brands and end-to-end technology. As at 31 March 2017, the Eclix Group had \$2.1 billion of assets under management or financed across Australia and New Zealand.

Eclix is listed on ASX with a market capitalisation of approximately \$971 million as at the Last Practicable Date.

Eclix's suite of diversified financial services brands includes FleetPartners, FleetPlus, Fleet Choice, AutoSelect, CarLoans.com.au, Eclix Commercial and Right2Drive.

Eclix's business is structured in three segments, being:

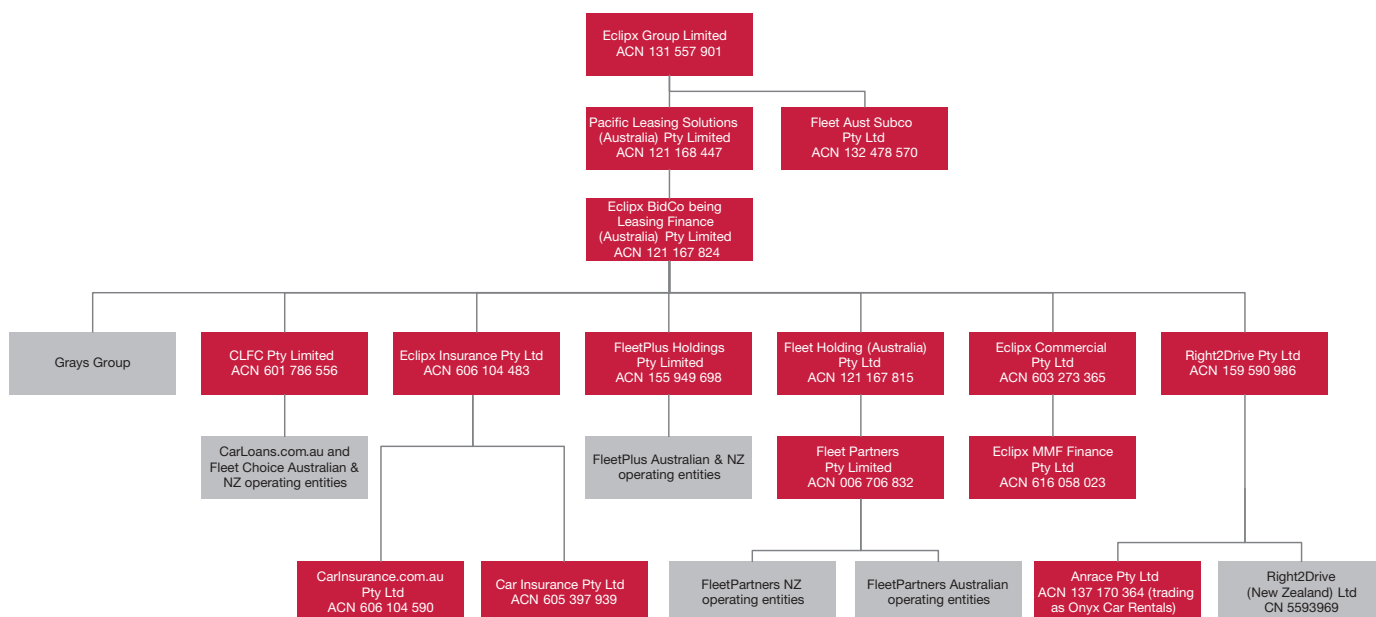
- Australian Commercial;
- New Zealand Commercial; and
- Australian Consumer.

These business segments are outlined in further detail in Section 6.6 below.

Eclix continues to explore value-accretive, strategic acquisition opportunities to complement its organic growth.

### 6.2 Eclix BidCo and Eclix Group corporate structure

Under the Scheme, subject to the provision of the Scheme Consideration, the Scheme Shares will be transferred to Eclix BidCo. Accordingly, following implementation of the Scheme, Grays will become a wholly owned subsidiary of Eclix BidCo. Set out below is a simplified corporate structure diagram illustrating the corporate structure of the Eclix Group following implementation of the Scheme.



### 6.3 Eclix's corporate history

Eclix's most established business, operating under the name "FleetPartners", was founded in 1987 as the vehicle fleet leasing and management business of Esanda Finance Corporation Ltd, a financing company of Australia and New Zealand Banking Group (ANZ). That business was sold in 2006 by ANZ to Nikko Principal Investments Australia and subsequently acquired in 2008 by Ironbridge Funds, Sing Glow and current and former members of management.

In 2014, Eclix acquired FleetPlus and CarLoans.com.au and effected a group restructure whereby the FleetPartners New Zealand business was acquired. The name 'Eclix' was adopted in March 2015. In 2016, Eclix acquired FleetSmart, Right2Drive and Anrace Pty Ltd (trading as Onyx Car Rentals).

On 22 April 2015, Eclix listed on the ASX. On 29 June 2016, Eclix entered the S&P/ASX 200 index.

## 6.4 Eclipx's business acquisitions

As is evidenced by Eclipx's corporate history, acquisitions of companies and businesses are a key component of its growth strategy.

Eclipx continually considers, and where appropriate seeks to pursue, value-accretive acquisitions that are aligned with its strategy to enter selected alternative market and/or product adjacencies using Eclipx's platform capabilities. Eclipx also leverages its management team's expertise and experience in acquisitions, integration and monetisation to participate in further industry consolidation where appropriate.

Any future acquisitions by Eclipx could be substantially larger than those previously completed or in industry sectors or geographical areas in which the Combined Group is not currently operating.

Any future acquisitions may be funded from existing cash reserves and cash flow, new or existing debt facilities, the issue of Eclipx Shares (whether by way of placement, rights issue or as consideration to the vendor(s)) or a combination of any of these sources and/or alternative means.

## 6.5 Industry overview

### a. Introduction

Eclipx operates in the following segments of the asset finance and asset management industries in Australia and New Zealand:

- *vehicle fleet leasing and management*: Eclipx provides financing solutions and management services for vehicle fleets;
- *consumer vehicle finance*: Eclipx provides novated leases and consumer vehicle financing products;
- *commercial equipment finance and leasing*: Eclipx provides commercial equipment financing solutions; and
- *accident replacement vehicles*: Eclipx provides medium term accident replacement vehicles to "not-at-fault" drivers who have accident damaged cars.

### b. Vehicle fleet leasing and management industry in Australia

A fleet management organisation (**FMO**) such as Eclipx provides customers (including SMEs and larger corporate and government entities) with financing solutions and management services for their vehicle fleets. These fleets comprise different types of vehicles, including "tool-of-trade" vehicles that customers use in carrying out their business operations. Examples include passenger vehicles used by sales representatives to visit customers, light commercial vehicles used by field technical staff in maintaining asset and infrastructure, light commercial vehicles used by small businesses to deliver goods or heavy commercial vehicles used by many businesses to support their logistics requirements.

FMOs provide value to their customers through offering leases and services that lower the cost and burden of maintaining and managing vehicles used by customers in their business.

#### i. Market size

The market size of the vehicle fleet leasing and management industry segment (excluding novated leases) can be measured as New Business Writings (**NBW**) (being initial financed capital value of "funded fleet" (i.e. funded by Eclipx or by third parties) vehicles under new leases with new customers, or new and replacement leases with existing customers entered into during the relevant period) per annum. Independent (and thus unverified) member-submitted New Business data from the Australian Fleet Lessors Association under this definition of market size was \$3.5 billion for the 12 months to 31 March 2017, which equates to a market size in excess of \$3.5 billion, taking into account non-members.

#### ii. Growth drivers

Eclipx believes the key growth drivers for the vehicle fleet leasing and management industry segment in Australia are:

- increasing willingness of customers to outsource the financing and/or management of their vehicle fleets (including as a result of product innovation such as sale and lease back arrangements); and
- FMOs increasing value-added offerings to customers, including the use of telematics (which monitors driver safety and assists in realising tax savings on vehicle-related fringe benefits tax and fuel tax) and other technology-based customer solutions.

#### iii. Competitive environment

In Australia, there are several large participants in the vehicle fleet leasing and management industry segment. Eclipx believes it is a significant participant, with approximately 11% market share as at 31 March 2017 by vehicles under management or financed.

Over the three years to 31 March 2017 (and since that date until the Last Practicable Date), there have been no new entrants of significant scale, although there have been changes in ownership of various industry participants. Eclipx believes the key factors that industry participants seek to use as points of differentiation, or to gain competitive advantage, include:

- *scale*: benefits derived from economies of scale include accessing supply chain cost efficiencies (e.g. on fuel, service, tyres and insurance), that may be passed on to customers through competitive pricing;
- *technology investment*: resources to fund investment in new technology and applications to develop and provide customers with a broader range of products and services;
- *expertise*: expertise and data to assist in assessing credit risk and setting residual values; and
- *funding*: access to a variety of funding sources on competitive terms.

Some participants, including Eclix, are locally-based with a focus on Australia and New Zealand (e.g. sgfleet), while other participants are owned by foreign-headquartered multinationals (e.g. LeasePlan, Toyota Financial Services, Custom Fleet, ORIX and Summit).

#### iv. Regulatory framework

##### **General regulatory environment**

In Australia, providers of fleet leases are required under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) (**AML/CTF Act**) to register with the Australian Transaction Reports and Analysis Centre (**AUSTRAC**) and to comply with the AML/CTF Act and related rules and obligations. In Australia, commercial hire purchase arrangements are also regulated by the AML/CTF Act and related rules and regulations.

Participants may distribute various types of insurance on behalf of insurers, acting as authorised representatives of these insurers as required by the Corporations Act. The provision and distribution of insurance are subject to financial services licensing and conduct requirements.

Organisations that collect personal information about individuals are subject to the *Privacy Act 1988* (Cth) (**Privacy Act**). The Privacy Act governs the way in which personal information (including credit information) is handled and secured.

Various other Australian laws regulate the general behaviour of participants, including the *Australian Securities and Investments Commission Act 2001* (Cth) which prohibits unfair practices and conduct in financial services, including in the provision of credit.

Provision of consumer credit is further regulated under the *National Consumer Credit Protection Act 2009* (Cth) and the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010* (Cth)).

##### **Tariffs**

Australian tariff laws and their variations can affect the value of new and used cars, which can have an impact on parties that bear residual value risk (i.e. the risk that the forecasted value of a vehicle at the end of its lease term differs from the actual sale value realised).

Over the past 27 years, the Australian Government has reduced the level of tariffs and quotas for foreign vehicles which to date has not materially or adversely affected the used car market. Despite the reduction in the rate of Australian tariffs on many passenger vehicles from approximately 40% in 1990 to 5% today, used car prices have proven to be resilient (which assists FMOs to estimate used car sales pricing).

Notwithstanding this gradual reduction in the level of tariffs and quotas for foreign vehicles, Australian tariff laws and their variations, and any associated effects on used car prices, need to be monitored by FMOs when offering products in which they retain residual value risk.

##### **Accounting standards**

The accounting standards issued by the International Accounting Standards Board (**IASB**), IAS 17 Leases, and Australian Accounting Standards Board (**AASB**), AASB 117 Leases, enable Eclix's operating lease customers to record a single operating expense in their statement of profit or loss and other comprehensive income. The accounting standards do not require the recognition of an asset or liability on the balance sheet of the lessee.

New accounting standards issued by the IASB, IFRS16 Leases, and AASB, AASB 16 Leases, will be applicable for annual reporting periods beginning on or after 1 January 2019. These new standards will replace IAS 17 Leases and AASB 117 Leases. The new standards will require Eclix's operating lease customers to recognise a right-of-use asset and a lease liability and accordingly the statement of profit or loss and other comprehensive income will require the disclosure of depreciation and interest expense.

#### c. Vehicle fleet leasing and management industry in New Zealand

The New Zealand vehicle fleet leasing and management industry is smaller than the Australian industry due to the smaller size of New Zealand's economy and population, although it exhibits similar drivers to the Australian industry.

Relative to Australia, New Zealand has experienced higher growth in new vehicle sales over the five years to 2016, growing at approximately 11.6% per annum over that period.

A key feature which distinguishes the New Zealand industry from Australia is the liberalisation of restrictions on importing used vehicles that occurred in New Zealand from the mid-1980s. New Zealand reduced its vehicle import tariffs from the mid-1980s and removed all tariffs on passenger and light commercial vehicles in 1998. Imports of used vehicles increased from 2% of new car registrations in 1984 to 69% in 2003 and have been in excess of 50% of new car registrations since that time. The average age of passenger vehicles in New Zealand is just under 14 years, which is considerably higher than Australia where the average age of passenger vehicles is less than 10 years.

While used vehicle imports may affect the dynamics of the second hand vehicle market and the sale proceeds industry participants can obtain on the sale of ex-lease vehicles, New Zealand used vehicle prices display a similar depreciation profile overall to that experienced to date in Australia.

## i. Competitive environment

The competitive landscape for this industry segment is similar to Australia's with participants in the New Zealand market including fleet managers that have an established presence in Australia. The New Zealand industry is smaller and there are fewer industry participants than in Australia, with the significant participants in addition to Eclix being Custom Fleet (a wholly-owned subsidiary of Element Financial Corporation), LeasePlan and ORIX. Eclix believes it is the second largest FMO with approximately 26% market share by vehicle registrations by lease companies in 2016.

## ii. Regulatory framework

### **Motor vehicle leasing regulation**

Persons in the business of selling and/or leasing (for a term greater than four months) motor vehicles in New Zealand, are (unless exempted) required under the *Motor Vehicle Sales Act 2003* to be registered. The core obligations under that Act are to make disclosure of certain information when vehicles are sold or leased, not to tamper with odometers, and to keep records of each contract of sale or lease.

The *Land Transport Act 1998* and the supplementary rules (together, **LT Laws**) regulate the leasing of vehicles for a term of less than six months. The core obligations under the LT Laws are to hold a transport service licence, include specified information in the rental agreement, ensure that the vehicles are maintained in a fit and proper condition and that all applicable charges are paid, offer vehicle insurance to the prospective hirer and to keep records relating to the hires.

### **Financial services regulation**

Fleet leasing of vehicles for primarily business purposes is not regulated in New Zealand under consumer credit law.

Fleet leasing and management providers are subject to the *Financial Advisers Act 2008* if, in the ordinary course of business, the provider makes a recommendation in respect of financial products (which include insurance products). The *Financial Service Providers (Registration and Dispute Resolution) Act 2008* is applicable to financial institutions (which include financial advisers and creditors under a credit contract). The core obligations under those Acts are to be registered, to comply with certain conduct and disclosure obligations, and if services are provided to retail clients, to be a member of a dispute resolution scheme.

### **Other regulation**

Organisations that collect personal information about individuals are subject to the *Privacy Act 1993*, which governs the way in which personal information (including credit information) is collected, handled and stored.

Eclix may also be required to comply with the *Fair Trading Act 1986*, which prohibits unfair practices and conduct in trade.

In New Zealand, providers of financial leases (other than those relating to consumer products) are required under the *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* to, among other things, develop a programme and report suspicious transactions to the authorities.

## d. Consumer vehicle finance industry in Australia and New Zealand

The consumer vehicle finance industry segment provides individuals (and their employers) with a range of leasing and lending solutions for their vehicles. The major channels by which consumers can obtain vehicle finance include directly through financial institutions or through car dealerships, finance brokers and other intermediaries such as online brokers (including Eclix's CarLoans.com.au). CarLoans.com.au provides consumer vehicle finance services in Australia and New Zealand (through CarLoans.co.nz), although its New Zealand operations are significantly smaller than its Australian operations.

### i. Market size

The size of the Australian consumer vehicle finance market can be calculated by combining the value of the novated leasing market and personal finance commitments for motor vehicles. The annual volume of novated leases written and personal finance commitments written in Australia is currently approximately \$19.3 billion.

### ii. Growth drivers

Eclix believes the key growth drivers for the consumer vehicle finance industry segment in Australia are:

- increased funding accessibility (easier, faster and potentially cheaper) through online channels; and
- taxation treatment which provides incentives to use novated lease products.

### iii. Competitive environment

There are a significant number of providers offering consumer vehicle finance in Australia. The participants can generally be categorised as one or more of the following:

- *banks and non-bank financial intermediaries*: providing mainly car loan products;
- *specialist vehicle fleet leasing and salary packaging companies (including Eclix)*: most participants provide a novated lease offering and some also provide other secured consumer vehicle financing products (such as a personal secured loan);
- *tied point of sale specialist financiers*: financiers associated with vehicle manufacturers offer customers finance at point of sale; and
- *online specialty finance providers (including Eclix)*: providing customers with the ability to purchase cars online and offer online car financing options.



Market leaders benefit from having distribution channels (including the ability to cross-sell consumer products to their corporate customers, and strong business-to-consumer sales capabilities) that may be difficult to replicate in a cost-effective or timely manner by new entrants.

#### iv. Regulatory framework

##### **General regulatory environment – Australia**

In Australia, the provision of consumer credit (including consumer vehicle finance) is regulated by the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**), the National Credit Code and the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010* (Cth)). A person who provides consumer credit or a consumer lease or who provides a credit service must be licensed under the NCCP Act. Organisations offering consumer vehicle finance and their credit representatives are subject therefore to responsible lending, disclosure, training and other compliance requirements under the NCCP Act.

Although consumer leases are generally regulated by the National Credit Code, novated leases are not regulated by consumer credit laws (on the basis that they relate to goods hired by an employee in connection with the employee's remuneration or other employment benefits).<sup>31</sup> Consumer loans are also a service which is subject to the requirements of the AML/CTF Act.

##### **General regulatory environment – New Zealand**

In addition to the New Zealand regulatory framework in respect of the vehicle fleet leasing and management industry, the following regulation is applicable to consumer vehicle financing:

- *Consumer credit regulation:* The core obligations on a creditor under the *Credit Contracts and Consumer Finance Act 2003* include compliance with lender responsibility principles and various disclosure obligations, along with restrictions on the nature and amount of fees that are charged in relation to the provision of credit. The Act also regulates the repossession of consumer goods.
- *Consumer protection:* The *Consumer Guarantees Act 1993* sets minimum guarantees that apply to the supply of consumer vehicle finance services and the sale of the vehicles in trade.

##### **Fringe benefits tax**

The financial performance of the consumer vehicle finance sector is partly driven by regulatory developments, including fringe benefits taxation and business incentives. Fringe benefits tax is a tax employers pay on certain benefits they provide to their employees. For example, between 2009 and 2012, the Australian Government offered various tax incentives for small businesses purchasing new assets, such as vehicles, which Eclipx believes contributed to growth in the consumer vehicle finance industry experienced over that period.

Novated lease volumes are driven in part by their treatment for tax purposes, as supported by fringe benefits tax rulings from the Australian Taxation Office. Currently, there are two approved methods of calculating fringe benefits tax, the statutory formula method and the operating cost method. Under the statutory formula method, the taxable value of the vehicle for fringe benefits tax purposes is calculated as a percentage of the vehicle's value, currently set at a statutory rate of 20%. Under the operating cost method, the taxable value of the vehicle for fringe benefits tax purposes is calculated based on the operating costs of the car multiplied by the proportion of kilometres driven that relates to non-business use (i.e. it is driven for private purposes). To use the operating cost method, accurate logbook records must be maintained, including the date of the journey, odometer readings at the beginning and end of the journey and the purpose of the journey.

In July 2013, the then Federal Labor Government proposed to eliminate the statutory formula method, which would result in individuals having to maintain trip logbooks to substantiate business use of vehicles. This was not implemented. The current Federal Coalition Government has maintained the ability for individuals to choose the flat 20% statutory rate for calculating the vehicle fringe benefits value and has advised that it does not intend to change the law in this area.

Telematics technology such as that provided by Eclipx is used for the purposes of producing 'logbook records', odometer records and a register report to calculate the taxable value of fringe benefits in relation to the use of vehicles. The Australian Taxation Office has issued rulings which support the use of this technology tool. Eclipx has an automated app-based electronic tax logbook with both Australian Taxation Office and New Zealand Inland Revenue Department Rulings approving their use to support tax calculations. As a result, Eclipx believes that its customers can continue to operate novated leases under either method with the benefit of this technology.

#### e. Commercial equipment financing and leasing industry in Australia

The commercial equipment financing and leasing segment forms part of the broader, general equipment finance industry in Australia and covers the equipment types in relation to which Eclipx is seeking to grow its market presence, including electronic data processing machines (e.g. computers), office machines and equipment for manufacturing.

##### i. Market size

As at 31 December 2016, the Australian Equipment Lessors Association estimates that the total value of equipment finance assets by its members and the wider market was \$89.7 billion. Of this, approximately \$34.1 billion was attributable to the equipment types that Eclipx is targeting: electronic data processing machines, manufacturing equipment, mining and construction equipment, renewable/solar equipment, agriculture equipment, forklifts, catering equipment and other equipment (a mixture of equipment not covered by the other categories, including medical equipment).

<sup>31</sup> With the exception of some circumstances where an employee ceases employment however retains a novated lease.

Eclipx is focusing on these assets because it believes that they are suitable for leasing arrangements.

## **ii. Growth drivers**

Eclipx believes growth in this segment is primarily driven by:

- the rapid development of, and increased use of, technology by selected service sectors (including medical and professional services); and
- the increased willingness of customers to outsource financing and/or management of such equipment.

## **iii. Competitive environment**

There are a large number of providers of commercial equipment financing and leasing products in Australia, broadly belonging to one of the three categories below:

- *domestic banks*: Australian banks are significant participants in the market, with their distribution channels providing access to broad range of customers (from SMEs through to large corporates);
- *offshore banks and financial institutions*: may focus on niche customer segments of the Australian market (e.g. the agricultural segment); and
- *specialty financiers (including Eclipx)*: offer equipment finance, often with a focus on the SME segment and typically finance smaller value equipment purchases.

## **iv. Regulatory framework**

The commercial equipment financing and leasing industry regulatory framework is similar to that of the fleet leasing and management industry segment as detailed above in Section 6.5(b)(iv).

# **f. Accident replacement vehicle industry in Australia and New Zealand**

The Australian and New Zealand accident replacement vehicle industry provides eligible drivers with rental replacement vehicles where they have been involved in a “not-at-fault” collision and have accident damaged cars. While their cars are being repaired, these drivers have a legal right to damages for loss of use of their vehicle. As a result, the insurer of the “at-fault” driver pays the cost associated with this service.

## **i. Market size**

The size of the accident replacement vehicle industry can be measured through the volume of potential hires per year by eligible “not-at-fault” drivers. Management estimates that the value of these potential hires per year in Australia and New Zealand is approximately \$550-750 million.

## **ii. Growth drivers**

Eclipx believes that increased customer awareness of their legal right to an accident replacement vehicle (when not-at-fault) is the key growth driver for the accident replacement vehicle industry segment in Australia and New Zealand.

## **iii. Competitive environment**

Compared to other more mature markets such as the UK, the Australian and New Zealand accident replacement markets are relatively smaller, and hence the growth opportunity is greater as the consumer becomes more educated as to their right to a replacement vehicle when not at fault.

Eclipx believes the key factors that industry participants seek to use as points of differentiation, or to gain competitive advantage, include:

- *distribution network*: the ability to provide an accident replacement vehicle to customers before a competitor can;
- *brand awareness*: benefits derived from customers being aware of a participant’s brand and contacting that participant when they have a “not-at-fault” collision; and
- *funding*: ability to fund investments in receivables and cycles of negative operating cash flow.

## **iv. Regulatory framework**

### **General regulatory environment – Australia**

In all Australian states, the Australian Capital Territory and the Northern Territory, common law principles govern the entitlement of a “not-at-fault” driver to be compensated for the loss of use of the driver’s vehicle by the “at-fault” driver. In accordance with those principles, the “at-fault” driver will be liable in damages for the loss of use of the “not-at-fault” driver’s vehicle during the period for which it is under repair. Such damages are to be calculated by reference to the market cost of hiring a like replacement vehicle.

### **General regulatory environment – New Zealand**

Similar to the Australian states and territories, common law principles in New Zealand govern the entitlement of a “not-at-fault” driver to be compensated by the “at-fault” driver for the loss of use of the driver’s vehicle during the period for which it is under repair. The accident replacement vehicle industry in New Zealand is subject to the regulations which apply to short term rental businesses (as earlier described).

## 6.6 Eclix's business segments

### a. Australian Commercial

Eclix's Australian Commercial business segment is comprised of fleet leasing and management businesses (FleetPartners and FleetPlus) and a commercial equipment financing business (Eclix Commercial).



FleetPartners is a leading vehicle fleet leasing and management company that focuses on SME, government, consumer and corporate customers. Based on its diverse customer needs, it has established three specialised business divisions, designed to suit the needs of its customers: business leasing (Australia), novated leasing (Australia) and business leasing (New Zealand). FleetPartners specialises in all vehicle types – from passenger cars to heavy commercial vehicles.



FleetPlus is an established fleet leasing, fleet provider and management company in Australia and New Zealand. It specialises in operating leasing and fleet management. FleetPlus offers businesses and individuals tailored fleet and leasing finance solutions to meet their individual circumstances.



Eclix Commercial offers financing solutions to assist Australian businesses of all sizes lease or purchase IT, office and manufacturing equipment.

### Australian Commercial – recent performance

The table below summarises the recent performance of the Australian Commercial business segment, which is set out in further detail in the 1H17 Results Presentation released by Eclix on ASX on 4 May 2017:

\$ million (AUD)	1H16 Actual	1H17 Actual	Growth pcp
New Business Writings – Fleet <sup>32</sup>	163	183	12%
New Business Writings – Equipment	30	32	6%
New Business Writings	194	215	11%
AUMOF (closing)	953	1,058	11%
VUMOF (units)	44,668	51,736	16%
NOI	56.1	58.8	5%
NPATA	17.8	18.9	6%
NOI/Avg AUMOF	11.9%	11.3%	
NPATA/Avg AUMOF	3.8%	3.6%	

### b. New Zealand Commercial

Eclix's New Zealand Commercial business provides vehicle fleet leasing and management services (FleetPartners and FleetPlus) and used vehicle retail sales (AutoSelect).



As noted in Section 6.6(a), FleetPartners has a specialised New Zealand business leasing division.



As noted in Section 6.6(a), FleetPlus offers fleet leasing and management services in both Australia and New Zealand.



AutoSelect is a registered motor vehicle trader that sells quality ex-lease vehicles provided by Eclix.

32 Excludes sale and leaseback agreements totalling \$14.1 million in 1H16 and \$8.7 million in 1H17.

### New Zealand Commercial – recent performance

The table below summarises the recent performance of the New Zealand Commercial business segment, which is set out in further detail in the 1H17 Results Presentation released by Eclix on ASX on 4 May 2017:

\$ million (AUD) <sup>33</sup>	1H16 Actual	1H17 Actual	Growth pcp
New Business Writings	86	93	8%
AUMOF (closing)	406	445	10%
VUMOF (units)	29,325	30,254	3%
NOI	18.5	21.2	15%
NPATA	5.0	5.4	8%
NOI/Avg AUMOF	9.5%	9.5%	
NPATA/Avg AUMOF	2.6%	2.4%	

### c. Australian Consumer

Eclix's Australian Consumer business provides novated online consumer vehicle finance loans (FleetPartners, FleetPlus, CarLoans.com.au and Fleet Choice), consumer novated leasing, and rental replacement vehicles to eligible "not-at-fault" drivers (Right2Drive).



FleetPartners' offering includes novated leasing, salary packaging and vehicle management and maintenance services to employees.



As noted in Section 6.6(a), in addition to its offering for businesses, FleetPlus offers novated vehicle leasing, fleet management services, short-term rentals and driver education programs to Australian consumers.



CarLoans.com.au is an online consumer vehicle finance broker service that assists individuals to secure the best car loan to suit their needs. CarLoans.com.au sources loans from a wide range of Australian lenders, and recommends loans that meet the individual requirements of each customer. CarLoans.com.au can assist with secured loans, as well as novated leases.



Right2Drive is a leading medium term accident replacement/car rental operator and existing FleetPartners customer. The Right2Drive business provides rental replacement vehicles to eligible "not-at-fault" drivers that have accident damaged cars. Right2Drive operates 24 hours a day, 7 days a week from locations across Australia and New Zealand, and with a fleet of over 2,300 vehicles. Since acquiring Right2Drive in May 2016, Eclix has expanded its branch network from 14 to 21 branches across Australia and New Zealand. Onyx Car Rentals, an operator in this sector based in Victoria, was acquired in November 2016.



Fleet Choice provides fleet management and salary packaging administration services for organisations and individuals across Australia. Fleet Choice makes reporting easy via a combination of direct contact and online reporting tools to streamline tax and compliance. In addition to its core fleet and finance services, it can also assist its customers access a nation-wide supplier network offering fleet discounts, full vehicle servicing, maintenance and repairs.

<sup>33</sup> Average AUD/NZD exchange rate 1H16 1.085 and 1H17 1.061, Spot AUD/NZD exchange rate 1H16 1.110 and 1H17 1.089

## Australian Consumer – recent performance

The table below summarises the recent performance of the Australian Consumer business segment, which is set out in further detail in the 1H17 Results Presentation released by Eclix on ASX on 4 May 2017:

\$ million (AUD)	1H16 Actual	1H17 Actual	Growth pcp
New Business Writings	126	150	19%
AUMOF (closing)	495	609	23%
VUMOF (units)	18,362	22,270	21%
NOI	15.4	35.0	127%
NPATA	3.2	6.9	116%
NOI/Avg AUMOF	6.3%	11.9%	
NPATA/Avg AUMOF	1.3%	2.4%	

## 6.7 Eclix Directors

Brief profiles of the Eclix Directors as at the date of this Scheme Booklet are set out below.

Name	Current position	Biography
Mr Kerry C D Roxburgh	Independent Chairman	<p>Mr Kerry Roxburgh is a Stockbrokers And Financial Advisers Association of Australia – Practitioner Member.</p> <p>Kerry is Chairman of Eclix Group Ltd and of Tyro Payments Ltd. He is the Lead Independent non-executive Director of Ramsay Health Care, and a non-executive director and investment committee chairman of the Medical Indemnity Protection Society and of MIPS Insurance Ltd.</p> <p>After 10 years as Chairman of the Charter Hall Group, he retired from that Group at their AGM in November, 2014 and after 20 years as Chairman, on 31 December 2015 he retired from the Board of Tasman Cargo Airlines.</p> <p>In 2000, Kerry completed a 3 year term as CEO of the online stockbroker, E*TRADE Australia (a business that he co-founded in 1997), becoming its non-executive Chairman until June 2007, when it was acquired by the ANZ Bank.</p> <p>Prior to this appointment he was an Executive Director of Hongkong Bank of Australia Group (now the HSBC) where for 10 years from 1986, he held various positions including Head of Corporate Finance and Executive Chairman of the group's stockbroker, James Capel Australia.</p>
Mr Doc Klotz	Chief Executive Officer and Managing Director	<p>Doc Klotz was appointed Chief Executive Officer, Managing Director and Executive Director of Eclix on 27 March 2014.</p> <p>Doc has over 25 years' experience in senior executive roles in the financial services and travel industries in Australia, New Zealand and the United States.</p> <p>Prior to joining Eclix, Doc was Head of Global Operations at FlexiGroup, an ASX 200 company. He also has senior executive experience with Travel Services International, Hotels.com and Expedia, Inc. in the United States.</p>
Mr Garry McLennan	Deputy Chief Executive Officer, Chief Financial Officer and Executive Director	<p>Garry McLennan was appointed Deputy Chief Executive Officer, Chief Financial Officer and Executive Director of Eclix on 27 March 2014.</p> <p>Garry has over 35 years of experience in financial services including five years as Chief Financial Officer at FlexiGroup, an ASX 200 company.</p> <p>Prior to his time at FlexiGroup, Garry spent 23 years at HSBC Bank Australia where he was Chief Financial Officer and subsequently Chief Operating Officer. He has previously served on the Board of HSBC Bank Australia and The Australian Banking Industry Ombudsman Ltd.</p> <p>Garry is also a director of GMCM Investments Pty Ltd and Glenhope Nominees Pty Ltd.</p>

Name	Current position	Biography
Ms Gail Pemberton	Independent Non-Executive Director	<p>Gail Pemberton was appointed a Director to the Eclix Board on 26 March 2015.</p> <p>Gail has more than 30 years' experience in banking and wealth management, and is a specialist in technology and operations.</p> <p>Gail is currently Chairman of OneVue Limited and Melbourne IT Ltd and a Non-Executive Director of PayPal Australia Pty Ltd and Zip Industries.</p> <p>She was previously Chairman of Onthefhouse, and served on the Board of Alleron Funds Management, Air Services Australia, the Sydney Opera House Trust, Harvey World Travel and UXC Ltd.</p>
Mr Trevor Allen	Independent Non-Executive Director	<p>Trevor Allen was appointed a Director to the Eclix Board on 26 March 2015.</p> <p>Trevor has more than 38 years of corporate and commercial experience, primarily as a corporate and financial adviser to Australian and international corporates.</p> <p>Trevor is currently Chairman of Brighte Capital Pty Ltd, the interim Chairman of Yowie Group Limited and a Non-Executive Director of Freedom Foods Group Ltd, Peet Limited, Peet Funds Management Limited, Peet Flagstone Pty Ltd, and Yowie Hong Kong Holdings Limited. He is a Non-Executive Alternate Director, Company Secretary and Public Officer of Australian Fresh Milk Holdings Pty Limited and Fresh Dairy One Pty Limited.</p> <p>Trevor was previously a Non-Executive Director of the Juvenile Diabetes Research Foundation, a member of FINSIA's Corporate Finance Advisory Committee for 10 years, and a board member of AON Superannuation Pty Ltd.</p>
Mr Russell Shields	Independent Non-Executive Director	<p>Russell Shields was appointed a Director to the Eclix Board on 26 March 2015.</p> <p>Russell has more than 35 years' experience in financial services, including six years as Chairman Queensland and Northern Territory for ANZ Bank.</p> <p>Russell is currently a Non-Executive Director of Aquis Entertainment Limited, Aquis Canberra Limited, Casino Canberra Limited, Holsmere Pty Ltd and Retail Food Group Ltd.</p> <p>Previously, Russell was the Chairman of Onyx Property Group Pty Ltd.</p>
Mr Gregory Ruddock	Non-Executive Director	<p>Gregory Ruddock was appointed as a Non-Executive Director to the Eclix Board on 26 March 2015, following his previous tenure as Chairman of Eclix.</p> <p>Gregory has 14 years' private equity experience with Gresham Private Equity and Ironbridge. He is currently the Joint Chief Executive Officer of Ironbridge and co-leads investment and portfolio management activities.</p> <p>Gregory is currently Chairman of Navigator Resources Limited and Non-Executive Director of Carp Advisory B Pty Ltd, Ironmonger Holdings Pty Ltd, Mascot Marine Holdings Pty Ltd, Super A-Mart Acquisitions Pty Ltd, Super A-Mart Finance Pty Ltd, Super A-Mart Holdco Pty Ltd, The Galore Group (Australia) Pty Ltd, Prosopa Advance Pty Ltd and IPMB Capital Partners Pty Ltd.</p>



## 6.8 Eclipx leadership team

Brief profiles of the members of Eclipx's leadership team as at the date of this Scheme Booklet are set out below.

Name	Current position	Biography
Mr Doc Klotz	Chief Executive Officer and Managing Director	See Section 6.7.
Mr Garry McLennan	Deputy Chief Executive Officer, Chief Financial Officer and Executive Director	See Section 6.7.
Mr Jeff McLean	Chief Operating Officer	<p>Jeff McLean has over 15 years' experience in senior executive roles with significant experience in Credit, Collections and Operational Excellence including Best Call Centre and AON Hewitt Best Employer.</p> <p>Prior to joining Eclipx, Jeff's prior roles included Chief Operating Officer at FlexiGroup and Head of Operations at Credit Corp, both ASX 200 listed companies.</p>
Mr Paul Verhoeven	Managing Director, Fleet Australia	<p>Paul Verhoeven has 20 years' experience in asset finance and vehicle fleet leasing and was previously Managing Director of FleetPartners New Zealand for 3 years.</p> <p>Prior to joining Eclipx, Paul's roles included Head of Lending for UDC Finance (a subsidiary of ANZ) and European Risk Director for First Data, an international merchant acquirer.</p>
Mr Dennis Kelly	Managing Director, Fleet New Zealand	<p>Dennis Kelly has 40 years' experience in leasing, commercial asset financing and general banking, including as Managing Director of FleetPartners New Zealand (a division of Eclipx).</p> <p>Dennis has been with FleetPartners for 10 years, initially as Managing Director for FleetPartners New Zealand for 7 years, followed by 3 years as Managing Director FleetPartners Australia, before recently returning to his previous role as Managing Director of FleetPartners New Zealand.</p> <p>Prior to joining Eclipx, Dennis held several senior executive roles including CEO of Geneva Finance Limited, Chief Operating Officer of Hanover Group and Managing Director of Hertz Fleetlease Limited.</p>
Mr Bevan Guest	Managing Director, FleetPlus	<p>Bevan Guest has over 17 years' experience in leasing, commercial asset financing and automotive distributor finance.</p> <p>Prior to joining Eclipx, Bevan was the National Manager for Nissan Finance and Asia Pacific Export Manager at GM Holden.</p>
Mr Anthony Roberts	Managing Director, Commercial Equipment Finance	<p>Anthony Roberts has over 20 years' experience in the Australian Asset &amp; Equipment Finance industry, including over four years as General Manager, Vendor &amp; Commercial Finance of FlexiGroup, an ASX 200 company.</p> <p>Prior to his time at FlexiGroup, Anthony held a number of senior positions with global finance companies including CIT, GE and Rabobank.</p>
Mr Damian Mullins	Managing Director, Right2Drive	<p>Damian Mullins has been the Managing Director of Right2Drive since its inception. Right2Drive was BRW Australia's third fastest growing company in 2016.</p> <p>Prior to Right2Drive, Damian spent 20 years in senior roles in the Australian liquor industry at Penfolds, Southcorp, Fosters and Constellation (now Accolade Wines).</p>

Mr David Brudenell	Managing Director, Consumer	<p>David Brudenell has over 15 years' experience in senior roles, bringing with him a wealth of knowledge specifically in the consumer and digital space.</p> <p>Prior to joining Eclix, David was Chief Digital Officer and Head of Product for Universum, where he led the digital transformation of the business globally. David has also held senior positions as Executive Vice President and Commercial Director at Pureprofile. While there he led Pureprofile's global sales, business operations, strategic partnerships and alliances.</p>
Mr Jason Muhs	Head of Business Strategy and Investor Relations	<p>Jason Muhs has over 15 years' experience in senior strategy roles for finance companies.</p> <p>Prior to joining Eclix, Jason was Head of Strategy at FlexiGroup and Director of Strategy &amp; Product at GE Money Mortgages.</p>
Mr Albert Ho	Chief Information Officer	<p>Albert Ho has over 33 years' experience in information technology with proven experience in real time online banking and trading systems in HSBC Group including five years with HSBC Insurance in Hong Kong and 25 years in senior management roles with HSBC Australia.</p>
Mr Edward Ho	Chief Risk Officer	<p>Edward Ho has 35 years' experience in banking and risk. Edward's banking experience includes investment and corporate banking, middle market, trade finance and retail network, as well as credit, business development, asset recovery, and operations support. Before joining Eclix, Edward was Head of Internal Audit for HSBC's operations in Australia and New Zealand, and later as Director Risk Advisory and Internal Audit at UNSW, reporting to the audit and risk committees.</p>
Mr Matthew Sinnamon	General Counsel and Company Secretary	<p>Matt Sinnamon joined Eclix in October 2014 following eight years with ING Bank Australia as Head of Legal, Compliance and Company Secretary.</p> <p>Prior to his time with ING, Matt held various legal and accounting positions with Corrs Chambers Westgarth, Perpetual Limited and Pitcher Partners.</p> <p>Matt is admitted to the Supreme Court of New South Wales and the High Court of Australia. He is a member of the Governance Institute of Australia, a Chartered Secretary and is entered on the Roll of Public Notaries.</p>
Mr Frank Laezza	Head of Business Intelligence and MIS	<p>Frank Laezza has over 25 years' experience in all facets of financial management, governance and business partnering, and most recently was CFO at the University of Technology, Sydney.</p> <p>Frank has led and implemented Operational and Treasury related initiatives for organisations to improve business intelligence, management reporting and analysis, as well as streamline processes and mitigate risk.</p>
Mr Jonathan Sandow	General Manager, Finance	<p>Jonathan Sandow has over 15 years' experience working in senior finance roles within banking and financial services in Australia, the United Kingdom and South Africa.</p> <p>Jonathan is a qualified CA and commenced his career at PwC. Before joining Eclix he held senior finance positions at FirstRand Banking Group and J.P. Morgan.</p>
Mr Paul Garvey	Group Treasurer	<p>Paul Garvey has over 15 years' experience in senior leadership roles within the financial services, banking and treasury sectors.</p> <p>Prior to joining Eclix, Paul's roles included General Manager, Treasury and Financial Markets at ME Bank.</p>

## 6.9 Corporate governance

### a. Statement of Corporate Governance Practices

The Eclipx Board is committed to implementing the highest possible standards of corporate governance and maximising performance, generating appropriate levels of shareholder value and financial return, and sustaining the growth and success of Eclipx. In conducting business with these objectives, the Eclipx Board seeks to ensure that Eclipx is properly managed to protect and enhance shareholder interests, and that Eclipx, Eclipx Directors, officers and personnel operate in an appropriate environment of corporate governance.

The Eclipx Board believes that sound governance is fundamental to the ongoing success and growth of Eclipx in the markets in which it participates. Accordingly, the Eclipx Board has created a framework for managing Eclipx, including adopting relevant internal controls, risk management processes and corporate governance policies and practices which it believes are appropriate for Eclipx's business and which are designed to promote the responsible management and conduct of Eclipx.

### b. Eclipx Board charter

The Eclipx Board has adopted a written charter to provide a framework for the effective operation of the Eclipx Board, which sets out:

- the roles and responsibilities of the Eclipx Board, including to provide overall strategic guidance for Eclipx, oversight of risk management and reporting, effective oversight of management, monitoring of Eclipx Board and management performance and oversight of governance;
- the roles and responsibilities of the Chairman and company secretary;
- the membership of the Eclipx Board, including in relation to the Eclipx Board's composition and size and the process of selection and re-election of Eclipx Directors, terms of appointment of Eclipx Directors, independence of directors and conduct of individual directors;
- the delegations of authority of the Eclipx Board to both committees of the Eclipx Board and to the Chief Executive Officer and other management of Eclipx; and
- Eclipx Board process, including how the Eclipx Board meets.

The management function is conducted by, or under the supervision of, the Chief Executive Officer as directed by the Eclipx Board (and by officers to whom the management function is properly delegated by the Chief Executive Officer).

The Eclipx Board collectively, and individual Eclipx Directors, may seek independent professional advice at Eclipx's expense, subject to the approval of the Chairman or the Eclipx Board as a whole.

### c. Audit and Risk Committee

The Audit and Risk Committee must have at least three members, a majority of whom (including the chair) must be independent and all of whom must be non-executive directors. Currently, Mr Trevor Allen, Mr Gregory Ruddock, Mr Kerry Roxburgh and Mr Russell Shields are members of this committee, and Trevor acts as chair. In accordance with its charter, it is intended that all members of the committee should be financially literate and have familiarity with financial management, and at least one member should have relevant qualifications and experience. The primary role of this committee includes:

- overseeing the process of financial reporting (including to assist the Chief Executive Officer, Deputy Chief Executive Officer or Chief Financial Officer to provide their declaration under section 295A of the Corporations Act), internal control, continuous disclosure, financial and non-financial risk management, compliance and external audit;
- monitoring Eclipx's compliance with laws and regulations and Eclipx's own codes of conduct and ethics;
- encouraging effective relationships with, and communication between, the Eclipx Board, management and Eclipx's external auditor;
- evaluating the adequacy of processes and controls established to identify and manage areas of potential risk; and
- seeking to safeguard the assets of Eclipx.

### d. Remuneration and Nomination Committee

The Remuneration and Nomination Committee must have at least three members, a majority of whom (including the chair) must be independent directors and all of whom must be non-executive directors. Currently, Ms Gail Pemberton, Mr Kerry Roxburgh and Mr Trevor Allen are members of this committee, and Gail acts as chair. The main functions of the committee are to assist the Eclipx Board with a view to establishing a board of effective composition, size, diversity, expertise and commitment to adequately discharge its responsibilities and duties, and assist the Eclipx Board with a view to discharging its responsibilities to Eclipx Shareholders and other stakeholders to seek to ensure that Eclipx:

- has coherent remuneration policies and practices which enable Eclipx to attract and retain executives and directors, including succession planning for the Eclipx Board and executives;
- fairly and responsibly remunerates directors and executives, having regard to the performance of Eclipx, the performance of the executives and the general remuneration environment;
- has policies to evaluate the performance of the Eclipx Board, individual directors and executives on (at least) an annual basis; and
- has effective policies and procedures to attract, motivate and retain appropriately skilled and diverse persons to meet Eclipx's needs.

#### **e. Risk management policy**

The identification and proper management of Eclix's risks are an important priority of the Eclix Board. The Eclix Board has adopted a risk management policy appropriate for its business. This policy highlights Eclix's commitment to designing and implementing systems and methods appropriate to minimise and control its risks.

The Eclix Board is responsible for overseeing and approving risk management framework, plan and policies, monitoring risk management procedures which are established to provide assurance that major business risks are identified, consistently assessed and appropriately addressed. The Eclix Board may delegate these functions to the Audit and Risk Committee.

The Eclix Board regularly undertakes reviews of its risk management procedures to ensure that it complies with its legal obligations.

The Eclix Board has in place a system whereby management is required to report as to its adherence to policies and guidelines approved by the Eclix Board for the management of risks.

#### **f. Tax risk management policy**

The Eclix Board has adopted a tax risk management policy to ensure an adequate framework is in place to allow for the effective management of tax risks in an appropriate and consistent manner in line with tax authority expectations.

The Eclix Board is ultimately responsible for risk oversight and the management and internal control of the processes by which risk is considered, and this applies equally to tax risk. The Eclix Board has delegated day to day oversight of tax risk to the Audit and Risk Committee.

#### **g. Diversity and other policies**

Eclix values a strong and diverse workforce and is committed to developing measurable objectives to achieve gender diversity in its workplace. It has implemented a diversity policy which is overseen by the Remuneration and Nomination Committee and which aligns Eclix's management systems with the commitment to develop a culture and business model that values and achieves diversity in its workforce and on the Eclix Board.

In addition, Eclix also has the following policies and codes:

- continuous disclosure and communications policy;
- securities trading policy;
- whistleblowing policy; and
- code of conduct.

These policies and codes are available on Eclix's website, [www.eclix.com](http://www.eclix.com).

### **6.10 Historical financial information**

#### **a. Basis of presentation**

This Section 6.10 presents:

- Eclix's historical consolidated statements of profit or loss for the years ended 30 September 2015 and 30 September 2016, and the six months ended 31 March 2017;
- Eclix's historical consolidated statements of cash flows for the years ended 30 September 2015 and 30 September 2016, and the six months ended 31 March 2017; and
- Eclix's historical consolidated statement of financial position as at 31 March 2017,

(collectively referred to as the **Eclix Historical Financial Information**).

The Eclix Historical Financial Information has been derived from:

- Eclix's financial statements for the financial years ended 30 September 2015 and 30 September 2016, which were audited by KPMG;
- Eclix's financial statements for the half-year ended 31 March 2017, which were reviewed by KPMG (being the last financial statements published by Eclix before the date of this Scheme Booklet); and
- certain accounting records underlying the reviewed financial statements for the half-year ended 31 March 2017.

The Eclix Historical Financial Information in this Section 6.10 is presented in an abbreviated form and does not contain all the disclosures, statements or comparative information that are usually provided in an annual report prepared in accordance with the Corporations Act. Eclix considers that for the purposes of this Scheme Booklet the historical financial information presented in an abbreviated form is more meaningful to Eclix Shareholders.

As the Eclix Historical Financial Information below does not represent the complete financial statements, it should therefore be read in conjunction with the financial statements for the respective periods including the description of the accounting policies contained in those financial statements and the notes to those financial statements, all of which are available at [www.eclix.com](http://www.eclix.com) or the ASX website at [www.asx.com.au](http://www.asx.com.au).

The Eclix Historical Financial Information has been prepared in accordance with the recognition and measurement principles of the AAS including the Australian Accounting Interpretations, issued by the Australian Accounting Standards Board which are consistent with the International Financial Reporting Standards and Interpretations issued by the International Accounting Standards Board, other than the Eclix historical consolidated statements of profit or loss and Eclix historical consolidated statements of cash flows, which include adjustments to separately present the impact of certain significant items. Details of these significant items are set out in Section 6.10(d) below.

#### **b. Eclix historical consolidated statement of financial position**

Set out below is the Eclix historical consolidated statement of financial position as at 31 March 2017.

<b>Eclix Consolidated Statement of Financial Position</b>	
<b>\$m</b>	<b>31-Mar-17</b>
<b>Current assets</b>	
Cash and cash equivalents	65.7
Restricted cash and cash equivalents	129.9
Trade receivables and other assets	114.4
Finance leases	118.4
Inventory – Motor vehicles	18.1
Operating leases reported as property, plant and equipment	237.4
<b>Total current assets</b>	<b>683.8</b>
<b>Non-current assets</b>	
Property, plant and equipment	14.5
Operating leases reported as property, plant and equipment	787.9
Deferred tax assets	4.8
Intangibles	606.3
Finance leases	278.5
<b>Total non-current assets</b>	<b>1,691.9</b>
<b>Total assets</b>	<b>2,375.7</b>
<b>Current liabilities</b>	
Trade and other liabilities	(103.2)
Borrowings	(307.7)
Derivative financial instruments	(9.8)
Provisions	(6.0)
Other	(0.7)
<b>Total current liabilities</b>	<b>(427.4)</b>
<b>Non-current liabilities</b>	
Trade and other liabilities	(4.2)
Borrowings	(1,219.3)
Provisions	(1.7)
Deferred tax liabilities	(44.6)
Derivative financial instruments	(3.6)
Other	(1.0)
<b>Total non-current liabilities</b>	<b>(1,274.4)</b>
<b>Total liabilities</b>	<b>(1,701.9)</b>
<b>Net assets</b>	<b>673.8</b>
<b>Equity</b>	
Contributed equity	458.6
Reserves	5.4
Retained earnings	209.8
<b>Total equity</b>	<b>673.8</b>

### c. Eclipx historical consolidated statements of profit or loss

Set out below are the Eclipx historical consolidated statements of profit or loss for the financial years ended 30 September 2015 and 30 September 2016, and for the six months ended 31 March 2017.

Eclipx historical consolidated statements of profit or loss				
\$m	Note	Year ended 30 Sep-15	Year ended 30 Sep-16	Half-year ended 31 Mar-17
<b>Revenue</b>		<b>479.6</b>	<b>504.8</b>	<b>282.7</b>
Cost of revenue		(240.5)	(241.5)	(132.3)
Lease finance costs		(66.4)	(65.1)	(33.6)
Impairment losses on loans and receivables		(1.6)	(2.0)	(1.9)
<b>Net operating income</b>		<b>171.0</b>	<b>196.2</b>	<b>114.9</b>
Employee benefit expense		(66.0)	(71.8)	(41.2)
Operating overheads		(27.3)	(36.2)	(23.7)
<b>Underlying EBITDA</b>	i	<b>77.7</b>	<b>88.2</b>	<b>50.0</b>
Depreciation, amortisation and impairment expense		(6.8)	(8.5)	(5.6)
<b>Underlying EBIT</b>	i	<b>70.9</b>	<b>79.7</b>	<b>44.5</b>
Operating finance costs		(6.8)	(7.3)	(4.1)
<b>Underlying PBT</b>	i	<b>64.1</b>	<b>72.3</b>	<b>40.3</b>
Income tax expense		(18.3)	(21.2)	(11.7)
<b>Underlying NPAT</b>	i	<b>45.8</b>	<b>51.2</b>	<b>28.6</b>
Amortisation and impairment of intangible assets (post-tax)		3.3	4.2	2.5
<b>Underlying NPATA</b>	i	<b>49.2</b>	<b>55.3</b>	<b>31.2</b>
Significant items (post-tax)		(18.3)	(5.3)	(0.2)
Amortisation and impairment of intangible assets (post-tax)		(3.3)	(4.2)	(2.5)
<b>Statutory NPAT</b>		<b>27.6</b>	<b>45.9</b>	<b>28.4</b>

### Notes to the Eclipx historical consolidated statements of profit or loss

- i. EBITDA, EBIT and NPATA are financial measures not prescribed by the AAS. EBITDA represents earnings before corporate depreciation, amortisation, corporate financing costs and tax expense, but includes depreciation and finance costs associated with lease assets. EBIT represents earnings before corporate financing costs and tax expense. NPATA represents net profit after tax excluding amortisation of acquired intangibles on an after-tax basis.

Underlying EBITDA, Underlying EBIT, Underlying PBT, Underlying NPAT and Underlying NPATA are financial measures which are not prescribed by the AAS and reflect earnings before the significant items set out in Section 6.10(d).

### d. Eclipx significant items

Eclipx significant items				
\$m	Note	Year ended 30 Sep-15	Year ended 30 Sep-16	Half-year ended 31 Mar-17
IPO costs	i	13.4	-	-
Acquisition related costs	ii	1.7	3.3	0.3
Restructuring costs	iii	-	1.8	-
Citigroup contingent consideration	iv	(1.4)	-	-
Change in capital structure	v	12.5	2.5	-
Tax effect of the above		(7.8)	(2.3)	(0.1)
<b>Significant items (post-tax)</b>		<b>18.3</b>	<b>5.3</b>	<b>0.2</b>



## Notes to the Eclix significant items

- i. Eclix paid external transaction costs of \$13.4 million in relation to its IPO in the year ended 30 September 2015.
- ii. Eclix paid external transaction costs of \$1.7 million in relation to its acquisition of CarLoans and FleetPartners New Zealand in the year ended 30 September 2015, \$3.3 million in relation to its acquisition of Right2Drive and FleetSmart in the year ended 30 September 2016, and \$0.3 million in relation to its acquisition of Onyx Car Rentals in the half-year ended 31 March 2017.
- iii. Eclix undertook a staff restructure during the year ended 30 September 2016, resulting in non-recurring costs of \$1.8 million.
- iv. Eclix settled contingent consideration owed to Citigroup on its IPO, resulting in a write-back of the excess amount provided for on the balance sheet of \$1.4 million.
- v. Eclix implemented a new capital structure on IPO, resulting in a significant change to finance costs. This item reflects the removal of legacy finance costs associated with the promissory notes (\$8.4 million) and convertible redeemable preference shares (\$1.3 million) in place prior to the IPO, advisory fees (\$0.6 million) payable to the prior owners of Eclix and the costs of refinancing (\$9.0 million), netted against a full-year effect of the new corporate debt structure (\$6.8 million).

## e. Eclix historical consolidated statements of cash flows

Set out below are the Eclix historical consolidated statements of cash flows for the financial years ended 30 September 2015 and 30 September 2016, and for the six months ended 31 March 2017.

Eclix historical consolidated statements of cash flows				
\$m	Notes	Year ended 30 Sep-15	Year ended 30 Sep-16	Half-year ended 31 Mar-17
<b>Underlying PBT</b>	i	<b>64.1</b>	<b>72.3</b>	<b>40.3</b>
Significant items (pre-tax)	ii	(26.1)	(7.6)	(0.3)
<b>PBT</b>		<b>38.0</b>	<b>64.8</b>	<b>40.0</b>
Depreciation and amortisation		197.7	197.9	106.6
Non-cash items		5.4	(12.2)	(5.8)
Change in working capital		125.6	128.1	50.3
Tax paid		(10.0)	(8.1)	(8.4)
<b>Net cash flow from operating activities</b>		<b>356.7</b>	<b>370.5</b>	<b>182.6</b>
Purchase of lease assets		(585.7)	(652.9)	(324.7)
Purchase of other PPE		(11.3)	(10.2)	(6.8)
Payments for acquisitions		(11.6)	(0.4)	(9.1)
Acquired on acquisition of Fleet NZ Limited		38.2	-	-
Settlement of deferred consideration		(9.0)	-	(0.2)
Proceeds from sale of lease assets		164.1	159.5	76.1
<b>Net cash flow from investing activities</b>		<b>(415.3)</b>	<b>(504.0)</b>	<b>(264.7)</b>
Net proceeds from borrowings		90.4	170.4	116.4
Dividends paid		-	(25.2)	(15.4)
Proceeds from issue of new shares		97.7	-	-
Settlement of promissory notes		(73.4)	-	-
Other		(0.4)	-	-
<b>Net cash flow from financing activities</b>		<b>114.3</b>	<b>145.2</b>	<b>101.0</b>
<b>Net cash flow</b>		<b>55.6</b>	<b>11.8</b>	<b>19.0</b>

## Notes to the Eclix historical consolidated statements of cash flows

- i. Underlying PBT is a financial measure which is not prescribed by the AAS. Underlying PBT excludes the impact of the significant items set out in Section 6.10(d).
- ii. Significant items presented in the Eclix historical consolidated statements of cash flows reflect the profit before tax impact of those items, not the cash flow impact, which would differ due to non-cash items and the timing of cash payments and receipts.

## 6.11 Material changes in financial position since last published accounts

Other than as disclosed in this Scheme Booklet, the consolidated financial position of Eclix has not materially changed since 31 March 2017.

## 6.12 Key features of Eclix Shares

The key features of Eclix Shares are summarised below.

### a. Meetings of members and voting

Each Eclix Shareholder is entitled to receive notice of, attend and vote at, general meetings of Eclix and to receive all notices, accounts and other documents required to be sent to Eclix Shareholders under the Eclix Constitution, the Corporations Act and the ASX Listing Rules.

At a general meeting of Eclix, Eclix Shareholders present in person or by proxy, representative or attorney will have one vote on a show of hands and, on a poll, one vote for each Eclix Share held.

### b. Dividends

The Eclix Board may from time to time resolve to pay dividends to Eclix Shareholders and fix the amount of the dividend, the time for determining entitlements to the dividend and the timing and method of payment. For further information in respect of Eclix's dividend policy, see Section 7.1(d).

### c. Transfer of Eclix Shares

Subject to the Eclix Constitution, Eclix Shares may be transferred by a proper transfer affected in accordance with the ASX Settlement Operating Rules, by a written instrument of transfer which complies with the Eclix Constitution or by any other method permitted by the Corporations Act, the ASX Listing Rules or the ASX Settlement Operating Rules.

The Eclix Board may refuse to register a transfer of Eclix Shares where permitted to do so under the Corporations Act, the ASX Listing Rules or the ASX Settlement Operating Rules. The Eclix Board must refuse to register a transfer of Eclix Shares when required to by the Corporations Act, the ASX Listing Rules or ASX Settlement Operating Rules.

### d. Issue of further Eclix Securities

Subject to the Corporations Act, the ASX Listing Rules and ASX Settlement Operating Rules and any rights and restrictions attached to a class of shares, Eclix may issue, or grant options in respect of, or otherwise dispose of further Eclix Shares on such terms and conditions as the Eclix Board resolves.

### e. Winding up

If Eclix is wound up, then subject to the Eclix Constitution and any special resolution or preferential rights or restrictions attached to a class of shares, any surplus must be divided among Eclix's members in the proportions which the amount paid and payable (including amounts credited) on the shares of a member is of the total amount paid and payable (including amounts credited) on the shares of all members of Eclix.

### f. Proportional takeover provisions

The Eclix Constitution contains provisions for Eclix Shareholder approval to be required in relation to any proportional takeover bid. These provisions will cease to apply unless renewed by special resolution of the Eclix Shareholders in general meeting by the third anniversary of the date of adoption of the Eclix Constitution.

## 6.13 Capital structure, ownership and incentive plans

### a. Issued Eclix Securities

As at the Last Practicable Date, the capital structure of Eclix is as follows:

Number of Eclix Shares	265,300,492
Number of Eclix Options	15,270,000
Number of Eclix Performance Rights	3,330,000

## **b. Incentive plans**

### **i. Long Term Incentive Plans**

Eclix established the Eclix LTI Plan to assist in the motivation, retention and reward of selected employees.

The Eclix LTI Plan is designed to align employees' interests with the interests of shareholders through the granting of performance right or options under the Eclix Performance Right and Option Plan.

Awards granted under the Eclix LTI Plan only vest where any vesting conditions determined by the Eclix Board have been satisfied. Vesting conditions may include the satisfaction of performance conditions (such as total shareholder return (**TSR**) and earnings per share (**EPS**) hurdles) or the participant remaining employed by Eclix at a particular point in time.

Details of the vesting conditions applicable to awards that were current as at 30 September 2016 (and other details about Eclix's remuneration arrangements) are set out in the Remuneration Report at pages 37 to 50 of Eclix's 2016 Annual Report, which can be found in the ASX announcements section of Eclix's website at <http://investors.eclixgroup.com/Investor-Centre/?page=ASX-Announcements>. An electronic copy of the Remuneration Report will be provided free of charge to any person who requests it.

#### ***Eclix Performance Rights and Options Plan***

Under the Eclix Performance Rights and Options Plan, the Eclix Board has absolute discretion to make awards in accordance with the plan and on such additional terms and conditions as the Eclix Board determines.

Each Eclix Performance Right is a conditional entitlement to receive an Eclix Share or, at the discretion of the Board, a cash payment of equivalent value.

Each Eclix Option is a conditional entitlement to receive an Eclix Share subject to the payment of the exercise price (if any). Alternatively, the Eclix Board may have discretion to settle an Eclix Option with a cash payment or an allocation of Eclix Shares based on the value of the Eclix Shares underlying the option less the exercise price.

#### ***Eclix Loan Share Plan***

Under the Eclix Loan Share Plan, which operated prior to 2016, the Eclix Board has absolute discretion to allocate fully paid ordinary shares in Eclix to an employee and provide a loan to finance the acquisition of those shares, in accordance with the plan and on such additional terms and conditions as the Eclix Board determines (**Eclix Loan Shares**).

#### ***Pre-IPO Loan Shares***

Pursuant to equity incentive arrangements existing prior to Eclix's IPO, certain executive directors and other members of management were issued fully paid ordinary shares in Eclix partially funded by loans provided by Eclix (**Pre-IPO Loan Shares**).

### **ii. Short Term Incentive Plan**

Eclix operates a short term incentive plan (**Eclix STI Plan**) to motivate and reward employees for specific measurable financial and non-financial results which link pay to performance and hence contribute to the achievement of Eclix's strategy.

Currently, awards made under the Eclix STI Plan are paid in cash following finalisation of audited year end financials.

### **iii. Share Rights Contribution Plan**

The Eclix Share Rights Contribution Plan was established to facilitate non-executive director shareholdings in Eclix and improve the alignment of non-executive director interests with those of Eclix Shareholders. Executive directors and other selected executives may also be eligible to participate in the plan.

Under the pre-tax salary sacrifice component of the plan, participants may elect to sacrifice a portion of their pre-tax remuneration to acquire share rights. Currently, non-executive directors may elect to sacrifice, on a pre-tax basis, up to 50% of base director fees (excluding committee fees) to acquire share rights.

Each share right is a conditional entitlement to receive an Eclix Share, subject to the payment of the exercise price (if any). Rights that have been granted to non-executive directors do not have an exercise price.

### **iv. Non-executive director options**

Non-executive directors at the time of the IPO purchased 200,000 options (**Eclix NED Options**) at \$0.24 per option. Each option is exercisable over one Eclix Share with an exercise price of 115% of the IPO offer price (\$2.65). All Eclix NED Options are currently vested and exercisable.

### c. Substantial holders

As at the Last Practicable Date, according to notices filed with the ASX, the substantial holders in Eclix were:

Substantial holder	Number of Eclix Shares	Voting power (%)
Bennelong Funds Management Group Pty Ltd	21,986,089	8.29
Commonwealth Bank of Australia and related bodies corporate	15,095,270	5.68
Vinva Investment Management	14,031,318	5.32
Platypus Asset Management	13,854,429	5.24

## 6.14 Recent Eclix share price performance

Eclix Shares are listed and posted for trading on ASX under the ASX code 'ECX'. Eclix Shares were listed on ASX on 22 April 2015.

The closing price of Eclix Shares on the ASX on 3 May 2017, being the last trading day prior to announcement of the Scheme, was \$3.80. The closing price of Eclix Shares on ASX on the Last Practicable Date was \$3.66, giving Eclix an implied market capitalisation on that date of \$971 million.<sup>34</sup>

During the period commencing on 3 February 2017 (being the date 3 months before the date the Scheme was announced) and ending on the Last Practicable Date:

- the highest recorded daily closing price for Eclix Shares on ASX was \$4.07 on 10 March 2017; and
- the lowest recorded daily closing price for Eclix Shares on ASX was \$3.53 on 9 June 2017 and 12 June 2017.

The following chart shows the daily closing price of Eclix Shares on ASX in the period from its listing to the Last Practicable Date:



<sup>34</sup> Based on 265,300,492 Eclix Shares being on issue as at the Last Practicable Date.

## 6.15 Interests of Eclipx Directors

### a. Interests in Eclipx Securities

At the Last Practicable Date, Eclipx Directors had the following Relevant Interests in Eclipx Securities:

Director	Class of Eclipx Security	Number	Exercise price (where applicable)
Mr Kerry C D Roxburgh	Eclipx Shares	204,246	N/A
	Eclipx NED Options	200,000	\$2.65
Mr Garry McLennan	Eclipx Shares	238,836	N/A
	Pre-IPO Loan Shares	3,539,118	N/A
	Eclipx Options (FY16)	800,000	\$3.06
	Eclipx Options (FY17)	880,000	\$3.60
	Eclipx Loan Shares (FY15)	1,600,000	N/A
	Eclipx Performance Rights (FY16)	185,000	N/A
	Eclipx Performance Rights (FY17)	143,000	N/A
Ms Gail Pemberton	Eclipx Shares	99,831	N/A
	Eclipx NED Options	200,000	\$2.65
Mr Trevor Allen	Eclipx Shares	96,331	N/A
	Eclipx NED Options	200,000	\$2.65
Mr Gregory Ruddock	Eclipx Shares	600,000	N/A
	Eclipx NED Options	200,000	\$2.65
Mr Russell Shields	Eclipx Shares	88,041	N/A
	Eclipx NED Options	200,000	\$2.65
Mr Doc Klotz	Eclipx Shares	263,836	N/A
	Pre-IPO Loan Shares	3,539,118	N/A
	Eclipx Options (FY16)	800,000	\$3.06
	Eclipx Options (FY17)	880,000	\$3.60
	Eclipx Loan Shares (FY15)	1,600,000	N/A
	Eclipx Performance Rights (FY16)	185,000	N/A
	Eclipx Performance Rights (FY17)	143,000	N/A

### b. Interests in Grays Securities

At the Last Practicable Date, none of the Eclipx Directors had a Relevant Interest in any Grays Securities.

## 6.16 Interests of Eclipx

As at the Last Practicable Date, neither Eclipx nor any of its Associates had a Relevant Interest in any Grays Securities.

## 6.17 No pre-transaction benefits

During the period of 4 months before the date of this Scheme Booklet, neither Eclipx nor any Associate of Eclipx gave, or offered to give, or agreed to give a benefit to another person which was likely to induce the other person, or an associate of the other person, to:

- vote in favour of the Scheme; or
- dispose of Grays Shares,

and which will not be provided to all Scheme Shareholders under the Scheme.

## 6.18 No dealings

Except for the consideration to be provided under the Scheme, neither Eclipx nor any of its Associates has provided or agreed to provide consideration for any Grays Securities under any purchase or agreement during the period of four months before the date of this Scheme Booklet.

## 6.19 Further information about Eclipx

As an ASX-listed company and a 'disclosing entity' under the Corporations Act, Eclipx is subject to regular reporting and disclosure obligations. Among other things, these obligations require Eclipx to announce price sensitive information to ASX as soon as it becomes aware of that information, subject to some exceptions.

Pursuant to the Corporations Act and the Listing Rules, Eclipx is also required to prepare and lodge with ASIC and the ASX both yearly and half-yearly financial statements accompanied by a statement and report from the Eclipx Directors and an audit or review report respectively.

Copies of documents given by Eclipx to ASIC under the Corporations Act may be obtained from, or inspected at, an ASIC office.

Additionally, copies of Eclipx's most recent annual financial report, Eclipx's half-year financial report, Eclipx's prospectus dated 26 March 2015 and any continuous disclosure notices given by Eclipx after the lodgement of its most recent annual financial report and before the lodgement of this Scheme Booklet with ASIC (free of charge) by contacting the Grays information line on 1300 103 188 (within Australia) or +61 3 9415 4232 (outside Australia) Monday to Friday between 9.00am and 5.00pm (AEST), or they can be accessed from ASX's website ([www.asx.com.au](http://www.asx.com.au)).

Information about Eclipx, including financial information, is available in electronic form on the Eclipx website ([www.eclipx.com](http://www.eclipx.com)).

All announcements made by Eclipx from 4 May 2017 (being the date that Eclipx's Half Year Report for H1 FY17 was announced to the ASX) to the Last Practicable Date are listed below:

Date	Title
29 May 2017	Update – Dividend/Distribution – ECX
11 May 2017	ECX Release of securities subject to voluntary escrow
4 May 2017	1H FY17 Results & ECX acquires Grays eCommerce – Presentation
4 May 2017	1H FY17 Results & ECX acquires Grays eCommerce – Media Release
4 May 2017	Dividend/Distribution – ECX



## 7. INFORMATION ABOUT THE COMBINED GROUP

### 7.1 Overview of post-acquisition Eclix

#### a. Overview of the Combined Group

As explained in further detail in Section 6 of this Scheme Booklet, Eclix is a customer service focussed and technology-driven financial services organisation and vehicle asset manager, providing fleet leasing and management services, equipment finance, novated leasing, consumer vehicle loans and medium term car rentals to government and corporate customers and consumers in Australia and New Zealand.

Section 5 of this Scheme Booklet, provides information on Grays and the Grays Group.

Subject to the matters referred to in Section 7.3, the Combined Group is expected to continue to operate in these sectors but in a manner that also capitalises on the opportunities presented by the product cross-promotion and cross-selling opportunities, and increased distribution channels arising from the combination of the businesses of Eclix and Grays.

On implementation of the Scheme, the Combined Group will continue to be listed on ASX under Eclix's existing ASX code, ECX.

#### b. Ownership of the Combined Group

As at the Last Practicable Date there were 265,300,492 Eclix Shares on issue. Eclix will issue approximately 47,083,121 New Eclix Shares pursuant to the Scheme.<sup>35</sup>

Immediately following implementation of the Scheme, assuming no Eclix Performance Rights or Eclix Options vest or are exercised before that time, existing Eclix Shareholders will hold approximately 84.9% of the Eclix Shares on issue and Scheme Shareholders (other than Ineligible Foreign Scheme Shareholders) will, in aggregate, hold approximately 15.1% of the Eclix Shares on issue.

#### c. Board of the Combined Group

Following implementation of the Scheme, Grays will become a wholly owned subsidiary of Eclix BidCo and its ultimate holding company will become Eclix. The Eclix Board will continue to comprise the members of the current Eclix Board and will continue to be governed by Eclix's current corporate governance policies. It is not proposed that any of the Grays Directors will join the Eclix Board.

#### d. Dividend policy of the Combined Group

Following implementation of the Scheme, the Eclix Board is not intending to make any changes to its dividend policy.

Depending on available profits and the financial position of Eclix, it is the current intention of the Eclix Board to continue to pay dividends in respect of half-years ending 31 March and final dividends in respect of full years ending 30 September each year subject to the requirements of the Corporations Act. Eclix will pay dividends in Australian dollars.

The payment of a dividend by Eclix is at the discretion of the Eclix Board and will be a function of a number of factors, including the general business environment, the operating results and financial condition of Eclix, future funding requirements including credit support for Eclix's warehouse facilities, capital management initiatives, taxation considerations (including the level of franking credits available), any contractual, legal or regulatory restrictions on the payment of dividends by Eclix, and any other factors the Eclix Board may consider relevant.

The Eclix Board intends to continue to target a dividend payout ratio between 60% and 70% of Eclix's statutory NPAT. The level of payout ratio may vary between periods depending upon Eclix's capital management plans at the time and any other factors that the Eclix Board considers relevant. It is expected that all future dividends will be franked to the maximum extent possible, which will depend on the amount of Australian income tax payable by Eclix.

No assurances can be given by any person, including the Eclix Directors, about the payment of any dividend and the level of franking on any such dividend. There may be periods in respect of which dividends are not paid.

### 7.2 Eclix's rationale for acquiring Grays

Eclix considers that the Scheme represents an opportunity for Eclix to cross-sell Eclix finance and insurance products to Grays' auto and commercial equipment purchasers as well as creating increased optionality for Eclix end of lease vehicle disposals. Eclix considers that the proposed acquisition of Grays is a strategic and synergistic transaction for Eclix.

Set out below is an overview of the various potential revenue and cost synergies, identified by Eclix, underlying Eclix's acquisition of Grays. These potential revenue and cost synergies are Eclix's estimates and should be read together with Section 8.3(b) of this Scheme Booklet, which outlines the risks relating to the integration of the Eclix and Grays businesses and the realisation of the potential synergies.

<sup>35</sup> Based on 128,787,043 Grays Shares being on issue at the time of implementation of the Scheme (this figure assumes the vesting and exercise of 1,309,732 Grays Performance Rights) multiplied by the Scheme exchange ratio of 0.365588962370616.

The potential synergies created by combining Eclix and Grays are currently estimated by Eclix to be approximately \$20 million per annum at full run-rate, excluding one-off costs, implementation costs, and the revenue impact from exiting certain of Grays' consumer product segments deemed non-core to Eclix. This potential synergy number has been calculated by Eclix on a pre-tax basis.

Eclix anticipates the Combined Group will achieve its full estimated run-rate synergies within 12 to 24 months of the Implementation Date, with 70-80% of the estimated run-rate synergies anticipated by Eclix to be achieved during the financial year ending 30 September 2018.

Eclix is targeting approximately \$23-25 million of EBITDA from Grays during the financial year ending 30 September 2018 (this takes into account the phasing of 70-80% of Eclix's estimated run-rate synergies in that financial year).<sup>36</sup>

As Grays Shareholders will in aggregate, through their holding of New Eclix Shares, own approximately 15.1% of the Combined Group immediately following implementation of the Scheme (disregarding Ineligible Foreign Scheme Shareholders), those Grays Shareholders will participate in, and benefit from, any value created from these potential synergies.

The key areas of potential revenue and cost synergies that have already been identified by Eclix are set out in the tables below, and are based on a preliminary analysis undertaken by Eclix. Further analysis will be undertaken by Eclix during the review process referred to in Section 7.3(b)(i). This Section 7.2 should be read together with Section 7.3.

The nature and extent of these potential synergies are still being explored by Eclix and the realisation of any synergies is subject to a number of risks and uncertainties which, in broad terms, relate to the success of management in integrating the respective businesses of Eclix and Grays, and further analysis and refinement of how to optimise the restructuring and integration of Grays' business.

There is no guarantee that all or any of these potential synergies will in fact be realised. For further information regarding risks relating to the integration of the Eclix and Grays businesses and the realisation of potential synergies, refer to Section 8.3(b) of this Scheme Booklet. Section 8 sets out other risk factors that may impact on the ability to realise the potential synergies.

**Table 1: Overview of potential revenue synergies identified by Eclix**

Strategy	Description
Distribute Eclix finance and insurance products to Grays' auto purchasers	<ul style="list-style-type: none"> <li>Grays expects to auction approximately 29,000 auto vehicles in the year ending 30 June 2017 via its GraysOnline platform</li> <li>Eclix believes there is a significant cross-selling opportunity to increase the penetration of financing, insurance and warranty products to consumers purchasing auto vehicles through the existing partnership with Eclix's CarLoan.com.au business</li> </ul>
Optimise disposal of Eclix's end of lease vehicles	<ul style="list-style-type: none"> <li>Eclix sells more than 12,000 end of lease fleet vehicles per annum. Eclix believes it can sell a portion of these vehicles to consumers through the GraysOnline auction platform and capture additional margin as compared to current wholesale disposal methods</li> </ul>
Distribute Eclix financing products to Grays' commercial equipment purchasers	<ul style="list-style-type: none"> <li>Eclix believes it can provide finance to a proportion of the purchasers of commercial equipment via GraysOnline (approximately \$350 million non-auto equipment auctioned per annum)</li> </ul>
Leverage Grays' customer base and infrastructure to grow Eclix's consumer businesses	<ul style="list-style-type: none"> <li>Grays has a consumer database of over 750,000 subscribed members which Eclix anticipates it will be able to cross-promote its consumer brands (including carinsurance.com, CarLoans.com.au, Georgie and Right2Drive)</li> <li>Grays also has a national physical presence across 37 locations in Australia and New Zealand, which Eclix plans to leverage in order to accelerate the branch roll-out of Right2Drive locations</li> </ul>

<sup>36</sup> Eclix stresses that these numbers are targets only – they are not forecasts and should not be read as such. The actual EBITDA and earnings per share numbers could be higher or lower than these numbers. Accordingly, Grays Shareholders are cautioned not to place undue weight on these numbers.

Eclix further notes that its targeted \$23-25 million EBITDA number above, assumes that the Scheme is implemented and Grays becomes part of the Combined Group. Grays Shareholders should not read this information as earnings guidance for Grays, or as suggesting that the targeted numbers could be realised by Grays on a stand-alone basis if the Scheme is not implemented.

**Table 2: Overview of potential cost synergies identified by Eclipx**

Strategy	Description
Rationalise corporate overheads and shared services costs	<ul style="list-style-type: none"> <li>Under Eclipx ownership Eclipx expects significant cost synergies as a result of leveraging Eclipx's existing head office, technology and marketing infrastructure to streamline Grays' corporate and leverage shared services costs, and to rationalise duplicated costs</li> </ul>
Exit selected poor-performing Grays Home consumer product lines	<ul style="list-style-type: none"> <li>Selected poor-performing consumer product lines in Grays Home (including art, jewellery, outdoor and furniture) are being discontinued with an orderly run-down of associated inventory</li> <li>This product rationalisation is expected to reduce the division's fixed cost base by a greater amount than the reduction in gross margin from the discontinued product lines</li> </ul>
Restructuring the fixed cost base of the retained consumer product lines	<ul style="list-style-type: none"> <li>Eclipx anticipates continuing to sell audio visual and IT products on consignment</li> <li>Eclipx also intends to continue the Grays Wine business under an optimised cost structure with more selective product sourcing strategies. This business generates positive earnings and there is strategic value in its consumer database as detailed above</li> <li>Eclipx intends to take a disciplined approach to restructure the fixed cost base of AV/IT and Grays Wine businesses</li> </ul>

Eclipx anticipates a total of approximately \$11 million in one-off costs to integrate the Grays business into the Eclipx Group and achieve the estimated level of potential synergies. These costs are anticipated by Eclipx to all be incurred in the financial year ending 30 September 2018. Approximately 50% of the costs are anticipated by Eclipx to be treated as operating expenses and 50% are anticipated by Eclipx to be treated as capital expenditure.

## 7.3 Eclipx's post-acquisition intentions

### a. Introduction

This Section 7.3 sets out Eclipx's current intentions in relation to:

- the continuation of the business of Grays;
- any major changes to be made to the business of Grays, including any deployment of its fixed assets; and
- the future employment of the present employees of Grays.

This Section 7.3 should be read together with Section 7.2. All statements set out in this Section 7.3 (and in Section 7.2) are statements of current intention only, and may vary as new information becomes available or circumstances change, including from the review referred to in Section 7.3(b)(i).

If any statement set out in Section 7.2 or Section 7.3 is repeated, summarised or referred to in any other section of this Scheme Booklet (including in the Independent Expert's Report):

- the statement as set out in Section 7.2 or Section 7.3 will prevail to the extent of any inconsistency; and
- any qualifications or limitations as set out in Section 7.2 or Section 7.3 which apply to the statement will apply whenever the statement is repeated, summarised or referred to in any other section of this Scheme Booklet or the Independent Expert's Report (including, for the avoidance of doubt, even when the qualifications and limitations are not set out when the statement is repeated, summarised or referred to).

### b. Intentions

#### i. Review of operations

Eclipx has reviewed information that has been publicly released by Grays about itself, its current activities and its future plans. Eclipx has also, through a due diligence process, reviewed certain non-public information about the Grays Group. Eclipx does not have full knowledge of all material information, facts and circumstances that are necessary to assess all of the operational, commercial, taxation and financial implications of its current intentions.

Accordingly, whilst the Eclix management team has an implementation plan to execute on in order to seek to deliver the potential synergies referred to in Section 7.2, following implementation of the Scheme, Eclix intends to conduct a comprehensive review of the operations, assets and employees of Grays. As part of that comprehensive review, Eclix intends to:

- evaluate Grays' performance, profitability, costs, capabilities and prospects;
- assess possible operational and strategic opportunities;
- identify opportunities for additional cost and revenue synergies; and
- comprehensively review the Combined Group's assets and operations to identify ways to maximise shareholder value.

Final decisions will only be made after that review and in light of material information and circumstances at the relevant time.

## **ii. Corporate matters**

If the Scheme is implemented, it is intended that:

- Grays will apply for termination of the official quotation of the Grays Shares on, and to have itself removed from, the official list of the ASX;
- Grays will become a wholly-owned subsidiary of Eclix;
- Grays will continue to operate under its current name;
- the corporate governance policies and practices of the Combined Group will be the same as Eclix's existing policies and practices, as set out in Section 6.8;
- the auditor of Grays will be changed to the auditor of Eclix;
- head office functions currently undertaken in Grays' Sydney office will be relocated and consolidated in Eclix's head office; and
- the financial year end of Grays will be changed to 30 September to be aligned with that of Eclix.

## **iii. Dividend policy**

As noted in Section 7.1(d), no changes are proposed to be made to Eclix's dividend policy immediately following implementation of the Scheme.

## **iv. Management and employees**

Following implementation of the Scheme, Eclix will consider the extent to which rationalisation of headcount is appropriate. As part of the integration of the operations of Eclix and Grays, it is expected that a number of current positions will be made redundant, resulting in a reduction of headcount and associated costs. Whilst the precise extent and the precise timing of such redundancies cannot be stated with certainty at this stage, where redundancies do occur, the relevant employees will receive benefits in accordance with their contractual and legal entitlements.

## **c. Intentions generally**

Other than as set out in this Section 7.3 and elsewhere in this Scheme Booklet (including in Section 7.2), it is Eclix's current intention, on the basis of the facts and information concerning the Grays Group that are known to it and the existing circumstances affecting the assets and operations of the Grays Group as at the date of this Scheme Booklet:

- that the business of the Grays Group will be conducted in substantially the same manner as at the date of this Scheme Booklet;
- not to make any major changes to the business of Grays nor to redeploy any of Grays' fixed assets; and
- subject to the expected reduction in headcount outlined in Section 7.3(b)(iv), to continue the employment of Grays' employees.

# **7.4 Pro forma financial information in relation to the Scheme**

## **a. Basis of preparation**

This Section 7.4 contains the following information:

- the Eclix historical consolidated statement of financial position as at 31 March 2017 as described in Section 6.10(b) of this Scheme Booklet, and the Grays historical consolidated statement of financial position as at 31 December 2016 as described in Section 5.12(b) of this Scheme Booklet; and
- pro forma adjustments for the effects of the combination of Eclix and Grays, as described in Section 7.4(c) of this Scheme Booklet;

(aggregated to give the **Combined Group Pro Forma Historical Consolidated Statement of Financial Position**);

- the Eclipx historical consolidated statement of profit or loss for the year ended 30 September 2016, as described in Section 6.10(c) of this Scheme Booklet, aggregated with the Grays historical consolidated statement of profit or loss for the year ended 30 June 2016, as described in Section 5.12(c) of this Scheme Booklet; and
- the Eclipx historical consolidated statement of profit or loss for the six months ended 31 March 2017, as described in Section 6.10(c) of this Scheme Booklet, aggregated with the Grays historical consolidated statement of profit or loss for the six months ended 31 December 2016, as described in Section 5.12(c) of this Scheme Booklet;

(together the **Combined Group Pro Forma Historical Consolidated Statements of Profit or Loss**); and

- the Eclipx historical consolidated statement of cash flows for the year ended 30 September 2016, as described in Section 6.10(e) of this Scheme Booklet, aggregated with the Grays historical consolidated statement of cash flows for the year ended 30 June 2016, as described in Section 5.12(e) of this Scheme Booklet; and
- the Eclipx historical consolidated statement of cash flows for the six months ended 31 March 2017, as described in Section 6.10(e) of this Scheme Booklet, aggregated with the Grays historical consolidated statement of cash flows for the six months ended 31 December 2016, as described in Section 5.12(e) of this Scheme Booklet;

(together the **Combined Group Pro Forma Historical Consolidated Statements of Cash Flows**).

The Combined Group Pro Forma Historical Consolidated Statements of Profit or Loss, Combined Group Pro Forma Historical Consolidated Statements of Cash Flows and Combined Group Pro Forma Historical Consolidated Statement of Financial Position are collectively referred to as the **Combined Group Pro Forma Historical Financial Information**.

It should be noted that the Combined Group Pro Forma Historical Financial Information reflects an aggregation of financial information with different period ends, as Eclipx has a financial year end of 30 September whilst Grays has a financial year end of 30 June.

The Combined Group Pro Forma Historical Financial Information has been prepared to provide Grays Shareholders with an indication of the consolidated statements of profit or loss and the consolidated statements of cash flows of the Combined Group for the year ended 30 June 2016 and the six months ended 31 December 2016, and the consolidated statement of financial position of the Combined Group as at 31 December 2016, and to illustrate the financial impacts on the Combined Group if the Scheme is implemented. This is not intended to present the financial information that would have actually resulted and would have been contained in Eclipx's financial statements had the Scheme been implemented in the past.

The Combined Group Pro Forma Historical Financial Information has been prepared in accordance with the recognition and measurement principles contained in the AAS other than that it includes adjustments that reflect the impact of the Scheme on the Combined Group Pro Forma Historical Consolidated Statement of Financial Position.

The Combined Group Pro Forma Historical Financial Information set out in this Section 7.4 should be read in conjunction with the risk factors set out in Section 8 of this Scheme Booklet, other information contained in this Scheme Booklet and the accounting policies of Eclipx as disclosed in its most recent financial statements for the six months ended 31 March 2017 and of Grays as disclosed in its most recent financial statements for the six months ended 31 December 2016.

The Combined Group Pro Forma Historical Financial Information is presented in an abbreviated form and does not contain all of the presentation and disclosures that are usually provided in general purpose financial statements prepared in accordance with the Corporations Act.

KPMG Transaction Services has been appointed as the Investigating Accountant to prepare an Investigating Accountant's Report contained in Appendix 2 to this Scheme Booklet on the Combined Group Pro Forma Historical Financial Information in this Section 7.4.

## **b. Combined Group Pro Forma Historical Consolidated Statement of Financial Position**

The Combined Group Pro Forma Historical Consolidated Statement of Financial Position has been derived by aggregating:

- the Eclipx historical consolidated statement of financial position as at 31 March 2017, which was extracted from Eclipx's half-year report for the six months ended 31 March 2017, which was reviewed by KPMG and on which an unqualified review opinion was provided;
- the Grays historical consolidated statement of financial position as at 31 December 2016, which was extracted from Grays' half-year report for the six months ended 31 December 2016, which was reviewed by Ernst & Young and on which an unqualified review opinion was provided; and
- the pro forma adjustments described below.

The table below sets out the Combined Group Pro Forma Historical Consolidated Statement of Financial Position.

Combined Group Pro Forma Historical Consolidated Statement of Financial Position					
\$m	Notes	Eclipx 31-Mar-17	Grays 31-Dec-16	Pro forma adjustments	Combined Group
<b>Current assets</b>					
Cash and cash equivalents	i	65.7	1.9	(9.6)	57.9
Restricted cash and cash equivalents		129.9	-	-	129.9
Trade receivables and other assets		114.4	7.1	-	121.4
Finance leases		118.4	-	-	118.4
Inventory – Motor vehicles		18.1	-	-	18.1
Inventory		-	7.8	-	7.8
Prepayments		-	7.4	-	7.4
Operating leases reported as PPE		237.4	-	-	237.4
Total current assets		683.8	24.1	(9.6)	698.2
<b>Non-current assets</b>					
Property, plant and equipment		14.5	3.2	-	17.6
Operating leases reported as PPE		787.9	-	-	787.9
Deferred tax assets	ii	4.8	8.0	2.9	15.6
Intangibles	iii	606.3	17.6	151.0	774.9
Finance leases		278.5	-	-	278.5
Total non-current assets		1,691.9	28.7	153.9	1,874.5
<b>Total assets</b>		<b>2,375.7</b>	<b>52.8</b>	<b>144.3</b>	<b>2,572.7</b>
<b>Current liabilities</b>					
Trade and other liabilities		(103.2)	(14.3)	-	(117.6)
Borrowings		(307.7)	-	-	(307.7)
Derivative financial instruments		(9.8)	-	-	(9.8)
Provisions		(6.0)	(6.9)	-	(12.9)
Other		(0.7)	-	-	(0.7)
Total current liabilities		(427.4)	(21.3)	-	(448.7)
<b>Non-current liabilities</b>					
Trade and other liabilities		(4.2)	-	-	(4.2)
Borrowings		(1,219.3)	(3.6)	-	(1,222.8)
Provisions		(1.7)	(3.4)	-	(5.1)
Deferred tax liabilities		(44.6)	-	-	(44.6)
Derivative financial instruments		(3.6)	-	-	(3.6)
Other		(1.0)	-	-	(1.0)
Total non-current liabilities		(1,274.4)	(6.9)	-	(1,281.4)
<b>Total liabilities</b>		<b>(1,701.9)</b>	<b>(28.2)</b>	<b>-</b>	<b>(1,730.1)</b>
<b>Net assets</b>		<b>673.8</b>	<b>24.6</b>	<b>144.2</b>	<b>842.6</b>
<b>Equity</b>					
Contributed equity	iv	458.6	45.6	127.2	631.4
Reserves	v	5.4	(6.5)	6.5	5.4
Retained earnings	vi	209.8	(14.5)	10.5	205.8
<b>Total equity</b>		<b>673.8</b>	<b>24.6</b>	<b>144.2</b>	<b>842.6</b>



## Pro forma adjustments to the Combined Group Pro Forma Historical Consolidated Statement of Financial Position

- i. **Cash and cash equivalents.** The reduction in cash and cash equivalents of \$9.6 million reflects the payment of transaction costs associated with the implementation of the Scheme.
- ii. **Deferred tax.** The increase in deferred tax assets of \$2.9 million reflects the deductibility of transaction costs over a five year period.
- iii. **Intangibles.** The increase in intangible assets of \$151.0 million (based on the closing price of Eclipx Shares of \$3.67 as at 14 June 2017) reflects the acquisition of Grays by Eclipx, resulting in recognition of goodwill and intangible assets, being the difference between the consideration paid and the net assets acquired (adjusted for transaction costs to be borne by Grays prior to the Transaction).

Eclipx will have 12 months from the Implementation Date to determine the fair value of goodwill and other assets and liabilities (including intangible assets) related to the acquisition of Grays. At the date of this Scheme Booklet it is not possible to determine the fair values of the assets acquired and the liabilities and contingent liabilities assumed. As a result the actual determination of goodwill, and the value of other assets and liabilities assumed, may change. The goodwill recognised will be subject to annual impairment testing with any resulting impairment impacting earnings. In addition, the amortisation expense presented in the Combined Group Pro Forma Historical Consolidated Statements of Profit or Loss may differ, for example, through any uplift in the value of intangible assets acquired or any reassessment of the useful economic life of assets.

- iv. **Contributed equity.** The increase in contributed equity reflects the net of new equity of \$172.8 million to be issued to the current shareholders of Grays (based on the closing price of Eclipx Shares of \$3.67 as at 14 June 2017) and the elimination of the existing contributed equity of Grays of \$45.6 million.
- v. **Reserves.** The increase in reserves of \$6.5 million reflects accelerated recognition of the share based payment expense relating to performance rights issued by Grays under its long term incentive plans (\$2.1 million) and the elimination of the Grays reserves on consolidation (\$4.4 million, after adjusting for the recognition of the remaining share based payments expense).
- vi. **Retained earnings.** The increase in retained earnings of \$10.5 million reflects the net of the post-tax impact of the transaction costs associated with the Scheme of \$6.7 million, the accelerated recognition of the share based payment expense relating to performance rights issued by Grays under its long term incentive plans (\$2.1 million) and the elimination of pre-acquisition losses of Grays of \$19.3 million (after adjusting for Grays transaction costs and the recognition of the remaining share based payments expense).

## c. Combined Group Pro Forma Historical Consolidated Statements of Profit or Loss

The Combined Group Pro Forma Historical Consolidated Statements of Profit or Loss have been derived by aggregating:

- the Eclipx historical consolidated statements of profit or loss for the year ended 30 September 2016 and the six months ended 31 March 2017, which were derived from Eclipx's annual report for the year ended 30 September 2016, which was audited by KPMG and on which an unqualified audit opinion was provided, and Eclipx's half-year report for the six months ended 31 March 2017, which was reviewed by KPMG and on which an unqualified review opinion was provided; and
- the Grays historical consolidated statements of profit or loss for year ended 30 June 2016 and the six months ended 31 December 2016, which were derived from Grays' annual report for the year ended 30 June 2016, which was audited by Ernst & Young and on which an unqualified audit opinion was provided, and Grays' half-year report for the six months ended 31 December 2016, which was reviewed by Ernst & Young and on which an unqualified review opinion was provided.

The table below sets out the Combined Group Pro Forma Historical Consolidated Statements of Profit or Loss.

Combined Group Pro Forma Historical Consolidated Statements of Profit or Loss							
\$m	Notes	FY16			1H17		
		Eclipx Year ended 30 Sep-16	Grays Year ended 30 Jun-16	Combined Group	Eclipx Half-year ended 31 Mar-17	Grays Half-year ended 31 Dec-16	Combined Group
<b>Revenue</b>		<b>504.8</b>	<b>124.9</b>	<b>629.7</b>	<b>282.7</b>	<b>71.3</b>	<b>353.9</b>
Cost of revenue		(241.5)	(37.3)	(278.9)	(132.3)	(21.7)	(154.0)
Lease finance costs		(65.1)	-	(65.1)	(33.6)	-	(33.6)
Impairment losses on loans and receivables		(2.0)	-	(2.0)	(1.9)	-	(1.9)
<b>Net operating income</b>		<b>196.2</b>	<b>87.6</b>	<b>283.8</b>	<b>114.9</b>	<b>49.5</b>	<b>164.5</b>
Employee benefit expense		(71.8)	(47.5)	(119.3)	(41.2)	(25.9)	(67.1)
Operating overheads		(36.2)	(25.8)	(62.0)	(23.7)	(16.6)	(40.2)
<b>Underlying EBITDA</b>	i	<b>88.2</b>	<b>14.3</b>	<b>102.5</b>	<b>50.0</b>	<b>7.1</b>	<b>57.2</b>
Depreciation, amortisation and impairment expense	ii	(8.5)	(1.7)	(10.3)	(5.6)	(0.9)	(6.5)
<b>Underlying EBIT</b>	i	<b>79.7</b>	<b>12.6</b>	<b>92.3</b>	<b>44.5</b>	<b>6.2</b>	<b>50.6</b>
Operating finance costs		(7.3)	(0.1)	(7.4)	(4.1)	(0.3)	(4.4)
<b>Underlying PBT</b>	i	<b>72.3</b>	<b>12.5</b>	<b>84.8</b>	<b>40.3</b>	<b>5.9</b>	<b>46.2</b>
Income tax expense		(21.2)	(2.6)	(23.8)	(11.7)	(1.9)	(13.6)
<b>Underlying NPAT</b>	i	<b>51.2</b>	<b>9.9</b>	<b>61.0</b>	<b>28.6</b>	<b>4.0</b>	<b>32.6</b>
Amortisation and impairment of intangible assets (post-tax)		4.2	0.7	4.9	2.5	0.3	2.9
<b>Underlying NPATA</b>	i	<b>55.3</b>	<b>10.6</b>	<b>65.9</b>	<b>31.2</b>	<b>4.3</b>	<b>35.5</b>
Significant items (post-tax)	iii	(5.3)	(29.9)	(35.2)	(0.2)	-	(0.2)
Amortisation and impairment of intangible assets (post-tax)		(4.2)	(0.7)	(4.9)	(2.5)	(0.3)	(2.9)
<b>Statutory NPAT</b>		<b>45.9</b>	<b>(20.0)</b>	<b>25.8</b>	<b>28.4</b>	<b>4.0</b>	<b>32.4</b>

#### Notes to the Combined Group Pro Forma Historical Consolidated Statements of Profit or Loss

- EBITDA and NPATA are financial measures not prescribed by the AAS. EBITDA represents earnings before depreciation, amortisation, financing costs and tax expense. NPATA represents net profit after tax excluding amortisation related to acquired intangibles, on an after-tax basis.
- Eclipx will have 12 months from the Implementation Date to determine the fair value of goodwill and other assets and liabilities (including intangible assets) related to the acquisition of Grays. At the date of this Scheme Booklet it is not possible to determine the fair values of the assets acquired and the liabilities and contingent liabilities assumed. As a result the actual determination of goodwill, and the value of other assets and liabilities assumed, may change. The goodwill balance recognised will be subject to annual impairment testing with any resulting impairment impacting earnings. In addition, the amortisation expense presented in the Combined Group Pro Forma Historical Consolidated Statements of Profit or Loss may differ, for example, through any uplift in the value of intangible assets acquired or any reassessment of the useful economic life of assets.
- Significant items for Eclipx and Grays are described in Sections 6.10(d) and 5.12(d) of this Scheme Booklet.

#### d. Combined Group Pro Forma Historical Consolidated Statements of Cash Flows

The Combined Group Pro Forma Historical Consolidated Statements of Cash Flows have been derived by aggregating:

- the Eclipx historical consolidated statements of cash flows for the year ended 30 September 2016 and the six months ended 31 March 2017, which were derived from Eclipx's annual report for the year ended 30 September 2016, which was audited by KPMG and on which an unqualified audit opinion was provided, and Eclipx's half-year report for the six months ended 31 March 2017 and certain accounting records underlying the reviewed half-year report, which was reviewed by KPMG and on which an unqualified review opinion was provided; and
- the Grays historical consolidated statements of cash flows for year ended 30 June 2016 and the six months ended 31 December 2016, which were derived from Grays' annual report for the year ended 30 June 2016, which was audited by Ernst & Young and on which an unqualified audit opinion was provided, and Grays' half-year report for the six months ended 31 December 2016, which was reviewed by Ernst & Young and on which an unqualified review opinion was provided.

The table below sets out the Combined Group Pro Forma Historical Consolidated Statements of Cash Flows.

Combined Group Pro Forma Historical Consolidated Statements of Cash Flows							
\$m	Notes	FY16			1H17		
		Eclipx Year ended 30 Sep-16	Grays Year ended 30 Jun-16	Combined Group	Eclipx Half-year ended 31 Mar-17	Grays Half-year ended 31 Dec-16	Combined Group
<b>Underlying PBT</b>	i	<b>72.3</b>	<b>12.5</b>	<b>84.8</b>	<b>40.3</b>	<b>5.9</b>	<b>46.2</b>
Significant items (pre-tax)	ii	(7.6)	(35.8)	(43.4)	(0.3)	-	(0.3)
<b>PBT</b>		<b>64.8</b>	<b>(23.3)</b>	<b>41.5</b>	<b>40.0</b>	<b>5.9</b>	<b>45.9</b>
Depreciation and amortisation		197.9	2.5	200.5	106.6	0.9	107.5
Non-cash items		(12.2)	13.6	1.4	(5.8)	0.4	(5.4)
Change in working capital		128.1	1.6	129.7	50.3	(7.2)	43.0
Tax paid		(8.1)	(1.3)	(9.4)	(8.4)	0.0	(8.4)
<b>Net cash flow from operating activities</b>		<b>370.5</b>	<b>(6.9)</b>	<b>363.6</b>	<b>182.6</b>	<b>(0.0)</b>	<b>182.6</b>
Purchase of lease assets		(652.9)	-	(652.9)	(324.7)	-	(324.7)
Purchase of other PPE		(10.2)	(1.9)	(12.1)	(6.8)	(1.0)	(7.8)
Payments for acquisitions		(0.4)	(3.0)	(3.4)	(9.1)	(1.1)	(10.2)
Settlement of deferred consideration		-		-	(0.2)		(0.2)
Proceeds from sale of lease assets		159.5		159.5	76.1		76.1
Proceeds from disposal of business		-	5.2	5.2	-	-	-
<b>Net cash flow from investing activities</b>		<b>(504.0)</b>	<b>0.3</b>	<b>(503.7)</b>	<b>(264.7)</b>	<b>(2.0)</b>	<b>(266.7)</b>
Net proceeds from borrowings		170.4	2.4	172.9	116.4	1.1	117.5
Dividends paid		(25.2)	-	(25.2)	(15.4)	-	(15.4)
<b>Net cash flow from financing activities</b>		<b>145.2</b>	<b>2.4</b>	<b>147.6</b>	<b>101.0</b>	<b>1.1</b>	<b>102.1</b>
<b>Net cash flow</b>		<b>11.8</b>	<b>(4.2)</b>	<b>7.6</b>	<b>19.0</b>	<b>(0.9)</b>	<b>18.0</b>

#### Notes to the Combined Group Pro Forma Historical Consolidated Statements of Cash Flows

- Underlying PBT is a financial measure not prescribed by the AAS and represents profit before tax excluding significant items.
- Details of the significant items relating to Eclipx and Grays are described in Sections 6.10(d) and 5.12(d), respectively, of this Scheme Booklet. The cash flow impact of Grays' significant items could not be reliably quantified, given the incorporation of fixed price retail balances within the working capital of the B2C division during the historical periods. Significant items presented in the Combined Group Pro Forma Historical Consolidated Statements of Cash Flows therefore reflect the profit before tax impact of those items, not the cash flow impact, which would differ due to non-cash items and the timing of cash payments and receipts.

## 7.5 Forecast financial information

Eclipx has given careful consideration as to whether forecast financial information can and should be included in this Scheme Booklet in respect of all or part of the Combined Group. In particular, Eclipx has considered whether there is a reasonable basis for the preparation and disclosure in this Scheme Booklet of reliable and useful forecast financial information.

Eclipx has concluded that forecast financial information for all or part of the Combined Group cannot be provided in this Scheme Booklet, as Eclipx does not have a reasonable basis for such forecasts as required by applicable law and practice, and that the inclusion of such forecasts could be potentially misleading.

## 8. POTENTIAL RISK FACTORS

### 8.1 Introduction

If the Scheme is implemented, Scheme Shareholders (other than Ineligible Foreign Scheme Shareholders) will be entitled to receive the Scheme Consideration (which consists of Eclipx Shares).

The price and value of Eclipx Shares, and the future operating and financial performance of the Combined Group, will be influenced by a range of factors, many of which will be beyond the control of the Combined Group.

These risk factors are divided into risks associated with:

- the Scheme and the creation of the Combined Group;
- the Combined Group;
- financial matters;
- business and operations;
- acquisitions; and
- Eclipx Shares.

The outline of risks in this Section 8 is a summary only and should not be considered exhaustive. This Section 8 does not purport to list every risk that may be associated with an investment in Eclipx now or in the future, and the occurrence or consequences of some of the risks described in Section 8 may be partially or completely outside the control of the Eclipx Group, the Grays Group, and their respective directors and management teams.

These risk factors do not take into account the individual investment objectives, financial and taxation situation, position or particular needs of Grays Shareholders.

You should carefully consider the risk factors discussed in this Section 8, as well as the other information contained in this Scheme Booklet, before voting on the Scheme.

### 8.2 Risks related to the Scheme and the creation of the Combined Group

#### a. Conditions Precedent

The implementation of the Scheme is subject to a number of conditions precedent, which are summarised in Section 4.8 and which are set out in full in clause 3.1 of the Scheme Implementation Deed.

The Scheme will not proceed to a Second Court Hearing unless each of the conditions precedent are satisfied or waived (where capable of waiver). As such, a failure to satisfy or waive any of the conditions precedent or a delay in the satisfaction or waiver of any conditions precedent and therefore implementation of the Scheme, may adversely affect the price or value of Eclipx Shares or Grays Shares.

#### b. Court approval and delays

There is a risk that the Court may not approve the Scheme or that Court approval may be delayed. In particular, if there is a material change in circumstances between the date of this Scheme Booklet and the Second Court Date, then, depending on the nature and timing of the change in circumstances:

- Grays may be required to issue a supplementary document to this Scheme Booklet and the preparation of that supplementary document may result in delays to the indicative timetable at the front of this Scheme Booklet; and / or
- the Court will have regard to that change in deciding how it should proceed - if such changes are so significant that they materially alter the Scheme, there is a risk that the Court may not approve the Scheme at the Second Court Hearing.

#### c. Uncertain exact value of the Scheme Consideration

The implied value of the Scheme Consideration is liable to vary over time depending on the prevailing Eclipx Share price, including between the date of this Scheme Booklet, the date of the Scheme Meeting and the date on which the Scheme Consideration is received by Scheme Shareholders (other than Ineligible Foreign Scheme Shareholders).

In relation to Ineligible Foreign Scheme Shareholders, a nominee appointed by Eclipx (the **Sale Agent**) will be issued the New Eclipx Shares attributable to Ineligible Foreign Scheme Shareholders and will be seeking to sell those securities on-market as soon as reasonably practicable and in any event no later than the date being 15 Business Days after the Implementation Date. There is no guarantee regarding the price that will be realised by the Sale Agent or the future share price of the New Eclipx Shares. The aggregate proceeds for the sale of the New Eclipx Shares (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges) (**Net Sale Proceeds**) will be remitted by the Sale Agent to Eclipx. Eclipx will then, as soon as reasonably practicable and in any event by no later than the date being 5 Business Days after receipt of the Net Sale Proceeds from the Sale Agent, remit to each Ineligible Foreign Scheme Shareholder the amount of the Net Sale Proceeds to which each Ineligible Foreign Scheme Shareholder is entitled under the Scheme.

Following implementation of the Scheme, the Eclipx Share price may rise or fall based on market conditions and the Combined Group's financial and operating performance. If the Eclipx Share price falls, the value of the New Eclipx Shares received by Scheme Shareholders as Scheme Consideration will also fall.

#### **d. Contract risk and potential inability to obtain third party consents**

The implementation of the Scheme may be deemed, under contracts to which members of the Grays Group are party, to constitute a change of control in respect of that member of the Grays Group. Those contracts may contain provisions allowing the relevant counterparty to renegotiate or terminate the contract as a result of the change of control.

Clause 7.6 of the Scheme Implementation Deed contains a regime whereby which Grays and Eclipx will:

- use reasonable endeavours to agree a proposed course of action with respect to obtaining from each counterparty to such contracts the consents and approvals required; and
- jointly initiate contact with those counterparties to obtain such consents and approvals. However, if the counterparty to any such contract were to seek to renegotiate or terminate that contract this may have a material adverse effect on the operating and financial performance of the Combined Group, depending on the nature of the relevant contract.

### **8.3 Risks relating to the Combined Group**

#### **a. Change in risk and investment profile**

If the Scheme is implemented, Scheme Shareholders (excluding Ineligible Foreign Scheme Shareholders) will receive New Eclipx Shares in exchange for their Grays Shares. Accordingly, there will be a change to the risk profile to which Grays Shareholders are currently exposed.

As a consequence of implementation of the Scheme, Scheme Shareholders (excluding Ineligible Foreign Scheme Shareholders) will be exposed to risk factors relating to Eclipx, and to certain additional risks relating to the Combined Group and the integration of the businesses of Eclipx and Grays, as outlined in this Section 8.3. The investment profile for Grays Shareholders will also change, as the operational profile, capital structure and size of the Combined Group is substantially different from that of Grays on a standalone basis.

#### **b. Integration risks and realisation of anticipated synergies**

The performance of the Combined Group will be affected by, among other factors, the successful integration of the businesses of Eclipx and Grays. There is no guarantee that the businesses of the Combined Group will be able to be integrated successfully without any unexpected delays or incurring additional costs. There is a risk that the operating and financial performance and future prospects of the Combined Group could be adversely impacted if the businesses of Eclipx and Grays are not integrated effectively. Additionally, such integration may take longer than expected and anticipated efficiencies, benefits and potential synergies of that integration may be less than targeted.

Further, as discussed in Section 7.2, there is a risk that implementation of the Scheme may not result in realisation of the estimated potential synergies (either on time or at all) due to, a variety of possible factors including:

- possible differences in the management culture of the two groups and the potential loss of key personnel, employees or customers;
- higher than anticipated integration costs;
- lower than expected cost savings; or
- unforeseen costs relating to the integration of IT systems and platforms, financial and accounting systems and other operating and management systems.

If the integration of the businesses of Eclipx and Grays is not achieved in an effective manner and within a reasonable time, the full benefits of the potential synergies may be achieved only in part, or not at all.

### **8.4 Risks related to financial matters**

#### **a. Eclipx may be affected by adverse movements in exchange rates**

Eclipx's financial reports are prepared in Australian dollars. However, revenue, expenditure and cash flows, and assets and liabilities, from Eclipx's New Zealand operations are denominated in New Zealand dollars. Eclipx monitors and estimates bank balances and cash flow requirements of both its Australian and New Zealand operations and moves cash between them to meet operating needs. Exchange rates are set on the day of the transactions and Eclipx does not hedge its exchange rate risk. As a result, movements in the AUD/NZD exchange rate could affect Eclipx's business, operating and financial performance.

#### **b. Eclipx may be exposed to increased funding costs due to changes in market conditions**

Eclipx hedges its base interest rates funding its receivables but may be exposed to increased funder credit margins on its existing or new warehouse facilities as part of the annual renewal process. Any increases in funder margins on existing leases cannot be passed onto customers and as a result could have a material adverse effect on Eclipx's operating and financial performance. Eclipx has limited ability to pass on any margin increases on its warehouse facilities to existing customers given the nature of the contracts it uses for its operating, finance and novated leases.

### **c. Eclipx may be affected by a worsening of general economic conditions in Australia and New Zealand**

The demand for and profitability of Eclipx's products and services are partly determined by macroeconomic factors such as unemployment, interest rates, credit demand, consumer confidence, inflation and vehicle sales. A negative development in any of such factors could reduce the demand for vehicles and equipment financing/leases and decrease the ability of Eclipx's customers to service their obligations. In turn, this could result in a reduction in the size of the vehicle fleet leasing and management market. It could also lead to a decline in the demand for vehicle financing and an increase in the number of credit defaults by Eclipx's customers due to them being unwilling or having insufficient income to meet their obligations. Such developments could have an adverse impact on Eclipx's financial and operating performance.

### **d. Eclipx is exposed to credit risk**

As part of its leasing business, Eclipx is exposed to the risk that counterparties to leasing agreements do not meet their financial obligations. A failure by Eclipx to adequately assess and manage counterparty credit risk may result in credit losses potentially resulting in a material adverse effect on Eclipx's business, operating and financial performance, including decreased operating cash flows received, significant impairment expenses recognised, an increase in funding costs, and reduced access to funding.

### **e. Eclipx may inaccurately set and forecast vehicle residual values and there may be unexpected falls in vehicle prices**

As part of its vehicle fleet leasing activities, Eclipx originates operating leases with third party funding. When it originates those operating leases it agrees to purchase the vehicle from the funder at the end of the lease at an agreed value (known as the residual value). Eclipx typically sells the vehicle at the end of the lease and seeks to recover net proceeds equal to or greater than the residual value.

Eclipx is exposed to the risk that the actual net disposal proceeds it receives are less than what it expects to receive, which could require it to impair a particular vehicle over the term of the lease, and result in cash losses on disposal of that vehicle, and adversely affect Eclipx's operating and financial performance. This may occur if Eclipx sets inaccurate residual values (at origination or during the lease) as a result of its residual value setting process, an inability to apply appropriate offsetting strategies during the life of a lease, or factors outside Eclipx's control, including if market values of used vehicles fall due to a change in general economic conditions, demand for new and used vehicles, manufacturer behaviour, regulatory changes (including changes to tariff arrangements), grey imports, and other external events impacting the supply of new vehicles.

### **f. Eclipx may be unable to access funding on competitive terms**

Eclipx's funding platform comprises a mix of equity, warehouse facilities, asset-backed securities, corporate debt, principal and agency arrangements and on-balance sheet funding. Eclipx depends on each of these sources to fund leases (and therefore faces funding risks). As detailed below, a loss of or adverse impact on or in relation to one or more of Eclipx's funding sources could limit Eclipx's ability to write new business or, without access to alternative funding sources, to write new business on favourable terms which could have an adverse effect on Eclipx's operating and financial performance.

#### **i. Revolving warehouse facilities and securitisation arrangements ('SPV' arrangements)**

There is a risk that there is a deterioration in the credit quality of the lease portfolios that underlie Eclipx's revolving warehouse facilities and asset-backed security issuances could potentially trigger a default under those arrangements which would prevent Eclipx from drawing on its warehouse facilities to fund new leases.

The occurrence of a default could cause Eclipx to lose control over the lease portfolio funded through the defaulted SPV, to the secured creditors of the SPV (who would have the option of selling the lease portfolio to facilitate repayment of their funding). Eclipx has the right to acquire the leases from the SPVs but it may not have the funds available to exercise that right in these circumstances (particularly if there is a credit deterioration across a significant part of its lease portfolio). The secured creditors of the SPV also have a right to remove Eclipx as the 'servicer' of the SPV without cause (i.e. the entity contractually appointed to service the leases and interface with the customers throughout the term of the relevant facility). If the lease portfolio was sold, Eclipx would:

- lose the fees associated with servicing the leases and the right to the net interest margin generated by the lease portfolio; and
- be likely to have its relationship with its customers damaged.

This would also apply, other than the loss of its net interest margin, where Eclipx is removed as servicer.

There is a risk that Eclipx is not able to renew the revolving warehouse facilities when they are due for annual renewal which could materially impact Eclipx's ability to fund new business, potentially materially adversely affecting Eclipx's operating and financial performance.

Eclipx's ability to draw on the warehouse facilities is subject to conditions. Failure to meet those conditions would limit Eclipx's ability to fund new leases through the facilities. Some of these triggers could be breached by action taken by Eclipx (breach of its obligations under the arrangements) or could be caused by events outside of Eclipx's control, such as a deterioration in the credit quality of the leases funded through the facility or a disruption to, or deterioration in, the general credit markets.

There is a risk that hedging costs in connection with the revolving warehouse facilities increase as a result of general market movement. Any increase in hedging costs would increase the costs associated with the operation of the revolving warehouse facilities and potentially adversely affect Eclipx's net interest margin and hence its operating and financial performance.

There is also a risk that Eclipx may be restricted from refinancing an existing warehouse facility through a capital markets transaction because it is unable to obtain the consent of the existing financiers.



There is a risk that general market conditions may restrict Eclix from expanding its funding capability if it cannot negotiate new warehouse facilities or structure and sell new asset-backed securities into the public wholesale capital markets.

Certain events may impact the availability or size of the net interest margin payable to Eclix on leases funded through the warehouse facilities and asset-backed securities. The net interest margin otherwise payable to Eclix may instead be used to help repay the funding in the event a warehouse facility is not extended, default or certain other trigger events occur. A trigger event may also increase the cost of funds for an SPV, which would impact the net interest margin payable to Eclix.

Warehouse facility funders may require changes to the terms of the warehouse facilities in connection with the annual renewal process. This may include the requirement for additional capital to be provided by Eclix, limits on the types of leases that may be funded through the arrangements, and an increase in the funding margin as part of the annual renewal process. Any such changes may constrain Eclix's ability to write new business and hence adversely affect its operating and financial performance.

Eclix has a number of its warehouse and its market termed transactions rated by external rating agencies. A change in the credit ratings provided to SPVs may also require additional capital to be provided and a decrease in the credit rating would increase the cost of funding, which would deteriorate net interest margins.

## **ii. Principal and agency arrangements**

There is a risk that one or more of the third party funders of Eclix's principal and agency arrangements ceases to provide funding, materially limits the amount of funding they provide, or changes the terms on which such funding is provided, including the rate of commission paid to Eclix, which could have a material adverse effect on Eclix's operating and financial performance.

## **iii. Corporate debt facility**

There is a risk that, due to an event of default (which includes a breach of a financial covenant), review event or similar, one or more of the providers (from time to time) of Eclix's corporate debt facility demands repayment of and cancels the facility provided by it, or on maturity of the facilities ceases to provide funding, limits the amount of funding they provide or changes the terms of the facilities which it is prepared to provide. As a result, Eclix is subject to a risk that it is unable to refinance its corporate debt facility upon acceleration or maturity of its corporate debt, or if it is able to do so, may face greater funding costs or be unable to obtain sufficient facilities to fund its growth activities which could affect its operating and financial performance.

# **8.5 Risks related to Eclix's business and operations**

## **a. Eclix may not successfully implement its business initiatives and growth strategy**

There is no guarantee that any of Eclix's growth initiatives will be successfully implemented, deliver the expected returns or ultimately be profitable. In particular, Eclix has implemented a number of significant initiatives designed to improve its risk management systems, enhance the services and solutions provided to customers, and improve the efficiency of the business. There is a risk that the benefits of these initiatives or other initiatives currently being pursued may be subject to unexpected delays, costs may overrun or the initiatives may not generate the financial returns they are intended to.

Eclix may also fail to adopt and execute the business initiatives that will enable it to successfully maintain or improve its service and product offering to its clients and match their evolving preferences. Failure to do so could result in customers choosing to utilise Eclix's competitors for their requirements, potentially leading to a worsening of Eclix's market position and on its operating and financial performance.

## **b. Eclix relies upon attracting and retaining skilled personnel**

The success of Eclix depends to a significant extent on the ability and performance of its key personnel, in particular, the senior management team. The loss of key personnel, sustained underperformance by key personnel or an inability to recruit or retain suitable replacement or additional personnel may impact Eclix's ability to develop and implement its growth strategies which may have an adverse effect on its future operating and financial performance.

The successful operation of Eclix also relies on its ability to attract and retain experienced and high performing employees with specialist skills, including relationship managers, sales staff, residual value management and disposal teams, as well as senior management. There is a risk that any measures put in place by Eclix to recruit and retain such employees may not be effective, may result in material expenditure being required to recruit new, experienced and high performing employees and may have a material adverse effect on Eclix's business, operating and financial performance.

## **c. Eclix faces significant competition**

The markets in which Eclix operates are highly competitive. Competitors may engage in more aggressive marketing, invest in improved customer services or technology offerings, undertake consolidation activities, or adopt more aggressive pricing strategies to gain scale and improve their market. Eclix may also be exposed to heightened competition resulting from new entrants into the industry segments in which it operates.

As a result of these competitive dynamics, Eclix's market position may worsen and it may not be able to retain and attract new key customers, for new originations and renewals unless it reduces margins and fees. The potential reduction in volumes and/or revenues may adversely affect Eclix's operating and financial performance.



**d. Eclipx may experience disruption, failure or obsolescence of its technology platform**

Eclipx's ability to provide reliable services to its customers and to successfully price its products and services depends on the efficient and uninterrupted operation of its technology platforms.

There is a risk that Eclipx's technology platforms are exposed to damage or interruption from systems failures, computer viruses, cyber-attacks, power failures or other events outside the control of Eclipx and that measures implemented by Eclipx to protect against such events are ineffective. Any systemic failure or sustained disruption in service provision could cause significant damage to Eclipx's reputation, and its ability to retain existing customers and generate new customers which could have a material adverse effect on its business, operating and financial performance. Eclipx's technology systems may also become obsolete or outdated through the investment of its peers in superior technology offerings or general market developments. This could require Eclipx to undertake substantial expenditure on updating or improving its current technology platform, which may affect its financial and operating performance.

**e. Existing customers may terminate their contracts with Eclipx and/or Eclipx may be unable to renew contracts**

For some contracts, for example, leases which have lasted the duration of the contracted term or certain managed fleet leases, customers can terminate the contract without cause. There is also a risk that Eclipx's customers do not renew their contract with Eclipx or renew their contract with Eclipx on similar terms (including, for example, paying lower monthly payments and/or reducing the size of their fleet outsourced to Eclipx). Eclipx could lose key customers, due to a range of events including as a result of deterioration in the level of service provided to the customer, a weakening of customer relationships or disputes with customers, or insolvency of customers. Eclipx's business volume and its operating and financial performance could be adversely affected if Eclipx lost customers or volumes that, in aggregate, constituted a material proportion of its revenue.

Margins vary across the products and services that Eclipx provides to its corporate customers and consumers. For new or renewed contracts, Eclipx's customers may choose to alter the mix of the products and services provided by Eclipx, which could have an adverse impact on Eclipx's operating and financial performance.

**f. Eclipx may be affected by changes in fringe benefits tax legislation in Australia**

Eclipx offers customers novated leases, which are currently supported by benefits permitted under fringe benefits tax legislation. The novated lease product is a small proportion of the overall business written by Eclipx. Notwithstanding this, there is a risk to the business that relevant taxation laws in Australia could be changed (or proposed to be changed) in such a way that would remove some of the perceived benefits of novated leases.

In July 2013, the former Federal Labor Government proposed to eliminate the statutory formula method, requiring individuals to maintain trip logbooks to substantiate business use of vehicles. This was not implemented and, since being elected in September 2013, the current Federal Coalition Government has maintained the ability for employers to choose the flat 20% statutory rate for deemed business use in the calculation of the vehicle fringe benefit value. The proposed changes, notwithstanding never being implemented, resulted in a temporary but significant decline in the demand for novated leases in the industry.

While the current Federal Coalition Government has not announced any changes to the fringe benefits tax legislation insofar as it relates to car fringe benefits, there is no guarantee the current legislation will remain in its current form indefinitely. Any future adverse changes to fringe benefits tax legislation in Australia could impact demand for Eclipx's novated lease product and could have a material adverse effect on Eclipx's operating and financial performance.

**g. Eclipx may be the subject of fraud**

Eclipx is exposed to the risk that various counterparties with which it deals, including finance brokers, dealers and customers, may seek to commit fraud in relation to Eclipx or the products and services that Eclipx offers. Potential fraudulent behaviour include dealers and finance brokers conspiring to falsely increase the price of the purchased vehicle or equipment or engaging in identity fraud to gain financing over an asset, including the extension of financing, without actually purchasing any vehicle or equipment, or the alteration of vehicles or equipment to reduce maintenance or other expenses. Eclipx relies on internal controls to detect fraud. Any failure of these internal controls to detect fraud could result in damage to Eclipx's reputation, loss of customers or inability to attract new customers, which in turn could materially adversely affect Eclipx's business, operations and its operating and financial performance.

**h. Eclipx may be affected by changes in the accounting treatment for operating leases**

There is a risk that the change in the accounting treatment for operating leases may have an adverse impact on Eclipx's business.

One of the benefits to customers of using operating leases is that, under current accounting standards, the assets and liabilities are not recognised on their balance sheet, with customers only reporting the monthly lease payments for use of the asset. This can result in more favourable leverage ratios (e.g. debt-to-equity) which may assist the customer to operate within covenant limits on other debt instruments.

New accounting standards issued by the International Accounting Standards Board (IASB) IFRS16 Leases and Australian Accounting Standards Board (AASB) AASB 16 Leases will be applicable for annual reporting periods beginning on or after 1 January 2019. These new standards will replace IAS 17 and AASB 117. The new standards require Eclipx's operating lease customers to recognise a right-of-use asset and a lease liability and accordingly the statement of profit or loss and other comprehensive income will require the disclosure of depreciation and interest expense.

In addition, the changes will largely eliminate sale and lease back transactions as potential sources of off-balance sheet finance and under the new standards, the lease back would typically be on-balance sheet for Eclipx's customers who sell and lease back.

While the accounting treatment may be unlikely to be the overriding determinant for a customer's decision as to whether or not it should outsource its fleet management, the changes may have the effect of appearing to increase debt and capital intensity for Eclipx's customers. The removal of some of the perceived benefit to clients may reduce demand for operating leases which could materially adversely affect Eclipx's business, operating and financial performance.

Under the new accounting standards, there are no significant changes that affect Eclipx's accounting with respect to these leases.

**i. Eclipx may be unable to protect its intellectual property**

Eclipx has developed proprietary trademarks, information and technology platforms which are key to the successful operation and development of its business. There is a risk that measures in place to protect Eclipx's intellectual property are not adequate to protect against third parties obtaining the intellectual property and using it in their businesses, compromising Eclipx's competitive advantage. In addition, third parties may be able to successfully challenge the validity, ownership or authorised use of intellectual property relevant to Eclipx's business. Eclipx may be exposed to significant expense or be unable to use the intellectual property in question which, if alternative solutions were not available cost effectively, or at all, could have a material adverse effect on Eclipx's business, operating and financial performance.

**j. Eclipx may be liable for health and safety damages**

Eclipx's employees who are involved in the movement, servicing and sale of vehicles are at risk of workplace accidents and incidents. In the event that an Eclipx employee is injured in the course of their employment, Eclipx may be liable for penalties or damages. This has the potential to harm both the reputation and the operating and financial performance of Eclipx.

There is also a risk of Eclipx becoming liable for damages, penalties, prosecution as a result of safety mismanagement by the outsourced service providers or lessees in the maintenance and operation of assets owned by Eclipx, which may lead to reputational damage and may have an adverse impact on Eclipx's financial performance.

**k. Eclipx may experience brand and reputational damage**

The reputation of Eclipx's individual brands is important in attracting customers and employees. There is a risk that certain issues or events may adversely affect the reputation of Eclipx's brands, including through negative publicity. Where the issue or event is limited to one particular brand the impact to that one particular brand could be significant. Any factors which diminish Eclipx's or its brand's reputations may result in employees and customers ceasing to work for or seek services from Eclipx; may impede Eclipx's ability to compete successfully; may negatively affect its business strategy; and may adversely impact the operating and financial performance, market position and prospects of Eclipx.

**l. Eclipx is exposed to potential litigation, claims and disputes**

Eclipx may from time to time be subject to litigation and other claims and disputes in the course of its business. For example, these claims may relate to defective vehicles, excess charges, workplace health and safety incidents, and employment disputes. There is a risk that such litigation, claims and disputes, including the costs of settling claims and operational impacts, could materially adversely affect Eclipx's business, operating and financial performance.

**m. Eclipx's suppliers and service providers may terminate their relationship with Eclipx or cease to provide the same services or services on the same terms**

Eclipx's business is dependent on a sound procurement process that achieves value for money and on maintaining successful relationships with key third party suppliers. Major supplies sourced by Eclipx include vehicles, fuel, tyres, insurance products and technology. A number of significant supplier contracts may be terminated for convenience, and a number of arrangements with certain key suppliers are not formally documented. There is a risk that these contracts or arrangements could be terminated, potentially with short notice, which could result in Eclipx experiencing a disruption to its supply chain. If alternative suppliers and service providers cannot be found quickly, on similar terms, or at all, there could be negative impact on Eclipx's ability to retain current customers or generate new business. This could lead to a material adverse effect on Eclipx's business, operating and financial performance.

**n. Eclipx may be subject to regulatory compliance breaches**

There is a range of legislation and regulations in Australia and New Zealand that govern Eclipx's business undertakings. There is a risk that the current processes and systems may not be adequate to detect or prevent all potential compliance breaches. A breach of legislation may result in reputational damage, fines and penalties, and loss of relevant operating licences. There is also a risk that future changes to laws and regulations may increase the costs of operations or adversely affect Eclipx's ability to conduct its operations.

## 8.6 Risks related to acquisitions

### a. Eclipx may not successfully integrate recent and future acquisitions

Eclipx has expanded through acquisitions in the past (including through its acquisitions of FleetPlus, CarLoans, Right2Drive Pty Ltd, Anrace Pty Ltd (trading as Onyx Car Rentals) and the business and assets of FleetSmart, a division of Cardlink Systems Ltd) and expects to continue to expand through acquisitions in the future. Eclipx has successfully integrated each of these acquisitions.

There is a risk that Eclipx fails to integrate successfully future acquisitions with its existing businesses, experiences higher than anticipated integration costs, or realises lower than anticipated synergies, or there is a significant delay in achieving the successful integration of these acquisitions, which could have a material adverse effect on Eclipx's earnings from the acquisition.

### b. Other acquisition risks

Future acquisitions may present challenges and risks relating to the integration of each business into Eclipx's operations. Future acquisitions could be substantially larger than those previously completed or in industry sectors or geographical areas in which Eclipx does not have previous operating experience. The acquired businesses or companies could consume a disproportionately large amount of management time and attention during integration, and the acquisitions may fail to meet strategic objectives, generate the anticipated improvement in operating and financial performance, or produce other expected synergies. If any or all of these potential risks materialise, this could have a material adverse effect on the operating and financial performance of Eclipx.

## 8.7 Risks related to Eclipx Shares

### a. There is a risk of shareholder dilution

In the future, Eclipx may elect to issue Eclipx Shares (or securities convertible into Eclipx Shares) including in connection with fundraisings for acquisitions that it may decide to make. While Eclipx is subject to the constraints of the Listing Rules regarding the percentage of its capital it is able to issue within a 12 month period (other than where exceptions apply), its shareholders may be diluted as a result of such issues of Eclipx Shares or securities.

In addition, the issuance of Eclipx Shares as a result of the exercise of Eclipx Options or Eclipx Performance Rights issued pursuant to the Eclipx LTI Plan may result in dilution to Eclipx Shareholders.

### b. The price of Eclipx Shares may fluctuate

The price at which Eclipx Shares are quoted on ASX may increase or decrease due to a number of factors, many of which are outside of Eclipx's control.

Some of the factors which may affect the price of Eclipx Shares include fluctuations in the domestic and international market for listed stocks, general economic conditions, including interest rates, inflation rates, exchange rates, commodity and oil prices, changes to government fiscal, monetary or regulatory policies, legislation or regulation, inclusion in or removal from market indices, the nature of the markets in which Eclipx operates and general operational and business risks.

Other factors which may negatively affect investor sentiment and influence Eclipx specifically or the stock market more generally include acts of terrorism, an outbreak of international hostilities or fires, floods, earthquakes, labour strikes, civil wars and other natural disasters.

### c. Taxation changes may occur

Changes in tax law (including goods and services taxes and stamp duties), or changes in the way taxation laws are interpreted may impact the tax liabilities of Eclipx or the tax treatment of an Eclipx Shareholder's investment. In particular, both the level and basis of taxation may change. In addition, an investment in Eclipx Shares involves tax considerations which may differ for each Eclipx Shareholder. Each prospective shareholder is encouraged to seek professional tax advice in connection with any investment in Eclipx.

### d. Force majeure events may occur

Events may occur within or outside Australia and New Zealand that could impact upon the Australian and New Zealand economies, the operations of Eclipx and the price of Eclipx Shares. The events include but are not limited to acts of terrorism, an outbreak of international hostilities, fires, floods, earthquakes, labour strikes, civil wars, natural disasters, outbreaks of disease or other natural or man-made events or occurrences that can have an adverse effect on the demand for Eclipx's services and its ability to conduct business. Eclipx has only a limited ability to insure against some of these risks.

## 8.8 Other risks

Additional risks and uncertainties not currently known to Eclipx or Grays, or that may currently be considered immaterial, may also have a material adverse effect on the business and operating and financial performance of Eclipx and/or Grays and that of the Combined Group and the information set out above in this Section 8 does not purport to be, nor should it be construed as representing, an exhaustive list of the risks affecting Eclipx, Grays or the Combined Group.

# 9. TAXATION IMPLICATIONS

## 9.1 General

The comments below provide a general outline of certain Australian tax issues for Australian tax resident shareholders who dispose of shares pursuant to the implementation of the Scheme and that hold Shares in Grays on capital account for Australian income tax purposes.

The categories of Grays Shareholders considered in this summary are limited to individuals, companies (other than life insurance companies), trusts, partnerships and complying superannuation funds that hold their shares on capital account.

This summary does not consider the taxation consequences for foreign resident Grays Shareholders, life insurance companies, banks, Grays Shareholders that hold their Grays Shares on revenue account or carry on a business of trading in shares, Grays Shareholders who are exempt from Australian tax, or Grays Shareholders who are subject to the Taxation of Financial Arrangements rules contained in Division 230 of the *Income Tax Assessment Act 1997*.

The summary below is general in nature and is not exhaustive of all Australian tax consequences that could apply in all circumstances of any given Grays Shareholder. The individual circumstances of each Grays Shareholder may affect the taxation implications of the investment of the Grays Shareholder.

**It is recommended that all Grays Shareholders consult their own independent tax advisers regarding the income tax (including capital gains tax), stamp duty and GST consequences of acquiring, owning and disposing of Grays Shares, having regard to their specific circumstances.**

The summary below is based on the relevant Australian tax law in force, established interpretations of that law and understanding of the practice of the relevant tax authority at the time of issue of the Scheme Booklet. The summary does not take into account the tax law of countries other than Australia.

Tax laws are complex and subject to ongoing change. The tax consequences discussed in this summary do not take into account or anticipate any changes in law (by legislation or judicial decision) or any changes in the administrative practice or interpretation by the relevant authorities. If there is a change, including a change having retrospective effect, the income tax, stamp duty and GST consequences should be reconsidered by Grays Shareholders in light of the changes. The precise implications of ownership or disposal of the Grays Shares will depend upon each Grays Shareholder's specific circumstances.

This summary does not constitute financial product advice as defined in the Corporations Act. This summary is confined to taxation issues and is only one of the matters which need to be considered by Shareholders before making a decision about their investments.

## 9.2 Grays Special Dividend

As described in Section 5.13, on 4 May 2017, Grays announced an intention to apply the proceeds received under the variation of the lease for its Sydney premises to pay the Grays Permitted Special Dividend. However, as at the date of this Scheme Booklet, no final decision has been made in respect of whether to declare the Grays Permitted Special Dividend or the amount of any such dividend. Whether any Grays Permitted Special Dividend is declared and paid is entirely independent of the Scheme. If the Grays Board determines to pay the Grays Permitted Special Dividend before the Implementation Date, the Scheme Consideration will not be adjusted for the amount of that dividend.

It is considered that such Grays Permitted Special Dividend (if declared and paid) should not form part of the capital proceeds received in respect of the disposal of Grays Shares under the Scheme. In particular, whether any Grays Permitted Special Dividend is declared and paid is entirely independent of the Scheme for the disposal of Grays Shares and the Grays Permitted Special Dividend (if declared and paid) will be paid from Grays' own resources without participation of Eclix. This is consistent with the reasoning put forward by the Australian Taxation Office in Tax Ruling TR 2010/4.

### a. Australian resident individuals and complying superannuation entities

Australian tax resident Grays Shareholders who are individuals or complying superannuation entities should, subject to the below comments in Section 9.2(d), include the Grays Permitted Special Dividend (if declared and paid) in their assessable income in the year the dividend is paid, together with any franking credits attached to that dividend. The rate of tax payable by each Australian Grays Shareholder that is an individual will depend on the individual circumstances of the Grays Shareholder and his/her prevailing marginal rate of income tax.

Australian Grays Shareholders who are individuals or complying superannuation entities should, subject to the below comments in Section 9.2(d), be entitled to a "tax offset" equal to the franking credits attached to the Grays Permitted Special Dividend (if declared and paid). The tax offset can be applied to reduce the tax payable on the Australian Grays Shareholder's taxable income. Where the tax offset exceeds the tax payable on the Australian Grays Shareholder's taxable income, such Australian Grays Shareholders should be entitled to a tax refund.

### b. Corporate shareholders

Corporate Grays Shareholders are also required to include both the Grays Permitted Special Dividend (if declared and paid) and associated franking credits in their assessable income. A tax offset is then allowed up to any amount of the franking credits on the Grays Permitted Special Dividend (if declared and paid).

An Australian resident Grays corporate Shareholder should, subject to the below comments in Section 9.2(d), be entitled to a credit in its own franking account to the extent of any franking credits attached to the Grays Permitted Special Dividend received. Such corporate Grays Shareholders can then pass on the benefit of such franking credits to their own shareholder(s) on the payment of franked dividends.

Excess franking credits received by a corporate Grays Shareholder cannot give rise to a refund, but may in certain circumstances be converted into carry forward tax losses.

### **c. Trusts and partnerships**

Australian tax resident Grays Shareholders who are trustees (other than trustees of “complying superannuation entities”) or partnerships should include the Grays Permitted Special Dividend (if declared and paid) and franking credits in determining the net income of the trust or partnership. A beneficiary, trustee or partner may, subject to the below comments in Section 9.2(d), be entitled to a tax offset equal to the beneficiary’s or partner’s share of the net income of the trust or partnership as the case may be.

### **d. Shares held at risk**

To be eligible for the benefit of franking credits and tax offset a Grays Shareholder must satisfy, amongst other things, the “holding period” rules, the “related payment” rules and the dividend washing integrity rules.

The holding period rules require that a Grays Shareholder hold the Grays Shares in the Company “at risk” for more than 45 days continuously (not including the date of acquisition and disposal).

If the related payment rules apply (i.e. when, for example, the Grays shareholders pass on the benefit of the Grays Permitted Special Dividend (if declared and paid) by means of a reduction in the purchase price for the Grays Shares), then Grays shareholders will need to hold the Grays Shares “at risk” for more than 45 days during the test period (broadly, the period beginning 45 days before and ending 45 days after the ex-dividend date).

Any day on which a Grays Shareholder has a materially diminished risk of loss or opportunity for gain in respect of the Grays Shares (e.g. through transactions such as granting options or warrants over Grays Shares or entering into a contract to sell the Grays Shares) will not be counted as a day on which the Grays Shareholder held the Grays Shares “at risk”.

Where the above rules are not satisfied the Grays Shareholder will not be able to include an amount for the franking credits in their assessable income and will not be entitled to a tax offset.

We note that the dividend washing integrity rules prevent a Grays Shareholder from obtaining franking credits if the Grays Shareholder has engaged in dividend washing. Grays Shareholders should consider the impact of these rules together with the broader integrity provisions that apply to the claiming of tax offsets given their own personal circumstances.

For completeness, it is noted that the holding period rules are subject to certain exceptions, including where the total franking offsets of an individual in a year of income do not exceed \$5,000. Special rules apply to trusts and beneficiaries.

Grays Shareholders should obtain their own professional tax advice to determine if these requirements, as they apply to them, have been satisfied.

## **9.3 Disposal of Grays Shares**

### **a. Australian capital gains tax (CGT) consequences**

If the Scheme is approved and implemented, all Grays Shareholders who participate in the Scheme will transfer their Grays Shares to Eclix BidCo in exchange for the Scheme Consideration.<sup>37</sup>

This transfer under the Scheme will constitute a CGT event (being CGT Event A1), as there is a disposal of Grays Shares by an Australian resident Grays Shareholder. The time of the CGT event should be the Record Date.

### **b. Capital gain or loss on disposal of Grays Shares**

Grays Shareholders may prima facie make a capital gain if “capital proceeds” on disposal exceed the “cost base” of the share (broadly, the amount paid to acquire the share plus any transaction costs incurred in relation to the acquisition or disposal of the Grays Shares). In the case of an “arm’s length” on-market sale, the capital proceeds will generally be the value of the proceeds received from the sale of the Grays Shares (see below).

Alternatively Grays Shareholders may make a capital loss if the “reduced cost base” of the Grays Shares exceeds the “capital proceeds” from disposal. Capital losses may only be offset against capital gains realised by the Grays Shareholder in the same income year or future income years, subject to certain loss recoupment tests being satisfied. Capital losses cannot be offset against other forms of assessable income.

<sup>37</sup> Ineligible Foreign Scheme Shareholders will not be entitled to receive any New Eclix Shares and will instead receive cash for any New Eclix Shares that they would otherwise have been entitled to receive. (See Section 4.3 for further information).



## 9.4 Capital proceeds

The capital proceeds received on disposal of Grays Shares should generally be equal to the market value of the New Eclix Shares received as consideration (determined at the Implementation Date).

The market value of a New Eclix Share may be determined by reference to the ASX closing price of a New Eclix Share, on the date of the CGT event.

Information on the market value of a New Eclix Share will be made available to Grays Shareholders via an announcement on ASX and Grays website <http://www.graysecommercegroup.com>.

## 9.5 Cost base of Grays shares

The cost base (or reduced cost base) of Grays Shares for a Gray Shareholder should generally include the cost of acquiring Gray Shares including incidental costs of acquisition and disposal. The reduced cost base should be the same as the cost base, subject to some modifications.

## 9.6 CGT discount

If a Grays Shareholder, who is an individual, trustee of a trust or a complying superannuation entity, derives a capital gain on the disposal of their Grays Shares, they may be eligible to claim the discount capital gains concession provided the Grays Shareholder had held their shares in Grays for at least 12 months prior to the CGT event.

If applicable, prior to applying the CGT discount, the Grays Shareholder must offset their capital gain against any capital losses made in the relevant income year and/or any unapplied net capital loss carried forward from prior income years. The remaining amount (net capital gain) should be then generally be included in the taxpayer's assessable income in the relevant income year.

The discount percentage applies as follows:

- individuals – 50% discount;
- complying superannuation funds – 33.3%; and
- trustee of a trust – 50%.

The discount capital gains concession is not available for companies.

## 9.7 CGT Scrip for Scrip rollover relief

Broadly, scrip for scrip rollover relief may be available to defer a capital gain made by a taxpayer to the extent that, amongst other things, under an arrangement, a taxpayer exchanges an interest i.e. share in an entity for a like interest i.e. share in another entity. Scrip for scrip rollover relief is not applicable to capital losses.

Where participating Grays Shareholders make a capital gain in respect of their Grays Shares, and choose for the scrip for scrip rollover relief from CGT to apply, any capital gain in respect of the disposal of Grays Shares is disregarded. Taxation of that capital gain is effectively deferred until the disposal of the New Eclix Shares received in exchange for Grays Shares.

The relative benefit of electing CGT rollover relief is dependent on each Scheme Shareholders' particular circumstances. Scheme Shareholders should obtain their own independent tax advice as to the most appropriate course of action.

## 9.8 Consequences of choosing Scrip for Scrip rollover relief

Broadly, the consequences for participating Grays Shareholders who choose to apply scrip for scrip rollover relief are as follows:

- The capital gain made on disposal of Grays Shares is deferred (i.e. the Grays Shareholders do not include this portion of the capital gain in their assessable income).
- The total cost base of the New Eclix Shares received will be equal to the portion of the Grays' Shareholder's total historical cost base of the Grays Shares disposed of that is attributable to the CGT rollover.
- The participating Grays' Shareholder will be deemed for CGT purposes to have acquired the New Eclix Shares at the time they originally acquired their Grays Shares. This may become relevant when determining the application of the discount capital gains concession in respect to the subsequent disposal of the New Eclix Shares.
- Generally, no formal election notice to choose CGT rollover relief is required to be lodged with the ATO. Grays Shareholder's income tax return should, however, be prepared in a manner consistent with electing CGT rollover relief.

Where scrip for scrip rollover relief is not available or not chosen, a capital gain will arise for a Grays Shareholder on disposal of their Grays Shares if the capital proceeds (i.e. market value of the New Eclix Shares received as consideration) exceeds the cost of their Grays Shares. A capital loss will arise where the capital proceeds are less than the cost base/reduced cost base of the Grays Shares.

## 9.9 GST implications

No GST should be payable by Grays Shareholders in respect of the disposal of Grays Shares to Eclipx BidCo under the Scheme.

Grays Shareholders may not be entitled to claim full input tax credits for any GST incurred on costs that relate to the Scheme. Separate GST advice should be sought by Shareholders in this respect relevant to their particular circumstances.

## 9.10 Stamp duty

Grays Shareholders should not be liable for stamp duty on the disposal of their Grays Shares or on the acquisition of New Eclipx Shares via the Scheme provided the Grays Shareholders in aggregate acquire less than a 90% interest in Eclipx.

## 9.11 Tax File Numbers (TFNs)

Grays Shareholders are not required to quote their tax file number (**TFN**), or where relevant Australian Business Number (**ABN**), to Grays. However, if a valid TFN, ABN or exemption details are not provided, Australian tax may be required to be deducted by Grays from distributions and / or unfranked dividends at the maximum marginal tax rate plus the Medicare levy. Australian tax should not be required to be deducted by Grays in respect of fully franked dividends.

A Shareholder that holds Shares as part of an enterprise may quote their ABN instead of their TFN. Non-residents are exempt from this requirement.



# 10. IMPLEMENTATION

## 10.1 Introduction

If:

- the Scheme is approved by the requisite majorities of Grays Shareholders at the Scheme Meeting; and
- all other Conditions to the Scheme as described in Section 4.8 (other than Court approval of the Scheme) have been satisfied or waived (where capable of waiver),

the further general steps required to implement the Scheme are as described in the remainder of this Section 10.

The description of these general steps is based on the obligations that Grays and Eclipx have under the Scheme Implementation Deed. Eclipx and Eclipx BidCo have also signed the Deed Poll in which each of them covenant in favour of Scheme Shareholders to perform the actions attributed to them under the Scheme and, in the case of Eclipx, to provide the Scheme Consideration in accordance with the Scheme. The Scheme Implementation Deed is contained in Appendix 5 to this Scheme Booklet. The Deed Poll is contained in Appendix 6 to this Scheme Booklet.

## 10.2 Apply to Court for approval of Scheme

At the Second Court Hearing, Grays will apply to the Court for orders approving the Scheme. It is expected that the Second Court Date will be held on 31 July 2017. Any change to this date will be announced through ASX and will be available on the ASX announcement platform at [asx.com.au](http://asx.com.au).

The Court has a wide, overriding discretion as to whether or not to approve the Scheme under section 411(4)(b) of the Corporations Act.

## 10.3 Opposing the Scheme

If you wish to oppose approval of the Scheme by the Court at the Second Court Hearing you must file with the Court and serve on Grays, a notice of appearance in the prescribed form, together with any affidavit on which you wish to rely at the hearing.

The address for service for Grays is:

Grays eCommerce Group Limited  
c/o MinterEllison  
Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000  
Attention: Michael Gajic and Michael Scarf

## 10.4 Receipt of Court orders

If the Court approves the Scheme:

- Grays will make an announcement to ASX notifying the market of the receipt of Court approval on the day on which the Court approves the Scheme;
- in that same announcement, Grays Directors will set the Record Date; and
- as soon as possible and in any event no later than the first Business Day after the day on which the Court approves the Scheme, Grays will lodge an office copy of the Court's orders with ASIC under section 411(10) of the Corporations Act. On that date (which is expected to be 1 August 2017), the Scheme will become Effective.

If the Scheme becomes Effective, Grays and Eclipx will become bound to implement the Scheme in accordance with the terms of the Scheme Implementation Deed, the Deed Poll and the Scheme. Only Grays Shareholders who qualify as Scheme Shareholders will be bound by and have the benefit of the Scheme. Section 10.6 of this Scheme Booklet describes the principles in the Scheme for determining the identity of Scheme Shareholders.

If the Scheme does not become Effective on or before the End Date, the Scheme will lapse.

## 10.5 Implementation of Scheme

### a. Record Date

Grays Shareholders will be entitled to receive consideration under the Scheme if they are registered as the holders of Scheme Shares on the Record Date. The Record Date is 7.00pm on the date which is the third Business Days after the Effective Date, and is currently expected to be 4 August 2017. In this Scheme Booklet, those Grays Shareholders, and Grays Shares that they hold as at the Record Date are referred to as Scheme Shareholders and Scheme Shares, respectively.

### b. Suspension of trading of Grays Shares

It is expected that suspension of trading on ASX in Grays Shares will occur from close of trading on ASX on the Effective Date. On the current timetable, the Effective Date is expected to be 1 August 2017.

### **c. Transfer and registration of Scheme Shares**

Under the Scheme, Scheme Shareholders irrevocably authorise Grays to Convert (within the meaning of the ASX Settlement Operating Rules) all Scheme Shares held in CHESS Holdings into Issuer Sponsored Holdings (each as defined in the ASX Settlement Operating Rules).

Under the Scheme, each Scheme Shareholder, without the need for any further act, irrevocably appoints Grays and each of its directors, officers and secretaries, jointly and severally, as that Scheme Shareholder's attorney and agent for the purpose of executing any document necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it, including (without limitation) the master transfer of all or part of the Scheme Shares.

On the Implementation Date, the Scheme Shares held by Scheme Shareholders, together with all rights and entitlements attaching to those shares as at the Implementation Date, will be transferred to Eclipx BidCo without the need for any further act by any Scheme Shareholder, by Grays executing and delivering a valid transfer or transfers of the Scheme Shares to Eclipx BidCo and Eclipx BidCo duly executing such transfer form and delivering it to Grays for registration.

In consideration of the transfer of the Scheme Shares to Eclipx BidCo, Eclipx will provide the Scheme Consideration to each Scheme Shareholder and, in the case of Ineligible Foreign Scheme Shareholders, to the Sale Agent, in accordance with the provisions of the Scheme. See Sections 10.5(d) to 10.5(g) inclusive for further details on the provision of the Scheme Consideration.

### **d. Issue of New Eclipx Shares**

The obligation of Eclipx to issue New Eclipx Shares to Scheme Shareholders will be satisfied by Eclipx taking the following steps:

- on or before the Implementation Date, Eclipx will allot and issue the applicable number of New Eclipx Shares to each Scheme Shareholder and, in the case of Ineligible Foreign Scheme Shareholders, to the Sale Agent; and
- within 5 Business Days after the Implementation Date, Eclipx will procure the dispatch of an allotment advice or holding statement (or equivalent document) to each Scheme Shareholder entitled to receive New Eclipx Shares under the Scheme, reflecting the number of New Eclipx Shares issued to them under the Scheme.

Each Scheme Shareholder to whom New Eclipx Shares are issued under the Scheme agrees:

- to become a member of Eclipx;
- to have their name and address entered in Eclipx Share Register; and
- to be bound by the constitution of Eclipx as in force from time to time.

Each Scheme Shareholder, without the need for any further act, irrevocably appoints Grays and each of its directors and officers, jointly and severally, as that Scheme Shareholder's attorney and agent for the purpose of executing any form of application required for the New Eclipx Shares to be issued to that Scheme Shareholder pursuant to the Scheme.

### **e. Joint holders**

In the case of Scheme Shares held in joint names, any holding statements for New Eclipx Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders, and forwarded to the holder whose name appears first in the Grays Share Register as at the Record Date.

### **f. Ineligible Foreign Scheme Shareholders**

Eclipx will be under no obligation to issue, and will not issue, any New Eclipx Shares to Ineligible Foreign Scheme Shareholders. See Section 4.3 for more information.

### **g. Delisting of Grays**

At a time determined by Eclipx following the implementation of the Scheme, Eclipx will cause Grays to apply for the termination of the official quotation of Grays Shares on ASX and to have itself removed from the official list of ASX. It is expected that this will occur shortly after the Implementation Date.

## **10.6 Determination of Scheme Shareholders**

To establish the identity of the Scheme Shareholders, dealings in Grays Shares will only be recognised if:

- in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Grays Share Register as the holder of the relevant Grays Shares on or before the Record Date; and
- in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before the Record Date at the place where the Grays Share Register is kept.

Grays will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Grays Shares received after the Record Date or received on or prior to the Record Date but not in registrable or actionable form, other than a transfer to Eclipx BidCo in accordance with the Scheme and any subsequent transfer by Eclipx BidCo or its successors in title.

Under the terms of the proposed Scheme,

- Grays Shareholders may not dispose of or otherwise deal with any Scheme Shares or any interest in them after the Record Date; and
- any dealings in Scheme Shares after the Record Date will not be recognised by the Grays Share Registry.

For the purpose of determining entitlements to the Scheme Consideration, Grays must maintain (or cause the Grays Share Registry to maintain) the Grays Share Register until the Scheme Consideration has been provided to the Scheme Shareholders. The Grays Share Register in this form will solely determine entitlements to the Scheme Consideration.

Any statements of holding for Grays Shares will cease to have effect from the Record Date as documents or evidence of title in respect of those Grays Shares. After the Record Date, each entry current at that date on the Grays Share Register will cease to have effect, except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

As soon as practicable after the Record Date and in any event by no later than 5:00pm on the Business Day after the Record Date, Grays will ensure that details of the names, registered addresses and holdings of Grays Shares for each Scheme Shareholder as shown in the Grays Share Register are available to Eclipx in the form Eclipx reasonably requires.

## **10.7 CHESS and holding statements in respect of New Eclipx Shares**

Shortly following the issue of New Eclipx Shares to Scheme Shareholders, they will receive an initial statement of holding (similar to a bank account statement) that sets out the number of New Eclipx Shares which have been allocated to them under the Scheme. This statement will also provide details of a shareholder's HIN in the case of a holding on the CHESS subregister or SRN in the case of a holding on the issuer-sponsored subregister. Scheme Shareholders receiving New Eclipx Shares under the Scheme will be required to quote their HIN or SRN, as applicable, in all dealings with a stockbroker or the Eclipx Share Registry.

Scheme Shareholders receiving New Eclipx Shares under the Scheme will receive subsequent statements at the end of any month in which there has been a change to their holding on Eclipx Share Register and as otherwise required under the Listing Rules.

# 11.ADDITIONAL INFORMATION

## 11.1 Introduction

This Section 11 sets out the statutory information required by section 412(1)(a) of the Corporations Act and Part 3 of Schedule 8 to the *Corporations Regulations 2001* (Cth) to be included in this Scheme Booklet, but only to the extent that this information is not otherwise disclosed in other Sections. This Section also includes additional information that your Directors consider material to a decision on how to vote on the resolution to be considered at the Scheme Meeting.

In this Section, the terms 'associate', 'marketable securities', 'related body corporate' and 'subsidiary' have the meanings given to them in the Corporations Act. The term 'executive officer' is used to mean 'senior manager' as defined in the Corporations Act, including the company secretary.

## 11.2 Grays Performance Rights

All 4,375,636 Grays Performance Rights were granted under the terms and conditions of the Grays Performance Rights Plan.

The exercise of the Grays Performance Rights are subject to certain exercise conditions (**Exercise Conditions**), including performance hurdles (**Performance Hurdles**) based on earnings per share (**EPS**) and total shareholder returns (**TSR**) relating to Grays Shares, as well as an absolute Grays Share price hurdle.

All Grays Performance Rights currently on issue are unvested as at the date of this Scheme Booklet.

If the Grays Performance Rights vest and are exercised, Grays Performance Rights holders will receive one Grays Share per Grays Performance Right exercised. No cash will be paid by Grays to any holder of Grays Performance Rights.

There are three tranches of Grays Performance Rights currently on issue as follows:

- 1,230,531 of the Grays Performance Rights are subject to Exercise Conditions and Performance Hurdles based on the EPS and TSR of Grays Shares as at 30 June 2017 (**Tranche 1 Rights**);
- 1,230,531 of the Grays Performance Rights are subject to Exercise Conditions and Performance Hurdles based on the EPS and TSR of Grays Shares as at 30 June 2018 (**Tranche 2 Rights**); and
- 1,914,574 of the Grays Performance Rights are subject to Exercise Conditions and Performance Hurdles based on the EPS and TSR of Grays Shares as at 30 June 2019 (**Tranche 3 Rights**).

Whilst it is not expressly a Condition of the Scheme that all the Grays Performance Rights will either vest or lapse before the Effective Date, the Scheme Implementation Deed includes a Grays Representation and Warranty that, subject to receipt of any necessary waivers from ASX or approvals from Grays Shareholders to permit the lapse of all unvested, or vested but unexercised, Grays Performance Rights, Grays has done or will do all things necessary to ensure that on the Effective Date there will be no Grays Performance Rights on issue. It is a Condition to the Scheme that no breach of any Grays Representation and Warranty occurs.

Accordingly, to enable the Scheme to proceed, the Grays Board exercised its discretion under the Grays Performance Rights Plan and determined, subject to receipt of all necessary ASX waivers and/or Grays Shareholder approvals, that a total of 1,309,732 Grays Performance Rights will vest as follows:

- a total of 762,777 Tranche 1 Rights vest on 1 July 2017;
- subject to the Scheme becoming Effective, a total of 307,633 Tranche 2 Rights will vest on a date to be determined by the Grays Board, such date being on or prior to the Effective Date for the Scheme; and
- subject to the Scheme becoming Effective, a total of 239,322 Tranche 3 Rights will vest on a date to be determined by the Grays Board, such date being on or prior to the Effective Date for the Scheme.

The remaining 3,065,904 Grays Performance Rights will lapse.

A total of 450,201 Grays Performance Rights held by the Managing Director and Chief Executive Officer, Mr Mark Bayliss, will vest on or before the Effective Date and the remaining 1,031,442 Grays Performance Rights held by Mr Bayliss will lapse.

The ASX has granted Grays a waiver from ASX Listing Rules 6.23.3 and 6.23.4. See Section 11.9 for more details.

Accordingly, it is expected that, after the Effective Date, there will be no Grays Performance Rights on issue.

## 11.3 Directors' interests in any contracts with Eclix

No Grays Director or any of his/her Associates has entered into, or otherwise has any interest in, any contract entered into by Eclix or any of its Associates.

## 11.4 Directors' interests in agreements connected with or conditional on the Scheme

No Grays Director has an interest in any agreement connected with or conditional on the Scheme, other than Mr Mark Bayliss' interests in Grays Performance Rights detailed in Section 11.2.

## 11.5 Retirement benefits

No payment or other benefit is proposed to be made or given in connection with the Scheme to any director, secretary or executive officer of Grays, or of any Grays Group Member, as compensation for loss of, or as consideration for, or in connection with, his or her retirement from office in Grays or in a Grays Group Member.

## 11.6 Directors' intentions regarding the business, assets and employees of Grays

If the Scheme is approved and implemented, the existing Grays Board will be reconstituted in accordance with the instructions of Eclipx, through Eclipx BidCo, as the only shareholder in Grays. Accordingly, it is not possible for your Grays Directors to provide a statement of their intentions regarding:

- the continuation of the business of Grays or how Grays' existing business will be conducted after the Scheme is implemented;
- any major changes to be made to the business of Grays, including any redeployment of the fixed assets of Grays; or
- the future employment of the present employees of Grays,

in each case, after the Scheme is implemented.

If the Scheme is approved and implemented, Eclipx, through Eclipx BidCo, will have 100% ownership of Grays Shares and will control Grays.

## 11.7 No unacceptable circumstances

The Grays Board believes that the Scheme does not involve any circumstances in relation to the affairs of Grays that could reasonably be characterised as constituting unacceptable circumstances for the purposes of section 657A of the Corporations Act.

## 11.8 ASIC relief and exceptions

Clause 8302(h) of Part 3 of Schedule 8 to the *Corporations Regulations 2001* (Cth) requires this Scheme Booklet to set out whether, within the knowledge of the Grays Directors, the financial position of Grays has materially changed since the date of the last balance sheet laid before a Grays annual general meeting or sent to Grays Shareholders in accordance with section 314 or 317 of the Corporations Act, and if so, full particulars of any change.

ASIC has granted Grays relief from this requirement on the condition that Grays:

- has complied with Division 2 of Part 2M.3 of the Corporations Act in respect of the half-year ended 31 December 2016;
- will provide, free of charge, copies of the financial report for the half year ended 31 December 2016 to anyone who requests a copy;
- sets out in this Scheme Booklet whether, within the knowledge of the directors of Grays as at the date of this Scheme Booklet, the financial position of Grays has materially changed since 31 December 2016 – in this respect, please refer to the statement in Section 5.12(f);
- has disclosed in this Scheme Booklet, and in announcements to the ASX, all material changes to Grays' financial position occurring after 31 December 2016 and prior to the date of this Scheme Booklet;
- discloses in announcements to the market operated by ASX Limited ACN 008 624 691 all material changes to Grays' financial position that occur after the date of this Scheme Booklet, but prior to the Scheme being approved by the Court; and
- this Scheme Booklet is substantially in the form given by Grays to ASIC on 15 June 2017.

## 11.9 ASX waivers

ASX Listing Rule 6.23.3 requires that a change which has the effect of reducing the exercise price, increasing the period for exercise or increasing the number of securities received on exercise of an option cannot be made. ASX Listing Rule 6.23.4 requires that any changes affecting options which are not prohibited under ASX Listing Rule 6.23.3 can only be made if holders of ordinary securities approve the change. As mentioned in Section 11.2, ASX has granted Grays waiver from ASX Listing Rule:

- 6.23.3 to the extent necessary to permit Grays to remove the performance conditions and accelerate the vesting of 546,955 Grays Performance Rights; and
- 6.23.4 to the extent necessary to permit Grays to extend the exercise period of 2,598,150 Grays Performance Rights such that those Grays Performance Rights will not be exercised and will lapse on the Effective Date,

without the need to obtain specific Grays Shareholder approval. The waiver is conditional on approval of the Scheme by Scheme Shareholders and the Court (and by voting in favour of the Scheme, Grays Shareholders will be (indirectly) agreeing to the lapsing of the particular Grays Performance Rights). The waiver is also conditional on the Scheme becoming Effective and full details of the proposed treatment of the Grays Performance Rights being set out to ASX's satisfaction in the Scheme Booklet.

## 11.10 Consents and disclaimers

The following parties have given and have not, before the time of registration of this Scheme Booklet by ASIC, withdrawn their written consent to be named in this Scheme Booklet in the form and context in which they are named:

- Eclipx Group Limited and Eclipx BidCo;
- MinterEllison as legal adviser to Grays;
- Moelis Australia Advisory Pty Ltd as financial adviser to Grays;
- Lonergan Edwards & Associates Limited as the Independent Expert;
- KPMG Transaction Services as Investigating Accountant;
- Ernst & Young;
- Australian Equipment Lessors Association;
- Australian Fleet Lessors Association;
- Computershare Investor Services Pty Limited as the Grays Share Registry;
- Link Market Services Limited as the Eclipx Share Registry;
- UBS Securities Australia Limited as the Sale Agent; and
- Caledonia.

Eclipx has given, and not withdrawn before the registration of this Scheme Booklet with ASIC, its written consent to be named in this Scheme Booklet in the form and context in which it is so named and to the inclusion of the Eclipx Information in the form and context in which such information is included in this Scheme Booklet. Eclipx has not caused or authorised the issue of this Scheme Booklet and, other than any reference to its name and the aforementioned information, takes no responsibility for any other part of this Scheme Booklet other than the Eclipx Information.

Lonergan Edwards & Associates Limited has given, and has not, before the time of registration of this Scheme Booklet by ASIC, withdrawn its consent, to the inclusion of statements attributed to Lonergan Edwards & Associates Limited in this Scheme Booklet and to the inclusion of the Independent Expert's Report set out in Appendix 1 to this Scheme Booklet in the form and context in which they are included.

KPMG Transaction Services has given, and has not, before the time of registration of this Scheme Booklet by ASIC, withdrawn its consent, to the inclusion of statements attributed to KPMG Transaction Services in this Scheme Booklet and to the inclusion of the Investigating Accountant's Report set out in Appendix 2 to this Scheme Booklet in the form and context in which they are included.

The Australian Equipment Lessors Association (**AELA**) has given, and not withdrawn before the registration of this Scheme Booklet with ASIC, its written consent to be named in this Scheme Booklet and to the inclusion of the statements attributed to it in this Scheme Booklet in the form and context in which they appear in this Scheme Booklet. AELA has not caused or authorised the issue of this Scheme Booklet and, other than any reference to its name and the aforementioned information, takes no responsibility for any other part of this Scheme Booklet. AELA is a source of industry statistics (provided by participating AELA members) and information. These statistics rely entirely on data provided by participating AELA members; AELA does not independently verify that data.

The Australian Fleet Lessors Association (**AFLA**) has given, and not withdrawn before the registration of this Scheme Booklet with ASIC, its written consent to be named in this Scheme Booklet and to the inclusion of the statements attributed to it in this Scheme Booklet in the form and context in which they appear in this Scheme Booklet. AFLA has not caused or authorised the issue of this Scheme Booklet and, other than any reference to its name and the aforementioned information, takes no responsibility for any other part of this Scheme Booklet. AFLA is a source of industry statistics (provided by participating AFLA members) and information. These statistics rely entirely on data provided by participating AFLA members; AFLA does not independently verify that data.

Caledonia has given, and not withdrawn before the registration of this Scheme Booklet with ASIC, its written consent to be named in this Scheme Booklet and to the inclusion of the statements attributed to it in this Scheme Booklet in the form and context in which they appear in this Scheme Booklet. Caledonia is a Grays Shareholder. Caledonia has not caused or authorised the issue of this Scheme Booklet and, other than any reference to its name and the aforementioned information, takes no responsibility for any other part of this Scheme Booklet.

Each of the above persons:

- has not authorised or caused the issue of this Scheme Booklet;
- does not make, or purport to make, any statement in this Scheme Booklet or any statement on which a statement in this Scheme Booklet is based other than a statement or report included in this Scheme Booklet with the consent of that party;
- to the maximum extent permitted by law, expressly disclaims and takes no responsibility for any part of this Scheme Booklet, other than as described in this Scheme Booklet with the consent of that party; and
- except for Eclipx, does not assume any responsibility for the accuracy or completeness of any Eclipx Information. The Eclipx Information has been prepared by and is the responsibility of Eclipx.



### 11.11 Independent advice

Grays Shareholders should consult their financial, legal or other professional adviser if they have any queries regarding:

- the Scheme;
- the taxation implications for them if the Scheme is implemented;
- the recommendations and intentions of the Grays Directors in relation to the Scheme, as set out in Sections 1.2(a) and 4.12 of this Scheme Booklet; or
- any other aspects of this Scheme Booklet.

Grays Shareholders may also call the Grays information line on 1300 103 188 (within Australia) or +61 3 9415 4232 (outside Australia) Monday to Friday between 9.00am and 5.00pm (AEST) with any queries they may have regarding the Scheme.

### 11.12 Other material information

Except as set out in this Scheme Booklet, in the opinion of the Grays Board, there is no other information material to the making of a decision in relation to the Scheme, being information that is within the knowledge of any Grays Director or of any Grays Group Member, which has not been previously disclosed to Grays Shareholders.

Grays will issue a supplementary document to this Scheme Booklet if it becomes aware of any of the following between the date of lodgement of this Scheme Booklet for registration by ASIC and the Effective Date:

- a material statement in this Scheme Booklet that is false or misleading in a material respect;
- a material omission from this Scheme Booklet;
- a significant change affecting a matter included in this Scheme Booklet; or
- a significant new matter that has arisen and that would have been required to be included in this Scheme Booklet if it had arisen before the date of lodgement of this Scheme Booklet for registration by ASIC.

Depending on the nature and timing of the changed circumstances and subject to obtaining any relevant approvals, Grays may circulate and publish any supplementary document by any one or more of the following methods:

- making an announcement to ASX;
- placing an advertisement in a prominently published newspaper which is circulated generally throughout Australia;
- posting the supplementary document to Grays Shareholders at their registered address as shown in the Grays Share Register; and/or
- posting a statement on Grays' corporate website,

as Grays in its absolute discretion considers appropriate, subject to any approval that may be required from the Court. In particular, where the matter is not materially adverse to Grays Shareholders, such circulation and publication may be only by an announcement to ASX.



# 12. GLOSSARY

The following terms used in this Scheme Booklet (including the Notice of Meeting in Appendix 4 to this Scheme Booklet) have the meanings given to them below, unless the context otherwise requires:

<b>AAS</b>	Australian Accounting Standards
<b>AASB</b>	Australian Accounting Standards Board
<b>Appendix</b>	an appendix of this Scheme Booklet
<b>ASIC</b>	the Australian Securities and Investments Commission
<b>Associate</b>	has the meaning given under section 12 of the Corporations Act
<b>ASX</b>	ASX Limited ACN 008 624 691 or, as the context requires, the financial market conducted by it
<b>ASX Settlement</b>	ASX Settlement Pty Limited ABN 49 008 504 532
<b>ASX Settlement Operating Rules</b>	the operating rules of the clearing and settlement facility provided by ASX Settlement
<b>ATO</b>	Australian Taxation Office
<b>Business Day</b>	means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales, Australia
<b>Caledonia</b>	Caledonia (Private) Investments Pty Limited ABN 58 003 977 115
<b>CHI-X</b>	Chi-X Australia Pty Ltd ACN 129 584 667 or, as the context requires, the financial market conducted by it
<b>CHESS</b>	the Clearing House Electronic Subregister System, the system established and operated by ASX Settlement
<b>CGT</b>	capital gains tax
<b>Combined Group</b>	Eclix Group following implementation of the Scheme, when the Grays Group will become wholly owned subsidiaries of Eclix. References to the Combined Group include all joint venture interests (incorporated or unincorporated) held by a member of the Combined Group
<b>Competing Proposal</b>	has the meaning given to that term in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Conditions</b>	the conditions to the Scheme set out in clause 3.1 of the Scheme Implementation Deed
<b>Control</b>	has the meaning given under section 50AA of the Corporations Act and Controlled has a corresponding meaning
<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth)
<b>Court</b>	the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act as Grays and Eclix agree in writing
<b>Deed Poll</b>	the deed poll executed by Eclix and Eclix BidCo on 16 June 2017 in favour of Scheme Shareholders in which Eclix and Eclix BidCo acknowledge and confirm certain of their obligations under the Scheme for the benefit of Scheme Shareholders. A copy of the executed Deed Poll is reproduced in Appendix 6 to this Scheme Booklet
<b>Delivery Time</b>	means the time being 2 hours before the commencement of the hearing of the Court on the Second Court Date
<b>EBITDA</b>	earnings before interest, tax, depreciation and amortisation
<b>Eclix</b>	Eclix Group Limited ABN 85 131 557 901
<b>Eclix BidCo</b>	Leasing Finance (Australia) Pty Limited ABN 39 121 167 824
<b>Eclix Board</b>	the board of directors of Eclix from time to time
<b>Eclix Break Fee</b>	has the meaning given to the term 'Bidder Break Fee' in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)

<b>Eclipx Constitution</b>	Eclipx's current constitution
<b>Eclipx Directors</b>	means a director of Eclipx from time to time
<b>Eclipx Group</b>	means Eclipx and each Subsidiary of Eclipx and <b>Eclipx Group Member</b> means any one of them
<b>Eclipx Information</b>	means the information regarding the Eclipx Group, the Combined Group, the Scheme Consideration and Eclipx's intentions relating to the Grays Group's business, assets and employees that has been provided by or on behalf of Eclipx or any of its advisers to Grays in writing for inclusion in the Scheme Booklet (including the letter from the Chairman of Eclipx and Sections 6, 7 and 8), but excluding any information provided by Grays to Eclipx, or obtained by Eclipx from an announcement made by Grays to ASX or from a publicly available document lodged by Grays with ASIC, contained in, or used in the preparation of, the information regarding the Combined Group. For the avoidance of doubt, Eclipx Information excludes Grays Information, the Independent Expert's Report, the Investigating Accountant's Report and the EY Information
<b>Eclipx Loan Shares</b>	has the meaning given in Section 6.13(b)
<b>Eclipx LTI Plan</b>	means the Eclipx Performance Rights and Options Plan
<b>Eclipx Material Adverse Change</b>	has the meaning given to the term 'Bidder Material Adverse Change' in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Eclipx NED Options</b>	has the meaning given in Section 6.13(b)
<b>Eclipx Options</b>	an entitlement to receive Eclipx Shares (or to receive a cash equivalent value payment or acquire a share equivalent number of shares, each as defined in the Eclipx LTI Plan) subject to satisfaction of applicable conditions and compliance with the applicable exercise procedure (including payment of any applicable exercise price) granted to an employee under the Eclipx LTI Plan on the terms and conditions determined by the Eclipx Board
<b>Eclipx Performance Rights</b>	a performance right, being an entitlement to acquire a share (or to receive a cash equivalent value (as defined in the Eclipx LTI Plan), at the discretion of the Eclipx Board), granted to an employee under the Eclipx LTI Plan on the terms and conditions determined by the Eclipx Board
<b>Eclipx Performance Rights and Options Plan</b>	the Eclipx Group Limited Long-Term Incentive Plan – Performance Rights and Options Plan Rules
<b>Eclipx Prescribed Occurrence</b>	has the meaning given to the term 'Bidder Prescribed Occurrence' in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Eclipx Representation and Warranty</b>	has the meaning given to the term 'Bidder Warranties' in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Eclipx Securities</b>	means: <ul style="list-style-type: none"> <li>▪ the Eclipx Shares;</li> <li>▪ the Eclipx Loan Shares and Pre-IPO Loan Shares;</li> <li>▪ the Eclipx Options and Eclipx NED Options; and</li> <li>▪ the Eclipx Performance Rights</li> </ul>
<b>Eclipx Share</b>	an issued fully paid ordinary share in the capital of Eclipx
<b>Eclipx Share Register</b>	the register of members of Eclipx maintained by or on behalf of Eclipx in accordance with section 168(1) of the Corporations Act
<b>Eclipx Share Registry</b>	Link Market Services Limited
<b>Eclipx Share Rights Contribution Plan</b>	the Eclipx Group Limited Share Rights Contribution Plan
<b>Eclipx Shareholder</b>	each person who is registered in Eclipx's register of members as holder of Eclipx Shares
<b>Effective</b>	when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme
<b>Effective Date</b>	the date on which the Scheme becomes Effective
<b>End Date</b>	means 31 December 2017 or such other date agreed in writing between Grays and Eclipx
<b>EPS</b>	earnings per share

<b>Excluded Share</b>	any Grays Share held by an Excluded Shareholder
<b>Excluded Shareholder</b>	means any Grays Shareholder who is a Eclix Group Member or any other Grays Shareholder to the extent it holds Grays Shares on behalf of, or for the benefit of, any Eclix Group Member
<b>Exclusivity Period</b>	has the meaning given to that term in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>EY</b>	Ernst & Young
<b>EY Information</b>	The information prepared by Ernst & Young in relation to the Scheme in Section 9
<b>First Court Date</b>	the first day on which an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting is heard, or, if the application is adjourned or subject to appeal for any reason, means the day on which the adjourned application is heard
<b>First Court Hearing</b>	the hearing of the application made to the Court by Grays for an order to convene the Scheme Meeting on the First Court Date
<b>FY</b>	financial year ended or ending, in respect of Grays 30 June, and in respect of Eclix 30 September
<b>Governmental Agency</b>	any Australian or foreign government or representative of a government or any Australian or foreign governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity, and includes any minister, ASIC, ASX or any other stock exchange and any regulatory organisation established under statute
<b>Grays</b>	Grays eCommerce Group Limited ABN 94 125 736 914
<b>Grays Board or Board of Directors</b>	the board of directors of Grays as constituted from time to time
<b>Grays Break Fee</b>	has the meaning given to the term 'Target Break Fee' in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Grays Directors or your Directors</b>	means a director of Grays from time to time
<b>Grays Group</b>	means Grays and its Subsidiaries and <b>Grays Group Member</b> means any one of them
<b>Grays Information</b>	<ul style="list-style-type: none"> <li>the entirety of the information to be included in this Scheme Booklet (excluding the Eclix Information, the Independent Expert's Report, the Investigating Accountant's Report), and</li> <li>any information provided by Grays to Eclix, or obtained by Eclix from an announcement made by Grays to ASX or from a publicly available document lodged by Grays with ASIC, contained in, or used in the preparation of, the information regarding the Combined Group</li> </ul>
<b>Grays Material Adverse Change</b>	has the meaning given to the term 'Target Material Adverse Change' in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Grays Performance Right</b>	a right granted under the Grays Performance Rights Plan to acquire a Grays Share, subject to the terms and conditions of the Grays Performance Rights Plan
<b>Grays Performance Rights Plan</b>	means the Grays eCommerce Group Limited Performance Rights Plan dated 17 January 2014
<b>Grays Permitted Special Dividend</b>	has the meaning given to the term in Section 5.13. This is the same potential dividend as described by the definition 'Target Permitted Special Dividend' in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Grays Prescribed Occurrence</b>	has the meaning given to the term 'Target Prescribed Occurrence' in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Grays Representation and Warranty</b>	has the meaning given to the term 'Target Warranties' in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Grays Securities</b>	means: <ul style="list-style-type: none"> <li>Grays Shares; and</li> <li>Grays Performance Rights</li> </ul>
<b>Grays Share</b>	an issued fully paid ordinary share in the capital of Grays

<b>Grays Share Register</b>	the register of members of Grays maintained by or on behalf of Grays in accordance with section 168(1) of the Corporations Act
<b>Grays Share Registry</b>	Computershare Investor Services Pty Limited ABN 48 078 279 277
<b>Grays Shareholder</b>	each person who is registered in the Grays Share Register as a holder of Grays Shares
<b>Headcount Test</b>	the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Grays Shareholders (other than Excluded Shareholders) present and voting, either in person or by proxy
<b>Implementation Date</b>	in relation to the Scheme, the date which is 5 Business Days after the Record Date or such other Business Day agreed in writing by Grays and Eclipx
<b>Independent Expert</b>	Loneragan Edwards & Associates Limited ABN 53 095 445 560
<b>Independent Expert's Report</b>	the report from the Independent Expert (a full copy of which is set out in Appendix 1 to this Scheme Booklet), and any update to such report that the Independent Expert issues
<b>Ineligible Foreign Scheme Shareholder</b>	a Scheme Shareholder whose address as shown in the Grays Share Register as at the Record Date is a place located outside of Australia and its external territories, New Zealand, the United States of America and any other jurisdiction as Grays and Eclipx may agree in writing (unless Eclipx is satisfied, acting reasonably, that Eclipx is permitted to allot and issue New Eclipx Shares to that Scheme Shareholder pursuant to the Scheme under the laws of that place either unconditionally or after compliance with conditions that Eclipx reasonably regards as acceptable and not unduly onerous or impracticable)
<b>Investigating Accountant</b>	KPMG Transaction Services
<b>Investigating Accountant's Report</b>	the report prepared by the Investigating Accountant dated 21 June 2017 (a full copy of which is set out in Appendix 2 to this Scheme Booklet)
<b>KPMG</b>	KPMG ABN 51 194 660 183
<b>KPMG Transaction Services</b>	a division of KPMG Financial Advisory Services (Australia) Pty Ltd ABN 43 007 363 215
<b>Last Practicable Date</b>	15 June 2017, being the last practicable trading day before the printing of this Scheme Booklet
<b>Listing Rules</b>	the official listing rules of ASX as amended or waived from time to time
<b>New Eclipx Shares</b>	the Eclipx Shares to be issued as the Scheme Consideration to Scheme Shareholders (other than Ineligible Foreign Scheme Shareholders) under the terms of the Scheme and <b>New Eclipx Share</b> means any one of them
<b>NPAT</b>	net profit after tax
<b>PPSA</b>	the <i>Personal Property Securities Act 2009</i> (Cth)
<b>Pre-IPO Loan Shares</b>	has the meaning given in Section 6.13(b)
<b>Proxy Form</b>	the Proxy Form for the Scheme Meeting accompanying this Scheme Booklet or, as the context requires, any replacement or substitute Proxy Form provided by or on behalf of Grays
<b>Record Date</b>	the date for determining entitlements to the Scheme Consideration, being 7.00pm (AEST) on the date being 3 Business Days after the Effective Date or such other Business Day agreed in writing between Eclipx and Grays
<b>Related Body Corporate</b>	in relation to a person, a related body corporate of that person under section 50 of the Corporations Act
<b>Relevant Interest</b>	has the meaning given in sections 608 and 609 of the Corporations Act
<b>Sale Agent</b>	UBS Securities Australia Limited ACN 008 586 481

<b>Scheme or Scheme of Arrangement</b>	the members' scheme of arrangement under Part 5.1 of the Corporations Act between Grays and the Scheme Shareholders under which Eclix BidCo proposes to acquire all of the Grays Shares (other than any Grays Shares held by an Excluded Shareholder) substantially in the form set out in Appendix 3 to this Scheme Booklet, subject to any alterations or conditions: a. agreed to in writing by Eclix and Grays; or b. made or required by the Court under section 411(6) of the Corporations Act and agreed to by Eclix and Grays
<b>Scheme Booklet</b>	this Scheme Booklet, including the appendices to it
<b>Scheme Conditions</b>	the conditions precedent specified at clause 3.1 of the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Scheme Consideration</b>	the New Eclix Shares to be issued by Eclix to each Scheme Shareholder (other than in the case of Ineligible Foreign Scheme Shareholders) in accordance with the Scheme, being 0.365588962370616 New Eclix Shares per Scheme Share held by the Scheme Shareholder
<b>Scheme Implementation Deed</b>	the Scheme implementation deed between Grays and Eclix dated 4 May 2017 setting out certain arrangements in relation to the Scheme. The Scheme Implementation Deed is reproduced in Appendix 5 to this Scheme Booklet
<b>Scheme Meeting</b>	the meeting of Grays Shareholders to consider and vote on the Scheme. The notice convening the Scheme Meeting is contained in Appendix 4 to this Scheme Booklet
<b>Scheme Resolution</b>	the resolution to approve the Scheme to be considered by Grays Shareholders at the Scheme Meeting, set out in the notice of the Scheme Meeting contained in Appendix 4
<b>Scheme Share</b>	a Grays Share on issue as at the Record Date other than any Grays Share held at that time by an Excluded Shareholder (but includes any Grays Share held at that time by an Excluded Shareholder on behalf of one or more Third Parties who are not Excluded Shareholders or otherwise hold Grays Shares in a fiduciary capacity on behalf of persons who are not Excluded Shareholders)
<b>Scheme Shareholders</b>	a Grays Shareholder that holds Scheme Shares as at the Record Date (other than an Excluded Shareholder)
<b>Second Court Date</b>	the first day on which an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard
<b>Second Court Hearing</b>	the hearing of the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme at the Second Court Date
<b>Section</b>	a section of this Scheme Booklet
<b>Securities Act</b>	US Securities Act of 1933 (as amended)
<b>Share Splitting</b>	the splitting by a holder of Grays Shares into two or more parcels of Grays Shares whether or not it results in any change in beneficial ownership of the Grays Shares
<b>Subsidiary</b>	has the meaning given to that term in section 46 of the Corporations Act
<b>Superior Proposal</b>	has the meaning given to that term in the Scheme Implementation Deed (see Appendix 5 to this Scheme Booklet)
<b>Third Party</b>	any person or entity (including a Governmental Agency) other than a Grays Group Member or an Eclix Group Member
<b>VWAP</b>	volume weighted average price

# APPENDIX 1 – INDEPENDENT EXPERT’S REPORT

## LONERGAN EDWARDS & ASSOCIATES LIMITED

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The Directors  
Grays eCommerce Group Limited  
Homebush Corporate Park  
29-33 Carter Street  
Lidcombe NSW 2141

15 June 2017

**Subject: Proposed acquisition by way of Scheme**

Dear Directors

### Introduction

- 1 On 4 May 2017, Grays eCommerce Group Limited (Grays or the Company) announced it had signed a Scheme Implementation Deed (the Agreement) under which Eclix Group Limited (Eclix) would acquire all of the issued shares in Grays for an offer consideration of 0.3656 Eclix shares<sup>1</sup> for each Grays share held (Scheme Consideration).
- 2 The proposed acquisition of the shares is to be implemented via a scheme of arrangement between Grays and its shareholders (the Scheme) and is subject to a number of conditions precedent (as summarised in Section I of our report).
- 3 If the Scheme is approved by Grays shareholders and the Court, Grays shareholders will receive the Scheme Consideration.
- 4 Grays also intends to apply the proceeds of a forthcoming variation of lease on its premises in Lidcombe, New South Wales to the payment of a dividend (Special Dividend). It is estimated that the fully franked dividend, should it be declared and paid, will equate to 5.6 cents per share. The Special Dividend, if declared, will be paid regardless of whether the Scheme proceeds. Should the Special Dividend be paid, the Scheme Consideration will not be adjusted<sup>2</sup>.
- 5 Grays will request that the Court convene a meeting of Grays shareholders. Under the *Corporations Act 2001 (Cth)* (Corporations Act), the Scheme is approved by Grays shareholders if a resolution in favour of the Scheme is passed by a majority in number of the Grays shareholders present and voting at the Scheme meeting (in person or by proxy), and by 75% of the votes cast on the resolution. If this occurs a second Court hearing will be held to approve the Scheme which, if approved, will become binding on all Grays shareholders who hold Grays shares as at the Scheme Record Date, whether or not they voted for the Scheme (and even if they voted against the Scheme).

<sup>1</sup> The fixed exchange share ratio has been rounded.

<sup>2</sup> However, Grays shareholders will not be entitled to the Eclix 1H17 interim dividend of 7.5 cents per share payable on 7 July 2017.



## Grays

- 6 Grays is an Australian-based e-commerce company focused on providing online auctioneering and associated services for businesses and online auctioneering for consumers. It is the largest industrial and commercial online auction business in the Asia-Pacific region, offering a large range of industrial, consumer and commercial goods, direct from asset owners, vendors, manufacturers, distributors and administrators.

## Eclix

- 7 Eclix is a leading provider of fleet and equipment leasing and management to government, corporate, SME and consumers in Australia and corporate and SME customers in New Zealand. Eclix is also a leading provider of accident replacement vehicles to not-at-fault drivers in Australia. As at 31 March 2017, Eclix managed or financed 104,260 vehicles with \$2.1 billion in assets under management across Australia and New Zealand under six primary brand names, being FleetPartners, FleetPlus, CarLoans.com.au, FleetChoice, AutoSelect, Right2Drive and EclixCommercial.

## Purpose of report

- 8 The Scheme is subject to a number of conditions precedent, including an independent expert concluding that the Scheme is in the best interests of Grays shareholders. In addition, the Directors' recommendation of the Scheme is subject to an independent expert concluding and continuing to conclude that the Scheme is in the best interests of Grays shareholders, in the absence of a superior proposal.
- 9 Accordingly, the Directors of Grays have requested that Lonergan Edwards & Associates Limited (LEA) prepare an independent expert's report (IER) stating whether, in our opinion, the Scheme is fair and reasonable and in the best interests of Grays shareholders and the reasons for that opinion. LEA is independent of Grays and Eclix and has no other involvement or interest in the proposed Scheme.

## Summary of opinion

- 10 In our opinion, the Scheme is fair and reasonable and in the best interests of Grays shareholders in the absence of a superior proposal. We have formed this opinion for the reasons set out below.

## Value of Grays

- 11 We have assessed the value of Grays shares on a 100% controlling interest basis at \$1.25 to \$1.36 per share, as shown below:

Value of Grays shares (on a 100% controlling interest basis)		
	Low \$m	High \$m
Enterprise value	165.0	178.5
Net debt	(5.0)	(5.0)
Other (net) assets	1.2	1.2
Equity value	161.2	174.7
Shares on issue	128.8	128.8
Value per share	\$1.25	\$1.36



### Value of Scheme Consideration

- 12 We have assessed the value of the Scheme Consideration to be received by Grays shareholders pursuant to the Scheme at the amounts below:

Value of Scheme Consideration per Grays share		
	Low \$ per share	High \$ per share
Assessed realisable value of Eclipx shares	3.50	3.75
Scheme ratio	0.3656	0.3656
Assessed value of Scheme Consideration	\$1.28	\$1.37

- 13 Grays shareholders should note that the listed market price of Eclipx shares is subject to daily fluctuation. The price at which Eclipx shares may be sold may therefore be greater or less than our assessed realisable value of Eclipx shares of \$3.50 to \$3.75 per share.

### Fair and reasonable opinion

- 14 Pursuant to Australian Securities & Investments Commission (ASIC) Regulatory Guide 111 – *Content of expert reports* (RG 111), a scheme is “fair” if the value of the Scheme Consideration is equal to or greater than the value of the securities the subject of the Scheme. This comparison for Grays shares is shown below:

Comparison of Scheme Consideration to value of Grays			
	Low \$ per share	High \$ per share	Mid-point \$ per share
Value of Scheme Consideration	1.28	1.37	1.33
Value of 100% of Grays	1.25	1.36	1.31
Extent to which the Scheme Consideration exceeds the value of Grays	0.03	0.01	0.02

- 15 As the Scheme Consideration is broadly consistent with our assessed valuation range for Grays shares on a 100% controlling interest basis, in our opinion, the Scheme Consideration is fair to Grays shareholders when assessed based on the Guidelines set out in RG 111.
- 16 Pursuant to RG 111, a transaction is reasonable if it is fair. Further, in our opinion, if the Scheme is “fair and reasonable” it must also be “in the best interests” of shareholders.
- 17 Consequently, in our opinion, the Scheme is also “reasonable” and “in the best interests” of Grays shareholders in the absence of a superior proposal.

### Assessment of the Scheme

- 18 We summarise below the likely advantages and disadvantages of the Scheme for Grays shareholders.

#### Advantages

- 19 In our opinion, the Scheme has the following benefits for Grays shareholders:
- (a) the Scheme Consideration of 0.3656 Eclipx shares per Grays share held is broadly consistent with our assessed value range for Grays shares on a 100% controlling interest basis

- (b) the Scheme Consideration represents a significant premium to the recent market prices of Grays shares prior to the announcement of the Scheme on 4 May 2017
- (c) if the Scheme does not proceed, and in the absence of an alternative offer or proposal, the price of Grays shares is likely to trade at a significant discount to our valuation and the Scheme Consideration due to the portfolio nature of individual shareholdings.

#### **Disadvantages**

- 20 If the Scheme is implemented, Grays shareholders should note that they will no longer hold a direct interest in Grays, and their collective indirect ownership interest in Grays (to be held through Eclix) will be diluted to approximately 15%. In the event that future value is created by Grays as a result of ongoing operations over and above that reflected in our assessed valuation of the company, Grays shareholders will therefore only share in approximately 15% of such future value.
- 21 However, as our assessed value of Grays shares is consistent with the Scheme Consideration, in our opinion, the present value of Grays's future potential is reflected in the Scheme Consideration. Further, as noted above, the Scheme Consideration equates (in aggregate) to an ownership interest of approximately 15% in the Eclix business. As noted in Section IV, Eclix has achieved significant earnings growth in recent years.

#### **Other matters**

- 22 It should also be noted that the proposed Scheme has the support of the Grays Board and Caledonia (Private) Investments Pty Limited (Grays major shareholder which, with its associates, had a relevant interest in 14.43% of Grays shares on 4 May 2017), in the absence of a superior proposal and subject to LEA maintaining its conclusion that the Scheme is in the best interests of Grays shareholders.

#### **Conclusion**

- 23 Given the above analysis, we consider that the advantages of the Scheme significantly outweigh the disadvantages. Consequently, in our view, the acquisition of Grays shares by Eclix under the Scheme is fair and reasonable and in the best interests of Grays shareholders in the absence of a superior proposal.

#### **General**

- 24 In preparing this report we have considered the interests of Grays shareholders as a whole. Accordingly, this report only contains general financial advice and does not consider the personal objectives, financial situations or requirements of individual shareholders.
- 25 The impact of approving the Scheme on the tax position of Grays shareholders depends on the individual circumstances of each investor. Grays shareholders should read the Scheme Booklet and consult their own professional advisers if in doubt as to the taxation consequences of the Scheme.

- 26 The ultimate decision whether to approve the Scheme should be based on each Grays shareholder's assessment of their own circumstances. If Grays shareholders are in doubt about the action they should take in relation to the Scheme or matters dealt with in this report, shareholders should seek independent professional advice. For our full opinion on the Scheme and the reasoning behind our opinion, we recommend that Grays shareholders read the remainder of our report.

Yours faithfully



Craig Edwards  
Authorised Representative



Martin Holt  
Authorised Representative

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## I Key terms of the Scheme

### Terms

- 27 On 4 May 2017, Grays eCommerce Group Limited (Grays) announced it had signed a Scheme Implementation Deed (the Agreement) under which Eclix Group Limited (Eclix) would acquire all of the issued shares in Grays for an offer consideration of 0.3656 Eclix shares<sup>3</sup> for each Grays share held (Scheme Consideration).
- 28 The proposed acquisition of the shares is to be implemented via a scheme of arrangement between Grays and its shareholders (the Scheme) and is subject to a number of conditions precedent as summarised below.
- 29 If the Scheme is approved by Grays shareholders and the Court, Grays shareholders will receive the Scheme Consideration.
- 30 Grays also intends to apply the proceeds of a forthcoming variation of lease on its premises in Lidcombe, New South Wales to the payment of a dividend (Special Dividend). It is estimated that the fully franked dividend, should it be declared and paid, will equate to 5.6 cents per share. The Special Dividend, if declared, will be paid regardless of whether the Scheme proceeds. Should the Special Dividend be paid, the Scheme Consideration will not be adjusted<sup>4</sup>.

### Conditions

- 31 The Scheme is subject to the satisfaction of a number of conditions precedent, including the following which are outlined in the Agreement between Grays and Eclix dated 4 May 2017:
- (a) Grays shareholder approval by the requisite majorities at the Scheme meeting under the Corporations Act
  - (b) approval of the Scheme by the Court in accordance with s411(4)(b) of the Corporations Act
  - (c) respective regulatory approvals from ASIC, the Australian Securities Exchange (ASX) and any other relevant Government Agency, or as required by law
  - (d) no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the transaction is in effect at the Delivery Time (as defined in clause 1.1 of the Agreement)
  - (e) the new shares to be issued by Eclix pursuant to the Scheme have been approved for official quotation by ASX by the Delivery Time
  - (f) no “Target Prescribed Occurrence” or “Bidder Prescribed Occurrence” (each as defined in clause 1.1 of the Agreement) in respect of either Grays or Eclix, respectively, occurs on or before the Delivery Time

<sup>3</sup> The fixed exchange share ratio has been rounded.

<sup>4</sup> However, Grays shareholders will not be entitled to the Eclix 1H17 interim dividend of 7.5 cents per share payable on 7 July 2017.



- (g) no “Target Material Adverse Change” or “Bidder Material Adverse Change” (each as defined in clause 1.1 of the Agreement) in respect of either Grays or Eclix, respectively, occurs on or before the Delivery Time
  - (h) each Grays and Eclix warranty (as set out in the respective clauses of the Agreement) is true and correct in all material respects as at the respective relevant time or times set out in the Agreement
  - (i) an independent expert issues a report which concludes that the Scheme is in the best interests of Grays shareholders (other than those Grays shareholders classified as Excluded Shareholders under the Scheme).
- 32 In addition Grays has agreed that up until the End Date (as set out in clause 1.1 of the Agreement) it will:
- (a) not solicit, invite, encourage or initiate any competing proposal
  - (b) not participate in any discussions with or enter into any agreement or understanding with any person in relation to a competing proposal or which may reasonably be expected to lead to a competing proposal
  - (c) not provide any non-public information to a third party for the purposes of enabling that party to table a competing proposal
  - (d) notify Eclix as soon as possible if it receives a competing proposal
  - (e) ensure that the notification to Eclix is accompanied by details of the price and material terms and conditions of the competing proposal including the identity of the party making the competing proposal
  - (f) not enter into any legally binding agreement with a third party to give effect to a competing proposal or to publicly recommend a competing proposal unless Grays has given Eclix at least five business days to provide a matching or superior proposal.
- 33 Certain of the exclusivity obligations described above do not apply if Grays has complied with the various obligations set out in the Agreement and the Grays Directors determine:
- (a) the proposed competing transaction is or may reasonably be expected to lead to a superior proposal; and
  - (b) that compliance with the relevant exclusivity obligations would be likely to involve a breach of the fiduciary or statutory duties of the Directors of Grays.
- 34 A break fee of \$1.79 million is payable by Grays to Eclix, or by Eclix to Grays, in certain circumstances as specified in the Agreement.

### **Resolution**

- 35 Grays shareholders will be asked to vote on the Scheme in accordance with the resolution contained in the notice of meeting accompanying the Scheme Booklet.

- 36 If the resolution is passed by the requisite majorities, Grays must apply to the Court for orders approving the Scheme, and if that approval is given, lodge the orders with ASIC and do all things necessary to give effect to the Scheme. Once the Court approves the Scheme it will become binding on all Grays shareholders who hold Grays shares as at the Scheme Record Date, whether or not they voted for the Scheme (and even if they voted against the Scheme).

## II Scope of our report

### Purpose

- 37 The Scheme is to be effected pursuant to Part 5.1 of the Corporations Act, which governs schemes of arrangement. Part 3 of Schedule 8 of the Corporations Regulations prescribes information to be sent to shareholders in relation to a member's scheme of arrangement pursuant to s411 of the Corporations Act.
- 38 Paragraph 8303 of Schedule 8 of the Corporations Regulations provides that, where the other party to the transaction holds not less than 30% of the voting shares in the company the subject of the scheme, or where a director of the other party to the transaction is also a director of the company the subject of the scheme, the explanatory statement must be accompanied by an IER assessing whether the proposed scheme is in the best interests of shareholders and stating reasons for that opinion.
- 39 Eclix has no current shareholding in Grays and has no representation on the Grays Board. However, it is a condition precedent to the Scheme that an independent expert concludes that the Scheme is in the best interests of Grays shareholders. It is a condition of the Grays' Directors' recommendation of the Scheme that an independent expert conclude and continue to conclude that the Scheme is in the best interests of Grays shareholders. In addition, as the Scheme (if approved and implemented) will result in 100% of the securities in Grays being held by Eclix, RG 111 requires that we provide an opinion on whether the consideration payable under the Scheme is "fair" and "reasonable" to the shareholders of Grays.
- 40 The Directors of Grays have therefore requested LEA to prepare an IER stating whether the proposed acquisition of the shares in Grays by Eclix under the Scheme is fair and reasonable and in the best interests of Grays shareholders and the reasons for that opinion.
- 41 This report has been prepared by LEA for the benefit of Grays shareholders to assist them in considering the resolution to approve the Scheme. Our report will accompany the Notice of Meeting and Scheme Booklet to be sent to Grays shareholders. The sole purpose of our report is to determine whether, in our opinion, the Scheme is fair and reasonable and in the best interests of Grays shareholders.
- 42 The ultimate decision whether to approve the Scheme should be based on each Grays shareholder's assessment of their own circumstances. If in doubt about the action they should take in relation to the Scheme or matters dealt with in this report, shareholders should seek independent professional advice.

### Basis of assessment

- 43 In preparing our report we have given due consideration to the Regulatory Guides issued by ASIC including, in particular, RG 111.
- 44 RG 111 distinguishes "fair" from "reasonable" and considers:
- (a) the Scheme to be "fair" if the value of the Scheme Consideration is equal to or greater than the value of the securities that are the subject of the Scheme. A comparison must be made assuming 100% ownership of the target company

- (b) the scheme to be reasonable if it is fair. The scheme may also be reasonable if, despite not being fair, the expert believes that there are sufficient reasons for shareholders to approve the scheme in the absence of a superior proposal.
- 45 There is no legal definition of the expression “in the best interests”. However, RG 111 states that a Scheme may be “*in the best interests of the members of the company*” if there are sufficient reasons for securityholders to vote in favour of the Scheme in the absence of a higher offer.
- 46 In our opinion, if the Scheme is “fair” and “reasonable” under RG 111 it must also be “in the best interests” of Grays shareholders.
- 47 Our report has therefore considered:
  - (a) the market value of 100% of the shares in Grays
  - (b) the value of the share consideration offered by Eclipx
  - (c) the extent to which (a) and (b) differ (in order to assess whether the Scheme is fair under RG 111)
  - (d) the extent to which a control premium is being paid to Grays shareholders
  - (e) the extent to which Grays shareholders are being paid a share of any synergies likely to be generated pursuant to the proposed Scheme
  - (f) the listed market price of Grays shares, both prior to and subsequent to the announcement of the proposed Scheme
  - (g) the likely market price of Grays securities if the proposed Scheme is not approved
  - (h) the value of Grays to an alternative offeror and the likelihood of a higher alternative offer being made for Grays prior to the date of the Scheme meeting
  - (i) the advantages and disadvantages of the Scheme from the perspective of Grays shareholders
  - (j) other qualitative and strategic issues associated with the Scheme.

### **Limitations and reliance on information**

- 48 Our opinions are based on the economic, sharemarket, financial and other conditions and expectations prevailing at the date of this report. Such conditions can change significantly over relatively short periods of time.
- 49 Our report is also based upon financial and other information provided by Grays and its advisers. We understand the accounting and other financial information that was provided to us has been prepared in accordance with the Australian equivalents to International Financial Reporting Standards. We have considered and relied upon this information and believe that the information provided is reliable, complete and not misleading and we have no reason to believe that material facts have been withheld.

- 50 The information provided was evaluated through analysis, enquiry and review to the extent considered appropriate for the purpose of forming an opinion on the Scheme from the perspective of Grays securityholders. However, we do not warrant that our enquiries have identified or verified all of the matters which an audit, extensive examination or “due diligence” investigation might disclose. Whilst LEA has made what it considers to be appropriate enquiries for the purpose of forming its opinion, “due diligence” of the type undertaken by companies and their advisers in relation to (for example) prospectuses or profit forecasts is beyond the scope of an IER.
- 51 Accordingly, this report and the opinions expressed therein should be considered more in the nature of an overall review of the anticipated commercial and financial implications of the proposed Scheme, rather than a comprehensive audit or investigation of detailed matters. Further, this report and the opinions therein, must be considered as a whole. Selecting specific sections or opinions without context or considering all factors together, could create a misleading or incorrect view or opinion. This report is a result of a complex valuation process that does not lend itself to a partial analysis or summary.
- 52 An important part of the information base used in forming an opinion of the kind expressed in this report is comprised of the opinions and judgement of management of the relevant companies. This type of information has also been evaluated through analysis, enquiry and review to the extent practical. However, it must be recognised that such information is not always capable of external verification or validation.
- 53 We in no way guarantee the achievability of budgets or forecasts of future profits. Budgets and forecasts are inherently uncertain. They are predictions by management of future events which cannot be assured and are necessarily based on assumptions of future events, many of which are beyond the control of management. Actual results may vary significantly from forecasts and budgets with consequential valuation impacts.
- 54 In forming our opinion, we have also assumed that:
- (a) the information set out in the Scheme Booklet is complete, accurate and fairly presented in all material respects
  - (b) if the Scheme becomes legally effective, it will be implemented in accordance with the terms set out in the Agreement and the terms of the Scheme itself.

### III Profile of Grays

#### Overview

- 55 Grays is an Australian-based e-commerce company focused on providing online auctioneering and associated services for businesses and online auctioneering for consumers. It is the largest industrial and commercial online auction business in the Asia-Pacific region, offering a large range of industrial, consumer and commercial goods, direct from asset owners, vendors, manufacturers, distributors and administrators.

#### History

- 56 Established in 1989, Grays has been a pioneer in creating ways for buyers and sellers to connect, from its traditional auction heritage to its first online auctions in 2000. The Company has over 17 years' internet retailing experience, having evolved to being an integrated e-commerce business that provides a range of services under the GraysOnline and associated brands.
- 57 The Grays business listed on the ASX in December 2014 following the reverse takeover of Mnemon Limited (Mnemon). At this time, Mnemon owned the dealsdirect.com.au and topbuy.com.au websites, while Grays owned the GraysOnline website and associated businesses and the OO.com.au online department store.
- 58 Grays acquired DMS Davlan Pty Limited (DMS Davlan) in July 2015 for \$3 million plus earnout payments linked to future earnings contributions. DMS Davlan is a leading agricultural machinery auctioneer and has expertise in the transport and civil construction industries. It operates from a national network of 13 branches throughout Australia, including seven key regional locations.
- 59 In October 2015, Grays announced the sale of its fixed price retail (FPR) business, which comprised the OO.com.au, dealsdirect.com.au and topbuy.com.au consumer websites, for \$5.2 million in cash to Mysale Group Plc. This decision was made having regard to the highly competitive market, the high fixed costs as well as the customer loyalty dynamics of the consumer business, with the ultimate view that it would be difficult to grow the business on a sustainable profitable basis. In the announcement of the sale Grays management stated:

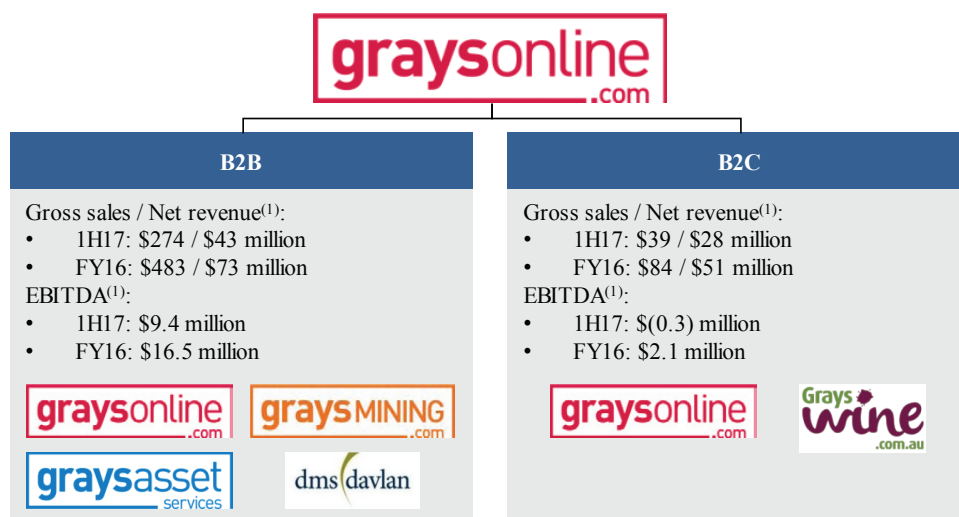
*"Following completion of the sale, management time and company resources will be freed up to increase the focus on growing the key auction businesses of Industrial B2B, Grays Wine, and the remaining consumer auction categories. These businesses generate strong returns on capital, have strong market positions, are cash generative and exhibit strong growth characteristics."*

#### Current operations

- 60 Grays currently employs around 400 people throughout Australia and New Zealand in technologically advanced warehouses, distribution centres and offices. It has a customer database of 2.3 million and 767,000 email subscribers, attracts 38.5 million annual visits to its websites and receives 4.3 million auction bids annually.
- 61 The Company's operations are conducted under two business segments, being Business to Business (B2B), providing online auctioneering and associated services, and Business to Consumer (B2C), which provides both online auctioneering and fixed price retail services.



## Grays – group structure



**Note:**

<sup>1</sup> Continuing operations and before corporate costs. EBITDA – earnings before interest, tax, depreciation and amortisation. FY16 – year to 30 June 2016. 1H17 – half year to 31 December 2016.

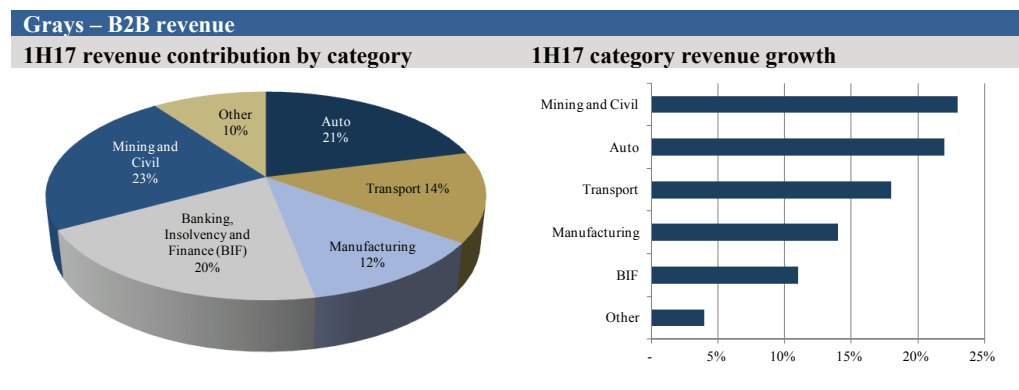
- 62 With respect to the above, the vast majority of the Company's gross sales and EBITDA are derived from the B2B division. Following the sale of the FPR business, the B2C business is being further rationalised to those areas that essentially support the B2B division.
- 63 The Company has developed industry leading warehousing and fulfilment capabilities. It provides full national coverage across Australia and New Zealand with primary offices in Sydney, Melbourne, Adelaide, Brisbane, Darwin, Perth, Wagga Wagga, Auckland and Christchurch. Through its international network, Grays also accesses networks of buyers and sellers in Asia, the Middle East, Africa and Europe.

### Business to Business (B2B) division

- 64 Grays' B2B division comprises the business-facing components and the auto category of GraysOnline, Grays Asset Services and GraysMining brands, as well as DMS Davlan. Collectively, these brands are the largest B2B online auction marketplace in the Asia-Pacific region for used plant and equipment. The Company services small to medium businesses (SME), government departments, banks and finance companies and offers more than 60 industry categories. Grays also has the critical size and reach to provide large scale programs for asset liquidation, such as those undertaken recently for McAleese and Masters.
- 65 The B2B business model also covers industrial services under the Grays Asset Services brand, which includes a total asset management solution, providing equipment valuation and commercial advice to financiers and insolvency companies as well as government departments and multinational companies. Its valuation team can provide support for insolvency, asset acquisition or divestment, taxation issues, business sales and insurance. Grays Asset Services manages end-of-lease residual values and assists with stocktakes and the identification and disposal of surplus assets. It also offers occupational health and safety

services including hazard identification, safety audits, site inspections, strategic plans, continuous improvement programs and operational risk assessments.

- 66 Key business drivers of the B2B division include the level of distressed activity in the economy and the level of business activity in each of its geographic locations. Grays' B2B clients include major corporations such as BHP Billiton, Coates Hire, Toyota, CAT, McConnell Dowell and Leighton.
- 67 A breakdown of the contribution from key categories of the B2B division for the half year to 31 December 2016 (1H17), as well as the category growth exhibited over this period, is as follows:



- 68 Grays has made a conscious effort to diversify its B2B revenue and reduce its reliance on the more volatile Banking, Insolvency and Financing (BIF) category (which is partially reliant on the level of liquidation activity in the economy, which is difficult for Grays to control). This has been undertaken by increasing its investment in facilities and people in its other B2B categories. As a result, growth for BIF has lagged the other B2B categories in recent periods (albeit BIF growth was above 10% in 1H17) which has resulted in the revenue contribution from BIF reducing from 33% in FY15 (and 21% in FY16) to 20% in 1H17 of the total B2B division.
- 69 Some highlights of recent growth initiatives for the B2B business include:
- strong growth in auction visitors, with the number of auction bids supported by increased use of unpaid channels (e.g. email) as well as category specific paid placements and digital marketing
  - whilst there have been fewer business failures in the mining and engineering services sector, the Mining and Civil category has benefitted from a steady supply of surplus equipment from the completion of construction and infrastructure projects
  - Grays' Auto business has expanded rapidly in recent periods and is expected to sell around 29,000 cars in FY17, an increase from 19,000 car sales in FY16. This has been primarily attributable to expanded personnel and facilities in New South Wales (NSW) and Victoria
  - the acquisition and integration of DMS Davlan has created a regional agri-business category (shown in the other category above)

- (e) Grays has commenced expansion into overseas markets with advanced plans to establish a Dubai office through a low cost and low capital investment joint venture. This will focus on online auctions of mining and civil plant and equipment and target the Middle East and African markets
  - (f) Grays also expects to initiate an asset based lending trial (sale and lease back) and expand its auto finance, insurance and warranty options in alliance with financiers.
- 70 Competitors for the B2B division include operators such as Pickles and Manheim Auctions (car auctions), Smith & Broughton (mining auctions), Slattery (industrial equipment auctions) and Ritchie Bros. Auctioneers (industrial equipment auctions), each of whom tend to focus on specific niches of the market or geographical areas. Many of these competitors also operate auctions in the traditional manner as opposed to online.

### **Business to Consumer (B2C) division**

- 71 The B2C division comprises both auction and fixed price sales of merchandise targeted for the consumer market. Sales for this division are predominantly auction based, undertaken online and mostly on a consignment basis.
- 72 As stated above, Grays made a strategic decision to substantially exit the highly competitive and unprofitable FPR segment in FY16. Following underperformance in the two key trading months of November and December 2016 (which was attributable to weakening demand and higher levels of competition), Grays has further rationalised its B2C categories to those that support B2B only (i.e. wine, refurbishment, tools and major event sales). As a result, the B2C division has since focused on an orderly run down of Grays owned inventories and associated reducing of its cost base.
- 73 Grays offers over 2,000 quality wines from the [grayswine.com.au](http://grayswine.com.au) and [graysonline.com](http://graysonline.com) desktop and mobile sites. It sells approximately 42,000 cases of wine per month direct to consumers, with over 70% of these via auction on a consignment basis by volume. The business services more than 250 wineries, with many labels exclusive to Grays, and sells approximately 2% of the Australian total bottled wine market (by volume). Competition in the online wine industry has been high in recent periods, driven by relatively new market entrants such as Vinomofo as well as the aggressive pricing by market leader Dan Murphy's.

### **Exit of Lidcombe site**

- 74 On 2 May 2017, Grays announced that it has reached agreement with the landlord of its Lidcombe premises to vary the terms of the current lease to allow for an early exit. Grays is currently in the process of locating more suitable office and warehouse premises that support the Company's reduced size requirements as the B2C division is downsized. The Company anticipates that new premises will be located, and the transition to those new premises completed, by the end of the 2017 calendar year.
- 75 Upon completion of the transition to new premises, the Company expects that its occupancy and related labour costs will reduce with a consequent improvement in underlying profitability. Until suitable alternative premises are found and the current premises are exited however, Grays will continue to incur the existing occupancy costs.
- 76 In compensation for varying the lease, Grays has received a payment from the landlord of \$7.5 million. These funds will be used to pay the Special Dividend, if declared.

## Strategy

- 77 The Board of Grays has developed a strategic direction, the major themes of which are to:
- (a) expand the business utilising its core strengths, primarily in its B2B division
  - (b) grow into natural adjacent market segments
  - (c) optimise the business through operational efficiencies; and
  - (d) continue to improve the B2C business following the sale of the FPR business and subsequent rationalisation of categories sold.
- 78 Given recent events, Grays has transformed its business from a mix of retail and auction to a predominantly B2B marketplace. The immediate focus for the B2B business is to continue to grow, whilst the focus for the B2C division is a return to sustainable profitability.

## Financial performance

- 79 The reported financial performance of Grays for FY15, FY16 and 1H17 is set out below:

Grays – financial performance <sup>(1)</sup>			
	FY15 \$m	FY16 \$m	1H17 \$m
Revenue from continuing operations	109.9	124.9	71.3
Operating expenses	(99.1)	(110.6)	(64.2)
<b>EBITDA before significant items / discontinued operations</b>	<b>10.8</b>	<b>14.3</b>	<b>7.1</b>
Depreciation and amortisation (continuing operations)	(2.5)	(1.7)	(0.9)
<b>EBIT before significant items / discontinued operations</b>	<b>8.3</b>	<b>12.6</b>	<b>6.2</b>
Significant items <sup>(2)</sup>	(6.5)	(25.3)	-
Discontinued operations (FPR business)	(4.1)	(10.5)	-
Net financial income / (expense)	0.4	(0.1)	(0.3)
Profit before tax / (expense)	(1.9)	(23.3)	5.9
Income tax benefit	0.7	3.3	(1.9)
<b>Profit after tax</b>	<b>(1.2)</b>	<b>(20.0)</b>	<b>4.0</b>
EBITDA margin	9.8%	11.4%	10.0%
EBIT margin	7.6%	10.1%	8.7%

### Note:

- 1 Rounding differences exist.
- 2 Refer paragraph 82 below.

- 80 For financial reporting purposes Grays presents revenue on a net basis, i.e. based on the commission it receives on consignment sales and gross margins on own inventory sales. Therefore, reported revenue for the Company does not reflect the gross revenue of all products sold (which is significantly higher).
- 81 A summary of the B2B and B2C divisional results from continuing operations for FY15, FY16 and 1H17 is set out below:

Grays – divisional performance for continuing operations <sup>(1)</sup>			
	<b>FY15</b>	<b>FY16</b>	<b>1H17</b>
	<b>\$m</b>	<b>\$m</b>	<b>\$m</b>
B2B revenue	56.2	73.4	43.2
B2C revenue	53.5	51.2	27.9
Corporate revenue	0.2	0.3	0.2
<b>Total revenue</b>	<b>109.9</b>	<b>124.9</b>	<b>71.3</b>
B2B EBITDA <sup>(2)</sup>	13.0	16.5	9.4
B2C EBITDA <sup>(2)</sup>	2.3	2.1	(0.3)
Corporate EBITDA	(4.4)	(4.3)	(1.9)
<b>Total EBITDA</b>	<b>10.8</b>	<b>14.3</b>	<b>7.1</b>
B2B EBITDA margin	23.1%	22.5%	21.7%
B2C EBITDA margin	4.3%	4.0%	(1.2)%

**Note:**

1 Rounding differences exist.

2 Divisional EBITDA is stated after the apportionment of allocable corporate overheads.

- 82 Below is a summary of the key factors that have impacted on the financial performance of Grays in FY15, FY16 and 1H17:

**FY15 results**

- revenue and EBITDA increased materially in FY15, primarily driven by the strong improvements in the B2B division
- B2B revenue and EBITDA increased by 32.6% and 74.6% respectively, driven by:
  - higher sales and leveraging a fixed cost base (which contributed to EBITDA margins rising from 17.5% in FY14 to 23.1% in FY15)
  - benefits flowing from investment in new geographies, senior personnel and implementation of strategic partnerships
  - appropriately incentivised and motivated management
- B2C faced a challenging year, and whilst total revenue grew materially to \$136.1 million, total EBITDA was negative \$1.7 million<sup>5</sup>. On a continuing operations basis, B2C revenue and EBITDA was \$53.5 million and \$2.3 million respectively
- corporate costs increased 35% due to the additional expenses associated with being an ASX listed entity<sup>6</sup> (i.e. Board fees, ASX listing costs and other professional fees)
- significant items (negative \$6.5 million) primarily related to the costs associated with the reverse takeover of Mnemon during the year

**FY16 results**

- revenue and EBITDA from continuing operations increased by 13.7% and 32.8% respectively due to growth in the Auto, Transport and Mining B2B categories
- on a divisional basis:

<sup>5</sup> Including results from the FPR business.

<sup>6</sup> Grays listed during December 2014 via the reverse takeover of Mnemon.

- B2B revenue and EBITDA from continuing operations grew by 30.7% and 27.7% respectively, due to a 41.3% increase in gross sales across vertical markets (Auto, Mining and Contracting and Transport) and the additional revenue from the DMS Davlan acquisition
- B2C revenue and EBITDA from continuing operations reduced by 4.3% and 8.8% respectively, due to reduced retail channel cross-selling following the sale of the FPR segment, fewer major event sales compared to FY15 and a reduction of less profitable categories to refocus on lines with a competitive advantage
- corporate costs reduced marginally, primarily due to a reduction in headcount
- significant items of negative \$25.3 million (which were predominately non-cash items), included the loss on sale of the FPR business (\$13.1 million), onerous lease costs (\$6.6 million), FPR inventory liquidation (\$1.5 million) and other business closure costs (\$4.1 million)

#### 1H17 results

- revenue from continuing operations increased 14.6% compared to the half year ending 31 December 2015 (1H16) due to strong growth in all B2B categories resulting from the increased investment in capacity in recent periods
- however, EBITDA from continuing operations reduced by \$1 million compared to 1H16, due to a combination of the high level of investment in the B2B division and the underperformance of the B2C business over the pre-Christmas 2016 period
- on a divisional basis:
  - B2B net revenue and EBITDA increased by 16.3% and 3.8% respectively, compared to 1H16. EBITDA growth lagged net revenue growth as Grays reinvested an additional \$5.3 million in facilities (\$1.1 million) and employment (\$4.2 million) in comparison to 1H16
  - B2C net revenue reduced 9.8% in comparison to 1H16, and reported a loss of \$0.3 million at the EBITDA level. This was attributable to increasing expenses, primarily from additional marketing and warehouse costs, as revenue decreased
  - Corporate costs reduced by 14.6% over 1H16 due to continued tight cost control

#### FY17 outlook

- Grays management provided the following FY17 guidance in its 1H17 results presentation dated 23 February 2017:
 

*“As a result of the strategic decision to rationalise B2C and its deteriorating performance, FY17 EBITDA expected to be at a similar level to FY16 (from Continuing Operations):*

  - *Benefits from investment in B2B are expected to continue flowing through in H2 FY17*
  - *Continued growth expected in B2B earnings offset by B2C loss.”*



## Financial position

- 83 The reported financial position of Grays as at 30 June 2016 and 31 December 2016 is set out below:

Grays – statement of financial position <sup>(1)</sup>		
	30 Jun 16 \$m	31 Dec 16 \$m
Debtors and prepayments	11.1	14.4
Inventories	7.9	7.8
Creditors, accruals and provisions	(23.9)	(21.3)
<b>Net working capital</b>	<b>(4.9)</b>	<b>0.9</b>
Property, plant and equipment	3.2	3.2
Intangible assets	17.5	17.6
Deferred tax assets	9.8	8.0
Provisions (non-current)	(4.8)	(3.4)
Payables (non-current)	(1.1)	-
<b>Total funds employed</b>	<b>19.8</b>	<b>26.3</b>
Cash and cash equivalents	2.8	1.9
Interest bearing liabilities	(2.4)	(3.6)
<b>Net cash / (borrowings)</b>	<b>0.4</b>	<b>(1.7)</b>
<b>Net assets attributable to Grays shareholders</b>	<b>20.2</b>	<b>24.6</b>

**Note:**

1 Rounding differences exist.

- 84 With respect to the above statement of financial position we note that:
- (a) the net working capital requirements for Grays are relatively low, due to the fact that cash is received at the point of sale and suppliers are paid on terms (including inventory supplied under consignment arrangements). These trading terms are reflected in the low and negative working capital shown above
  - (b) due to the large proportion of consignment sales, inventory levels are low relative to annual sales turnover. Further, the Company has had no significant historical aged inventory issues<sup>7</sup>
  - (c) plant and equipment primarily relates to leasehold improvements and fixtures, fittings and equipment at the Company's warehouse facilities
  - (d) deferred tax assets includes the benefit of available tax losses (gross) of \$5.9 million (as at 31 December 2016).

<sup>7</sup> Inventory levels are also expected to reduce materially post completion of the rationalisation of B2C categories currently underway.

## Intangible assets

85 The majority of the intangible assets represent goodwill, as shown below:

Grays – intangible assets and goodwill		
	30 Jun 16	31 Dec 16
	\$m	\$m
Goodwill	16.2	16.2
Website development	0.3	0.6
Software	0.8	0.7
Other intangible assets	0.1	0.1
<b>Intangible assets</b>	<b>17.5</b>	<b>17.6</b>
<b>Goodwill split</b>		
B2B	10.4	10.4
B2C	5.8	5.8
<b>Total goodwill</b>	<b>16.2</b>	<b>16.2</b>

86 During FY15 Grays recognised \$21.9 million of goodwill from the reverse acquisition of Mnemon (with all of this goodwill booked to the B2C division). In FY16, \$16.1 million of goodwill associated with the sale of the FPR business was written off, with goodwill of \$5.4 million recognised with the acquisition of DMS Davlan.

87 The carrying value of goodwill is tested for impairment annually using the discounted cash flow (DCF) method. As at 30 June 2016, the cash flows were discounted adopting:

- (a) B2B division – pre-tax / post tax discount rates of 13.5% and 10.5% per annum respectively; and
- (b) B2C division – pre-tax / post tax discount rates of 14.8% and 11.5% per annum respectively.

88 Following the announced restructuring of the B2C division, goodwill was tested for impairment at 31 December 2016 with no impairment charge required. Pre-tax / post-tax discount rates were 14.3% and 12.5% respectively.

## Share capital and performance

89 As at 15 June 2017, Grays had 127.5 million fully paid ordinary shares on issue. In addition, Grays had 4.3 million performance rights issued under the Company's long-term incentive program. Each performance right converts to one ordinary share of Grays on exercise. No amounts are paid or payable by the recipient of a performance right, which carry neither rights to dividends nor voting rights.

90 Absent the Scheme, the performance rights vest as at 1 July 2017, 1 July 2018 and 1 July 2019, subject to meeting certain shareholder return and/or earnings vesting conditions. Vesting of the performance rights is also subject to continued service by the relevant executive over the relative performance period. Only vested performance rights may be exercised.

91 For the purpose of the Scheme, the Grays Board has determined that 1.3 million performance rights will vest on or prior to the Effective Date of the Scheme, with the balance of the

performance rights to lapse. Shares issued on exercise of these performance rights will therefore participate in the Scheme.

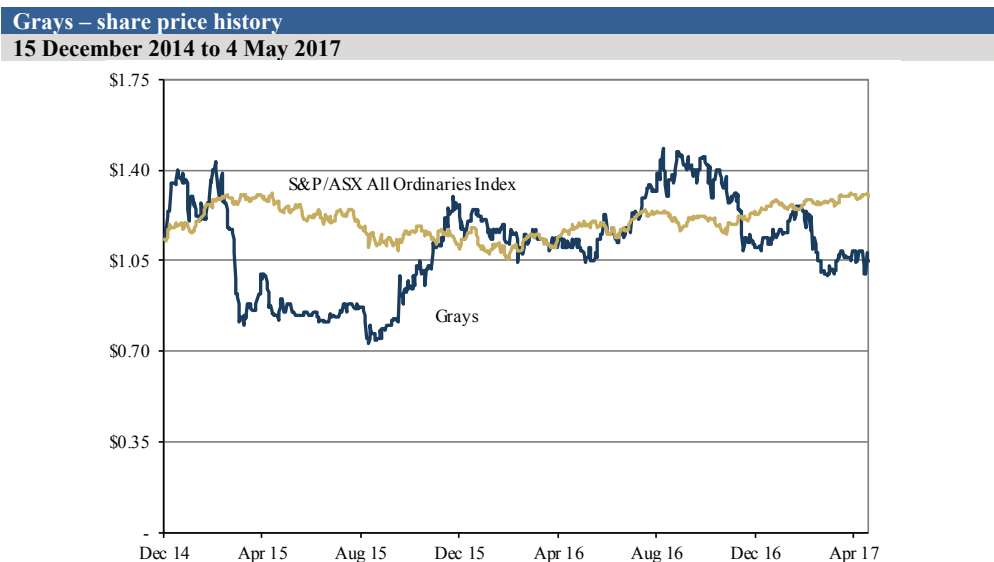
#### Substantial shareholders

- 92 Based on public disclosures as at 15 June 2017, there were four substantial shareholders in Grays that held a total of 37.2% of the ordinary shares on issue as detailed below:

Grays eCommerce – substantial shareholders <sup>(1)</sup>		
Shareholder	Shares held	
	Million	% interest
Caledonia (Private) Investments Pty Limited (Caledonia)	18.4	14.4
Perpetual Limited (Perpetual)	15.6	12.2
BT Investment Management Limited	6.7	5.3
Alceon Liquid Strategies Pty Ltd	6.7	5.3
<b>Total</b>	<b>47.4</b>	<b>37.2</b>

#### Share price performance

- 93 The Grays business listed on the ASX on 15 December 2014 following the reverse takeover of Mnemon. Accordingly, the following chart illustrates the movement in the share price of Grays from 15 December 2014 to 3 May 2017 (i.e. the last day of trading prior to the announcement of the Scheme):



Source: Bloomberg.

- 94 Over the period since the reverse takeover of Mnemon, the Grays share price has traded between a range of \$0.73 and \$1.49, and prior to the announcement of the Scheme closed at \$1.05. Whilst the B2B business has achieved solid growth in revenue and EBITDA over the above period, it would appear that the Grays share price has been negatively impacted by the underperformance of the B2C business.

### Liquidity in Grays shares

- 95 The liquidity in Grays shares based on trading on the ASX over the 12 month period to 3 May 2017 (i.e. the last day of trading prior to the announcement of the Scheme) is set out below:

Grays – liquidity in shares						
Period	Start date	End date	No of shares traded 000	WANOS <sup>(1)</sup> outstanding 000	Implied level of liquidity Period <sup>(2)</sup> %	Annual <sup>(3)</sup> %
1 month	4 Apr 17	3 May 17	4,653	127,477	3.6	43.8
3 months	4 Feb 17	3 May 17	14,630	127,477	11.5	45.9
6 months	4 Nov 16	3 May 17	25,356	127,477	19.9	39.8
1 year	4 May 16	3 May 17	58,101	127,477	45.6	45.6

**Note:**

- 1 Weighted average number of shares outstanding (WANOS) during relevant period.
- 2 Number of shares traded during the period divided by WANOS.
- 3 Implied annualised figure based upon implied level of liquidity for the period.

- 96 In the above periods disclosed, total share turnover (on an annualised basis) has consistently ranged from around 40% to 45% of the shares on issue. Considering that both Caledonia and Perpetual held substantial shareholdings over the above period, Grays shares appear relatively liquid.

## IV Profile of Eclix

### Overview

- 97 Eclix is a leading provider of fleet and equipment leasing and management to government, corporate, SME and consumers in Australia and corporate and SME customers in New Zealand. Eclix is also a leading provider of accident replacement vehicles to not-at-fault drivers in Australia. As at 31 March 2017, Eclix managed or financed 104,260 vehicles with \$2.1 billion in assets under management across Australia and New Zealand under six primary brand names, being FleetPartners, FleetPlus, CarLoans.com.au, FleetChoice, AutoSelect, Right2Drive and EclixCommercial.

### History

- 98 Eclix's most established business, operating under the name FleetPartners, was founded in 1987 as the vehicle fleet leasing and management business of Esanda Finance Corporation Ltd, a financing company owned by Australia and New Zealand Banking Group (ANZ). That business was sold in 2006 by ANZ to Nikko Principal Investments Australia and subsequently acquired in 2008 by Ironbridge Funds, Sing Glow Investment Private Limited and current and former members of management.
- 99 During 2014, the appointment of a new leadership team led to the roll out of a number of online customer-focused solutions, additional funding capacity and flexibility, new distribution and disposal channels and upgraded residual value risk management systems. In 2014, the company also acquired FleetPlus, a vehicle fleet leasing and management business that focuses on SME and corporate customers, and CarLoans.com.au, an online consumer vehicle finance broker. The group adopted the name Eclix in March 2015 prior to listing on the ASX in April 2015.
- 100 Since listing on the ASX, Eclix has undertaken a number of acquisitions, including those of:
- (a) FleetSmart in March 2016, which provides vehicle fleet management in New Zealand
  - (b) Right2Drive in May 2016, the market leading "not at fault" accident replacement vehicle operator in Australia and New Zealand
  - (c) Onyx Car Rentals in November 2016, which assisted with the expansion of Right2Drive into the Melbourne market.

### Current operations

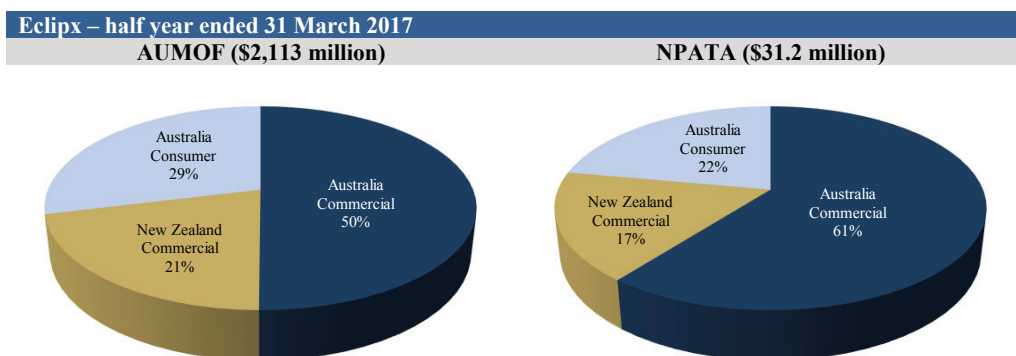
- 101 Eclix is headquartered in Sydney and employs approximately 750 people. It is a diversified financial services organisation that supplies, finances and manages vehicles and equipment on behalf of corporate customers and consumers in Australia and corporate and SME customers in New Zealand.
- 102 Eclix generates revenue in different ways across its brands, that can broadly be split into the following business models:
- (a) Eclix-funded model (used primarily by FleetPartners and Eclix Commercial) – where Eclix funds the purchase of vehicles or equipment to lease to customers and earns a spread, or net interest income, being the difference between the interest income it

receives from customers and its cost of funds. Eclixp recognises net interest income over the life of the lease

- (b) third-party-funded model (used primarily by FleetPlus, CarLoans.com.au and Fleet Choice) – where Eclixp acts as a broker or agent that arranges vehicle and equipment financing for the customer from third party banks and financial institutions. Under this model, as compensation for originating new business, Eclixp earns most of its revenue from upfront brokerage commissions paid by the third-party funders
  - (c) vehicle rental (Right2Drive) – where Eclixp rents motor vehicles to “not at fault” drivers that have accident damaged vehicles. Eclixp recognises rental income for the period that the motor vehicle has been rented and costs directly associated with the rental are disclosed under cost of revenue.
- 103 Eclixp also earns management and maintenance fees, ancillary revenue from related products and services and end of lease income. Additionally, Eclixp typically sells a vehicle at the end of the lease and seeks to recover net proceeds equal to or greater than the residual value. Eclixp manages its residual value risk by estimating future used car values with the assistance of a proprietary algorithm, actively monitoring car usage and maintenance to manage in-life lease modifications and maximise end of lease sale proceeds.
- 104 Eclixp relies on its experience, proprietary data (including customer credit performance, arrears management, loss rates and recovery rates) and external credit reporting data to assess the credit risk of customers. This assists Eclixp in pricing transactions and estimating the quantum of potential credit losses. It also uses technology and credit scorecards to enable prompt credit decision making and maintain consistency in assessments.




### Business segments

- 105 Eclixp operates in three business segments, being Australia Commercial, Australia Consumer and New Zealand Commercial. The proportion of assets under management or financed (AUMOF) and net profit after tax and tax adjusted add back of intangibles (NPATA)<sup>8</sup> for each business segment for the half year ended 31 March 2017 is shown below:



<sup>8</sup> This is the financial measure by which Eclixp management analyses the financial performance of the company.

- 106 An overview of Eclix's three business segments, including primary activities, product offering, brands, vehicles under management or financed (VUMOF) and AUMOF is as follows:

Eclix – business segments			
	Australia Commercial	New Zealand Commercial	Australia Consumer
Description	<ul style="list-style-type: none"> <li>Vehicle leasing and management</li> <li>Commercial equipment finance</li> </ul>	<ul style="list-style-type: none"> <li>Vehicle fleet leasing and management</li> <li>Used vehicle retail sales</li> </ul>	<ul style="list-style-type: none"> <li>Online consumer vehicle finance</li> <li>Consumer novated leasing</li> <li>Vehicle rental replacement to eligible 'not at fault' drivers</li> </ul>
Product offering	<ul style="list-style-type: none"> <li>Operating lease</li> <li>Finance lease</li> <li>Fleet management/value-added services</li> <li>Telematics/FSB management</li> </ul>	<ul style="list-style-type: none"> <li>Operating lease</li> <li>Finance lease</li> <li>Fleet management/value-added services</li> <li>Used vehicle retail sales</li> </ul>	<ul style="list-style-type: none"> <li>Secured loan (against vehicle)</li> <li>Novated lease</li> <li>Medium term car rental</li> </ul>
Brands			
VUMOF as at 31-Mar-17	Total VUMOF: 51,736 (50% of Eclix's VUMOF) - Funded Fleet: 33,031 - Managed Fleet: 18,705	Total VUMOF: 30,254 (29% of Eclix's VUMOF) - Funded Fleet: 17,778 - Managed Fleet: 12,476	Total VUMOF: 22,270 (21% of Eclix's VUMOF) - Funded Fleet: 22,270 - Managed Fleet: nil
1H17 Closing AUMOF	\$1,058m (11% Growth pcg)	\$445m (10% Growth pcg)	\$609m (23% Growth pcg)

## Financial performance

- 107 The financial performance of Eclix for the two years ended 30 September 2015 and 30 September 2016 and the half year ended 31 March 2017 is set out below:

Eclix – statement of financial performance <sup>(1)</sup>			
	Year to 30 Sep 15 \$m	Year to 30 Sep 16 \$m	HY to 31 Mar 17 \$m
Revenue from continuing operations	479.6	504.8	282.7
Cost of revenue	(240.5)	(241.5)	(132.3)
Lease finance costs	(66.4)	(65.1)	(33.6)
<b>NOI<sup>(2)</sup> before operating expenses and impairment charges</b>	<b>172.6</b>	<b>198.2</b>	<b>116.9</b>
Impairment losses on loans and receivables	(1.6)	(2.0)	(1.9)
Employee benefit expense	(66.0)	(71.8)	(41.2)
Depreciation, amortisation and impairment expense	(6.8)	(8.5)	(5.6)
Operating overheads	(41.5)	(41.3)	(24.0)
<b>Total overheads</b>	<b>(114.3)</b>	<b>(121.6)</b>	<b>(70.8)</b>
Operating finance costs	(18.7)	(9.8)	(4.1)
<b>Profit before income tax</b>	<b>38.0</b>	<b>64.8</b>	<b>40.0</b>
Income tax expense	(10.4)	(18.9)	(11.6)
<b>Net profit after tax</b>	<b>27.6</b>	<b>45.9</b>	<b>28.4</b>
Amortisation and impairment of intangible assets (post-tax)	3.3	4.2	2.5
IPO and restructure costs (post-tax)	18.3	5.3	0.2
<b>NPATA</b>	<b>49.2</b>	<b>55.3</b>	<b>31.2</b>



Eclipx – statement of financial performance <sup>(1)</sup>			
	Year to 30 Sep 15 \$m	Year to 30 Sep 16 \$m	HY to 31 Mar 17 \$m
Closing AUMOF	1,770	2,035	2,113
VUMOF (1,000s of units)	80.2	99.3	104.3
Cost / income ratio	57.5%	55.8%	58.2%

**Note:**

- 1 Rounding differences exist.
- 2 Net operating income.

- 108 The origination of leases and loans is a key driver of profitability and the group targets growth through business-to-business relationships and online business-to-consumer. Eclipx seeks to maximise profitability by managing interest margins, credit quality and operating expenses.
- 109 A summary of the divisional NPATA and AUMOF for Eclipx for the two years ended 30 September 2015 and 30 September 2016 and the half year ended 31 March 2017 is set out below:

Eclipx – divisional NPATA and AUMOF			
	Year to 30 Sep 15 \$m	Year to 30 Sep 16 \$m	HY to 31 Mar 17 \$m
<b>NPATA</b>			
Australian Commercial	33.6	36.6	18.9
New Zealand Commercial	9.3	10.0	5.4
Australian Consumer	5.7	8.7	6.9
Total	48.6	55.3	31.2
<b>AUMOF (closing)</b>			
Australian Commercial	920	1,024	1,058
New Zealand Commercial	374	446	445
Australian Consumer	475	566	609
Total	1,769	2,036	2,112

- 110 Below is a summary of the key factors that have impacted on the financial performance of Eclipx in the two years ended 30 September 2015 and 30 September 2016 and the half year ended 31 March 2017:

**Year ended 30 September 2015 results**

- NOI exceeded prospectus forecasts and increased 10% on the pro-forma year to 30 September 2014
- end of lease income increased \$5.0 million on a like-for-like basis due to:
  - an increase in the number of vehicles disposed
  - an increase in profit per vehicle from the multi-channel disposal strategy and reduced selling costs
- premises consolidation and scale efficiencies supported a decline in the cost / income ratio to 57.5%

- NPATA excluding significant items on a pro-forma basis increased 33%

**Year ended 30 September 2016 results**

- AUMOF increased by 15% to \$2.04 billion, and VUMOF increased 24% to 99,254 units, driving a 14% increase in NPATA to \$55.3 million
- Eclipx maintained NOI and NPATA margins by diversifying its revenue streams whilst increasing its share of high quality lower yielding corporate and Government business
- despite a 5% reduction in the volume of units sold during the year, Eclipx reported a 15% increase in end of lease income
- restructuring costs included those associated with the Right2Drive and FleetSmart acquisitions (\$3.3 million), the costs of terminating the previous corporate debt program to facilitate an increase and extension of debt facilities (\$2.5 million) and staff restructuring (\$1.8 million)<sup>9</sup>
- on a divisional basis:
  - Australian Commercial NPATA increased 9% due to significant new wins in the Government and large corporate segments, increased AUMOF and reduced overheads
  - New Zealand Commercial NPATA increased 8% primarily attributable to growth in new business writings (noting Eclipx has established a leadership position in the New Zealand market) and favourable conditions in the second hand market
  - Australian Consumer NPATA increased 53%, due to acquisitions and expansions of the Right2Drive and CarLoans.com.au businesses, as well as new novated wins for FleetPartners and FleetPlus

**Half year ended 31 March 2017 results**

- Eclipx increased NOI and NPATA margins by diversifying its revenue streams whilst increasing its share of high credit quality, lower yielding corporate and Government business
- the increase in overheads reflects the costs relating to Right2Drive together with increased investments in the Right2Drive branch network and the recruitment of additional fleet sales and relationship executives
- NPATA grew 20% to \$31.2 million (from the prior corresponding half year) exceeding market guidance due to strong performance in fleet and the acquisition of Right2Drive
- on a divisional basis, in comparison to the previous corresponding half year period:
  - Australian Commercial NPATA increased 6%, primarily attributable to increased AUMOF and new business writings
  - New Zealand Commercial NPATA increased 8%, primarily due to growth in AUMOF and continued favourable conditions in the second hand car market
  - Australian Consumer NPATA increased 116%, due to expansions of the Right2Drive and CarLoans.com.au businesses, the successful integration of the

<sup>9</sup> These items are all pre-tax.

Onyx Car Rentals business, as well as new novated wins for FleetPartners and FleetPlus

#### Guidance for the year ending 30 September 2017

- Eclipx management provided the following guidance for the year to 30 September 2017 in its 31 March 2017 results presentation, dated 4 May 2017:
  - “Despite ongoing competition in fleet, Eclipx expects to continue increasing its Assets Under Management or Financed supported by a growing pipeline of new business
  - Strength in the used car market expected to underpin stable end of lease profits in FY17
  - CarLoans and Right2Drive are expected to deliver strong growth in the Consumer segment in FY17
  - Reaffirm guidance of between \$65.5m and \$67m FY17 NPATA, an increase of 18–21% on FY16 excluding any contribution from Grays.”

#### Financial position

111 The financial position of Eclipx as at 30 September 2016 and 31 March 2017 is set out below:

Eclipx – statement of financial position		
	30 Sep 16	31 Mar 17
	\$m	\$m
Cash and cash equivalents	60.9	65.7
Restricted cash and cash equivalents	117.4	129.9
Trade and other receivables	95.3	114.4
Operating leases reported as property, plant and equipment	999.3	1,025.3
Finance leases	349.1	396.8
Intangible assets	597.4	606.3
Inventory, property, plant and equipment and other assets	41.1	37.3
<b>Total assets</b>	<b>2,260.5</b>	<b>2,375.7</b>
Trade and other liabilities	130.5	109.2
Borrowings	1,415.0	1,526.9
Derivative financial instruments	20.7	13.5
Deferred tax liabilities	28.3	44.6
Provisions	7.2	7.7
<b>Total liabilities</b>	<b>1,601.7</b>	<b>1,701.9</b>
<b>Net assets</b>	<b>658.8</b>	<b>673.8</b>

#### Restricted cash

112 Restricted cash includes cash held in segregated bank accounts for the purposes of the warehouse facilities and asset-backed securities as required by the terms of the relevant facility agreements. It includes payments Eclipx receives from lessees for the purpose of paying for vehicle maintenance and cash held for liquidity purposes that acts a source of funds

or liquidity for the relevant warehouse facility or asset-backed securities. Restricted cash is not available for use in the business or distribution to shareholders.

### Leases

113 A breakdown of Eclix's current and non-current operating and finance leases is as follows:

Eclix – leases		
	30 Sep 16 \$m	31 Mar 17 \$m
Operating leases reported as property, plant and equipment – current	212.3	237.4
Operating leases reported as property, plant and equipment – non-current	787.0	787.9
<b>Operating leases reported as property, plant and equipment – total</b>	<b>999.3</b>	<b>1,025.3</b>
Finance leases – current	104.6	118.4
Finance leases – non-current	244.5	278.4
<b>Finance leases – total</b>	<b>349.1</b>	<b>396.8</b>

114 With respect to the above we note that:

- (a) current operating leases relate to those leases terminating within 12 months and non-current relate to leases terminating after more than 12 months
- (b) finance leases are gross investment less unearned income
- (c) the provision for impairment held against all leases as at 31 March 2017 was \$4.3 million
- (d) following termination of the lease or rental contract the relevant assets are transferred from operating leases reported as property, plant and equipment to inventories at their carrying amount.

### Intangible assets

115 The majority of the intangible assets represent goodwill, as shown below:

Eclix – intangible assets		
	30 Sep 16 \$m	31 Mar 17 \$m
Goodwill	533.3	539.0
Customer relationships	27.9	26.0
Software	18.1	22.5
Brand names	18.1	18.8
<b>Intangible assets</b>	<b>597.4</b>	<b>606.3</b>
<b>Goodwill split</b>		
Australia Commercial	280.8	250.8
Australia Consumer	136.6	145.8
New Zealand Commercial	115.9	112.4
<b>Total goodwill</b>	<b>533.3</b>	<b>539.0</b>

- 116 The carrying value of goodwill is tested for impairment annually using the discounted cash flow (DCF) method on a value in use basis. As at 30 September 2016, the cash flows were discounted adopting post tax discount rates of 11.0%, with long term growth rates of 2.5% adopted for Australia and 3.0% for New Zealand.

### Borrowings

- 117 The majority of Eclipx's borrowings are notes payable, as shown below:

Eclipx – borrowings		
	30 Sep 16 \$m	31 Mar 17 \$m
Notes payable	1,290.2	1,298.0
Bank loans	130.0	231.2
Borrowing costs	(5.2)	(7.0)
Chattel mortgages <sup>(1)</sup>	-	4.7
<b>Total borrowings</b>	<b>1,415.0</b>	<b>1,526.9</b>

**Note:**

- 1 These were acquired as a part of the acquisition of Onyx Car Rentals.

- 118 Total borrowings as at 31 March 2017 includes \$231.2 million of bank loans, with \$1,298.0 million (i.e. notes payable) relating to funding directly associated with leases and inventory. As at 31 March 2017, Eclipx had undrawn debt facilities of \$283.7 million.
- 119 Eclipx has extensive and diversified sources of funding, including committed warehouse and corporate debt facilities, asset-backed securitisations and principal and agency arrangements with a total of 20 funding partners and debt investors. For leasing finance facilities where Eclipx acts as the funder, funding will be provided by a combination of warehouse and asset backed securitisation funding structures. Funders (major trading banks and institutional investors) provide financing to a special purpose vehicle established by Eclipx which is used to fund the purchase of assets that are to be leased to customers. These facilities are also known as revolving warehouse facilities because they can be drawn and repaid on an ongoing basis up to an agreed limit subject to conditions. A group of assets funded via a warehouse facility can be pooled together and refinanced by issuing securities (backed by those assets) to investors in public wholesale capital markets (such as domestic and international banks and institutional funds).

### Share capital and performance

- 120 As at 16 May 2017, Eclipx had 265.3 million fully paid ordinary shares on issue (of these 3.6 million shares are held under voluntary escrow arrangements). In addition, Eclipx had 15.27 million options on issue at exercise prices of \$2.30 to \$3.80 and 3.35 million performance rights on issue.

### Significant shareholders

- 121 As at 16 May 2017, there were five substantial shareholders in Eclipx that held a total of 29.9% of the ordinary shares on issue as detailed below:

**Eclipx – substantial shareholders**

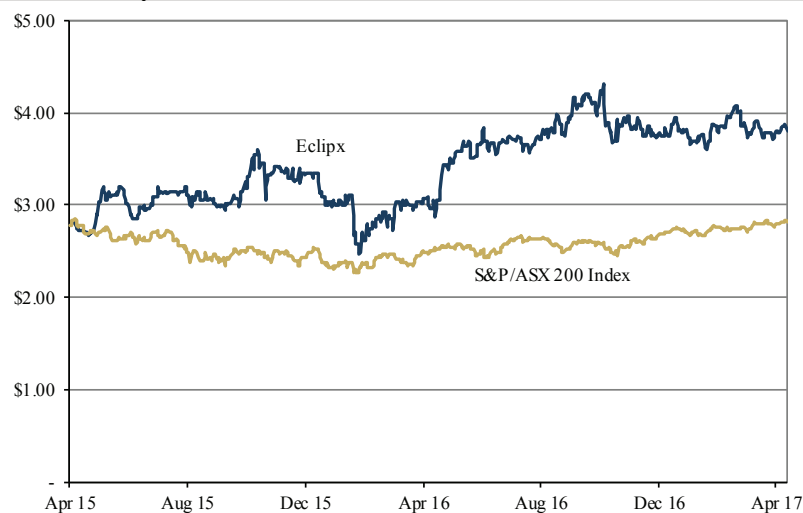
Shareholder	Shares held	
	Million	% interest
Bennelong Funds Management Group Pty Ltd	22.0	8.3
Commonwealth Bank of Australia and associated companies	15.1	5.7
UBS Group AG and its related bodies corporate	14.4	5.4
Vinva Investment Management	14.0	5.3
Platypus Asset Management Pty Ltd	13.9	5.2
<b>Total</b>	<b>79.4</b>	<b>29.9</b>

**Share price performance**

- 122 The following chart illustrates the movement in the share price of Eclipx from 22 April 2015 (i.e. the date it listed on the ASX) to 3 May 2017 (i.e. the last day of trading prior to the announcement of the Scheme):

**Eclipx – share price history<sup>(1)</sup>**

**22 April 2015 to 3 May 2017**



Source: Bloomberg.

- 123 Under its initial public offering (IPO), Eclipx raised \$253 million by issuing 110 million new shares at a price of \$2.30 per share. The funds raised were used to pay out exiting shareholders and existing debt facilities at the time. Post completion of the IPO, Ironbridge Funds held some 97.6 million shares, or 40.6% of the Eclipx shares outstanding. Ironbridge Funds subsequently sold the majority of its shares in block trades on 11 November 2015 (38 million shares), 10 May 2016 (38 million shares) and 14 December 2016 (7 million shares) and is no longer a substantial shareholder in Eclipx.

- 124 The Eclix share price closed on its first day of trading at \$2.78, a 20.9% premium to the IPO price. Due to continued strong growth in earnings, assisted by astute acquisitions, the Eclix share price has materially outperformed the S&P/ASX200 Index over the above period. On 3 May 2017 (i.e. the last day of trading prior to the announcement of the Scheme), the Eclix share price closed at \$3.80.

#### **Liquidity in Eclix shares**

- 125 The liquidity in Eclix shares based on trading on the ASX over the 12 month period to 3 May 2017 (i.e. the last day of trading prior to the announcement of the Scheme) is set out below:

<b>Eclix – liquidity in shares</b>						
<b>Period</b>	<b>Start date</b>	<b>End date</b>	<b>No of shares traded 000</b>	<b>WANOS<sup>(1)</sup> outstanding 000</b>	<b>Implied level of liquidity Period<sup>(2)</sup> %</b>	<b>Annual<sup>(3)</sup> %</b>
1 month	4 Apr 17	3 May 17	12,642	265,301	4.8	57.2
3 months	4 Feb 17	3 May 17	46,067	265,301	17.4	69.5
6 months	4 Nov 16	3 May 17	113,957	264,938	43.0	86.0
1 year	4 May 16	3 May 17	286,171	263,557	108.6	108.6

**Note:**

- 1 Weighted average number of shares outstanding (WANOS) during relevant period.
- 2 Number of shares traded during the period divided by WANOS.
- 3 Implied annualised figure based upon implied level of liquidity for the period.

- 126 In the above periods disclosed, total share turnover (on an annualised basis) has ranged from 57% to over 100%, indicating that Eclix shares have a high level of liquidity.



## V Valuation methodology

- 127 RG 111 outlines the appropriate methodologies that a valuer should consider when valuing assets or securities for the purposes of, amongst other things, share buy-backs, selective capital reductions, schemes of arrangement, takeovers and prospectuses. These include:
- (a) the DCF methodology
  - (b) the application of earnings multiples appropriate to the businesses or industries in which the company or its profit centres are engaged, to the estimated future maintainable earnings or cash flows of the company, added to the estimated realisable value of any surplus assets
  - (c) the amount that would be available for distribution to shareholders in an orderly realisation of assets
  - (d) the quoted price of listed securities, when there is a liquid and active market and allowing for the fact that the quoted market price may not reflect the value of the securities on a 100% controlling interest basis
  - (e) any recent genuine offers received by the target for any business units or assets as a basis for valuation of those business units or assets.
- 128 Under the DCF methodology the value of the business is equal to the net present value (NPV) of the estimated future cash flows including a terminal value. In order to arrive at the NPV the future cash flows are discounted using a discount rate which reflects the risks associated with the cash flow stream.
- 129 Methodologies using capitalisation multiples of earnings or cash flows are commonly applied when valuing businesses where a future “maintainable” earnings stream can be established with a degree of confidence. Generally, this applies in circumstances where the business is relatively mature, has a proven track record and expectations of future profitability and has relatively steady growth prospects. Such a methodology is generally not applicable where a business is in start-up phase, has a finite life, or is likely to experience a significant change in growth prospects and risks in the future.
- 130 Capitalisation multiples can be applied to either estimates of future maintainable operating cash flow, earnings before interest, tax, depreciation and amortisation (EBITDA), earnings before interest, tax and amortisation (EBITA), earnings before interest and tax (EBIT) or net profit after tax. The appropriate multiple to be applied to such earnings is usually derived from stock market trading in shares in comparable companies which provide some guidance as to value and from precedent transactions within the industry. The multiples derived from these sources need to be reviewed in the context of the differing profiles and growth prospects between the company being valued and those considered comparable. When valuing controlling interests in a business an adjustment is also required to incorporate a premium for control. The earnings from any non-trading or surplus assets are excluded from the estimate of the maintainable earnings and the value of such assets is separately added to the value of the business in order to derive the total value of the company.

- 131 An asset based methodology is applicable in circumstances where neither a capitalisation of earnings nor a DCF methodology is appropriate. It can also be applied where a business is no longer a going concern or where an orderly realisation of assets and distribution of the proceeds is proposed. Using this methodology, the value of the net assets of the company is adjusted for the time, cost and taxation consequences of realising the company's assets.

## Methodologies selected

### Grays

- 132 The market value of Grays has been assessed by aggregating the market value of the business operations, together with the realisable value of any surplus assets and deducting net borrowings. The valuation of the business has been made on the basis of market value as a going concern. The primary valuation method used to value the Grays business is the capitalisation of future maintainable EBITDA. Under this methodology the value of the business is represented by its core underlying maintainable EBITDA capitalised at a rate (or EBITDA multiple) reflecting the risk inherent in those earnings.
- 133 We have adopted this method when valuing Grays for the following reasons:
- (a) we do not have long-term cash flow projections which we regard as sufficiently robust to enable a DCF valuation to be undertaken
  - (b) Grays (and online businesses generally) are not capital intensive
  - (c) transaction evidence in the sector is generally expressed in terms of EBITDA multiples.
- 134 As noted in Section III, Grays shares have been relatively liquid with over \$69 million shares traded in the 12 months to 3 May 2017. Accordingly, we have also cross-checked our valuation of Grays by reference to the listed market price of Grays shares on the ASX prior to the announcement of the Scheme, which we have adjusted to reflect a premium for control.

### Scheme Consideration

- 135 For the purpose of assessing the value of the Scheme Consideration we have had primary regard to the recent listed market prices of Eclix shares. This is principally because, in our view, the listed market prices of Eclix shares are likely to represent a reasonable proxy for the amount that Grays shareholders could expect to realise if they sold any Eclix shares received as consideration either immediately or in the short-term.
- 136 We have also cross-checked the reasonableness of our assessed value of Eclix shares being offered as consideration under the Scheme by reference to implied earnings multiples.

## VI Valuation of Grays

### Valuation methodology

- 137 As stated in Section V we have adopted the capitalisation of EBITDA method as our primary valuation methodology. Under this method the EBITDA (before non-recurring items) is capitalised at an appropriate multiple. The value of the shares in Grays is then derived by adding to this business value any surplus assets and deducting other liabilities and net borrowings.
- 138 The resulting value has also been cross-checked by reference to the listed market price of Grays shares on the ASX prior to the announcement of the Scheme, adjusted for a control premium.

### EBITDA

- 139 In order to assess the appropriate level of EBITDA for valuation purposes we have had regard to the historical and forecast results for Grays' continuing businesses (being the B2B division and the smaller B2C division<sup>10</sup>), and have discussed each business unit's financial performance, operating environment and prospects with Grays management.

### Historical results

- 140 The recent reported results of the continuing businesses of Grays are summarised in the table below:

Grays – divisional performance for continuing operations <sup>(1)</sup>			
	FY15	FY16	1H17
	\$m	\$m	\$m
B2B revenue	56.2	73.4	43.2
B2C revenue	53.5	51.2	27.9
Corporate revenue	0.2	0.3	0.2
<b>Total revenue</b>	<b>109.9</b>	<b>124.9</b>	<b>71.3</b>
B2B EBITDA <sup>(2)</sup>	13.0	16.5	9.4
B2C EBITDA <sup>(2)</sup>	2.3	2.1	(0.3)
Corporate EBITDA	(4.4)	(4.3)	(1.9)
<b>Total EBITDA</b>	<b>10.8</b>	<b>14.3</b>	<b>7.1</b>
B2B EBITDA margin	23.1%	22.5%	21.7 %
B2C EBITDA margin	4.3%	4.0%	(1.2)%

**Note:**

- 1 Rounding differences exist.
- 2 Divisional EBITDA is stated after the apportionment of allocable corporate overheads.

- 141 In respect of the reported historical financial performance of Grays we note:
- (a) the B2B division grew significantly over the period across all B2B categories, reflecting in part the increased investment in underlying business capacity

<sup>10</sup> In October 2015, Grays announced the sale of the majority of its fixed price retail (FPR) business which comprised the OO.com.au, dealsdirect.com.au and topbuy.com.au consumer websites. In February 2017, Grays announced the further rationalisation of its B2C categories to those that support B2B.

- (b) growth in revenue in the B2B division resulted in a related growth in EBITDA, as operating margins were generally maintained
- (c) the benefits at the overall Grays level were offset however by the continued under-performance of the B2C division, which has since been significantly rationalised
- (d) subsequent to the reporting periods above, Grays has entered into a lease variation agreement in respect of the Lidcombe premises which is expected to significantly reduce ongoing fixed overhead costs.

142 In relation to the 1H17 results we note that:

- (a) strong revenue growth in Mining & Civil (up 23% compared to 1H16), Auto (up 22%) and Transport (up 18%) was achieved in the B2B business in 1H17:
  - (i) in 1H17 over 13,500 cars were sold compared to 8,800 in 1H16. This growth reflected (inter-alia) increased marketing efforts and the expansion of the Company's Auto facilities in NSW, Victoria and Queensland, and into South Australia
  - (ii) revenue growth in Mining & Civil in 1H17 reflected (inter-alia) higher levels of surplus equipment from the completion of infrastructure projects
  - (iii) revenue growth in Transport in 1H17 reflected (inter-alia) solid growth from fleet replacements
- (b) in 1H17 approximately 20% of B2B revenues were sourced from the Banking, Insolvency and Financing (BIF) sector. These revenues can fluctuate substantially with timing dependent on factors outside of management's control (as these revenues are partially reliant on the level of liquidation activity in the economy)
- (c) major events can also materially impact profitability and add to earnings volatility. For example, significant revenues were generated in calendar 2016 from the sale of assets following the closure of Masters and the administration of McAleese Group
- (d) the continuing B2C business was downsized during 1H17 and contributed a small EBITDA loss in 1H17. However, the exit of the Lidcombe site (announced to the ASX on 2 May 2017) will reduce costs and improve the profitability of the B2C business as management plans to relocate to a smaller site.

#### **FY17 guidance**

143 As stated in Section III, management provided the following EBITDA guidance for Grays for FY17 on 23 February 2017 (being the date the Company announced its results for 1H17 to the ASX):

*"As a result of the strategic decision to rationalise B2C and its deteriorating performance, FY17 EBITDA expected to be at a similar level to FY16 (from Continuing Operations):*

- *Benefits from investment in B2B are expected to continue flowing through in H2 FY17*
- *Continued growth expected in B2B earnings offset by B2C loss."*

- 144 As at 23 February 2017, management therefore indicated that the EBITDA result from continuing operations for FY17 was expected to be similar to the level of EBITDA achieved in FY16 (which was \$14.3 million).
- 145 We note that in May 2017 Grays received a lease termination payment of \$7.5 million from the landlord of its Lidcombe premises as compensation for varying the Lidcombe lease. We are informed that the accounting treatment of this payment will result in a positive EBITDA benefit in FY17.
- 146 However, we also note the significant monthly earnings volatility experienced by the business (consistent with the nature of operations). As a result, we have reviewed the financial performance of the Company on a monthly basis up to 30 April 2017<sup>11</sup>. Based on this review we note that the business will need to experience significantly higher levels of sales activity in May and June 2017 (compared to that achieved in January to March 2017) in order to meet the EBITDA guidance provided by Grays management on 23 February 2017 (before the positive earnings impact of the lease adjustment accounting mentioned above). The achievability of this higher sales activity is uncertain.

#### **EBITDA adopted for valuation purposes**

- 147 Based on the above, for valuation purposes we have assessed maintainable EBITDA at \$16.5 million to \$17.0 million. In assessing this level of EBITDA we note that, in particular:
- (a) EBITDA from continuing operations was \$14.3 million in FY16
  - (b) on 23 February 2017, management indicated that the EBITDA result from continuing operations in FY17 was expected to be similar to the level of EBITDA achieved in FY16. The achievement of this result (prior to taking into account the accounting gain resulting from the variation of the Lidcombe lease) depends on the level of sales activity in May and June 2017
  - (c) as a result of the variation of the Lidcombe lease (which Grays announced on 2 May 2017) Grays expects to recognise an accounting gain in FY17. For valuation purposes this benefit has been excluded from our assessment of underlying EBITDA
  - (d) the on-going cost savings from the relocation of the Lidcombe premises (of around \$3.0 million per annum<sup>12</sup>) are expected to exceed the one-off accounting gain recognised in FY17.

#### **EBITDA multiple**

- 148 The selection of the appropriate EBITDA multiple to apply is a matter of judgement but normally involves consideration of a number of factors including, but not limited to:

<sup>11</sup> At the date of this report, the May management accounts for Grays were not available.

<sup>12</sup> Grays management have estimated higher on-going annual savings from the Lidcombe exit and associated B2C restructure. However, given the current expectation that the exit from Lidcombe will not take place until later in calendar 2017, for the purposes of our report we have risk adjusted the related expected annual earnings benefit.

- The stability and quality of earnings
- The quality of the management and the likely continuity of management
- The nature and size of the business
- The spread and financial standing of customers
- The financial structure of the company and gearing level
- The multiples attributed by share market investors to listed companies involved in similar activities or exposed to the same broad industry sectors
- The multiples that have been paid in recent acquisitions of businesses involved in similar activities or exposed to the same broad industry sectors
- The future prospects of the business including the growth potential of the industry in which it is engaged, strength of competitors, barriers to entry, etc
- The cyclical nature of the industry
- Expected changes in interest rates
- The asset backing of the underlying business of the company and the quality of the assets
- The extent to which a premium for control is appropriate
- Whether the assessment is consistent with historical and prospective earnings

- 149 We discuss below specific factors taken into consideration when assessing the appropriate EBITDA multiple range for Grays.

#### Listed company multiples

- 150 There are no directly comparable businesses to Grays listed on the ASX or internationally, as companies which specialise in the provision of online auction services of industrial and commercial plant appear to be either private companies or smaller businesses within larger companies. Accordingly, we have considered the EBITDA multiples for selected listed online retailers and marketplaces on the basis that these companies predominately sell goods online (using an auction and / or fixed price ecommerce platform):

EBITDA multiples as at 15 May 2017						
		Enterprise value <sup>(1)</sup> \$m	EBITDA multiples			CAGR <sup>(3)</sup> (%)
Year ended			FY17 forecast <sup>(2)</sup>	FY18 forecast <sup>(2)</sup>	FY19 forecast <sup>(2)</sup>	
Australasian online retailers and marketplaces						
Trade Me Group	30 June	2,232	15.6	14.3	13.2	8.7
Grays	30 June	136	9.5	8.0	6.8	18.7
Kogan.com	30 June	122	9.7	8.7	6.6	20.8
International online retailers and marketplaces						
eBay	31 Dec	46,824	10.2	9.5	9.0	6.5
Mercadolibre	31 Dec	16,243	38.1	29.0	23.2	28.2
BCA Marketplace	31 Mar	3,305	14.7	12.8	11.8	11.4
Etsy	31 Dec	1,509	21.6	14.2	10.4	44.2
Manutan International	30 Sept	823	8.2	7.7	7.5	4.7
MySale Group	30 Jun	443	29.2	22.5	17.8	28.0
Overstock.com	31 Dec	405	11.5	11.0	9.8	8.3
<b>Median</b>			13.1	11.9	10.1	
<b>Mean</b>			16.8	13.8	11.6	
<b>Mean excluding Mercadolibre and MySale Group</b>			12.6	10.8	9.4	

**Note:**

- 1 Enterprise value and earnings multiples calculated as at 15 May 2017, with the exception of Grays which is as at 3 May 2017 (being the last trading day prior to the announcement of the Scheme). Enterprise value includes net debt, net derivative liabilities and excludes surplus assets (with foreign currencies converted to Australian dollars).
- 2 Forecast earnings have been sourced from Bloomberg and reflect average broker forecasts (excluding outliers and outdated forecasts). It should be noted that the forecast multiples for Grays and Kogan are based on one broker forecast only as no other brokers publish research on these two companies. Whilst the broker's forecast for Grays for FY17 is consistent with management's guidance, the broker forecasts for FY18 and FY19 have not been reviewed by Grays management and may not be reliable.
- 3 Compound annual growth rate.

**Source:** Bloomberg, latest full year statutory accounts, latest interim accounts, company announcements, LEA analysis.

- 151 It should be noted that the level of EBITDA adopted for valuation purposes exceeds the likely EBITDA result for Grays in FY17<sup>13</sup>, as we have incorporated into EBITDA the estimated cost savings arising from the pending exit from the Lidcombe premises. Accordingly, as FY17 earnings are not considered representative of the sustainable ongoing earnings of Grays the FY18 EBITDA multiples shown above are considered more relevant.
- 152 The above EBITDA multiples are based on the listed market price of each company's shares (and therefore exclude a premium for control). Empirical evidence undertaken by LEA indicates that the average premium paid above the listed market price in successful takeovers in Australia ranges between 30% and 35% (assuming the pre-bid market price does not reflect any speculation of the takeover). This broadly translates to a premium of 20% to 25% at the EBITDA multiple or enterprise value level, although this varies depending on the level of debt funding employed in each company.
- 153 However, as indicated above, Grays is generally much smaller than the above listed companies. Smaller companies generally trade on lower EBITDA multiples than larger companies, assuming future earnings growth expectations are similar. In our view, the much smaller size of Grays is likely to offset the impact of the application of any control premium.
- 154 Due to the small size of Grays, we do not consider that the EBITDA multiples for leading online retail businesses such as Amazon and Alibaba are relevant. In addition to being materially larger than Grays<sup>14</sup>, these companies also have significant other businesses in addition to their online marketplaces, such as Amazon Web Services (Amazon's cloud based offering) and Alipay (Alibaba's electronic payments business).
- 155 Whilst eBay is also significantly larger than Grays (given its market capitalisation of around US\$37 billion<sup>15</sup>), we have set out eBay's EBITDA multiple above as the company is largely an online retail / auction business following the spin-off of Paypal as a separate listed company in July 2015.

<sup>13</sup> Management's guidance for FY17 is that EBITDA will be broadly consistent with that achieved in FY16.

<sup>14</sup> As at 28 April 2017, the market capitalisation of Amazon and Alibaba was US\$442 billion and US\$286 billion respectively. In comparison, Grays' market capitalisation on 28 April 2017 was only around A\$127 million.

<sup>15</sup> As at 15 May 2017.



- 156 We note that the above EBITDA multiples vary widely, which reflects (inter-alia) differences in the nature of their operations, size, relative market positions, perceived risks, and expected future earnings growth. In particular, we note that:
- (a) the lower EBITDA multiples for eBay and Manutan International (prima facie) appear to reflect their more modest growth outlook compared to some of the other listed ecommerce businesses
  - (b) the high EBITDA multiples for Mercadolibre reflect its position as the largest online ecommerce and payments platform in Latin America, an area with one of the world's fastest growing internet penetration rates. In the year ended 31 December 2016, gross merchandising volumes and total payment volumes on Mercadolibre's ecommerce platform grew 85% and 93% respectively compared to the prior year
  - (c) most of the above listed companies focus on the online sale / auction of consumer goods rather than industrial and commercial plant and equipment. As a result, the listed company multiples reflect expectations of future earnings growth arising from (inter-alia) the increasing proportion of retail sales being conducted online. Whilst Grays is also benefiting from this trend, we note that the supply of industrial and commercial plant and equipment for sale on Grays can be volatile, resulting in more lumpy earnings.
- 157 Given the above, in our view, a lower EBITDA multiple is therefore likely to be appropriate compared to the mean and median EBITDA multiples of the listed companies.

#### Transaction evidence

- 158 On 5 August 2014, Mnemon Limited (now Grays) announced the merger of Mnemon (which owned DealsDirect<sup>16</sup>) and Grays (Aust) Holdings Pty Ltd (Grays (Aust)) (which principally owned the current B2B business of Grays and the wine business). This scrip based merger was accounted for as a reverse takeover of Mnemon by Grays (Aust), and accordingly it is difficult to calculate the implied EBITDA multiple from this transaction.
- 159 However, at the time of the merger, the businesses owned by Grays (Aust) were independently valued (on a 100% controlling interest basis) by LEA at between \$68 million and \$76 million<sup>17</sup>. This valuation range represented an EBITDA multiple of 8.5 to 9.5 times the level of EBITDA adopted for valuation purposes (\$8 million).
- 160 Since the merger, Grays B2B business has grown significantly and the level of EBITDA generated by the business is now substantially higher. The values attributed to ecommerce businesses have generally also increased. As a result, in our view, the appropriate EBITDA multiple to apply to Grays today would also be higher.

#### SWOT analysis

- 161 In assessing the appropriate EBITDA multiple to apply we have also considered (inter-alia) the following factors:

<sup>16</sup> As noted above, in October 2015, Grays announced the sale of the majority of its fixed price retail (FPR) business which comprised the OO.com.au, dealsdirect.com.au and topbuy.com.au consumer websites.

<sup>17</sup> Source: LEA IER on the proposed acquisition of Grays (Aust) Holdings Pty Ltd, dated 9 October 2014.

#### Strengths / Opportunities

- Largest industrial and commercial plant and equipment auction company in Australia
- Potential for further earnings growth from provision of ancillary services (such as asset finance, warranties and insurance)
- Ability to leverage expertise in international markets (e.g. south east Asian market opportunity is eight times larger than the Australian market)
- Grays Wine is one of the largest wine sites by visitation in Australia (>300,000 page visits per month)

#### Weaknesses / Threats

- As noted above, the supply of industrial and commercial plant for sale can be volatile, resulting in lumpy earnings.

#### Potential synergies

- 162 In its Scheme related announcement on 4 May 2017, Eclix stated that it is targeting an EBITDA contribution from Grays (under Eclix ownership) of approximately \$23 million to \$25 million in FY18. This compares to maintainable EBITDA adopted (by LEA) for valuation purposes of \$16.75 million (mid-point). Based on related disclosure in the Eclix announcement we understand that the targeted increase in earnings is broadly attributable to annual savings in corporate overheads (being public company related costs no longer incurred and the elimination of other duplicated overheads), with the balance attributable to targeted revenue synergies identified by Eclix.
- 163 However, pursuant to RG 111, synergies that are not available to other potential bidders should not be taken into account in the valuation of the target company when assessing whether an offer is fair. Further, the existence of such synergies from business combinations is one of the key reasons why bidders pay a control premium to acquire a company.
- 164 Consequently, in our opinion, it is inappropriate (in the circumstances of Grays) to incorporate a separate value for synergies over and above that already implicitly reflected in the controlling interest multiple applied.

#### Conclusion on EBITDA multiple

- 165 As stated above, in our view the appropriate EBITDA multiple to apply to Grays should be significantly less than the mean and median EBITDA multiples of the listed companies. This is principally due to the smaller size of Grays and the different nature of its business. Whilst the listed online retailers and marketplaces are benefiting from the increasing level of retail sales being conducted online, the level of industrial and commercial plant and equipment sold by Grays can be volatile, resulting in lumpy earnings.
- 166 At the time of the merger of Grays and Mnemon (in late 2014), Grays B2B business was valued at 8.5 to 9.0 times EBITDA. Since then the business has increased in size and values for ecommerce / online businesses has generally increased.
- 167 Based on the above we have therefore adopted an EBITDA multiple of 10.0 to 10.5 times, which reflects a full controlling interest value multiple.

## Enterprise value

168 On this basis the value of the Grays business (before debt) is as follows:

Value of the Grays business		
	Low \$m	High \$m
EBITDA adopted for valuation purposes	16.5	17.0
EBITDA multiple (x)	10.0	10.5
<b>Enterprise value</b>	<b>165.0</b>	<b>178.5</b>

## Net debt

169 As at 30 April 2017 Grays had net debt of \$6.8 million. This is higher than the net debt position as at 31 December 2016 (\$1.7 million) and reflects (inter-alia) the payment of a \$1.5 million dividend in April 2017, working capital movements (which are expected to reverse in May and June 2017) and the lower level of sales activity in recent months. However, debt levels are expected to reduce by 30 June 2017.

170 Having regard to the above, we have adopted net debt of \$5 million. This reflects, in particular, the expected reversal of working capital movements before year end.

## Other assets and liabilities

171 We also note that:

- (a) Grays has approximately \$1.7 million (written down value) in inventory relating to the discontinued B2C business which will be realised over time
- (b) the latest estimate of the remaining liability to the vendors of DMS Davlan is \$0.5 million.

172 Having regard to the above, we have adopted other (net) assets of \$1.2 million.

## Treatment of Lidcombe proceeds

173 On 2 May 2017, Grays announced that it had reached agreement with the landlord of its Lidcombe premises to vary the terms of the current lease to allow for an early exit.

174 In compensation for varying the Lidcombe lease, Grays has received a payment from the landlord of \$7.5 million. As this payment will be distributed to Grays shareholders separately to the Scheme Consideration (in the form of the Special Dividend), we have excluded it from our assessment of Grays' value.

## Shares on issue

175 As at 16 May 2017, Grays had 127.5 million fully paid ordinary shares on issue. In addition, Grays had 4.3 million performance rights issued under the Company's long-term incentive program. For the purpose of the Scheme the Grays Board has determined that 1.3 million performance rights will vest on or prior to the Effective Date of the Scheme. Shares issued on exercise of these performance rights will therefore participate in the Scheme.

176 Consequently, for valuation purposes we have adopted fully diluted shares on issue of 128.8 million.

## Value of Grays

177 On this basis the value of Grays shares (on a 100% controlling interest basis) is as follows:

Value of Grays shares (on a 100% controlling interest basis)		
	Low \$m	High \$m
Enterprise value	165.0	178.5
Net debt	(5.0)	(5.0)
Other (net) assets	1.2	1.2
Equity value	161.2	174.7
Shares on issue	128.8	128.8
Value per share	\$1.25	\$1.36

## Cross-check to pre-announcement share trading range

- 178 In order to cross-check our valuation of Grays shares we have considered the listed market price of Grays shares up to 3 May 2017 (being the last day of trading prior to the announcement of the Scheme), adjusted for a premium for control.
- 179 The volume weighted average share prices (VWAP) for Grays in the period from 28 February 2017<sup>18</sup> to 3 May 2017<sup>19</sup> was \$1.03 per share. Empirical evidence undertaken by LEA indicates that the average premium paid above the listed market price in successful takeovers in Australia ranges between 30% and 35% (assuming the pre-bid market price does not reflect any speculation of the takeover, and after adjusting the pre-bid market price for the movement in share market indices between the date of the pre-bid market price and the announcement of the takeover).
- 180 Adding a 30% to 35% premium for control to this VWAP would result in a theoretical “control” value of \$1.34 to \$1.39 per share. This is broadly consistent with the high end of our valuation range.

<sup>18</sup> Grays shareholders received an interim dividend of 1.2 cents per share on 21 April 2017 and the share prices prior to the ex-date of 28 February 2017 traded with an entitlement to this dividend. Accordingly, to ensure the implied premium is calculated on an appropriate basis we have therefore had regard to trading in Grays shares in the period subsequent to and including 28 February 2017 to 3 May 2017.

<sup>19</sup> 3 May 2017 was the last trading day prior to the announcement of the Scheme.

## VII Valuation of Scheme Consideration

### Approach

- 181 As set out in Section I, if Grays shareholders approve the Scheme and all conditions are satisfied, then Grays shareholders will receive 0.3656<sup>20</sup> shares in Eclipx for each Grays share held.
- 182 As stated in Section V, it is customary in transactions where scrip is offered as consideration to rely upon the listed market price of the bidder's shares (in this case Eclipx) as the reference point for estimating the realisable value of the consideration offered. This is principally because:
- (a) the listed market prices of Eclipx shares are likely to represent a reasonable proxy for the amount that Grays shareholders could expect to realise if they sold any Eclipx shares received as consideration either immediately, or in the short-term
  - (b) any decision to continue to hold Eclipx shares beyond the immediate to short-term is a separate investment decision which should be made by shareholders having regard to their risk profile, liquidity preference, tax position and expectations as to value and future market conditions. It is also not possible to accurately predict future share price movements
  - (c) whilst there may be a future opportunity for Grays shareholders to share in a control premium in the event Eclipx was acquired, this is not a scenario that we consider likely in the short-term.
- 183 Accordingly, in our opinion, the recent market prices of Eclipx shares are the appropriate reference point for estimating the value of the Scheme Consideration. In doing so, we have also considered the depth of the market for those securities and the volatility of the share price.
- 184 We have also cross-checked the reasonableness of our assessed value of Eclipx shares being offered as consideration by reference to implied earnings multiples.

### Recent share prices

#### Recent share trading history (pre and post announcement of Scheme)

- 185 The historical share prices for Eclipx are set out in Section IV. More recent trading in Eclipx shares prior to the announcement of the Scheme is shown below:

Eclipx – share price history (pre announcement of Scheme)				
Time periods up to and including 3 May 2017 <sup>(1)</sup>	Low \$	High \$	VWAP \$	Number traded (m)
1 month	3.68	3.92	3.80	48.0
3 months	3.56	4.11	3.85	177.1

**Note:**

- 1 Being the last trading date before the announcement of the Scheme.

<sup>20</sup> The exchange ratio has been rounded.

- 186 For the purpose of assessing the value of the Eclix shares offered as consideration we believe more regard should be given to the price of Eclix shares since the Scheme was announced on 4 May 2017. This is because we consider the Eclix share price subsequent to and including 4 May 2017 to be more representative of the share price assuming the Scheme is approved than the prices before 4 May 2017.
- 187 The following table sets out the prices at which Eclix shares have traded in the period subsequent to the announcement of the Scheme up to 14 June 2017. Eclix shares traded up until 17 May 2017 with an entitlement to the 1H17 interim dividend of 7.5 cents per share. Pursuant to the Scheme Grays shareholders will not be entitled to receive this dividend.

Eclix – share price history (post announcement of Scheme)				
Time periods	Low \$	High \$	VWAP \$	Number traded (m)
4 May 2017 <sup>(1)</sup> to 17 May 2017 <sup>(2)</sup>	3.53	3.98	3.74	23.4
18 May 2017 to 14 June 2017 <sup>(3)</sup>	3.51	3.86	3.64	28.0

**Note:**

- 1 Being the first day of trading subsequent to the announcement of the Scheme.
- 2 Trading in this period includes an entitlement to the 1H17 dividend of 7.5 cents per share which Grays shareholders are not entitled to.
- 3 Eclix shares traded excluding an entitlement to the 1H17 dividend on 18 May 2017.

**Source:** Bloomberg.

### Share trading restrictions and liquidity

- 188 There are no significant restrictions on trading in Eclix which would prevent sufficient trading (on a day-to-day basis) to produce an unbiased share price.
- 189 Further, in our view, the liquidity in Eclix shares over the previous 12 months has been relatively high. Consequently, we consider the listed market price to be an appropriate reference point to assess the realisable value of Eclix shares.

### Information disclosures

- 190 Eclix is reasonably well researched and analysed by share broking firms and institutional investors.
- 191 Significant information in relation to the operations of Eclix has been disclosed in its financial reports and ASX announcements. Further, Eclix has an obligation under the ASX Listing Rules (subject to certain exemptions) to notify the ASX immediately of any information concerning Eclix of which it becomes aware, which a reasonable person would expect to have a material effect on the price or value of Eclix shares.

### Number of Eclix shares to be issued as consideration

- 192 As at 4 May 2017 Eclix had 265.3 million ordinary shares on issue<sup>21</sup>.

<sup>21</sup> Ordinary shares on issue includes 6.4 million Treasury shares. In addition, Eclix had 15.27 million options and 3.35 million performance rights on issue.

- 193 The number of shares to be issued by Eclix as consideration under the Scheme will therefore represent approximately 15.1% of the enlarged capital base of Eclix (assuming there are no ineligible foreign shareholders of Grays that do not receive scrip based consideration under the Scheme), as follows:

Scheme Consideration as a % of enlarged capital base		
		million
Number of Eclix shares held by existing shareholders <sup>(1)</sup>		265.3
Number of shares to be issued pursuant to the Scheme <sup>(2)</sup>	(A)	47.1
Total shares outstanding in Eclix post transaction <sup>(1)</sup>	(B)	312.4
Grays shareholders' interest <sup>(3)</sup> in Eclix post transaction.	(A) / (B)	15.1%

**Note:**

- 1 Ignoring options and performance rights.
- 2 Being 128.8 million shares in Grays (on a fully diluted basis) converted to Eclix shares at the Scheme ratio of 0.3656 Eclix shares for every one share in Grays.
- 3 Representing the collective interest of Grays shareholders.

- 194 Given the number of new Eclix shares to be issued under the Scheme, if a large number of Grays shareholders elect not to retain the shares in Eclix received as consideration there may be an oversupply of Eclix shares, which may have an adverse impact on the Eclix share price in the short-term.

**Dilution and synergies**

- 195 As Eclix is paying a control premium (above the listed market price) for Grays there will be a dilution effect on the value of Eclix shares subsequent to a successful conclusion of the Scheme. This is because the listed market price of Eclix shares will reflect a portfolio rather than a controlling interest in the enlarged group. In the absence of synergies this dilution often results in a fall in the share price of the bidder.
- 196 However, Eclix has indicated that large synergies (particularly relative to the size of the standalone earnings of Grays) are likely to be realised from combining the two businesses. In particular, Eclix stated the following in its investor presentation dated 4 May 2017:
- (a) the acquisition of Grays is a highly strategic and synergistic transaction for Eclix
  - (b) having conducted extensive due diligence, Eclix management is targeting pre-tax cost and revenue synergies of approximately \$20 million per annum<sup>22</sup>, on a full run-rate basis (excluding one-off transaction and integration costs)
  - (c) Eclix expects that these synergies are targeted to be achieved within 12 to 24 months of completion (of the transaction), with approximately 70% to 80% of run-rate synergies targeted by Eclix to be achieved in FY18
  - (d) Eclix management have a detailed implementation plan to execute on delivering the synergies targeted by Eclix, which, together with the quantum of synergies targeted by Eclix, has been independently reviewed.

<sup>22</sup> We note that these synergy estimates appear to include cost savings that Grays management expect to realise as a result of rationalising the standalone business (e.g. from exiting the Lidcombe site which was announced to the ASX on 2 May 2017).



- 197 Further information on the synergies expected by Eclipx to be generated is set out in the Scheme Booklet.
- 198 Given the size of expected synergies relative to the standalone earnings of Grays, in our opinion, it is reasonable to conclude that the value of expected synergies would exceed the dilutionary effect discussed above.

### Conclusion

- 199 In summary, in assessing the value of the Eclipx shares offered as consideration under the Scheme we have had regard to:
- (a) the recent trading range of Eclipx shares, noting that the shares have traded in the range of \$3.51 to \$3.98 in the period subsequent to the announcement of the Scheme up to 14 June 2017<sup>23</sup>
  - (b) the number of shares to be issued by Eclipx under the Scheme compared to the enlarged number of Eclipx shares on issue post completion of the Scheme
  - (c) the likely level of on-market trading in Eclipx shares subsequent to completion of the Scheme, having regard to factors including:
    - (i) any potential oversupply of Eclipx shares from those shareholders in Grays not wishing to retain the Eclipx shares received as consideration
    - (ii) the dilution effect implicit in any control premium being paid by Eclipx
    - (iii) the level of synergies expected by Eclipx relative to the increased earnings of Eclipx subsequent to the transaction
  - (d) recent stock market conditions
  - (e) the earnings multiples implied by our adopted range (see paragraphs 204 to 210 below).
- 200 Based on the above we have assessed the realisable value of the Eclipx shares offered as consideration (excluding any entitlement to the Eclipx 1H17 dividend) under the Scheme at between \$3.50 and \$3.75 per share.

### Assessed value of Scheme Consideration

- 201 We have therefore assessed the value of the Scheme Consideration to be received by Grays shareholders pursuant to the Scheme at the amounts below:

Value of Scheme Consideration per Grays share		
	Low	High
	\$ per share	\$ per share
Assessed realisable value of Eclipx shares	3.50	3.75
Scheme ratio	0.3656	0.3656
Assessed value of Scheme Consideration	<u>\$1.28</u>	<u>\$1.37</u>

<sup>23</sup> In the period 4 May 2017 to 17 May 2017 Eclipx shares traded with an entitlement to the 1H17 interim dividend of 7.5 cents per share, which Grays shareholders are not entitled to.

### Other considerations

- 202 Grays shareholders should note that the listed market price of Eclipx shares is subject to daily fluctuation. The price at which Eclipx shares may be sold may therefore be greater or less than our assessed realisable value of Eclipx shares of \$3.50 to \$3.75 per share.
- 203 Grays shareholders should also note that any decision to hold Eclipx shares beyond the short-term is a separate investment decision. As it is not possible to accurately predict future share price movements, any decision to hold Eclipx shares should be made by shareholders having regard to their risk profile, liquidity preference, tax position and expectations as to value and future market conditions.

### Implied NPATA multiple

- 204 As stated above, we have also cross-checked our assessment of the realisable value of Eclipx shares by considering the NPATA<sup>24</sup> multiple implied for the enlarged entity (post completion of the Scheme).

### Market capitalisation

- 205 The market capitalisation of Eclipx based on our assessed value of Eclipx shares post completion of the Scheme is shown below:

Eclipx – estimated market capitalisation of enlarged entity <sup>(1)</sup>		
	Low	High
Shares on issue post completion of Scheme (million) <sup>(2)</sup>	312.4	312.4
Adopted share price <sup>(3)</sup> (\$)	3.50	3.75
Market capitalisation post completion of Scheme (\$m)	1,093.4	1,171.5

**Note:**

- 1 Based on assessed share value post completion of the Scheme.
- 2 Ignoring Eclipx options and performance rights.
- 3 Assessed realisable value of Eclipx shares.

- 206 Based upon the latest reported balance sheets for both Eclipx and Grays, we consider there are no assets or liabilities of significance unrelated to the business operations of the companies. Accordingly, we have attributed the market capitalisation of Eclipx post completion of the Scheme to the combined business operations.

### NPATA

- 207 For the purpose of calculating the NPATA multiple implied by the above market capitalisation we have adopted normalised NPATA of \$78.7 million. This reflects:
- (a) NPATA of \$66.0 million for Eclipx on a standalone basis (i.e. excluding any contribution from Grays), consistent with the NPATA guidance provided by Eclipx management on 4 May 2017 for the year ending 30 September 2017<sup>25</sup>; plus

<sup>24</sup> NPATA is net profit after tax prior to the amortisation of acquired intangibles. This is the financial measure by which Eclipx management analyses the financial performance of the company.

<sup>25</sup> Eclipx management's NPATA guidance for FY17 represented growth of between 18% and 21% compared to the level of NPATA achieved in FY16. In this regard we note that broker forecasts for Eclipx for FY18 (excluding any contribution from Grays) assume NPATA growth at least equal to that forecast to be achieved in FY17.

- (b) a NPATA contribution from Grays of \$10.2 million (before Eclix's estimate of synergies), based on the level of EBITDA for Grays adopted by us for valuation purposes in Section VI<sup>26</sup>; plus
- (c) corporate and public company cost savings of \$2.5 million (after tax), which is conservative in comparison to the total synergies forecast by Eclix management<sup>27</sup>.

### Implied NPATA multiple

208 On this basis, the implied NPATA multiple for Eclix for FY17 (normalised) is as follows:

Eclix – implied NPATA multiple post completion of the Scheme		
	Low \$m	High \$m
Market capitalisation (post completion of Scheme)	1,093.4	1,171.5
Normalised NPATA	78.7	78.7
Implied NPATA multiple (post completion of Scheme)	13.9	14.9

209 The forecast FY17 NPATA multiples for Eclix and other broadly comparable companies are shown below:

NPATA multiples as at 15 May 2017					
	Balance date	Market capitalisation \$m	FY17 forecast	FY18 forecast	FY19 forecast
Eclix	Sept	1,008	14.7	13.3	12.2
McMillan Shakespeare	Jun	1,139	12.8	12.1	11.5
SG Fleet Group	Jun	946	13.7	12.5	11.6

#### Note:

- Market capitalisation and earnings multiples calculated as at 15 May 2017, with the exception of Eclix which is as at 3 May 2017 (being the last trading day prior to the announcement of the Scheme).
- Forecast earnings have been sourced from Bloomberg and reflect average broker forecasts (excluding outliers and outdated forecasts).

**Source:** Bloomberg, latest full year statutory accounts, latest interim accounts, company announcements, LEA analysis.

210 Based on the above, in our opinion, the implied multiple range for Eclix (post completion of the Scheme) is reasonable, particularly as Eclix management have indicated that they expect to achieve a significantly higher level of synergies than adopted in our price earnings cross-check. We therefore consider our assessed realisable range of values for Eclix shares to be reasonable and appropriate.

<sup>26</sup> Based on EBITDA of \$16.75 million (midpoint of our range) less depreciation of \$1.8 million, \$0.4 million net interest and a corporate tax rate of 30%.

<sup>27</sup> On 4 May 2017 Eclix management provided an FY18 target underlying EBITDA contribution from Grays under Eclix ownership of approximately \$23 million to \$25 million (which implies that Eclix expects to realise a higher level of synergy benefits from the acquisition of Grays).

## VIII Evaluation of the Scheme

### Summary of opinion

- 211 In our opinion, the Scheme is fair and reasonable and in the best interests of Grays shareholders in the absence of a superior proposal. We have formed this opinion for the reasons set out below.

### Value of Grays

- 212 As set out in Section VI, we have assessed the value of Grays at between \$1.25 and \$1.36 per share.

### Value of Scheme Consideration

- 213 As set out in Section VII, we have assessed the value of the Scheme Consideration at between \$1.28 and \$1.37 per share.

### Fair and reasonable opinion

#### Assessment of fairness

- 214 Pursuant to RG 111 the Scheme is “fair” if the value of the Scheme Consideration is equal to, or greater than, the value of the securities the subject of the Scheme. This comparison is shown below:

Comparison of Scheme Consideration to value of Grays			
	Low	High	Mid-point
	\$ per share	\$ per share	\$ per share
Value of Scheme Consideration	1.28	1.37	1.33
Value of 100% of Grays	1.25	1.36	1.31
Extent to which the Scheme Consideration exceeds the value of Grays	0.03	0.01	0.02

- 215 As the Scheme Consideration is broadly consistent with our assessed valuation range for Grays shares on a 100% controlling interest basis, in our opinion, the Scheme Consideration is fair to Grays shareholders when assessed based on the guidelines set out in RG 111.

#### Assessment of reasonableness

- 216 Pursuant to RG 111, a transaction is reasonable if it is fair. Further, in our opinion, if the Scheme is “fair and reasonable” it must also be “in the best interests” of shareholders.
- 217 Consequently, in our opinion, the Scheme is also “reasonable” and “in the best interests” of Grays shareholders in the absence of a superior proposal.
- 218 In assessing whether the Scheme is reasonable and in the best interests of Grays shareholders LEA has also considered, in particular:
- (a) the extent to which a control premium is being paid to Grays shareholders
  - (b) the extent to which Grays shareholders are being paid a share of any synergies likely to be generated pursuant to the proposed Scheme

- (c) the listed market price of Grays shares, both prior to and subsequent to the announcement of the proposed Scheme
- (d) the likely market price of Grays securities if the proposed Scheme is not approved
- (e) the value of Grays to an alternative offeror and the likelihood of a higher alternative offer being made for Grays prior to the date of the Scheme meeting
- (f) the advantages and disadvantages of the Scheme from the perspective of Grays shareholders
- (g) other qualitative and strategic issues associated with the Scheme.

219 These issues are discussed in detail below.

### **Extent to which a control premium is being paid**

220 Research undertaken by LEA indicates that average premiums paid in successful takeovers in Australia generally range between 30% and 35% above the listed market price of the target company's shares<sup>28</sup> three months prior to the announcement of the bid (assuming no speculation of the takeover is reflected in the pre-bid price). This premium range reflects the fact that:

- (a) the owner of 100% of the shares in a company obtains access to all the free cash flows of the company being acquired, which it would otherwise be unable to do as a minority shareholder
- (b) the controlling shareholder can direct the disposal of surplus assets and the redeployment of the proceeds
- (c) a controlling shareholder can control the appointment of directors, management policy and the strategic direction of the company
- (d) a controlling shareholder is often able to increase the value of the entity being acquired through synergies and/or rationalisation savings.

221 We have calculated the premium implied by the Scheme Consideration by reference to the market prices of Grays shares (as traded on the ASX) for periods up to and including 3 May 2017 (being the last trading day prior to the announcement of the Scheme).

222 We note that Grays shareholders received an interim dividend of 1.2 cents per share on 21 April 2017 and that the share prices prior to the ex-date of 28 February 2017 traded with an entitlement to this dividend. Accordingly, to ensure the implied premium is calculated on an appropriate basis we have therefore had regard to trading in Grays shares in the period subsequent to and including 28 February 2017 to 3 May 2017.

223 For the purpose of calculating the implied offer premium we have adopted the mid-point of \$1.33 per share of our assessed value of the Scheme Consideration, as set out at paragraph 213 above:

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<sup>28</sup> After adjusting the pre-bid market prices for the movement in share market indices between the date of the pre-bid market price and the announcement of the takeover.

**Implied offer premium relative to recent share prices**

	Grays share price \$	Implied control premium %
Closing share price on 3 May 2017 <sup>(1)</sup>	1.05	26.7
1 month VWAP <sup>(2)</sup> to 3 May 2017	1.05	26.7
28 February 2017 to 3 May 2017	1.03	29.1

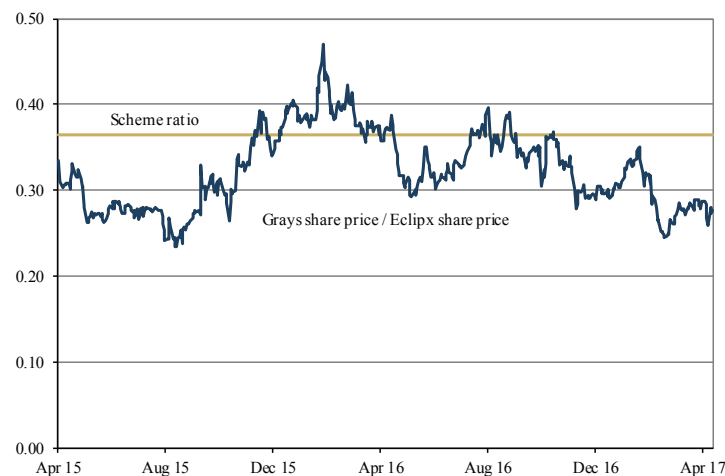
**Note:**

- 1 Being the closing price on the last day of trading prior to the announcement of the Scheme.
  - 2 Volume weighted average price.
- Rounding differences may exist.

- 224 In considering the implied premium we have also had regard to the relative prices at which shares in Grays and Eclix have traded over the period 22 April 2015 to 3 May 2017. As set out below, based on share market trading over this period, the Scheme ratio generally reflects a premium to the relative value placed on Grays by share market investors:

**Scheme ratio to Grays share price / Eclix share price**

**22 April 2015 to 3 May 2017**



- 225 The Scheme Consideration therefore provides Grays shareholders with a significant premium above the listed market price of Grays shares prior to the announcement of the Scheme (albeit the premium is slightly below the average premium paid in successful takeovers).

**Extent to which Grays shareholders are being paid a share of synergies**

- 226 As noted in Section VII, Eclix has indicated that large synergies (particularly relative to the size of the standalone earnings of Grays) are likely to be realised from combining the two businesses. In respect of the synergies identified by Eclix, we note:

- (a) cost related synergies identified by Eclix include cost savings arising from the current rationalisation of the B2C division (including exiting the leased premises at Lidcombe),

allowance for which (relative to the current status) has been made in our assessed maintainable EBITDA of Grays

- (b) the synergies identified by Eclix include projected additional revenues from an expected ability of Eclix to cross-sell products / services into the existing customer base of Grays<sup>29</sup>
- (c) in its Scheme related announcement on 4 May 2017, Eclix stated that it is targeting an EBITDA contribution from Grays (under Eclix ownership) of approximately \$23 million to \$25 million in FY18. This compares to maintainable EBITDA adopted (by LEA) for valuation purposes of \$16.75 million (mid-point). Based on related disclosure in the Eclix announcement we understand that the targeted increase in earnings is broadly attributable to annual savings in corporate overheads (being public company related costs no longer incurred and the elimination of other duplicated overheads), with the balance attributable to targeted revenue synergies identified by Eclix.

227 In the circumstances, based on our understanding of the nature and quantum of potential synergies identified by Eclix, we have concluded that an appropriate share of the value of the potential synergy benefits arising from the transaction is reflected in the Scheme Consideration.

### **Recent share prices subsequent to the announcement of the Scheme**

228 Since the announcement of the Scheme we note that, based on the respective VWAP, Grays shares have generally traded relative to Eclix shares at an implied ratio slightly below the Scheme ratio implicit in the Scheme Consideration<sup>30</sup>. This indicates that investors do not consider that a superior offer or proposal to the Scheme is considered likely.

### **Likely price of Grays shares if the Scheme is not implemented**

229 If the Scheme is not implemented we expect that, at least in the short-term, Grays shares will trade at a significant discount to our valuation and the Scheme Consideration due to the difference between the value of Grays shares on a portfolio basis and their value on a 100% controlling interest basis. In this regard we note that Grays shares last traded at \$1.05 per share on 3 May 2017 (being the last trading day prior to the announcement of the Scheme with Eclix).

230 If the Scheme is not implemented those Grays shareholders who wish to sell their Grays shares are therefore likely, at least in the short-term, to realise a significantly lower price for their shares than the value implicit in the Scheme Consideration.

### **Likelihood of an alternative offer**

231 We have been advised by the Directors of Grays that no formal alternative offers have been received subsequent to the announcement of the Scheme on 4 May 2017. We have been further advised that the Scheme reflects the outcome of negotiations between Grays and

<sup>29</sup> We note that by their nature, synergy benefits attributable to revenue related items are inherently more difficult to achieve than cost related synergy benefits.

<sup>30</sup> During the period to 17 May 2017 the shares in Eclix have traded with an entitlement to the 1H17 interim dividend of 7.5 cents per share (to be paid on 7 July 2017), and Grays shares have traded with an entitlement to the proposed Special Dividend of 5.6 cents per share which is planned to be paid prior to the implementation date of the Scheme.



Eclipx and that no formal sale process in respect of Grays was undertaken prior to entering into the Agreement with Eclipx.

- 232 There has effectively been (and remains) therefore an opportunity for third parties contemplating an acquisition of Grays to table a proposal before the Grays Board. In this regard, however, Grays shareholders should note the exclusivity obligations on Grays pursuant to the Agreement, which are outlined in Section I above.

### **Summary of opinion on the Scheme**

- 233 We summarise below the likely advantages and disadvantages for Grays shareholders if the Scheme proceeds.

#### **Advantages**

- 234 The Scheme has the following benefits for Grays shareholders:

- (a) the Scheme Consideration of 0.3656 Eclipx shares per Grays share held is broadly consistent with our assessed value range for Grays shares on a 100% controlling interest basis
- (b) the Scheme Consideration represents a significant premium to the recent market prices of Grays shares prior to the announcement of the Scheme on 4 May 2017
- (c) if the Scheme does not proceed, and in the absence of an alternative offer or proposal, the price of Grays shares is likely to trade at a significant discount to our valuation and the Scheme Consideration due to the portfolio nature of individual shareholdings.

#### **Disadvantages**

- 235 If the Scheme is implemented, Grays shareholders should note that they will no longer hold a direct interest in Grays, and their collective indirect ownership interest in Grays (to be held through Eclipx) will be diluted to approximately 15%. In the event that future value is created by Grays as a result of ongoing operations over and above that reflected in our assessed valuation of the company, Grays shareholders will therefore only share in approximately 15% of such future value.
- 236 However, as our assessed value of Grays shares is consistent with the Scheme Consideration, in our opinion, the present value of Grays's future potential is reflected in the Scheme Consideration. Further, as noted above, the Scheme Consideration equates (in aggregate) to an ownership interest of approximately 15% in the Eclipx business. As noted in Section IV, Eclipx has achieved significant earnings growth in recent years.

#### **Other matters**

- 237 It should also be noted that the proposed Scheme has the support of the Grays Board and Caledonia (Private) Investments Pty Limited (Grays major shareholder which, with its associates, had a relevant interest in 14.43% of Grays shares on 4 May 2017), in the absence of a superior proposal and subject to LEA maintaining its conclusion that the Scheme is in the best interests of Grays shareholders.

## **Conclusion**

238 Given the above analysis, we consider that the advantages of the Scheme significantly outweigh the disadvantages. Consequently, in our view, the acquisition of Grays shares by Eclipx under the Scheme is fair and reasonable and in the best interest of Grays shareholders in the absence of a superior proposal.

## Appendix A

### Financial Services Guide

#### Lonergan Edwards & Associates Limited

- 1 Lonergan Edwards & Associates Limited (ABN 53 095 445 560) (LEA) is a specialist valuation firm which provides valuation advice, valuation reports and independent expert's reports (IER) in relation to takeovers and mergers, commercial litigation, tax and stamp duty matters, assessments of economic loss, commercial and regulatory disputes.
- 2 LEA holds Australian Financial Services Licence No. 246532.

#### Financial Services Guide

- 3 The *Corporations Act 2001 (Cth)* (Corporations Act) authorises LEA to provide this Financial Services Guide (FSG) in connection with its preparation of an IER to accompany the Scheme Booklet to be sent to Grays shareholders in connection with the Scheme.
- 4 This FSG is designed to assist retail clients in their use of any general financial product advice contained in the IER. This FSG contains information about LEA generally, the financial services we are licensed to provide, the remuneration we may receive in connection with the preparation of the IER, and if complaints against us ever arise how they will be dealt with.

#### Financial services we are licensed to provide

- 5 Our Australian Financial Services Licence allows us to provide a broad range of services to retail and wholesale clients, including providing financial product advice in relation to various financial products such as securities, derivatives, interests in managed investment schemes, superannuation products, debentures, stocks and bonds.

#### General financial product advice

- 6 The IER contains only general financial product advice. It was prepared without taking into account your personal objectives, financial situation or needs.
- 7 You should consider your own objectives, financial situation and needs when assessing the suitability of the IER to your situation. You may wish to obtain personal financial product advice from the holder of an Australian Financial Services Licence to assist you in this assessment.

#### Fees, commissions and other benefits we may receive

- 8 LEA charges fees to produce reports, including this IER. These fees are negotiated and agreed with the entity who engages LEA to provide a report. Fees are charged on an hourly basis or as a fixed amount depending on the terms of the agreement with the entity who engages us. In the preparation of this IER, LEA is entitled to receive a fee estimated at \$100,000 plus GST.
- 9 Neither LEA nor its directors and officers receive any commissions or other benefits, except for the fees for services referred to above.

## Appendix A

- 10 All of our employees receive a salary. Our employees are eligible for bonuses based on overall performance and the firm's profitability, and do not receive any commissions or other benefits arising directly from services provided to our clients. The remuneration paid to our directors reflects their individual contribution to the company and covers all aspects of performance. Our directors do not receive any commissions or other benefits arising directly from services provided to our clients.
- 11 We do not pay commissions or provide other benefits to other parties for referring prospective clients to us.

### Complaints

- 12 If you have a complaint, please raise it with us first, using the contact details listed below. We will endeavour to satisfactorily resolve your complaint in a timely manner.
- 13 If we are not able to resolve your complaint to your satisfaction within 45 days of your written notification, you are entitled to have your matter referred to the Financial Ombudsman Services Limited (FOS), an external complaints resolution service. You will not be charged for using the FOS service.

### Contact details

- 14 LEA can be contacted by sending a letter to the following address:  
  
Level 7  
64 Castlereagh Street  
Sydney NSW 2000  
(or GPO Box 1640, Sydney NSW 2001)

## Appendix B

### Qualifications, declarations and consents

#### Qualifications

- 1 LEA is a licensed investment adviser under the Corporations Act. LEA's authorised representatives have extensive experience in the field of corporate finance, particularly in relation to the valuation of shares and businesses and have prepared hundreds of IERs.
- 2 This report was prepared by Mr Craig Edwards and Mr Martin Holt, who are each authorised representatives of LEA. Mr Edwards and Mr Holt have over 20 years and 30 years experience respectively in the provision of valuation advice (and related advisory services).

#### Declarations

- 3 This report has been prepared at the request of the Directors of Grays to accompany the Scheme Booklet to be sent to Grays shareholders. It is not intended that this report should serve any purpose other than as an expression of our opinion as to whether or not the Scheme is fair and reasonable and in the best interests of Grays shareholders.

#### Interests

- 4 At the date of this report, neither LEA, Mr Edwards nor Mr Holt have any interest in the outcome of the Scheme. With the exception of the fee shown in Appendix A, LEA will not receive any other benefits, either directly or indirectly, for or in connection with the preparation of this report.
- 5 We have considered the matters described in ASIC RG 112 – Independence of experts, and consider that there are no circumstances that, in our view, would constitute a conflict of interest or would impair our ability to provide objective independent assistance in this engagement.

#### Indemnification

- 6 As a condition of LEA's agreement to prepare this report, Grays agrees to indemnify LEA in relation to any claim arising from or in connection with its reliance on information or documentation provided by or on behalf of Grays which is false or misleading or omits material particulars or arising from any failure to supply relevant documents or information.

#### Consents

- 7 LEA consents to the inclusion of this report in the form and context in which it is included in the Scheme Booklet.

## Appendix C

### Listed company descriptions

#### Australasian online retailers and marketplaces

##### Trade Me Group Limited

- 1 Trade Me Group is an online marketplace and classified advertising platform in New Zealand, with auctions and fixed price sales for new and used goods, as well as automotive, real estate and employment businesses. It operates three divisions namely, General Item, Classifieds and Other. The General Item segment (35% of EBITDA in 1H17) covers its online marketplace business, with revenue generated from listing fees, premium fees and success fees. The Classifieds segment (54% of EBITDA in 1H17) represents advertising revenue from each of its three classified advertising sites (Motors, Property and Jobs), with revenue generated primarily from basic and premium listing fees. The Other segment (11% of EBITDA in 1H17) includes advertising, travel, dating, payments gateway, life and health insurance comparison and general insurance.

##### Kogan.com Limited

- 2 Kogan.com is a fixed price online retailer that operates in Australia and internationally. It sells both private label and third party branded products, offering grocery, apparel, consumer electronics, personal care, hardware, pantry, baby, fitness and outdoor products. The company also offers travel packages, mobile phone plans and accommodation and cruise bookings. In April 2016, Kogan.com purchased the Dick Smith brand name and associated websites as well as its customer database (including 1.5 million email subscribers).

##### Grays eCommerce Group

- 3 Grays is an Australian based e-commerce company focused on providing online auctioneering and associated services for businesses and online auctioneering for consumers. It is the largest industrial and commercial online auction business in the Asia-Pacific region, offering a large range of industrial, consumer and commercial goods, direct from asset owners, vendors, manufacturers, distributors and administrators.

#### International online retailers and marketplaces

##### eBay Inc.

- 4 eBay operates an auction based and fixed priced commerce platform that connects buyers and sellers worldwide through its Marketplace, Classifieds and StubHub business segments. The Marketplace segment provides the majority of eBay's revenue and income and includes the online marketplace located at ebay.com, its localised counterparts and eBay mobile apps. Classifieds cover online classified sites in more than 1,500 cities internationally and include the brands Gumtree, mobile.de, Marktplaats and eBay Kleinanzeigen (with revenue derived from advertising). StubHub is an online ticket platform that allows sport and art fans to connect and sell tickets to each other.

##### Mercadolibre Inc.

- 5 Mercado Libre hosts the largest e-commerce and payments ecosystem in Latin America and enables the sale and purchase of fixed price and auctioned goods to both businesses and

## Appendix C

individuals in 18 countries. It is designed to provide users with a complete portfolio of services to facilitate commercial transactions. MercadoLibre Classifieds allows users to list offerings such as motor vehicles, vessels, aircraft, services and real estate. MercadoLibre Advertising offers online advertising services on the company's various webpages. MercadoShops allows users to build, manage and promote their own web-stores. The company facilitates transactions with a shipping service it owns called MercadoEnvio and an integrated payments solution it owns called MercadoPago, that can be used both on and off of its online marketplace.

### BCA Marketplace Plc

- 6 BCA Marketplace operates the United Kingdom's and Europe's largest used-vehicle marketplace. It operates the United Kingdom's market leading provider of vehicle buying services, We Buy Any Car. The company facilitates the exchange of used vehicles between vendors including manufacturers, contract hire and leasing companies, dealers and vehicle buying companies and buyers. It offers both physical and online auctions as well as remarketing services. The company also provides vehicle inventory management services, fleet transport and both pre and post auction services including inspection, logistics appraisal, repair and valet. It is also involved in property leasing and supplying photographic software to the automotive industry.

### ETSY Inc.

- 7 Etsy operates an e-commerce platform mainly for vintage and handmade goods, offering approximately 45 million items from over one million independent sellers. It provides a range of supporting tools and services to sellers such as Etsy Payments, promoted listings and shipping labels. The company also provides sellers tools and education to start, manage and scale businesses through etsy.com, and also offers an online marketplace (A Little Market) for handmade products and supplies as well as Pattern, a platform which enables sellers to create custom websites.

### Manutan International SA

- 8 Manutan International is a distributor that assists industrial and commercial customers throughout Europe to make non-strategic business purchases by offering over 200,000 products to solve a variety of business needs. The company markets itself online, using paper catalogues and through sales teams and agencies. It provides handling, packaging, lifting, office, security and measuring equipment as well as school and industrial supplies, furniture and electrical products. Additionally, it offers services such as assembly, spare parts, bespoke design, express delivery, e-business solutions for key accounts and on-demand sourcing.

### MySale Group Plc

- 9 MySale Group is a leading international online retailer that provides retail, wholesale and flash sales to its customers while providing unique inventory management solutions to its brand partners. It offers fashion, accessories, health and beauty product and homeware at discounted prices. The company's online retail brands include Deals Direct, OO.com.au and Top Buy in Australia. Its flash sale brands host time limited sales predominately on a consignment inventory basis and include OzSale and BuyInvite in Australia, NzSale in New Zealand, SingSale in Singapore and both MySale and Cocosa internationally.



## Appendix C

### **Overstock.com Inc.**

- 10 Overstock.com is an online retailer in the United States that offers a broad range of discounted products including bed and bath goods, kitchenware, jewellery, sporting goods, electronics, books and accessories. It sells consumer products through overstock.com and offers business products, supplies and equipment through o.biz. The company uses both a direct business model, where it sells inventory from its own warehouse, and a partner business model, which involves selling merchandise from manufacturers, distributors and other suppliers direct to consumers using the company's website.

## Appendix D

### Glossary

Term	Meaning
Agreement	Scheme Implementation Deed
ASIC	Australian Securities & Investments Commission
ASX	Australian Securities Exchange
ATO	Australian Taxation Office
Corporations Act	<i>Corporations Act 2001 (Cth)</i>
Corporations Regulations	<i>Corporations Regulations 2001</i>
DCF	Discounted cash flow
EBIT	Earnings before interest and tax
EBITDA	Earnings before interest, tax and amortisation of acquired intangibles
EBITDA	Earnings before interest, tax depreciation and amortisation
FOS	Financial Ombudsman Services Limited
FSG	Financial Services Guide
FY	Financial year
IER	Independent expert's report
LEA	LonerGAN Edwards & Associates Limited
NPATA	Net profit after tax and the tax adjusted add back of intangibles
NPV	Net present value
RG 111	Regulatory Guide 111 – <i>Content of expert reports</i>
Scheme	The proposed acquisition of Grays by Eclix
Scheme Consideration	The consideration of 0.3656 Eclix shares for each Grays share held
Special Dividend	The proposed distribution of net proceeds from the variation of the Lidcombe lease
VWAP	Volume weighted average price

# APPENDIX 2 – INVESTIGATING ACCOUNTANT’S REPORT



## **KPMG Transaction Services**

A division of KPMG Financial Advisory Services  
(Australia) Pty Ltd  
Australian Financial Services Licence No. 246901  
Level 38, 300 Barangaroo Avenue  
Sydney NSW 2000

PO Box H67  
Australia Square 1213  
Australia

ABN: 43 007 363 215  
Telephone: +61 2 9335 7000  
Facsimile: +61 2 9335 7001  
DX: 1056 Sydney  
www.kpmg.com.au

The Directors  
Eclix Group Limited  
Level 32, 1 O’Connell Street  
Sydney NSW 2000

The Directors  
Grays eCommerce Group Limited  
Homebush Corporate Park  
29-33 Carter Street  
Lidcombe NSW 2141

21 June 2017

Dear Directors

## **Limited Assurance Investigating Accountant’s Report and Financial Services Guide**

### **Investigating Accountant’s Report**

#### **Introduction**

KPMG Financial Advisory Services (Australia) Pty Ltd (of which KPMG Transaction Services is a division) (“KPMG Transaction Services”) has been engaged by Eclix Group Limited (“Eclix”) and Grays eCommerce Group Limited (“Grays”) to prepare this report for inclusion in the Scheme Booklet to be dated 21 June 2017 (“Scheme Booklet”), and to be issued by Grays, in relation to the proposal from Eclix to acquire all the ordinary shares in Grays (together the “Combined Group”) (the “Transaction”).

Expressions defined in the Scheme Booklet have the same meaning in this report.

#### **Scope**

You have requested KPMG Transaction Services to perform a limited assurance engagement in relation to the Combined Group pro forma historical financial information described below and disclosed in the Scheme Booklet.

The Combined Group pro forma historical financial information is presented in the Scheme Booklet in an abbreviated form, insofar as it does not include all of the presentation and disclosures required by Australian Accounting Standards and other mandatory professional

KPMG Financial Advisory Services (Australia) Pty Ltd is affiliated with KPMG. KPMG is an Australian partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative (“KPMG International”), a Swiss entity.

reporting requirements applicable to general purpose financial reports prepared in accordance with the *Corporations Act 2001*.

Our limited assurance engagement has not been carried out in accordance with auditing or other standards and practices generally accepted in Australia and accordingly should not be relied upon as if it had been carried out in accordance with those standards and practices.

***Combined Group Pro Forma Historical Financial Information***

You have requested KPMG Transaction Services to perform limited assurance procedures in relation to the compilation of the Combined Group pro forma historical financial information of Eclix and Grays (the responsible parties) included in the Scheme Booklet.

The Combined Group pro forma historical financial information has been derived from the historical financial information of Eclix and Grays, after adjusting for the effects of pro forma adjustments described in Section 7.4 of the Scheme Booklet. The Combined Group pro forma historical financial information consists of:

- the Combined Group pro forma historical consolidated statements of profit or loss for the year ended 30 September 2016 and the six months ended 31 March 2017;
- the Combined Group pro forma historical consolidated statements of cash flows for the year ended 30 September 2016 and the six months ended 31 March 2017; and
- the Combined Group pro forma historical consolidated statement of financial position as at 31 March 2017 shown with pro forma adjustments to show the effect of events and transactions related to the Transaction,

as set out in Section 7.4 of the Scheme Booklet (together, the “Combined Group Pro Forma Historical Financial Information”).

The Combined Group pro forma historical consolidated statement of financial position as at 31 March 2017 consists of the Eclix historical consolidated statement of financial position as at 31 March 2017, the Grays historical consolidated statement of financial position as at 31 December 2016 as well as certain pro forma adjustment as described in Section 7.4 of the Scheme Booklet.

The Combined Group pro forma historical consolidated statement of profit or loss for the year ended 30 September 2016 consists of the aggregation of the Eclix historical consolidated statement of profit or loss for the year ended 30 September 2016 and the Grays historical consolidated statement of profit or loss for the year ended 30 June 2016.

The Combined Group pro forma historical consolidated statement of profit or loss for the half-year ended 31 March 2017 consists of the aggregation of the Eclix historical consolidated statement of profit or loss for the half-year ended 31 March 2017 and the Grays historical consolidated statement of profit or loss for the half-year ended 31 December 2016.

The Combined Group pro forma historical consolidated statement of cash flows for the year ended 30 September 2016 consists of the aggregation of the Eclix historical consolidated statement of cash flows for the year ended 30 September 2016 and the Grays historical consolidated statement of cash flows for the year ended 30 June 2016.

The Combined Group pro forma historical consolidated statement of cash flows for the half-year ended 31 March 2017 consists of the aggregation of the Eclix historical consolidated statement of cash flows for the half-year ended 31 March 2017 and the Grays historical consolidated statement of cash flows for the half-year ended 31 December 2016.

The stated basis of preparation is the recognition and measurement principles contained in Australian Accounting Standards applied to the historical financial information and the event(s) or transaction(s) to which the pro forma adjustments relate, as described in Section 7.4 of the Scheme Booklet. Due to its nature, the Combined Group Pro Forma Historical Financial Information does not represent the companies' actual or prospective financial position, profit or loss, or cash flows.

The Combined Group Pro Forma Historical Financial Information has been compiled by Eclix to illustrate the impact of the Transaction on Eclix's and Grays' financial position as at 31 March 2017, Eclix's and Grays' financial performance for the year ended 30 September 2016 and the half-year ended 31 March 2017 and Eclix's and Grays' cash flows for the year ended 30 September 2016 and the half-year ended 31 March 2017.

As part of this process, information about Eclix's and Grays' consolidated statement of financial position, consolidated statement of profit or loss and consolidated statement of cash flows has been extracted by Eclix and Grays from Eclix's financial statements for the year ended 30 September 2016 and half-year ended 31 March 2017, and from Grays' financial statements for the year ended 30 June 2016 and the half-year ended 31 December 2016.

The financial statements of Eclix for the year ended 30 September 2016 were audited by KPMG in accordance with Australian Auditing Standards. The audit opinion issued to the members of Eclix relating to those financial statements was unqualified. The financial statements of Grays for the year ended 30 June 2016 were audited by Grays' external auditor in accordance with Australian Auditing Standards. The audit opinion issued to the members of Grays relating to those financial statements was unqualified.

The financial statements of Eclix for the half-year ended 31 March 2017 were reviewed by KPMG in accordance with Australian Auditing Standards. The review opinion issued to the members of Eclix relating to those financial statements was unqualified. The financial statements of Grays for the half-year ended 31 December 2016 were reviewed by Grays' external auditor in accordance with Australian Auditing Standards. The review opinion issued to the members of Grays relating to those financial statements was unqualified.

For the purposes of preparing this report we have performed limited assurance procedures in relation to the Combined Group Pro Forma Historical Financial Information in order to state whether, on the basis of the procedures described, anything comes to our attention that would cause us to believe that the Combined Group Pro Forma Historical Financial Information is not

prepared, in all material respects, by the directors in accordance with the stated basis of preparation. As stated in section 7.4 of the Scheme Booklet, the stated basis of preparation is:

- the extraction of:
    - Eclixp's historical consolidated statement of profit or loss and historical consolidated statement of cash flows for the year ended 30 September 2016 from Eclixp's audited financial statements for the year ended 30 September 2016 and certain accounting records underlying the audited financial statements;
    - Eclixp historical consolidated statement of financial position as at 31 March 2017 and historical consolidated statement of profit or loss and historical consolidated statement of cash flows for the half-year ended 31 March 2017, from the reviewed financial statements for the half-year ended 31 March 2017 and certain accounting records underlying the reviewed financial statements;
    - Grays' historical consolidated statement of profit or loss and historical consolidated statement of cash flows for the year ended 30 June 2016 from Grays' audited financial statements for the year ended 30 June 2016 and certain accounting records underlying the audited financial statements; and
    - Grays historical consolidated statement of financial position as at 31 December 2016 and historical consolidated statement of profit or loss and historical consolidated statement of cash flows for the half-year ended 31 December 2016, from the reviewed financial statements for the half-year ended 31 December 2016;
- (together the "Historical Financial Information"), and
- the application of pro forma adjustments, determined in accordance with Australian Accounting Standards and Eclixp's accounting policies, to the Combined Group pro forma consolidated historical statement of financial position as at 31 March 2017 to illustrate the effects of the Transaction as if it had occurred on 31 March 2017, described in Section 7.4 of the proposed Scheme Booklet.

We have conducted our engagement in accordance with the Standard on Assurance Engagements ASAE 3450 *Assurance Engagements involving Corporate Fundraisings and/or Prospective Financial Information*.

The procedures we performed were based on our professional judgement and included:

*Historical Financial Information*

- consideration of work papers, accounting records and other documents, including those dealing with the extraction of:

- the Eclixp consolidated statement of financial position as at 31 March 2017 and Eclixp consolidated statement of profit or loss and consolidated statement of cash flows for the six months ended 31 March 2017 from Eclixp's reviewed financial statements for the six months ended 31 March 2017 and certain accounting records underlying the reviewed financial statements; and
  - the Eclixp consolidated statement of profit or loss and consolidated statement of cash flows for the year ended 30 September 2016 from Eclixp's audited financial statements for the year ended 30 September 2016 and certain accounting records underlying the audited financial statements,
- consideration of work papers, accounting records and other documents, including those dealing with the extraction of:
  - the Grays consolidated statement of financial position as at 31 December 2016 and Grays consolidated statement of profit or loss and consolidated statement of cash flows for the six months ended 31 December 2016 from Grays' reviewed financial statements for the six months ended 31 December 2016; and
  - the Grays consolidated statement of profit or loss and consolidated statement of cash flows for the year ended 30 June 2016 from Grays' audited financial statements for the year ended 30 June 2016 and certain accounting records underlying the audited financial statements;

*Pro forma adjustments:*

- consideration of the pro forma adjustments described in the proposed Scheme Booklet;
- enquiry of directors, management, personnel and advisors;
- the performance of analytical procedures applied to the Combined Group Pro Forma Historical Financial Information; and
- a review of accounting policies for consistency of application in the preparation of the pro forma adjustments.

The procedures performed in a limited assurance engagement vary in nature from, and are less in extent than for, an audit. As a result, the level of assurance obtained in a limited assurance engagement is substantially lower than the assurance that would have been obtained had we performed an audit. Accordingly, we do not express an audit opinion about whether the Combined Group Pro Forma Historical Financial Information is prepared, in all material respects, by the directors in accordance with the stated basis of preparation.



### **Directors' responsibilities**

The directors of Eclix are responsible for the preparation of the Combined Group Pro Forma Historical Financial Information, including the selection and determination of the pro forma transactions and/or adjustments made to the Historical Financial Information and included in the Combined Group Pro Forma Historical Information (save to the extent it relates to the Grays historical consolidated statement of profit or loss and the Grays historical consolidated statement of cash flows for the year ended 30 June 2016 and the half-year ended 31 December 2016, or the Grays historical consolidated statement of financial position as at 31 December 2016).

The directors of Grays are responsible for the Grays historical consolidated statement of profit or loss and historical consolidated statement of cash flows for the year ended 30 June 2016 and the half-year ended 31 December 2016, and the historical consolidated statement of financial position as at 31 December 2016 (the "Grays Historical Financial Information"), and for properly compiling the Combined Group Pro Forma Historical Financial Information (to the extent it relates to the Grays Historical Financial Information).

The directors' responsibility includes establishing and maintaining such internal controls as the directors determine are necessary to enable the preparation of financial information that is free from material misstatement, whether due to fraud or error.

### **Conclusions**

#### ***Review statement on the Combined Group Pro Forma Historical Financial Information***

Based on our procedures, which are not an audit, nothing has come to our attention that causes us to believe that the Combined Group Pro Forma Historical Financial Information, as set out in Section 7.4 of the Scheme Booklet, comprising:

- the Combined Group pro forma historical consolidated statements of profit or loss for the year ended 30 September 2016 and the half-year ended 31 March 2017;
- the Combined Group pro forma historical consolidated statements of cash flows for the year ended 30 September 2016 and the half-year ended 31 March 2017; and
- the Combined Group pro forma historical consolidated statement of financial position as at 31 March 2017;

is not prepared or presented fairly, in all material respects, on the basis of the pro forma transactions and/or adjustments described in Section 7.4 of the Scheme Booklet, and in accordance with the recognition and measurement principles prescribed in Australian Accounting Standards, and Eclix's accounting policies.

### **Independence**

KPMG Transaction Services does not have any interest in the outcome of the proposed Transaction, other than in connection with the preparation of this report and participation in due diligence procedures for which normal professional fees will be received. KPMG is the auditor

of Eclixp and from time to time, KPMG also provides Eclixp with certain other professional services for which normal professional fees are received.

**General advice warning**

This report has been prepared, and included in the Scheme Booklet, to provide investors with general information only and does not take into account the objectives, financial situation or needs of any specific investor. It is not intended to take the place of professional advice and investors should not make specific investment decisions in reliance on the information contained in this report. Before acting or relying on any information, an investor should consider whether it is appropriate for their circumstances having regard to their objectives, financial situation or needs.

**Restriction on use**

Without modifying our conclusions, we draw attention to Section 7.4 of the Scheme Booklet, which describes the purpose of the financial information, being for inclusion in the Scheme Booklet. As a result, the financial information may not be suitable for use for another purpose. We disclaim any assumption of responsibility for any reliance on this report, or on the financial information to which it relates, for any purpose other than that for which it was prepared.

KPMG Transaction Services has consented to the inclusion of this Investigating Accountant's Report in the Scheme Booklet in the form and context in which it is so included, but has not authorised the issue of the Scheme Booklet. Accordingly, KPMG Transaction Services makes no representation regarding, and takes no responsibility for, any other statements, or material in, or omissions from, the Scheme Booklet.

Yours faithfully



David Willis  
*Authorised Representative*

## **Financial Services Guide Dated 21 June 2017**

### ***What is a Financial Services Guide (FSG)?***

This FSG is designed to help you to decide whether to use any of the general financial product advice provided by **KPMG Financial Advisory Services (Australia) Pty Ltd ABN 43 007 363 215**, Australian Financial Services Licence Number 246901 (of which KPMG Transaction Services is a division) ('**KPMG Transaction Services**'), and David Willis as an authorised representative of KPMG Transaction Services, authorised representative number 404265 (**Authorised Representative**).

This FSG includes information about:

- KPMG Transaction Services and its Authorised Representative and how they can be contacted
- the services KPMG Transaction Services and its Authorised Representative are authorised to provide
- how KPMG Transaction Services and its Authorised Representative are paid
- any relevant associations or relationships of KPMG Transaction Services and its Authorised Representative
- how complaints are dealt with as well as information about internal and external dispute resolution systems and how you can access them; and
- the compensation arrangements that KPMG Transaction Services has in place.

The distribution of this FSG by the Authorised Representative has been authorised by KPMG Transaction Services. This FSG forms part of an Investigating Accountant's Report (Report) which has been prepared for inclusion in a disclosure document or, if you are offered a financial product for issue or sale, a Product Disclosure Statement (PDS). The purpose of the disclosure document or PDS is to help you make an informed decision in relation to a financial product. The contents of the disclosure document or PDS, as relevant, will include details such as the risks, benefits and costs of acquiring the particular financial product.

### **Financial services that KPMG Transaction Services and the Authorised Representative are authorised to provide**

KPMG Transaction Services holds an Australian Financial Services Licence, which authorises it to provide, amongst other services, financial product advice for the following classes of financial products:

- deposit and non-cash payment products;
- derivatives;
- foreign exchange contracts;
- government debentures, stocks or bonds;
- interests in managed investments schemes including investor directed portfolio services;

- securities;
- superannuation;
- carbon units;
- Australian carbon credit units; and
- eligible international emissions units,

to retail and wholesale clients. We provide financial product advice when engaged to prepare a report in relation to a transaction relating to one of these types of financial products. The Authorised Representative is authorised by KPMG Transaction Services to provide financial product advice on KPMG Transaction Services' behalf.

### **KPMG Transaction Services and the Authorised Representative's responsibility to you**

KPMG Transaction Services has been engaged by Eclixp Group Limited (Eclixp) and Grays eCommerce Group Limited (Grays) (together 'Client') to provide general financial product advice in the form of a Report to be included in a Scheme Booklet (Document) prepared by Grays in relation to the proposed acquisition of all the ordinary shares in Grays by Eclixp (Transaction).

You have not engaged KPMG Transaction Services or the Authorised Representative directly but have received a copy of the Report because you have been provided with a copy of the Document. Neither KPMG Transaction Services nor the Authorised Representative are acting for any person other than the Client.

KPMG Transaction Services and the Authorised Representative are responsible and accountable to you for ensuring that there is a reasonable basis for the conclusions in the Report.

### **General Advice**

As KPMG Transaction Services has been engaged by the Client, the Report only contains general advice as it has been prepared without taking into account your personal objectives, financial situation or needs.

You should consider the appropriateness of the general advice in the Report having regard to your circumstances before you act on the general advice contained in the Report.

You should also consider the other parts of the Document before making any decision in relation to the Transaction.

### **Fees KPMG Transaction Services may receive and remuneration or other benefits received by our representatives**

KPMG Transaction Services charges fees for preparing reports. These fees will usually be agreed with, and paid by, the Client. Fees are agreed on either a fixed fee or a time cost basis. In this instance, the Client has agreed to pay KPMG Transaction Services \$130,000 for preparing the Report. KPMG Transaction Services and its officers, representatives, related entities and associates will not receive any other fee or benefit in connection with the provision of the Report.

KPMG Transaction Services officers and representatives (including the Authorised Representative) receive a salary or a partnership distribution from KPMG's Australian professional advisory and accounting practice (the KPMG Partnership). KPMG Transaction Services' representatives (including the Authorised Representative) are eligible for bonuses based on overall productivity. Bonuses and other remuneration and benefits are not provided directly in connection with any engagement for the provision of general financial product advice in the Report.

Further details may be provided on request.

### **Referrals**

Neither KPMG Transaction Services nor the Authorised Representative pay commissions or provide any other benefits to any person for referring customers to them in connection with a Report.

### **Associations and relationships**

Through a variety of corporate and trust structures KPMG Transaction Services is controlled by and operates as part of the KPMG Partnership. KPMG Transaction Services' directors and Authorised Representatives may be partners in the KPMG Partnership. The Authorised Representative is a partner in the KPMG Partnership. The financial product advice in the Report is provided by KPMG Transaction Services and the Authorised Representative and not by the KPMG Partnership.

From time to time KPMG Transaction Services, the KPMG Partnership and related entities (KPMG entities) may provide professional services, including audit, tax and financial advisory services, to companies and issuers of financial products in the ordinary course of their businesses.

KPMG entities have provided, and continue to provide, a range of audit, tax and advisory services to Eclixp for which professional fees are received. Over the past two years professional fees of \$4.0 million have been received from Eclixp. Of these fees, \$280,000 related to advisory services in connection with the transaction.

KPMG entities have provided, and continue to provide, a range of audit, tax and advisory services to Grays for which professional fees are received. Over the past two years professional fees of \$10,000 have been received from Grays. None of those services have related to the transaction.

No individual involved in the preparation of this Report holds a substantial interest in, or is a substantial creditor of, the Client or has other material financial interests in the transaction.

#### **Complaints resolution**

##### Internal complaints resolution process

If you have a complaint, please let either KPMG Transaction Services or the Authorised Representative know. Formal complaints should be sent in writing to The Complaints Officer, KPMG, PO Box H67, Australia Square, Sydney NSW 1213. If you have difficulty in putting your complaint in writing, please telephone the Complaints Officer on 02 9335 7000 and they will assist you in documenting your complaint.

Written complaints are recorded, acknowledged within 5 days and investigated. As soon as practical, and not more than 45 days after receiving the written complaint, the response to your complaint will be advised in writing.

##### External complaints resolution process

If KPMG Transaction Services or the Authorised Representative cannot resolve your complaint to your satisfaction within 45 days, you can refer the matter to the Financial Ombudsman Service (FOS). FOS is an independent company that has been established to provide free advice and assistance to consumers to help in resolving complaints relating to the financial services industry.

Further details about FOS are available at the FOS website [www.fos.org.au](http://www.fos.org.au) or by contacting them directly at:

Address: Financial Ombudsman Service Limited, GPO Box 3, Melbourne Victoria 3001

Telephone: 1800 367 287

Facsimile: (03) 9613 6399

Email: [info@fos.org.au](mailto:info@fos.org.au).

The Australian Securities and Investments Commission also has a freecall infoline on 1300 300 630 which you may use to obtain information about your rights.

#### **Compensation arrangements**

KPMG Transaction Services has professional indemnity insurance cover as required by the Corporations Act 2001(Cth).

#### **Contact Details**

You may contact KPMG Transaction Services or the Authorised Representative using the contact details:

KPMG Transaction Services  
A division of KPMG Financial Advisory  
Services (Australia) Pty Ltd  
Level 38, Tower 3  
300 Barangaroo Avenue  
Sydney NSW 2000  
PO Box H67  
Australia Square  
NSW 1213  
Telephone: (02) 9335 7000  
Facsimile: (02) 9335 7200

David Willis  
C/O KPMG  
PO Box H67  
Australia Square  
NSW 1213  
Telephone: (02) 9335 7000  
Facsimile: (02) 9335 7200

## APPENDIX 3 – SCHEME



# Scheme of Arrangement

—  
Grays eCommerce Group Limited (**Target**)  
Scheme Shareholders  
—

Level 40 Governor Macquarie Tower 1 Farrer Place  
Sydney NSW 2000 Australia DX 117 Sydney  
T +61 2 9921 8888 F +61 2 9921 8123  
minterellison.com  
63137538

MinterEllison

# Scheme of Arrangement

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## Details

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth)  
Between the parties

Name	<b>Grays eCommerce Group Limited</b>
ABN	94 125 736 914
Short name	<b>Target</b>
Address details	Homebush Corporate Park, 29-33 Carter Street, Lidcombe, New South Wales, 2141 and <b>Each Scheme Shareholder</b>

### 1. Definitions and interpretation

#### 1.1 Definitions

In this Scheme, unless the context requires otherwise:

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

**Bidder** means Eclipx Group Limited ABN 85 131 557 901.

**Bidder Share** means a fully paid ordinary share in the capital of the Bidder.

**Bidder Sub** means Leasing Finance (Australia) Pty Limited ABN 39 121 167 824, being a wholly owned Subsidiary of the Bidder.

**Bidder Group** means the Bidder and each Subsidiary of the Bidder (excluding, at any time, each Target Group Member to the extent that such Target Group Member is a subsidiary of the Bidder at that time) and **Bidder Group Member** means any one of them.

**Bidder Registry** means Link Market Services Limited or any replacement provider of share registry services to the Bidder and to Bidder Sub from time to time.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales, Australia.

**CHESS** means the clearing house electronic subregister system of share transfers operated by ASX Settlement Pty Limited ABN 49 008 504 532.

**CHESS Holding** has the meaning given to that expression in the Settlement Rules.

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

**Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the Target and the Bidder may agree in writing.

**Deed Poll** means the deed poll dated 16 June 2017 executed by the Bidder and Bidder Sub under which each covenants in favour of the Scheme Shareholders to perform the actions attributed to the Bidder and Bidder Sub under this Scheme.

**Deemed Holder** has the meaning given to that expression in clause 5.7(b).

**Delivery Time** means the time being 2 hours before the commencement of the hearing of the Court on the Second Court Date.

**Effective** means, in relation to the Scheme, the coming into effect under section 411(10) of the Corporations Act of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme.

**Effective Date** means in relation to the Scheme, the date on which this Scheme becomes Effective.

**End Date** means 31 December 2017 or such other date agreed in writing between the Target and the Bidder.

**Excluded Shareholder** means any Target Shareholder who is a Bidder Group Member or any other Target Shareholder to the extent it holds the Target Shares on behalf of, or for the benefit of, any Bidder Group Member.

**Governmental Agency** means any Australian or foreign government or representative of a government or any Australian or foreign governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX or any other stock exchange and any regulatory organisation established under statute.

**Implementation Date** means, in relation to the Scheme, the date being 5 Business Days after the Record Date or such other Business Day agreed in writing by the Target and the Bidder.

**Ineligible Foreign Scheme Shareholder** means a Scheme Shareholder whose address as shown in the Target Register as at the Record Date is a place located outside of Australia and its external territories, New Zealand, the United States of America and any other jurisdiction as the Target and the Bidder may agree in writing (unless the Bidder is satisfied, acting reasonably, that the Bidder is permitted to allot and issue New Bidder Shares to that Scheme Shareholder pursuant to the Scheme under the laws of that place either unconditionally or after compliance with conditions that the Bidder reasonably regards as acceptable and not unduly onerous or impracticable).

**Issuer Sponsored Holding** has the meaning given in the Settlement Rules.

**Last Practicable Date** means 15 June 2017.

**Net Sale Proceeds** has the meaning given to that expression in clause 5.5(a)(iii).

**New Bidder Shares** means the Bidder Shares to be issued under the terms of the Scheme as Scheme Consideration and **New Bidder Share** means any one of them.

**Nominee** has the meaning given to that expression in clause 5.5(a)(i).

**Record Date** means 7.00pm on the date being 3 Business Days after the Effective Date or such other Business Day agreed in writing between the Target and the Bidder.

**Registered Address** means, in relation to a Target Shareholder, the address of that Target Shareholder shown in the Target Register as at the Record Date.

**Relevant New Bidder Shares** has the meaning given to that expression in clause 5.5(a)(i).

**Respective Proportion** means, in relation to an Ineligible Foreign Scheme Shareholder, the proportion (expressed as a percentage) that the number of Scheme Shares held by that Ineligible Foreign Scheme Shareholder as at the Record Date bears to the total number of Scheme Shares held by all Ineligible Foreign Scheme Shareholders as at the Record Date.

**Scheme** means this scheme of arrangement, subject to any alterations or conditions:

- (a) agreed to in writing by the Target and the Bidder; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

**Scheme Consideration** means, in respect of each Scheme Share held by a Scheme Shareholder, subject to the operation of clauses 5.5 and 5.7, the number of New Bidder Shares for that Scheme Share determined in accordance with the Scheme Consideration Ratio as at the Record Date.

**Scheme Consideration Ratio** means 0.365588962370616 New Bidder Shares per Scheme Share.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 4 May 2017 between the Bidder and the Target.

**Scheme Meeting** means the meeting of the Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act at which Target Shareholders will consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Share** means a Target Share on issue as at the Record Date other than any Target Share held at that time by an Excluded Shareholder (but includes any Target Share held at that time by an Excluded Shareholder on behalf of one or more Third Parties who are not Excluded Shareholders or otherwise in a fiduciary capacity on behalf of persons who are not Excluded Shareholders).

**Scheme Shareholder** means a Target Shareholder that holds Scheme Shares as at the Record Date.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Settlement Rules** means the ASX Settlement Operating Rules.

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act.

**Target Group** means the Target and its Subsidiaries and **Target Group Member** means any one of them.

**Target Performance Right** means a right granted under the Target Performance Rights Plan to acquire a Target Share, subject to the terms and conditions of the Target Performance Rights Plan.

**Target Performance Rights Plan** means the Grays eCommerce Group Limited Performance Rights Plan dated 17 January 2014.

**Target Register** means the register of members of the Target maintained by, or on behalf of, the Target in accordance with section 168(1) of the Corporations Act.

**Target Registry** means Computershare Investor Services Pty Limited or any replacement provider of share registry services to the Target from time to time.

**Target Share** means an issued fully paid ordinary share in the capital of the Target.

**Target Shareholder** means each person who is registered in the Target Register as a holder of Target Shares.

**Third Party** means any person or entity (including a Governmental Agency) other than a Target Group Member or a Bidder Group Member.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural, and the converse also applies;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to a clause or schedule is a reference to a clause of or schedule to this Scheme;
- (f) a reference to an **agreement** or **document** (including a reference to this Scheme) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Scheme or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document;

- (g) a reference to a party to this Scheme or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (h) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (i) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (j) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (k) a reference to **dollars** and **\$** is to Australian currency;
- (l) all references to time are to Sydney, Australia time;
- (m) mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included; and
- (n) a reference to an **officer** is to that term as it is defined in the Corporations Act.

### 1.3 Business Day

Where the day on or by which any act, matter or thing under this Scheme is to be done is not a Business Day, that act, matter or thing must be done on or by the next Business Day.

### 1.4 Listing requirements included as law

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

## 2. Preliminary

### 2.1 Target

- (a) The Target is a public company limited by shares, registered in Queensland, Australia and admitted to the official list of ASX.
- (b) The Target Shares are officially quoted on ASX. As at the Last Practicable Date the Target's capital structure, including all issued securities as at the date of this deed, is as set out below:
  - (i) 127,477,311 Target Shares were on issue which are officially quoted on ASX; and
  - (ii) 4,375,636 Target Performance Rights were on issue which are not quoted on any financial market.

### 2.2 Bidder

- (a) The Bidder is a public company limited by shares, registered in Victoria, Australia and admitted to the official list of ASX.
- (b) Bidder Sub, a wholly-owned Subsidiary of the Bidder, is a proprietary company limited by shares registered in Victoria, Australia.
- (c) The Bidder Shares are officially quoted on ASX. As at the Last Practicable Date, the Bidder's capital structure, including all issued securities, is as set out below:
  - (i) 265,300,492 Bidder Shares were on issue which are officially quoted on ASX; and
  - (ii) 15,270,000 options were on issue which are not quoted on any financial market;
  - (iii) 3,330,000 rights were on issue which are not quoted on any financial market.

### 2.3 General

- (a) The Target and the Bidder have agreed by executing the Scheme Implementation Deed to implement this Scheme.
- (b) This Scheme attributes actions to the Bidder and Bidder Sub but does not itself impose an obligation on them to perform those actions, as the Bidder and Bidder Sub are not parties to this Scheme. The Bidder and Bidder Sub have agreed, by executing the Deed Poll, to perform the actions attributed to them under this Scheme, including the provision or procuring the provision of the Scheme Consideration to the Scheme Shareholders.

### 2.4 Consequence of this Scheme becoming Effective

If this Scheme becomes Effective:

- (a) the Bidder will provide or procure the provision of the Scheme Consideration to Scheme Shareholders in accordance with this Scheme; and
- (b) all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, will be transferred to Bidder Sub, and the Target will enter Bidder Sub in the Target Register as the holder of the Scheme Shares with the result that the Target will become a wholly-owned subsidiary of the Bidder.

## 3. Conditions

- (a) This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:
  - (i) each of the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition in clause 3.1(b) relating to Court approval of the Scheme) having been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by the Delivery Time;
  - (ii) neither the Scheme Implementation Deed nor the Deed Poll having been terminated in accordance with their terms before the Delivery Time;
  - (iii) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are agreed to in writing by the Bidder and the Target;
  - (iv) such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to the Target and the Bidder, having been satisfied or waived; and
  - (v) the orders of the Court (including, if applicable, any orders of the Court under section 411(6) of the Corporations Act) approving the Scheme under section 411 of the Corporations Act coming into effect, under section 411(10) of the Corporations Act, on or before the End Date (or any later date that the Target and the Bidder agree in writing).
- (b) The satisfaction of the conditions referred to in clause 3(a) of this document is a condition precedent to the operation of clauses 4 and 5.
- (c) Subject to clause 3.2, this Scheme will take effect on and from the Effective Date.

### 3.2 Certificate

- (a) The Target and the Bidder will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3(a)(i) and 3(a)(ii) have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent were satisfied, waived or taken to be waived.

### **3.3 End date**

- (a) This Scheme will lapse and be of no further force or effect if:
  - (i) the Effective Date does not occur on or before the End Date;
  - (ii) the Scheme Implementation Deed is terminated before implementation of this Scheme on the Implementation Date,unless the Target and the Bidder otherwise agree in writing.

## **4. Implementation**

### **4.1 Lodgement of Court orders**

The Target must lodge with ASIC office copies of any Court orders under section 411 of the Corporations Act approving this Scheme as soon as possible and in any event no later than by 5.00pm on the first Business Day after the Court approves this Scheme.

### **4.2 Transfer of Scheme Shares**

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5, the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to Bidder Sub, without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its officers as agent and attorney of the Scheme Shareholders under clause 8.6 or otherwise) by:
  - (i) the Target delivering to Bidder Sub a share transfer form duly completed and executed by the Target on behalf of Scheme Shareholders to transfer all the Scheme Shares to Bidder Sub; and
  - (ii) Bidder Sub duly executing such transfer form and delivering it to the Target for registration; and
- (b) immediately after receipt of the transfer form in accordance with clause 4.2(a)(ii), but subject to the stamping of such transfer form (if required) the Target must enter, or procure the entry of, the name of Bidder Sub in the Target Register in respect of the Scheme Shares.

## **5. Scheme Consideration**

### **5.1 Amount of Scheme Consideration**

Subject to the other provisions in this clause 5, each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share registered in the name of the Scheme Shareholder.

### **5.2 Provision of Scheme Consideration**

- (a) Subject to clauses 5.4, 5.5, 5.6 and 5.7, the Bidder must on or before the Implementation Date:
  - (i) allot and issue to each Scheme Shareholder such number of New Bidder Shares as that Scheme Shareholder is entitled to in accordance with the Scheme and on the terms set out in clause 5.3 and procure that the name of the Scheme Shareholder is entered in the Bidder's register of members in respect of those New Bidder Shares (in holdings having the same holding name and address and other details as the holding of the relevant Scheme Shares); and
  - (ii) procure that the name of the Nominee is entered in the Bidder's register of members as the holder of the Relevant New Bidder Shares (with such holding details as the Nominee notifies).

- (b) On or before the date that is 5 Business Days after the Implementation Date, the Bidder must send or procure the sending of an allotment advice or holding statement (or equivalent document) to each Scheme Shareholder entitled to receive New Bidder Shares under this Scheme, reflecting the issue of such New Bidder Shares in accordance with clause 5.2(a)(i).

### 5.3 Status of the New Bidder Shares

Subject to this Scheme becoming Effective, the Bidder must:

- (a) issue the New Bidder Shares required to be issued under this Scheme on terms such that each such New Bidder Share will rank equally in all respects with each existing Bidder Share;
- (b) ensure that each such New Bidder Share required to be issued under this Scheme is duly issued and is fully paid and free from any mortgage, charge, lien, encumbrance or other security interest (except for any lien arising under the constitution of the Bidder); and
- (c) do everything reasonably necessary to ensure that the New Bidder Shares are approved for official quotation on ASX and that trading in the New Bidder Shares is able to commence as soon as practicable after the Implementation Date.

### 5.4 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any New Bidder Shares comprised in the Scheme Consideration are to be issued to and registered in the names of the joint holders; and
- (b) any other document required to be sent under this Scheme, will be forwarded to the holder whose name appears first in the Target Register as at the Record Date.

### 5.5 Ineligible Foreign Scheme Shareholders

- (a) Unless the Bidder is satisfied that the laws of an Ineligible Foreign Scheme Shareholder's country of residence (as shown in the Target Register as at the Record Date) permit the issue of New Bidder Shares to the Ineligible Foreign Scheme Shareholder either unconditionally or after compliance with conditions that the Bidder reasonably regards as acceptable and not unduly onerous or impracticable:
  - (i) the Bidder will be under no obligation under the Scheme to issue, and will not issue, any New Bidder Shares to any Ineligible Foreign Scheme Shareholders and instead must issue, subject to clauses 5.6 and 5.7, the New Bidder Shares that would otherwise have been issued to the Ineligible Foreign Scheme Shareholders (**Relevant New Bidder Shares**) to a nominee appointed by the Bidder (**Nominee**);
  - (ii) the Bidder must procure that as soon as reasonably practicable and in any event by no later than the date being 15 Business Days after the Implementation Date, the Nominee sell the Relevant New Bidder Shares on-market in such manner, at such price and on such other terms as the Nominee determines in good faith;
  - (iii) promptly after the sale of the last of the Relevant New Bidder Shares in the manner contemplated under clause 5.5(a)(ii), the Bidder must procure that the Nominee pays the aggregate proceeds for the sale of the Relevant New Bidder Shares (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges) (**Net Sale Proceeds**) to the Bidder; and
  - (iv) the Bidder must then, as soon as reasonably practicable and in any event by no later than the date being 5 Business Days after receipt of the Net Sale Proceeds from the Nominee, remit to each Ineligible Foreign Scheme Shareholder the amount equal to that Ineligible Foreign Scheme Shareholder's Respective Proportion of the Net Sale Proceeds (rounded down to the nearest cent).



- (b) The amount referred to in clause 5.5(a)(iv) must be paid by the Bidder doing any of the following at its election:
- (i) sending (or procuring the Bidder Registry or Target Registry to send) it to the Scheme Shareholder's Registered Address by cheque in Australian currency;
  - (ii) depositing (or procuring the Bidder Registry or Target Registry to deposit) it into a bank account notified to the Bidder or the Target (or the Bidder Registry or the Target Registry) by an appropriate authority from the relevant Scheme Shareholder; or
  - (iii) where an Ineligible Foreign Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Target Registry to receive dividend payments from the Target by electronic funds transfer to a bank account nominated by the Ineligible Foreign Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election.
- (c) In the event that the Bidder believes, after consultation with the Target Registry, that an Ineligible Foreign Scheme Shareholder is not known at its Registered Address (including as a result of any cheque sent to an Ineligible Foreign Shareholder in accordance with clause 5.5(b)(i) being returned to sender) and no account has been notified in accordance with clause 5.5(b)(ii) or a deposit into such account notified in accordance with clause 5.5(b)(ii) is rejected or refunded, the Bidder may credit the amount payable to that Ineligible Foreign Scheme Shareholder to a separate bank account of the Bidder until the Ineligible Foreign Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW), and the Bidder must hold the amount in trust but any amount accruing from the amount will be to the benefit of the Bidder. An amount credited to the account is to be treated as having been paid to the Ineligible Foreign Scheme Shareholder.
- (d) The Ineligible Foreign Scheme Shareholders acknowledge that neither the Bidder nor the Nominee gives any assurance as to the price that will be achieved for the sale of the New Bidder Shares described in clause 5.5(a).
- (e) If the Bidder receives professional advice that any withholding or other tax is required by law or a Governmental Agency to be withheld from a payment to an Ineligible Foreign Scheme Shareholder, the Bidder is entitled to withhold the relevant amount before making the payment to the Ineligible Foreign Scheme Shareholder (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme, including clause 5.5(a)(iv)). The Bidder must pay any amount so withheld to the relevant taxation authorities within the time permitted by law, and, if requested in writing by the relevant Ineligible Foreign Scheme Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Ineligible Foreign Scheme Shareholder.
- (f) Each Ineligible Foreign Scheme Shareholder appoints the Target as its agent to receive on its behalf any financial services guide (or similar or equivalent document) or other notices (including any updates of those documents) that the Nominee is required to provide to Ineligible Foreign Shareholders under the Corporations Act or any other applicable law.
- (g) If there is any surplus Net Sale Proceeds, that surplus may be retained by the Bidder following the satisfaction of the Bidder's obligations under this clause. Any interest on the Net Sale Proceeds (less bank fees and other charges) will be to the Bidder's account.
- (h) If any amount is required under any law or by any Governmental Agency to be:
- (i) withheld from any amount of the Net Sale Proceeds payable under this clause 5.5 and paid to that entity or authority; or
  - (ii) retained by the Bidder out of an amount payable under this clause 5.5,
- its payment or retention by the Bidder (or the Bidder Registry) will constitute the full discharge of the Bidder's obligations under this clause with respect to the amount so paid or retained until, in the case of clause 5.5(h)(ii), it is no longer required to be retained.

- (i) Payment of the amount calculated in accordance with clause 5.5(a)(iv) to an Ineligible Foreign Scheme Shareholder in accordance with this clause 5.5 satisfies in full the Ineligible Foreign Scheme Shareholder's right to Scheme Consideration for each Scheme Share held by the Ineligible Foreign Scheme Shareholder.

## 5.6 Orders of a court or Governmental Agency

If written notice is given to the Bidder (or the Bidder Registry) or to the Target (or the Target Registry) of an order or direction made by a court of competent jurisdiction or by another Governmental Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by the Bidder in accordance with this clause 5, then the Bidder shall be entitled to procure that the provision of that consideration is made in accordance with that order or direction; or
- (b) prevents the Bidder from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, the Bidder shall be entitled to (as applicable):
  - (i) retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration for each Scheme Share; and/or
  - (ii) not issue, or issue to a trustee or nominee, such number of New Bidder Shares as that Scheme Shareholder would otherwise be entitled to under clause 5.2;until such time as payment in accordance with this clause 5 is permitted by that (or another) order or direction or otherwise by law.

## 5.7 Fractional entitlements and splitting

- (a) Where the calculation of the number of New Bidder Shares to be issued to a particular Scheme Shareholder would result in a Scheme Shareholder becoming entitled to a fraction of a New Bidder Share, the fractional entitlement will be rounded down to the nearest whole number of New Bidder Shares.
- (b) If the Bidder reasonably forms the opinion that two or more Scheme Shareholders, each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.7(a), have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain advantage by reference to such rounding, the Bidder may send a notice to those Scheme Shareholders stating that opinion and attributing to one of them specifically identified in the notice (**Deemed Holder**) all of the Scheme Shares held by all of them, on which, for the purposes of the Scheme:
  - (i) the Deemed Holder will be taken to hold all of the Scheme Shares referred to in the notice; and
  - (ii) each of the other Scheme Shareholders whose names are set out in the notice, will be taken not to hold any of the Scheme Shares,and, by complying with this clause 5.7(b), the Bidder will be taken to have satisfied and discharged its obligations under the terms of the Scheme to all the Scheme Shareholders named in the notice.

## 5.8 Definition of 'sending'

For the purposes of clause 5, the expression **sending** means, in relation to each Scheme Shareholder:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Shareholder as at the Record Date; or
- (b) delivery to the Registered Address of that Scheme Shareholder as at the Record Date by any other means at no cost to the recipient.

## 6. Entitlement to participate and dealings in the Target Shares

### 6.1 Entitlement to participate

Each Scheme Shareholder will be entitled to participate in the Scheme.

### 6.2 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in the Target Shares will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Register as the holder of the relevant the Target Shares on or before the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before the Record Date at the place where the Target Register is kept,

and the Target will not accept for registration, nor recognise for any purpose (except a transfer to Bidder Sub under this Scheme and any subsequent transfer by Bidder Sub or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### 6.3 Register

- (a) **(Registration of transfers)** The Target must register registrable transmission applications or transfers of the kind referred to in clause 6.2(b) by the Record Date (provided that for the avoidance of doubt nothing in this clause 6.3 requires the Target to register a transfer that would result in a Target Shareholder holding a parcel of Target Shares that is less than a 'marketable parcel' (as defined in the Settlement Rules)).
- (b) **(No registration after Record Date)** The Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of the Target Shares received after the Record Date, other than to Bidder Sub in accordance with this Scheme.
- (c) **(Maintenance of the Target Register)** For the purpose of determining entitlements to the Scheme Consideration, the Target must maintain the Target Register in accordance with the provisions of this clause until the Scheme Consideration has been delivered to the Scheme Shareholders. The Target Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) **(No disposal after Record Date)** From the Record Date until registration of Bidder Sub in respect of all Scheme Shares under clause 4, no Target Shareholder may dispose or otherwise deal with the Target Shares in any way except as set out in this Scheme and any attempt to do so will have no effect and the Target shall be entitled to disregard any such disposal.
- (e) **(Statements of holding from Record Date)** All statements of holding for Target Shares will cease to have effect from the Record Date as documents of title in respect of those shares (other than statements of holding in favour of any Excluded Shareholders). As from the Record Date, each entry current at that date on the Target Register (other than entries in respect of any Excluded Shareholder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (f) **(Provision of Scheme Shareholder details)** As soon as practicable after the Record Date and in any event by no later than 5:00pm on the Business Day after the Record Date, the Target will ensure that details of the names, Registered Addresses and holdings of the Target Shares for each Scheme Shareholder are available to the Bidder in the form the Bidder reasonably requires.

## 7. Quotation of the Target Shares

- (a) The Target will apply to ASX to suspend trading on the ASX in the Target Shares with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by the Bidder, and only after the transfer of the Scheme Shares has been registered in accordance with clause 4.2(b), the Target will apply:
  - (i) for termination of the official quotation of the Target Shares on ASX; and
  - (ii) to have itself removed from the official list of ASX.

## 8. General Scheme provisions

### 8.1 Consent

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) the Target may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which the Bidder has consented in writing; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions to which the Target has consented.

### 8.2 Binding effect of Scheme

This Scheme binds the Target and all Scheme Shareholders (including those who did not attend the Scheme Meeting, those who did not vote at that meeting, or voted against this Scheme at that meeting) and, to the extent of any inconsistency, overrides the constitution of the Target.

### 8.3 Scheme Shareholders' agreements and acknowledgment

Each Scheme Shareholder:

- (a) agrees to the transfer of the Target Shares registered in the name of the Scheme Shareholder as at the Record Date together with all rights and entitlements attaching to those Target Shares in accordance with this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this Scheme;
- (c) who holds their Target Shares in a CHESS Holding agrees to the conversion of those Target Shares to an Issuer Sponsored Holding and irrevocably authorises the Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
- (d) agrees to become a shareholder in the Bidder and to be bound by the constitution of the Bidder; and
- (e) acknowledges that this Scheme binds the Target and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against this Scheme at that Scheme Meeting).

### 8.4 Warranties by Scheme Shareholders

- (a) Each Scheme Shareholder is deemed to have warranted to the Target, the Bidder and Bidder Sub, and appointed and authorised the Target as its attorney and agent to warrant to the Bidder and to Bidder Sub on the Implementation Date that, as at the Implementation Date:
  - (i) all Target Shares registered in its name (including any rights and entitlements attaching to those shares) which are transferred to Bidder Sub under this Scheme will, on the date on which they are transferred to Bidder Sub, be free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;

- (ii) all Target Shares registered in its name which are transferred to Bidder Sub under this Scheme will, on the date on which they are transferred to Bidder Sub, be fully paid;
  - (iii) it has full power and capacity to transfer Target Shares registered in its name to Bidder Sub together with any rights and entitlements attaching to those shares; and
  - (iv) it has no existing right to be issued any Target Shares, Target Performance Rights or any other Target securities, other than, in the case of any Scheme Shareholder who is also the holder of Target Performance Rights, the right to be issued Target Shares on the exercise or vesting of those the Target Performance Rights in accordance with their terms.
- (b) The Target undertakes that it will provide the warranties in clause 8.4(a) to Bidder Sub as agent and attorney of each Scheme Shareholder.

### 8.5 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to those shares) transferred under this Scheme will be transferred free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration for each Scheme Share to each Scheme Shareholder in the manner contemplated by clause 5, Bidder Sub will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of Bidder Sub in the Target Register as the holder of the Scheme Shares.

### 8.6 Authority given to the Target

Each Scheme Shareholder, without the need for any further act:

- (a) on the Effective Date, irrevocably appoints the Target and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary for or incidental to the implementation of this Scheme, including executing, as agent and attorney of each Scheme Shareholder, a share transfer or transfers in relation to Scheme Shares as contemplated by clause 4.2; and
- (b) on the Implementation Date, irrevocably appoints the Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of executing any document necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it including (without limitation) a proper instrument of transfer of its Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the Scheme Shares,

and the Target accepts each such appointment. Each Scheme Shareholder agrees that the Target as attorney and agent of each Scheme Shareholder may sub-delegate its functions, authorities or powers under this clause 8.6 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

### 8.7 Appointment of sole proxy

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder or to the Nominee (as applicable) in the manner contemplated by clause 5 and until the Target registers Bidder Sub as the holder of all the Target Shares in the Target Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed Bidder Sub as its attorney and agent (and directed Bidder Sub in such capacity) to appoint an officer or agent nominated by Bidder Sub as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of the Target, exercise the votes attaching to the Scheme Shares registered in its name and sign any Target Shareholders' resolutions or document;

- (b) undertakes not to otherwise attend shareholders' meetings, exercise the votes attaching to Scheme Shares registered in their names or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than as under clause 8.7(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder Sub reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.7(a), Bidder Sub and any officer or agent nominated by Bidder Sub under clause 8.7(a) may act in the best interests of Bidder Sub as the intended registered holder of the Scheme Shares.

## **8.8 Instructions and elections**

If not prohibited by law (and including where permitted or facilitated by relief granted by a Governmental Agency), all instructions, notifications or elections by a Scheme Shareholder to the Target binding or deemed binding between the Scheme Shareholder and the Target relating to the Target or the Target Shares (including any email addresses, instructions relating to communications from the Target, whether dividends are to be paid by cheque or into a specific bank account, notices of meetings or other communications from the Target) will be deemed from the Implementation Date (except to the extent determined otherwise by the Bidder in its sole discretion), by reason of this Scheme, to be made by the Scheme Shareholder to the Bidder and to be a binding instruction, notification or election to, and accepted by, the Bidder in respect of the New Bidder Shares issued to that Scheme Shareholder until that instruction, notification or election is revoked or amended in writing addressed to the Bidder at its registry.

## **9. General**

### **9.1 Stamp duty**

The Bidder must pay all stamp duty payable in connection with the transfer of the Scheme Shares to Bidder Sub.

### **9.2 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this document is sent by post to the Target, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at the Target's registered office or at the office of the Target Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Target Shareholder may not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### **9.3 Further assurances**

- (a) The Target must do anything necessary (including executing agreements and documents) or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (b) Each Scheme Shareholder consents to the Target doing all things necessary or incidental to give full effect to this Scheme and the transactions contemplated by it, whether on behalf of the Scheme Shareholder, the Target or otherwise.

### **9.4 Governing law and jurisdiction**

- (a) This Scheme is governed by the laws of New South Wales.
- (b) The parties irrevocably submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Scheme.

### **9.5 Further action**

The Target must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

#### **9.6 No liability when acting in good faith**

Each Scheme Shareholder agrees that neither the Target, nor the Bidder, nor Bidder Sub, nor any director, officer, secretary or employee of any of those companies shall be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.



# APPENDIX 4 – NOTICE OF SCHEME MEETING

GRAYS eCOMMERCE GROUP LIMITED  
ABN 94 125 736 914

## NOTICE OF SCHEME MEETING

Notice is hereby given that by an order of the Court made on 21 June 2017 pursuant to section 411(1) of the *Corporations Act 2001* (Cth) a meeting of the holders of ordinary shares in Grays eCommerce Group Limited (**Company**) will be held at the offices of MinterEllison, Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 on Wednesday, 26 July 2017 at 11.30am (AEST) (**Scheme Meeting**).

The Court has also directed that Mr Jonathan Pinshaw act as Chairman of the Scheme Meeting or failing him Mr Mark Bayliss.

Information on the Scheme is set out in this Scheme Booklet (of which this notice forms part). To enable you to make an informed voting decision, important information on the Scheme is set out in the Scheme Booklet. This notice should be read in conjunction with the Scheme Booklet. The Explanatory Notes to this notice provides additional information on matters to be considered at the Scheme Meeting. The Explanatory Notes and the Proxy Form forms part of this notice.

Terms used in this notice of Scheme Meeting will, unless the context otherwise requires, have the meaning given to them in the Glossary in Section 12 of the Scheme Booklet.

### BUSINESS OF THE SCHEME MEETING – SCHEME RESOLUTION

The purpose of the Scheme Meeting is to consider, and if thought fit, to approve the following resolution in accordance with section 411(4)(a)(ii) of the Corporations Act:

*“That, pursuant to and in accordance with section 411 of the Corporations Act, the scheme of arrangement proposed between the Company and Grays Shareholders, the terms of which are contained in and more particularly described in the Scheme Booklet (which accompanies the notice convening this meeting) is agreed to and the Directors of the Company are authorised to agree to such alterations or conditions as are thought fit by the Court, and subject to approval by the Court, to implement the Scheme with any such alterations or conditions.”*

BY ORDER OF THE BOARD

**Leanne Ralph**  
Company Secretary  
21 June 2017

## EXPLANATORY NOTES

### ENTITLEMENT TO VOTE

The Directors have determined pursuant to regulation 7.11.37 of the *Corporations Regulations 2001* (Cth) that the persons eligible to vote at the Scheme Meeting are those persons (other than Excluded Shareholders) who are registered shareholders of the Company as at 7.00pm (AEST) on Monday, 24 July 2017 (**Entitlement Time**).

This means that if you are not the registered holder of a Share in the Company at the Entitlement Time, you will not be entitled to attend and vote at the Scheme Meeting.

### MAJORITIES REQUIRED

In accordance with section 411(4)(a)(ii) of the Corporations Act, the Scheme Resolution (which is contained in this notice of Scheme Meeting) must be passed by:

- a. a majority in number (more than 50%) of Grays Shareholders (other than Excluded Shareholders) present and voting (in person or by proxy, corporate representative or attorney) at the Scheme Meeting; and
- b. at least 75% of the votes cast on the Scheme Resolution (in person or by proxy, corporate representative or attorney).

The Court has a discretion under section 411(4)(a)(ii)(A) of the Corporations Act to approve the Scheme if it is approved by at least 75% of the votes cast on the resolution but not by a majority in number of Grays Shareholders present and voting at the Scheme Meeting.

### COURT APPROVAL

Under section 411(4)(b) of the Corporations Act, the Scheme (with or without alteration or condition) is subject to the approval of the Court. If the resolution put to the Scheme Meeting is passed by the requisite majorities and the other Conditions to the Scheme (other than approval by the Court) are satisfied or waived by the time required under the Scheme, the Company intends to apply to the Court for the necessary orders to give effect to the Scheme.

### VOTING OPTIONS AND PROXIES

#### Voting in person

Grays Shareholders or their proxies, attorneys or representatives (including representatives of corporate proxies) wishing to vote in person should attend the Scheme Meeting and bring a form of personal identification (such as their driver's licence).

Grays Shareholders, their attorneys or representatives (including proxies and their representatives) who plan to attend the Scheme Meeting in person are asked to arrive at the venue 30 minutes prior to the time designated for the commencement of the Scheme Meeting, so that their shareholding can be checked against the Grays Share Register and attendances noted. Attorneys should bring with them the original or a certified copy of the power of attorney under which they have been authorised to attend and vote at the meetings.

To vote in person at the Scheme Meeting, you, your proxy, your attorney, your representative or your corporate proxy's representative must attend the Scheme Meeting to be held at the offices of MinterEllison, Level 40, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 on 26 July 2017, at 11.30am (AEST).

If you do not plan to attend the Scheme Meeting in person, you are encouraged to complete and return the Proxy Form, which accompanies this notice of Scheme Meeting.

#### Voting by Proxy

A Grays Shareholder who is entitled to attend and vote at the Scheme Meeting is entitled to appoint not more than two proxies to attend and vote in place of the Grays Shareholder.

If the Grays Shareholder appoints two proxies, the Grays Shareholder may specify the proportion or number of votes each proxy is entitled to exercise. If no proportion or number of votes is specified, each proxy may exercise half of the Grays Shareholder's votes. If the specified proportion or number of votes exceeds that which the Grays Shareholder is entitled to, each proxy may exercise half of the Grays Shareholder's votes. Any fractions of votes brought about by the apportionment of votes to a proxy will be disregarded.

A proxy need not be a Grays Shareholder. A body corporate appointed as a Grays Shareholder's proxy may appoint a representative to exercise any of the powers the body may exercise as a proxy at the Scheme Meeting. The representative should bring to the Scheme Meeting evidence of his or her appointment, including any authority under which the appointment is signed, unless it has previously been given to the Company.

If a Grays Shareholder has not directed their proxy how to vote, the proxy may vote as the proxy determines.

If a Grays Shareholder nominates the Chairman of the Scheme Meeting as their proxy, the person acting as Chairman of the Scheme Meeting must act as proxy under the appointment in respect of any or all items of business to be considered at the Scheme Meeting. If a proxy appointment is signed or validly authenticated by a Grays Shareholder but does not name the proxy or proxies in whose favour it is given, or their named proxy or proxies do not attend the meeting, the Chairman of the Scheme Meeting may at his or her election:

- a. act as proxy in respect of any or all items of business to be considered at the Scheme Meeting; or
- b. complete the proxy appointment by inserting the name or names of one or more Grays Directors or the Company secretary to act as proxy under the appointment, in respect of any or all items of business to be considered at the Scheme Meeting.

### Chairman's Voting Intentions

Proxy appointments in favour of the Chairman of the Scheme Meeting, the secretary of the Company or any Grays Director which do not contain a direction will be voted in support of the Scheme Resolution at the Scheme Meeting (in the absence of a Superior Proposal prior to the date of the Scheme Meeting).

### Proxy Forms

To be effective, the Proxy Form must be completed, signed and lodged (together with the relevant original power of attorney or a certified copy if the proxy is signed by an attorney) with the Company's Share Registry, as an original or by facsimile, no later than 11.30am (AEST) on Monday, 24 July 2017 (**Proxy Deadline**).

Proxy forms may be submitted in one of the following ways:

- a. **By mail** to Computershare Investor Services Pty Limited using the reply paid envelope or GPO Box 242, Melbourne VIC 3001. Please allow sufficient time so that it reaches Computershare Investor Services Pty Ltd by the Proxy Deadline;
- b. **By fax** to Computershare Investor Services Pty Limited on +1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia);
- c. **Online** via the Company's Share Registry website at [www.investorvote.com.au](http://www.investorvote.com.au). Please refer to the Proxy Form for more information; or
- d. **By hand delivery** to Computershare Investor Services Pty Limited at Level 4, 60 Carrington Street, Sydney NSW 2000.

Proxy Forms and Powers of Attorney must be received by the Proxy Deadline.

### Voting by attorney

Grays Shareholders wishing to vote by attorney at the Scheme Meeting must, if they have not already presented an appropriate power of attorney to Grays for notation, deliver to the Grays Share Registry (at the address or facsimile number provided above) the original instrument appointing the attorney or a certified copy of it by 11.30am (AEST) on 24 July 2017.

### CORPORATE REPRESENTATIVES

Where a shareholding is registered in the name of a corporation, the corporate shareholder may appoint a person to act as its representative to attend the Scheme Meeting by providing that person with:

- a. a letter or certificate authorising him or her as the corporation's representative, executed in accordance with the corporation's constitution; or
- b. a copy of the resolution appointing the representative, certified by a secretary or director of the corporation.

# APPENDIX 5 – SCHEME IMPLEMENTATION DEED



## Scheme Implementation Deed

—  
Grays eCommerce Group Limited (**Target**)  
Eclipx Group Limited (**Bidder**)  
—

Level 40 Governor Macquarie Tower 1 Farrer Place  
Sydney NSW 2000 Australia DX 117 Sydney  
T +61 2 9921 8888 F +61 2 9921 8123  
[minterellison.com](http://minterellison.com)  
62538548

MinterEllison

ME\_137065800\_2

# Scheme Implementation Deed

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# Details

Date

4 May 2017

## Parties

Name	<b>Grays eCommerce Group Limited</b>
ABN	94 125 736 914
Short form name	<b>Target</b>
Notice details	Homebush Corporate Park, 29 – 33 Carter Street, Lidcombe, New South Wales, 2141 Facsimile: +61 2 9741 9680 Email: mark.bayliss@grays.com.au Attention: Mr Mark Bayliss

Name	<b>Eclipx Group Limited</b>
ABN	85 131 557 901
Short form name	<b>Bidder</b>
Notice details	Level 32, 1 O'Connell Street, Sydney, New South Wales, 2000 Facsimile: +61 2 8973 7171 Email: Matt.Sinnamon@eclipx.com Attention: Group General Counsel

## Background

- A The Target and the Bidder have agreed to implement the Proposed Transaction on the terms, and subject to the conditions, of this deed.
- B The Target and the Bidder have agreed certain other matters in connection with the Proposed Transaction as set out in this deed.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

**Adviser** means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to the Target or the Bidder in connection with the Proposed Transaction.

**Agreed Announcement** has the meaning given to that expression in clause 14.2.

**ASIC** means the Australian Securities and Investments Commission.

**Associate** has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this deed and the Target was the designated body.

**ASX** means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

**Authorised Persons** means, in relation to a person, each:

- (a) director, officer, partner, member or employee of the person;
- (b) Adviser of the person; and
- (c) director, officer or employee of an Adviser of the person,

and **Authorised Person** means any one of them.

**Bidder Break Fee** has the meaning given to that term in clause 12.3(a).

**Bidder Disclosure Letter** means the letter so entitled provided by the Bidder to the Target prior to the date of this deed.

**Bidder Excluded Obligation** means each obligation of the Bidder under each of clauses 2(b), 3.3, 3.5, 4.1, 4.2, 4.3, 5.2, 5.7, 7.8 and 12.

**Bidder Group** means the Bidder and each Subsidiary of the Bidder (excluding, at any time, each Target Group Member to the extent that such Target Group Member is a subsidiary of the Bidder at that time) and **Bidder Group Member** means any one of them.

**Bidder Indemnified Parties** means each Bidder Group Member (other than the Bidder) and each Authorised Person of each Bidder Group Member.

**Bidder Information** means the information regarding the Bidder Group, the merged Bidder-Target entity following implementation of the Scheme, the Scheme Consideration and the Bidder's intentions relating to the Target Group's business, assets and employees that is provided by or on behalf of the Bidder or any of its Advisers to the Target in writing for inclusion in the Scheme Booklet (excluding any information provided by the Target to the Bidder, or obtained by the Bidder from an announcement made by the Target to ASX or from a publicly available document lodged by the Target with ASIC, contained in, or used in the preparation of, the information regarding the merged Bidder-Target entity following implementation of the Scheme). For the avoidance of doubt, the Bidder Information excludes the Target Information, the Independent Expert's Report, any investigating accountant's report and any description of the taxation effect of the Proposed Transaction on Scheme Shareholders.

**Bidder Knowledge Persons** means each director of the Bidder.

**Bidder Material Adverse Change** means any event, change, condition, occurrence, circumstance, thing or matter (or the announcement, disclosure or discovery of any event, change, condition, occurrence, circumstance, thing or matter) occurring before, on or after the date of this deed that individually or when aggregated with all such events, changes, conditions,

occurrences, circumstances, things or matters that have occurred or are reasonably likely to occur, has, has had or would be reasonably likely to have:

- (a) the effect of diminishing the consolidated net profit after tax and tax adjusted add back of intangibles of the Bidder Group, taken as a whole, by at least \$5.5 million against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance thing or matter;
- (b) the effect of diminishing the consolidated net operating income of the Bidder Group, taken as a whole, by at least \$19.6 million against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance, thing or matter; or
- (c) the effect of diminishing the consolidated net assets of the Bidder Group, taken as a whole, by at least \$65.88 million against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance, thing or matter,

other than those events, changes, conditions, occurrences, circumstances, things or matters:

- (a) required to be done or procured by a Bidder Group Member under, or pursuant to, this deed, the Deed Poll or the Scheme;
- (b) to the extent it is Fairly Disclosed in the Bidder Disclosure Letter;
- (c) Fairly Disclosed in the six months prior to the date of this deed in filings of the Bidder on ASX;
- (d) relating to costs and expenses incurred by the Bidder Group in connection with the Proposed Transaction, including all fees payable to any Adviser of a Bidder Group Member; or
- (e) that:
  - (i) result from changes in generally accepted accounting principles or the interpretation of them;
  - (ii) arise as a result of any generally applicable change in law or governmental policy; or
  - (iii) arise from changes in economic or business conditions or securities markets in general,

but, in each case, excluding any event, change, condition, occurrence, circumstance, thing or matter which has a disproportionate adverse effect on the Bidder Group, taken as a whole, as compared to other participants in the principal business segments in which the Bidder Group operates.

**Bidder Parties** means each Bidder Group Member and each Authorised Person relating to each Bidder Group Member.

**Bidder Prescribed Occurrence** means the occurrence of any of the following on or after the date of this deed and before the Delivery Time:

- (a) the Bidder converts all or any of its shares into a larger or smaller number of shares (as contemplated under section 254H of the Corporations Act or otherwise);
- (b) the Bidder resolves to reduce its share capital in any way or to reclassify, combine, split or redeem any of the shares in the Bidder;
- (c) the Bidder:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any Bidder Group Member issues securities (including, without limitation, shares and convertible notes or securities convertible into shares), or grants a right (including a performance right) or an option over securities (including, without limitation, shares) in the Bidder Group Member, or agrees to make such an issue or grant such a right or option other than:

- (i) pursuant to an exercise or vesting of an option or right where that option or right was on issue as at the time immediately prior to the entry into this deed;
- (ii) any issue of rights or options pursuant to the Eclix Group Limited Long-Term Incentive Plan;
- (iii) any issue of shares pursuant to the Bidder's dividend reinvestment plan;
- (iv) any issue of shares to the vendor or vendors of a company or business purchased by a Bidder Group Member; or
- (v) any issue of securities to another Bidder Group Member;
- (e) any material Bidder Group Member disposes, or agrees to dispose, of the whole, or a substantial part, of the business or property of the Bidder Group Member;
- (f) any Bidder Group Member creates or agrees to create any Encumbrance over the whole, or a substantial part, of the business or property of the Bidder Group Member, other than to a bona fide Third Party financier or in the usual and ordinary course of business of the Bidder Group Member;
- (g) any Bidder Group Member becomes Insolvent;
- (h) the Bidder makes any change to its constitution or convenes a meeting to consider a resolution to change the constitution of the Bidder, which change adversely affects, or would reasonably be expected to adversely affect, any Target Shareholder disproportionately to Bidder Shareholders (on the basis that in considering whether the change adversely affects, or would reasonably be expected to adversely affect, any Target Shareholder disproportionately to Bidder Shareholder, such Target Shareholder will be deemed to be a registered holder of Bidder Shares);
- (i) any Bidder Group Member ceases, or threatens to cease, to carry on any material business of the Bidder Group Member conducted as at the date of this deed;
- (j) any Bidder Group Member (other than a dormant, non-operating member of the Bidder Group) is deregistered as a company or is otherwise dissolved;
- (k) any Bidder Group Member disposes of shares or securities in any material Bidder Group Member other than to another Bidder Group Member; or
- (l) any Bidder Group Member directly or indirectly authorises, commits or agrees to take or publicly announces any of the actions referred to in paragraphs (a) to (k) (inclusive) of this definition,

provided that a Bidder Prescribed Occurrence will not include any matter:

- (m) required or permitted to be done or procured by a Bidder Group Member under, or pursuant to, this deed or the Scheme;
- (n) Fairly Disclosed in the six months prior to the date of this deed in filings of the Bidder on ASX;
- (o) required by law or by an order of a court or other Governmental Agency;
- (p) to the extent it is Fairly Disclosed in the Bidder Disclosure Letter; or
- (q) the undertaking of which the Target has approved in writing.

**Bidder Registry** means Link Market Services Limited or any replacement provider of share registry services to the Bidder and to Bidder Sub from time to time.

**Bidder Share** means an issued fully paid ordinary share in the capital of the Bidder.

**Bidder Sub** means Leasing Finance (Australia) Pty Limited (ACN 121 167 824), being a wholly owned Subsidiary of Bidder.

**Bidder Warranties** means the representations and warranties of the Bidder set out in clause 9.1.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales, Australia.

**Change of Control Contract** has the meaning given to that expression in clause 7.6(a).

**Claim** means a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgement, award, damage, loss, costs, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

**Competing Proposal** means any offer, expression of interest, proposal, transaction or arrangement by a Third Party that, if entered into or completed, would mean a person or two or more persons who are Associates:

- (a) would acquire a Relevant Interest or voting power in 15% or more of the aggregate number of Target Shares or of securities of any other Target Group Member;
- (b) would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 15% or more of the aggregate number of Target Shares or of the securities of any other Target Group Member;
- (c) would directly or indirectly acquire or become the holder of, or otherwise acquire or have the right to acquire, any legal, beneficial or economic interest in, or control of, all or a substantial part or material part of the business conducted by, or assets or property of, the Target Group;
- (d) would acquire Control of the Target or any other material Target Group Member;
- (e) may otherwise acquire, or merge with, the Target or any other material Target Group Member; or
- (f) require Target to abandon, or otherwise fail to proceed with, the Proposed Transaction, whether by way of takeover bid, scheme of arrangement, capital reduction, buy-back or sale of assets, sale of securities, strategic alliance, dual listed company structure (or other synthetic merger), joint venture, partnership, any proposal by the Target to implement any reorganisation of capital or any other transaction or arrangement, and on the basis that each successive material modification or variation of any proposal, offer, arrangement, expression of interest or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

**Conditions** means the conditions set out in clause 3.1 and **Condition** means any one of them.

**Confidentiality Agreement** means the exclusivity and confidentiality deed dated 24 March 2017 between the Target and the Bidder.

**Consultation Notice** has the meaning given to that expression in clause 3.6(a).

**Control** has the meaning given under section 50AA of the Corporations Act and **Controlled** has a corresponding meaning.

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

**Counterparty Consent** has the meaning given to that expression in clause 7.6(b)(i).

**Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the Target and the Bidder may agree in writing.

**Deed Poll** means the deed poll to be executed by the Bidder and Bidder Sub in favour of the Scheme Shareholders prior to the First Court Date in the form set out in Schedule 2 or such other form acceptable to the Target (acting reasonably).

**Delivery Time** means the time being 2 hours before the commencement of the hearing of the Court on the Second Court Date.

**Due Diligence Material** means:

- (a) the documents and information (including all written responses provided by or on behalf of the Target Group in response to written requests for information) that were at any time prior to 5.00pm on 3 May 2017 contained in the online data room established by or on behalf of the Target Group and made available to the Bidder and the Bidder's Authorised Persons prior to the date of this deed, the index of which has been initialled as at the date of this deed by, or on behalf of, the Target and the Bidder for identification; and

- (b) to the extent not contained in the Due Diligence Material, all written information disclosed by or on behalf of the Target Group in management presentations made to the Bidder and the Bidder's Authorised Persons prior to the date of this deed, provided copies of which are attached to the Target Disclosure Letter.

**Effective** means, in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

**Effective Date** means, in relation to the Scheme, the date on which the Scheme becomes Effective.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest (including a security interest as defined in section 12 of the *Personal Property Securities Act 2009* (Cth)), title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person, whether registered or unregistered.

**End Date** means 31 December 2017 or such other date agreed in writing between the Target and the Bidder.

**Excluded Shareholder** means any Target Shareholder who is a Bidder Group Member or any other Target Shareholder to the extent it holds Target Shares on behalf of, or for the benefit of, any Bidder Group Member.

**Excluded Warranties** means the representations and warranties of the Target set out in clauses 9.3(b)(xix) and 9.3(b)(xx).

**Exclusivity Period** means the period commencing on the date of this deed and ending on the earlier of:

- (a) the End Date;
- (b) the Effective Date; and
- (c) the date this deed is terminated in accordance with its terms.

**Fairly Disclosed** means, in relation to information disclosed in respect of a matter, event or circumstance to the Bidder or any of the Bidder's Authorised Persons, disclosed to a sufficient extent, and in sufficient detail, so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Proposed Transaction to identify or ascertain the nature and scope of the relevant matter, event or circumstance from the information disclosed.

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Governmental Agency** means any Australian or foreign government or representative of a government or any Australian or foreign governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity, and includes any minister, ASIC, ASX or any other stock exchange and any regulatory organisation established under statute.

**Headcount Test** means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Target Shareholders (other than Excluded Shareholders) present and voting, either in person or by proxy.

**Implementation Date** means, in relation to the Scheme, the date being 5 Business Days after the Record Date or such other Business Day agreed in writing by the Target and the Bidder.

**Impugned Amount** has the meaning given to that expression in clause 13.1.

**Incoming Officer** has the meaning given to that expression in clause 8.1.

**Independent Expert** means an expert, independent of the parties, appointed by the Target in good faith to opine on whether the Scheme is in the best interest of Target Shareholders.

**Independent Expert's Report** means the report issued by the Independent Expert in connection with the Scheme for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in the Independent Expert's opinion, the Scheme is in the best interest of Target Shareholders, but does not include any supplement, addendum or update of that report unless expressly stated otherwise in this deed.

**Ineligible Foreign Scheme Shareholder** means a Scheme Shareholder whose address as shown in the Target Register as at the Record Date is a place located outside of Australia and its external territories, New Zealand and any other jurisdiction as the Target and the Bidder may agree in writing (unless the Bidder is satisfied, acting reasonably, that the Bidder is permitted to allot and issue New Bidder Shares to that Scheme Shareholder pursuant to the Scheme under the laws of that place either unconditionally or after compliance with conditions that the Bidder reasonably regards as acceptable and not unduly onerous or impracticable).

**Insolvency Event** means, in relation to a person:

- (a) **insolvency official**: the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **arrangements**: the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **winding up**: the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **suspends payments**: the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **insolvency**: the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (f) **deregistration**: the person is deregistered as a company or otherwise dissolved;
- (g) **deed of company arrangement**: the person executing a deed of company arrangement; or
- (h) **analogous events**: anything analogous to those set out in any of paragraphs (a) to (g) (inclusive) of this definition occurs in relation to the person under the laws of a foreign jurisdiction,

and the person shall be **Insolvent** if any event specified in paragraphs (a) to (h) (inclusive) of this definition occurs in respect of that person.

**Interest Rate** means, in relation to an amount due for payment, the 30 day Bank Bill Swap Reference Rate as published as at the relevant due date for payment in the 'Money & Bond Markets' section of The Australian Financial Review.

**Listing Rules** means the official listing rules of ASX as amended or waived from time to time.

**New Bidder Shares** means the Bidder Shares to be issued under the terms of the Scheme as Scheme Consideration and **New Bidder Share** means any one of them.

**Outgoing Officer** has the meaning given to that expression in clause 8.2.

**Proposed Transaction** means:

- (a) the proposed acquisition by Bidder Sub in accordance with the terms and conditions of this deed of all of the Target Shares (other than the Target Shares owned or held by an Excluded Shareholder) through the implementation of the Scheme; and
- (b) all transactions and steps contemplated by this deed.

**Receiving Party** has the meaning given to that expression in clause 18.3.



**Record Date** means 7.00pm on the date being 5 Business Days after the Effective Date or such other Business Day agreed in writing between the Target and the Bidder.

**Regulatory Approvals** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, license, direction, declaration, authority, waiver, modification, or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without such intervention or action.

**Related Body Corporate** means, in relation to a person, a related body corporate of that person under section 50 of the Corporations Act.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Relevant Notice** has the meaning given to that expression in clause 10.6(a)(iv).

**Respective Proportion** means, in relation to an Ineligible Foreign Scheme Shareholder, the proportion (expressed as a percentage) that the number of Scheme Shares held by that Ineligible Foreign Scheme Shareholder as at the Record Date bears to the total number of Scheme Shares held by all Ineligible Foreign Scheme Shareholders as at the Record Date.

**Rival Acquirer** has the meaning given to that term in clause 10.6(a)(v).

**RG 60** means ASIC Regulatory Guide 60 issued by ASIC.

**Scheme** means a members' scheme of arrangement under Part 5.1 of the Corporations Act between the Target and Scheme Shareholders under which Bidder Sub proposes to acquire all of the Target Shares (other than any Target Shares held by an Excluded Shareholder), substantially in the form set out in Schedule 3, subject to any alterations or conditions:

- (a) agreed to in writing by the Target and the Bidder; or
- (b) made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

**Scheme Booklet** means the explanatory booklet to be prepared by the Target in respect of the Proposed Transaction in accordance with the terms of this deed and to be despatched to Target Shareholders.

**Scheme Consideration** means, in respect of each Scheme Share held by a Scheme Shareholder, subject to the terms of the Scheme, the number of New Bidder Shares for that Scheme Share determined in accordance with the Scheme Consideration Ratio as at the Record Date.

**Scheme Consideration Ratio** means 0.365588962370616 New Bidder Shares per Scheme Share.

**Scheme Meeting** means the meeting of the Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act at which Target Shareholders will consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Share** means a Target Share on issue as at the Record Date other than any Target Share held at that time by an Excluded Shareholder (but includes any Target Share held at that time by an Excluded Shareholder on behalf of one or more Third Parties who are not Excluded Shareholders or otherwise in a fiduciary capacity on behalf of persons who are not Excluded Shareholders).

**Scheme Shareholder** means a Target Shareholder that holds Scheme Shares as at the Record Date.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Share Splitting** means the splitting by a holder of Target Shares into two or more parcels of Target Shares whether or not it results in any change in beneficial ownership of the Target Shares.

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal:

- (a) of the kind referred to in any of paragraphs (c), (d) or (e) of the definition of 'Competing Proposal'; and
- (b) not resulting from a breach by the Target of any of its obligations under clause 10 of this deed (it being understood that any actions by the other Target Group Members or the Authorised Persons of any Target Group Member not permitted by clause 10 shall be deemed to be a breach by the Target for the purposes hereof),

which in the determination of the Target Board acting in good faith in order to satisfy what the Target Board reasonably considers to be its fiduciary or statutory obligations (after having taken written advice from their external legal counsel and financial advisers in relation to the financial aspects of the Competing Proposal):

- (c) is reasonably capable of being valued and reasonably likely to be completed in accordance with its terms in a timely fashion, taking into account all financial, regulatory and other aspects of such proposal, including the ability of the proposing party to consummate the transactions contemplated by the Competing Proposal; and
- (d) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to Target Shareholders as a whole than the terms of the Proposed Transaction (as completed) as notified at that time by the Bidder (or any Authorised Person of the Bidder) to the Target (including, for the avoidance of doubt, following the application of the matching right in clause 10.6), taking into account all of the terms and conditions of the Competing Proposal, including consideration, conditionality, funding, certainty, timing, the identity of the proponent and any other matters affecting the probability of the Competing Proposal being completed.

**Target Board** means the board of directors of the Target as constituted from time to time (or any committee of the board of directors of the Target constituted from time to time to consider the Proposed Transaction on behalf of the Target).

**Target Break Fee** has the meaning given to that term in clause 11.3(a).

**Target Director** means a director of the Target from time to time.

**Target Director Shares** means, in relation to a Target Director, all Target Shares:

- (a) held by or on behalf of the Target Director; or
- (b) listed as an indirect interest in an Appendix 3X or Appendix 3Y lodged by the Target with ASX in respect of the Target Director.

**Target Disclosure Letter** means the letter so entitled provided by the Target to the Bidder on or prior to the date of this deed (including any schedules or annexures to that letter).

**Target Excluded Obligation** means each obligation of the Target under each of clauses 2(a), 3.3, 3.5, 4.6, 5.1, 5.6, 5.7, 6, 7.1, 7.2 (except in respect of an event, change, circumstance, occurrence, matter or thing to which clause 7.3(d) applies), 10 and 11.

**Target Group** means the Target and its Subsidiaries and **Target Group Member** means any one of them.

**Target Indemnified Parties** means each Target Group Member (other than the Target) and each Authorised Person of each Target Group Member.

**Target Information** means:

- (a) the entirety of the information to be included in the Scheme Booklet (excluding the Bidder Information, the Independent Expert's Report, any investigating accountant's report and any description of the taxation effect of the Proposed Transaction on Scheme Shareholders prepared by an external adviser to the Target); and

- (b) any information provided by the Target to the Bidder, or obtained by the Bidder from an announcement made by the Target to ASX or from a publicly available document lodged by the Target with ASIC, contained in, or used in the preparation of, the information regarding the merged Bidder-Target entity following implementation of the Scheme.

**Target Knowledge Persons** means each director of the Target and David Grbin

**Target Material Adverse Change** means any event, change, condition, occurrence, circumstance, thing or matter (or the announcement, disclosure or discovery of any event, change, condition, occurrence, circumstance, thing or matter) occurring before, on or after the date of this deed that individually or when aggregated with all such events, changes, conditions, occurrences, circumstances, things or matters that have occurred or are reasonably likely to occur, has, has had or would be reasonably likely to have:

- (a) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Target Group taken as a whole; or
- (b) without limiting the generality of paragraph (a) of this definition:
  - (i) the effect of diminishing the consolidated EBITDA of the Target Group, taken as a whole, by at least \$1,500,000 against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance thing or matter;
  - (ii) the effect of diminishing the consolidated revenue of the Target Group, taken as a whole, by at least \$12,500,000 against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance, thing or matter; or
  - (iii) the effect of diminishing the consolidated net assets of the Target Group, taken as a whole, by at least \$2,460,000 against what it would reasonably be expected to have been but for that event, change, condition, occurrence, circumstance, thing or matter;

other than those events, changes, conditions, occurrences, circumstances, things or matters:

- (a) required to be done or procured by a Target Group Member under, or pursuant to, this deed or the Scheme;
- (b) to the extent it is Fairly Disclosed in the Due Diligence Materials and/or the Target Disclosure Letter;
- (c) Fairly Disclosed in the six months prior to the date of this deed in filings of the Target on ASX;
- (d) relating to costs and expenses incurred by the Target Group in connection with the Proposed Transaction, including all fees payable to any Adviser of a Target Group Member, to the extent such amounts or a reasonable estimate of such amounts are Fairly Disclosed in the Due Diligence Material or the Target Disclosure Letter;
- (e) relating to the payment by the Target of the Target Permitted Special Dividend;
- (f) that:
  - (i) result from changes in generally accepted accounting principles or the interpretation of them;
  - (ii) arise as a result of any generally applicable change in law or governmental policy; or
  - (iii) arise from changes in economic or business conditions or securities markets in general,

but, in each case, excluding any event, change, condition, occurrence, circumstance, thing or matter which has a disproportionate adverse effect on the Target Group, taken as a whole, as compared to other participants in the principal business segments in which the Target Group operates.

**Target Parties** means:

- (a) the Target Group Members; and
  - (b) each Authorised Person of each Target Group Member,
- and **Target Party** means any one of them.

**Target Performance Right** means a right granted under the Target Performance Rights Plan to acquire a Target Share, subject to the terms and conditions of the Target Performance Rights Plan.

**Target Performance Rights Plan** means the Grays eCommerce Group Limited Performance Rights Plan dated 17 January 2014.

**Target Permitted Special Dividend** has the meaning given to that expression in clause 7.7(a).

**Target Prescribed Occurrence** means the occurrence of any of the following on or after the date of this deed and before the Delivery Time:

- (a) the Target converts all or any of its shares into a larger or smaller number of shares (as contemplated under section 254H of the Corporations Act or otherwise);
- (b) the Target resolves to reduce its share capital in any way or to reclassify, combine, split or redeem any of the shares in the Target;
- (c) the Target:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any Target Group Member issues securities (including, without limitation, shares), or grants a performance right or an option over securities (including, without limitation, shares) in the Target Group Member, or agrees to make such an issue or grant such a performance right or option other than pursuant to an exercise or vesting prior to the Record Date of a Target Performance Right on issue as at the time immediately prior to the entry into this deed provided that such exercise or vesting is agreed by the Target and the Bidder in writing;
- (e) any Target Group Member issues, or agrees to issue, securities convertible into shares in the Target Group Member;
- (f) any Target Group Member issues, or agrees to issue, convertible notes;
- (g) any Target Group Member disposes, or agrees to dispose, of the whole, or a substantial part, of the business or property of the Target Group Member;
- (h) any Target Group Member creates or agrees to create any Encumbrance over the whole, or a substantial part, of the business or property of the Target Group Member;
- (i) any Target Group Member becomes Insolvent;
- (j) any Target Group Member makes any change to its constitution or convenes a meeting to consider a resolution to change the constitution of any other Target Group Member;
- (k) any Target Group Member ceases, or threatens to cease, to carry on the business of the Target Group Member conducted as at the date of this deed;
- (l) any Target Group Member (other than a dormant, non-operating member of the Target Group) is deregistered as a company or is otherwise dissolved;
- (m) any Target Group Member disposes of shares or securities in any Target Group Member other than to another Target Group Member; or
- (n) any Target Group Member directly or indirectly authorises, commits or agrees to take or publicly announces any of the actions referred to in paragraphs (a) to (m) (inclusive) of this definition,

provided that a Target Prescribed Occurrence will not include any matter:

- (o) required or permitted to be done or procured by a Target Group Member under, or pursuant to, this deed or the Scheme;
- (p) Fairly Disclosed in the six months prior to the date of this deed in filings of the Target on ASX;
- (q) required by law or by an order of a court or other Governmental Agency;
- (r) to the extent it is Fairly Disclosed in the Due Diligence Materials or the Target Disclosure Letter; or
- (s) the undertaking of which the Bidder has approved in writing.

**Target Register** means the register of members of the Target maintained by, or on behalf of, the Target in accordance with section 168(1) of the Corporations Act.

**Target Registry** means Computershare Investor Services Pty Limited or any replacement provider of share registry services to the Target from time to time.

**Target Share** means an issued fully paid ordinary share in the capital of the Target.

**Target Shareholder** means each person who is registered in the Target Register as a holder of Target Shares.

**Target Warranties** means the representations and warranties of the Target set out in clause 9.3.

**Termination Notice** has the meaning given to that expression in clause 3.6(c).

**Third Party** means any person or entity (including a Governmental Agency) other than a Target Group Member or a Bidder Group Member.

**Timetable** means the indicative timetable in relation to the Proposed Transaction set out in Schedule 1 as may be amended from time to time by written agreement of the Target and the Bidder.

## 1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) gender includes other genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (g) a reference to time is to Sydney, Australia time;
- (h) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;

- (m) the meaning of general words is not limited by specific examples introduced by **including**, **for example** or similar expressions;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

### 1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

### 1.4 Listing requirements included as law

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

### 1.5 Statements on the basis of knowledge

- (a) Any statement made in this deed by the Target on the basis of the Target's knowledge or awareness is made on the basis that the Target's knowledge or awareness is limited to the knowledge that any of the Target Knowledge Persons has or would have if the Target Knowledge Persons had made all reasonable inquiries of the officers, managers, employees and other persons with responsibility for the matters to which the statement relates.
- (b) Any statement made by the Bidder on the basis of the Bidder's knowledge or awareness is made on the basis that the Bidder's knowledge is limited to the knowledge or awareness that any of Bidder Knowledge Persons has or would have if the Bidder Knowledge Persons had made all reasonable inquiries of the officers, managers, employees and other persons with responsibility for the matters to which the statement relates.

### 1.6 Reasonable endeavours

Any provision of this deed which requires a party to use reasonable endeavours or best endeavours to procure that something is performed or occurs or does not occur does not include any obligation:

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Governmental Agency; or
  - (b) to commence any legal action or proceeding against any person,
- except where that provision expressly specifies otherwise.

## 2. Agreement to propose Scheme

- (a) The Target agrees to propose and implement the Scheme on, and subject to, the terms and conditions of this deed, and substantially in accordance with the Timetable.
- (b) The Bidder agrees to:
  - (i) assist the Target in proposing and implementing the Scheme; and
  - (ii) procure Bidder Sub to assist the Target in proposing and implementing the Scheme,

on, and subject to, the terms and conditions of this deed, and substantially in accordance with the Timetable.

### 3. Conditions precedent and pre-implementation steps

#### 3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the Target and the Bidder in relation to the implementation of the Scheme will not be binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Shareholder approval):** the Scheme is approved by Target Shareholders (other than Excluded Shareholders) at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (b) **(Court approval):** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act;
- (c) **(Regulatory Approvals):** any Regulatory Approvals that are required by law, or by any Governmental Agency, to implement the Scheme are granted, given, made or obtained on an unconditional basis (or conditional only the Scheme becoming Effective) and remain in full force and effect in all respects, and have not been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing) before the Delivery Time;
- (d) **(Restraints):** between (and including) the date of this deed and the Delivery Time:
  - (i) there is not in effect any temporary, preliminary or permanent injunction, decision or other order issued by any court of competent jurisdiction or other Governmental Agency or other material legal restraint or prohibition;
  - (ii) no action or investigations is announced, commenced or threatened by an Governmental Agency; and
  - (iii) no application is made to any Governmental Agency, in consequence of, or in connection with, the Scheme which:
  - (iv) restrains, prohibits or prevents (or could reasonably be expected restrain, prohibit or prevent) the Scheme, the implementation of the Proposed Transaction or the rights of the Bidder or the Bidder Sub in respect of the Target Shares to be acquired under the Scheme; or
  - (v) requires the divestiture by the Bidder or Bidder Sub of any Target Shares or the divestiture of any assets of the Bidder Group or the Target Group, unless such injunction decision, order, action, investigation or application has been disposed of to the satisfaction of the Bidder acting reasonably, or is otherwise no longer effective or enforceable, by the Delivery Time;
- (e) **(ASIC and ASX):** before the Delivery Time, ASIC and ASX issue or provide such consents, waivers, exemptions, declarations or approvals as are necessary or which the Target and the Bidder agree are necessary or desirable to implement the Scheme and no such consent, waiver, exemption, declaration or approval has been withdrawn or revoked before the Delivery Time;
- (f) **(New Bidder Shares):** the New Bidder Shares to be issued pursuant to the Scheme are approved for official quotation by ASX by the Delivery Time (provided that any such approval may be subject to customary conditions);
- (g) **(No Target Prescribed Occurrence):** no Target Prescribed Occurrence occurs between the date of this deed and the Delivery Time;
- (h) **(No Target Material Adverse Change):** no Target Material Adverse Change occurs between the date of this deed and the Delivery Time;
- (i) **(Target Warranties):** each Target Warranty (other than an Excluded Warranty) is true and correct in all material respects as at the relevant time or times (as the case may be) set out in clause 9.3(a) in relation to that Target Warranty;



- (j) **(No Bidder Prescribed Occurrence)**: no Bidder Prescribed Occurrence occurs between the date of this deed and the Delivery Time;
- (k) **(No Bidder Material Adverse Change)**: no Bidder Material Adverse Change occurs between the date of this deed and the Delivery Time;
- (l) **(Bidder Warranties)**: each Bidder Warranty is true and correct in all material respects as at the relevant time or times (as the case may be) set out in clause 9.1(a) in relation to that Bidder Warranty; and
- (m) **(Independent Expert)**: the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interest of Scheme Shareholders before the time when the Scheme Booklet is registered by ASIC.

### 3.2 Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(a) (*Shareholder approval*) and 3.1(b) (*Court approval*) cannot be waived.
- (b) The Conditions in clauses 3.1(c) (*Regulatory Approvals*), 3.1(d) (*Restraints*), 3.1(e) (*ASIC*) and 3.1(f) (*New Bidder Shares*) and are for the benefit of both the Target and the Bidder and any breach or non-satisfaction of them may only be waived (if capable of waiver) with the written consent of both the Target and the Bidder.
- (c) The Conditions in clauses 3.1(g) (*No Target Prescribed Occurrences*), 3.1(h) (*No Target Material Adverse Change*) and 3.1(i) (*Target Warranties*) are for the sole benefit of the Bidder and any breach or non-satisfaction of them may only be waived by the Bidder by notice in writing to the Target.
- (d) The Conditions in clauses 3.1(j) (*No Bidder Prescribed Occurrences*), clauses 3.1(k) (*No Bidder Material Adverse Change*), 3.1(l) (*Bidder Warranties*) and 3.1(m) (*Independent Expert*) are for the sole benefit of the Target and any breach or non-satisfaction of them may only be waived by the Target by notice in writing to the Bidder.
- (e) A party entitled to waive the breach or non-satisfaction of a Condition pursuant to this clause 3.2 (either individually or jointly) may do so in its absolute discretion. Any waiver of a Condition by a party for whose benefit the Condition applies must take place on or prior to the Delivery Time.
- (f) If a party waives the breach or non-satisfaction of any Condition, that waiver will not preclude it from suing the other party for any breach of this deed including, without limitation, a breach that resulted in the non-fulfilment of the Condition that was waived.

### 3.3 Procuring satisfaction of the Conditions

The Target and the Bidder will, to the extent that it is within their respective power to do so, use their respective reasonable endeavours to procure that each of the Conditions is satisfied as soon as reasonably practicable after the date of this deed or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require).

### 3.4 Notifications

The Target and the Bidder must each:

- (a) keep the other party promptly and reasonably informed of the steps the party has taken and of the party's progress towards satisfaction of the Conditions;
- (b) promptly notify the other party in writing if the party becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other party in writing if the party becomes aware that any Condition is, or has become, incapable of being satisfied by the date specified in this deed for the satisfaction of the Condition (having regard to the respective obligations of each party under clause 3.3).

### 3.5 Scheme voted down

If the Condition in clause 3.1(a) is not satisfied by reason only of the non-satisfaction of the Headcount Test and the Target or the Bidder considers (acting reasonably) that Share Splitting or some other abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied, then the Target must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by the Target to represent the Target in Court proceedings related to the Scheme considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

### 3.6 Conditions not capable of being fulfilled

- (a) If any Condition:
  - (i) is not satisfied;
  - (ii) becomes incapable of being satisfied; or
  - (iii) where the Condition is capable of waiver, is not waived in accordance with clause 3.2,

in each case by the date specified in this deed for the satisfaction of the Condition, then, subject to clause 3.6(d), either of the Target or the Bidder may give written notice (**Consultation Notice**) to the other within 5 Business Days after the date that the relevant notice relating to the Condition is given under clause 3.4(c).
- (b) Upon delivery of the Consultation Notice, the Target and the Bidder must consult in good faith with a view to determining whether the Target and the Bidder can reach agreement with respect to:
  - (i) the terms (if any) on which the party with the benefit of the relevant Condition the subject of the Consultation Notice will waive that Condition;
  - (ii) an extension of the time for satisfaction of the relevant Condition the subject of the Consultation Notice or an extension of the End Date (as the case may be); or
  - (iii) the Proposed Transaction proceeding by way of alternative means or methods.
- (c) If:
  - (i) the Target and the Bidder are unable to reach agreement in the manner contemplated under clause 3.6(b) within 5 Business Days after a Consultation Notice is given;
  - (ii) a Consultation Notice is not given within the timeframe specified in clause 3.6(a); or
  - (iii) the Scheme has not become Effective by the End Date,

then, subject to clause 3.2 and clause 3.6(d), either the Target or the Bidder may terminate this deed by notice in writing prior to the Delivery Time (**Termination Notice**) to the other without any liability to any party by reason of that termination alone.
- (d) A party will not be entitled to give a Consultation Notice or a Termination Notice if the relevant Condition has not been satisfied or has become incapable of being satisfied or the Scheme has not become Effective by the End Date (as the case may be) as a result of:
  - (i) a breach of this deed by that party; or
  - (ii) a deliberate act or omission of that party which directly or materially contributed to that Condition not being satisfied or the Scheme not becoming Effective by the End Date (as the case may be).

### **3.7 Interpretation**

For the purposes of this clause 3, a Condition is incapable of satisfaction, or will be incapable of being satisfied, if:

- (a) in the case of a Condition relating a Regulatory Approval, the relevant Governmental Agency makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval; and
- (b) in all other cases, there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the date specified in this deed for the satisfaction of the Condition (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this deed).

## **4. Scheme structure**

### **4.1 Scheme**

The parties acknowledge and agree that, subject to the Scheme becoming Effective, the general effect of the Scheme will be that:

- (a) each Scheme Shareholder will be entitled to receive the Scheme Consideration for each Scheme Share held by the Scheme Shareholder at the Record Date; and
- (b) all of the Scheme Shares will be transferred to Bidder Sub (as provided for in the Scheme),

in each case on the Implementation Date and otherwise in accordance with the terms of the Scheme.

### **4.2 Scheme Consideration**

- (a) The Bidder covenants in favour of the Target (in the Target's own right and separately as trustee for each Scheme Shareholder) that, subject to the Scheme becoming Effective and in consideration for the transfer to Bidder Sub (as provided for in the Scheme) of each Scheme Share under the terms of the Scheme, the Bidder will:
  - (i) procure that Bidder Sub will accept that transfer; and
  - (ii) provide or procure the provision of the Scheme Consideration for each Scheme Share held by each Scheme Shareholder on the Implementation Date and otherwise in accordance with the terms of the Scheme.
- (b) In order to facilitate the provision of the Scheme Consideration, the Target must provide, or procure the provision of, a complete copy of the Target Register as at the Record Date (which must include the name, registered address and registered holding of each Scheme Shareholder as at the Record Date) within 1 Business Day after the Record Date. The details and information to be provided under this clause 4.2(b) must be provided in such form as the Bidder or the Bidder Registry may reasonably require, as notified to the Target prior to the Record Date.

### **4.3 Allotment and issue of New Bidder Shares**

The Bidder must issue the New Bidder Shares to Scheme Shareholders in accordance with the terms of the Scheme.

### **4.4 Ineligible Foreign Scheme Shareholders**

The provision to an Ineligible Foreign Scheme Shareholder of the Scheme Consideration for each Scheme Share held by the Ineligible Foreign Scheme Shareholder will be dealt with in the manner set out in the Scheme.

### **4.5 Fractional entitlements**

Fractional entitlements of a Scheme Shareholder to a part of a New Bidder Share will be dealt with in the manner set out in the Scheme.

#### 4.6 Performance rights

The Target must as soon as possible after the date of this deed (and, in any event, before the date of the Scheme Meeting) take all action necessary to ensure that all Target Performance Rights (whether unvested or vested and not exercised) are dealt with in the manner that the Target and the Bidder agree in writing.

### 5. Scheme – parties' respective implementation obligations

#### 5.1 Target's obligations

The Target must take all steps reasonably necessary to propose and (subject to all of the Conditions being satisfied or waived in accordance with their terms) implement the Scheme as soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable, including without limitation taking each of the following steps:

- (a) **(Scheme Booklet)**: prepare the Scheme Booklet in compliance with all applicable laws, RG 60 and in accordance with clause 5.3;
- (b) **(Target Information)**: ensure that the Target Information is not misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Scheme Booklet;
- (c) **(consultation with the Bidder in relation to Scheme Booklet)**: consult with the Bidder as to the content and presentation of the Scheme Booklet including:
  - (i) making available to the Bidder drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling the Bidder to review and comment on those draft documents. In relation to the Independent Expert's Report, the Bidder's review is to be limited to a factual accuracy review;
  - (ii) consulting with the Bidder in relation to the content of those drafts (other than the Bidder Information), and consider in good faith, for the purposes of amending those drafts, comments from the Bidder on those drafts; and
  - (iii) providing to the Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet referred to in clause 5.1(h)(i) is finalised and to enable the Bidder to review that draft of the Scheme Booklet before its submission to ASIC in the manner contemplated under clause 5.1(h)(i);
- (d) **(directors' recommendation)**: include in the Scheme Booklet:
  - (i) the statement by the Target Board contemplated under clause 6(a)(ii); and
  - (ii) a statement that each Target Director will (in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to, that report) that the Scheme is in the best interest of Scheme Shareholders) vote, or procure the voting of, any Target Director Shares relating to that Target Director as at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,unless there has been a change of recommendation contemplated by clause 6(b);
- (e) **(Independent Expert)**: promptly appoint the Independent Expert to prepare and provide the Independent Expert's Report, and provide any assistance and information to enable the Independent Expert to prepare the Independent Expert's Report;
- (f) **(approval of the Bidder Information)**: subject to clause 5.3(c), seek written approval from the Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet (which approval the Bidder must not unreasonably withhold or delay) and not lodge the Scheme Booklet with ASIC until such approval is obtained from the Bidder;
- (g) **(approval of draft for ASIC)**: as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving that draft as being in a form appropriate for

provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;

- (h) **(liaison with ASIC and ASX):** as soon as reasonably practicable after the date of this deed:
  - (i) provide an advanced draft of the Scheme Booklet approved in accordance with clauses 5.1(g) and 5.2(g) to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
  - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep the Bidder reasonably informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Proposed Transaction and use reasonable endeavours, in consultation with the Bidder, to resolve any such matters;
- (i) **(information):** provide all necessary information, and procure that the Target Registry provides all necessary information, in each case in a form reasonably requested by the Bidder, about the Scheme, the Scheme Shareholders and Target Shareholders to the Bidder and its Authorised Persons, which the Bidder reasonably requires in order to canvass agreement to the Scheme by Target Shareholders (including the results of directions by the Target to Target Shareholders under Part 6C.2 of the Corporations Act), and the Target must comply with any reasonable request of the Bidder for the Target to give directions to Target Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of these purposes;
- (j) **(approval of Scheme Booklet):** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to Target Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (k) **(listing):** subject to clause 5.1(x), not do anything to cause Target Shares to cease being quoted on ASX or to become permanently suspended from quotation prior to implementation of the Proposed Transaction unless the Bidder has agreed in writing;
- (l) **(update Scheme Booklet):** without limiting the Target's obligations under clause 5.4(a), until the date of the Scheme Meeting, promptly update or supplement the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement, and seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. The Target must consult with the Bidder as to the content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated by clause 5.1(c).
- (m) **(section 411(17)(b) statements):** apply to ASIC for the production of:
  - (i) an indication of intent letter stating that ASIC does not intend to appear before the Court on the First Court Date; and
  - (ii) a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (n) **(first Court hearing):** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.1(i) and the written statements in clause 5.1(k) have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (o) **(representation):** procure that the Target is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act and at which, through its counsel or solicitors, the Target will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in

order to ensure the fulfilment of its obligations under this deed, the Scheme and/or in connection with the Proposed Transaction;

- (p) **(registration of Scheme Booklet)**: if the Court directs Target to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (q) **(convening Scheme Meeting)**: take all reasonable steps necessary to comply with the orders of the Court given on the First Court Date including, as required, despatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting, provided that if this deed is terminated under clause 15 Target will take all steps reasonably required to ensure the Scheme Meeting is not held;
- (r) **(certificate)**: at the Court hearing on the Second Court Date, provide to the Court:
  - (i) a certificate, in the form of a deed, (substantially in the form attached in Schedule 4) confirming (in respect of matters within the Target's knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this deed. A draft of such certificate shall be provided by the Target to the Bidder by 5.00pm on the date that is 2 Business Days prior to the Second Court Date; and
  - (ii) any certificate provided to it by the Bidder pursuant to clause 5.2(m);
- (s) **(Court approval application)**: if:
  - (i) the resolution submitted to the Scheme Meeting is passed by the majorities required under the Corporations Act or, where clause 3.5 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act; and
  - (ii) where necessary, the Target and the Bidder agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions (other than the Condition in clause 3.1(b)) will be satisfied or waived prior to the Delivery Time,apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- (t) **(appeal process)**: if the Court refuses to make any orders directing the Target to convene the Scheme Meeting or approving the Scheme, the Target and the Bidder must:
  - (i) consult with each other in good faith as to whether to appeal the Court's decision; and
  - (ii) appeal the court decision unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success;
- (u) **(implementation of Scheme)**: if the Scheme is approved by the Court:
  - (i) subject to the Listing Rules, lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act by no later than the Business Day after the date on which the Court orders were made (or such later date as agreed in writing between the Target and the Bidder);
  - (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
  - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Bidder Sub on the Implementation Date; and
  - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (v) **(Bidder Information)**: without the prior written consent of the Bidder, not use the Bidder Information for any purposes inconsistent with the Confidentiality Agreement;
- (w) **(documents)**: consult with the Bidder in relation to the content of the documents required for the purpose of the Scheme (including originating process, affidavits, submissions and

draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from the Bidder and its Authorised Persons on those documents;

- (x) **(suspension from trading)**: apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date; and
- (y) **(compliance with laws)**: do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

## 5.2 The Bidder's obligations

The Bidder must take all steps reasonably necessary to assist the Target to implement the Scheme as soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable including, without limitation, taking each of the following steps:

- (a) **(Bidder Information)**: provide to the Target, in a form appropriate for inclusion in the Scheme Booklet, the Bidder Information, which information must (without limiting the foregoing):
  - (i) contain all information necessary to enable Target to ensure that the Scheme Booklet complies with the requirements of RG 60; and
  - (ii) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Scheme Booklet;
- (b) **(confirmation of Bidder Information)**: subject to clause 5.3(c), promptly after the Target requests that it does so, confirm in writing to the Target that the Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears (such consent not to be unreasonably withheld or delayed provided that the Target has complied with clause 5.3(c));
- (c) **(New Bidder Shares)**: do everything reasonably necessary to ensure that the New Bidder Shares are approved for official quotation on ASX and that trading in the New Bidder is able to commence as soon as practicable after the Implementation Date;
- (d) **(Independent Expert)**: promptly provide all assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report for inclusion in the Scheme Booklet;
- (e) **(assistance with Scheme Booklet and Court documents)**: promptly provide any assistance or information reasonably requested by the Target or its Advisers in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme;
- (f) **(review of Scheme Booklet)**: as soon as reasonably practicable after receipt, review the drafts of the Scheme Booklet prepared by the Target and provide comments on those drafts in good faith;
- (g) **(approval of draft for ASIC)**: as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the board of directors of the Bidder, or of a committee of the board of directors of the Bidder appointed for the purpose, is held to consider approving those sections of that draft that relate to the Bidder as being in a form appropriate for provision to ASIC for review;
- (h) **(approval of Scheme Booklet)**: as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the board of directors of the Bidder, or of a committee of the board of directors of the Bidder appointed for the purpose, is held to consider approving those sections of the Scheme Booklet that relate to the Bidder as being in a form appropriate for despatch to Target Shareholders, subject to approval of the Court;



- (i) **(update of Bidder Information):** without limiting the Bidder's obligations under clause 5.2(a), until the date of the Scheme Meeting:
  - (i) promptly update or supplement the Bidder Information with all information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Bidder Information does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement; and
  - (ii) promptly provide to the Target any such information contemplated under clause 5.2(i)(i), in a form appropriate for inclusion in any update of the Scheme Booklet, in order to ensure that the Target is able to comply with the Target's obligations under clause 5.1(l);
- (j) **(representation):** procure that the Bidder is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act and at which, through its counsel or solicitors, The Bidder will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed, the Scheme, the Deed Poll and/or in connection with the Proposed Transaction;
- (k) **(Deed Poll):** prior to the First Court Date, execute, and procure that Bidder Sub executes, the Deed Poll;
- (l) **(Target Information):** without the prior written consent of the Target, not use the Target Information for any purposes inconsistent with the Confidentiality Agreement;
- (m) **(certificate):** as soon as reasonably practicable after the Delivery Time and, in any event, before the commencement of the Court hearing on the Second Court Date, provide to the Target for provision to the Court at that hearing a certificate, in the form of a deed, (substantially in the form attached in Schedule 4) confirming (in respect of matters within the Bidder's knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this deed.; and
- (n) **(compliance with laws):** do everything reasonably within the Bidder's power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

### 5.3 Scheme Booklet - preparation principles

- (a) As soon as reasonably practicable after the date of this deed and substantially in accordance with the Timetable, the Target must prepare the Scheme Booklet in compliance with:
  - (i) all applicable laws, in particular with the Corporations Act, RG 60 and the Listing Rules; and
  - (ii) this clause 5.3.
- (b) The Scheme Booklet will include:
  - (i) the terms of the Scheme;
  - (ii) the notice of Scheme Meeting;
  - (iii) the Target Information (other than the Target Information referred to in clauses 5.3(b)(i) and 5.3(b)(ii));
  - (iv) the Bidder Information;
  - (v) a copy of this deed (without the schedules or annexures);
  - (vi) a copy of the Deed Poll executed by the Bidder and the Bidder Sub; and
  - (vii) a copy of the Independent's Expert Report.

- (c) If the Target and the Bidder disagree on the form or content of the Scheme Booklet, the Target and the Bidder must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:
  - (i) if the disagreement relates to the form or content of any information appearing in the Scheme Booklet other than the Bidder Information, the Target Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet; and
  - (ii) if the disagreement relates to the form or content of the Bidder Information, the Target will make such amendments to the form or content of the disputed part of the Bidder Information as the Bidder, acting in good faith, requires.
- (d) The Target must take all reasonable steps to ensure that the Scheme Booklet (other than the Bidder Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to Target Shareholders.
- (e) The Bidder must take all reasonable steps to ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Scheme Booklet is despatched to Target Shareholders.
- (f) The Target and the Bidder each agree that the efficient preparation of the Scheme Booklet and the implementation of the Scheme are in the interests of Target Shareholders and the Bidder and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under this clause 5.3 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

#### **5.4 New information**

- (a) The Target must provide to the Bidder all such further or new information of which the Target becomes aware that arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is, or may be, necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (b) The Bidder must provide to Target all such further or new information of which the Bidder becomes aware that arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is, or may be, necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.

#### **5.5 Verification**

- (a) The Target must undertake reasonable verification processes in relation to the information included in the Scheme Booklet (other than the Bidder Information) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to the Bidder of the completion of such processes and provide to the Court with any such evidence as the Target's counsel considers necessary or desirable concerning those verification processes.
- (b) The Bidder must undertake reasonable verification processes in relation to the Bidder Information included in the Scheme Booklet so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to the Target of the completion of such processes and provide to the Court with any such evidence as the Target's counsel considers necessary or desirable concerning those verification processes.

#### **5.6 Responsibility statements**

The Scheme Booklet will include a responsibility statement, that will contain words to the following effect:

- (a) the Target is responsible for the Target Information and that, to the maximum extent permitted by law, the Target will not be responsible for any Bidder Information and will disclaim any liability for the Bidder Information appearing in the Scheme Booklet; and
- (b) the Bidder is responsible for the Bidder Information and that, to the maximum extent permitted by law, the Bidder will not be responsible for any information appearing in the Scheme Booklet other than the Bidder Information and will disclaim any liability for any information appearing in the Scheme Booklet other than the Bidder Information.

## **5.7 Good faith cooperation**

The Target and the Bidder must each use all reasonable endeavours to procure that its Authorised Persons work (including by attending meetings and by providing information) in good faith and in a timely and co-operative manner with the other parties to implement the Scheme, to prepare all documents required relating to the Scheme, and to agree and execute the strategy described in clause 7.6.

## **6. Board recommendation**

- (a) The Target must use its best endeavours to procure that, subject to clause 6(b):
  - (i) the Target Board unanimously recommends that Target Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to, that report) that the Scheme is in the best interest of Scheme Shareholders; and
  - (ii) the Scheme Booklet includes a statement by the Target Board to the effect set out in clause 6(a)(i).
- (b) The Target must use its best endeavours to procure that the Target Board collectively, and the members of the Target Board individually, do not change, withdraw or modify its, his or her recommendation to vote in favour of the Scheme unless:
  - (i) the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or addendum to, that report) that the Scheme is not in the best interest of Scheme Shareholders; or
  - (ii) the Target has received, other than as a result of a breach by the Target of clause 10, a Superior Proposal,
 and the Target has complied with its obligations under clause 10.
- (c) For the purposes of this clause 6, customary qualifications and explanations contained in the Scheme Booklet in relation to a recommendation to vote in favour of the Scheme to the effect that the recommendation is made in the absence of a Superior Proposal and/or subject to the Independent Expert concluding in the Independent Expert's Report (or in any update of, or revision, amendment or addendum to, that report) that the Scheme is in the best interest of Scheme Shareholders will not be regarded as a failure to make, or a withdrawal of the making of, a recommendation in favour of the Scheme.

## **7. Conduct of business before the Implementation Date**

### **7.1 Conduct of Target business**

- (a) Subject to clauses 7.2 and 7.3, from the date of this deed up to and including the Implementation Date, and without limiting any other obligations of the Target under this deed, the Target must ensure that the business of the Target Group is conducted in the ordinary and usual course of business and must:
  - (i) operate the business of the Target Group consistent with past practice, in substantially the same manner as previously conducted in the 12 months before the date of this deed;

- (ii) use reasonable endeavours to preserve its relationships, and the relationships of the other Target Group Members, with customers, suppliers, landlords, licensors, licensees, Governmental Agencies and others having material business dealings with a Target Group Member, and to retain the services of all key employees of the Target Group;
  - (iii) use reasonable endeavours to ensure that all assets of each Target Group Member are maintained in the normal course consistent with past practice; and
  - (iv) use reasonable endeavours to ensure compliance in all material respects by each Target Group Member with all material contracts to which a Target Group Member is a party, and with all laws, authorisations and licenses applicable to each Target Group Member.
- (b) From the date of this deed up to and including the Implementation Date, and without limiting any other obligations of the Target under this deed, the Target must:
- (i) not take or fail to take (and procure that each other Target Group Member does not take or fail to take) any action that constitutes a Target Prescribed Occurrence or that could reasonably be expected to result in a Target Prescribed Occurrence;
  - (ii) not take or fail to take (and procure that each other Target Group Member does not take or fail to take) any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied; and
  - (iii) without limiting the generality of clause 7.2, procure that any financial accommodation that is provided by any Target Group Member to any person as part of, or in connection with, the 'Grays Capital' business (or any similar asset-backed finance business) is provided on the terms stipulated by, and subject to the approval of, and any conditions required by, the Bidder in writing.

## 7.2 Prohibited actions

Subject to clause 7.3 and without limiting the generality of clause 7.1, from the date of this deed up to and including the Implementation Date, the Target must not, and must procure that each other Target Group Member does not:

- (a) other than the Target Permitted Special Dividend, declare, pay or distribute any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members;
- (b) do any of the following:
  - (i) amend the terms of the Target Performance Rights Plan or of any Target Performance Rights;
  - (ii) amend the terms of any Offer Letter (as that term is defined in the Target Performance Rights Plan) provided on or prior to the date of this deed to any participant or proposed participant in the Target Performance Rights Plan;
  - (iii) grant or agree to grant any Target Performance Rights or otherwise taking any action affecting any or all of the Target Performance Rights;
  - (iv) accelerate, or otherwise cause or permit, the vesting of any Target Performance Rights (except as agreed by the Target and the Bidder in writing); or
  - (v) pay (or agree to pay) any money or provide (or agree to provide) any financial compensation, valuable consideration or any other incentive to or for the benefit of a holder or former holder of Target Performance Rights in respect of the lapse of their Target Performance Rights or otherwise in connection with the matters referred to in clause 4.6;
- (c) make any change to its constitution, except with the written consent of the Bidder;
- (d) commence or undertake business activities (whether alone or with a third party) which are materially different in nature to business activities already carried out as at the date of this deed, whether by way of acquisition or otherwise;
- (e) do any of the following:

- (i) acquire or dispose of;
  - (ii) agree, offer or propose to acquire or dispose of; or
  - (iii) announce a bid or tendering for,
- any business, entity or undertaking (including any shares or other interests in any company or other entity) or interest in real property (including giving notice under, or otherwise bringing about the termination or extinguishment of any lease to which any Target Group Member is a party);
- (f) do any of the following:
- (i) enter into any contract (including renewing or otherwise extending any existing contract) or commitment (other than in respect of financial accommodation or information technology) requiring payments by the Target Group in excess of:
    - (A) in the case of contracts or commitments relating to the purchase of assets by the Target Group for resale by auction in the ordinary course of business, or to the guarantee in the ordinary course of business of prices to be realised for assets to be sold by auction by the Target Group, \$5,000,000 (individually or in aggregate); or
    - (B) otherwise, \$150,000 (individually or in aggregate);
  - (ii) (without limiting the foregoing) agree to incur capital expenditure from the date of this deed that is not reflected in the Target Group's budget (as contained in the Due Diligence Materials) and is more than \$100,000 (individually or in aggregate);
  - (iii) waive any material third party default where the financial impact on the Target Group will be in excess of \$200,000 (individually or in aggregate);
  - (iv) accept as a compromise of a matter less than the full compensation due to a Target Group Member where the financial impact of the compromise on the Target Group is more than \$200,000 (individually or in aggregate);
  - (v) enter into any lease or lease renewal (or agreement to lease or to renew any lease) real property;
  - (vi) enter into any contract (including renewing any existing contract) or commitment, relating to any information technology (whether hardware, software or otherwise);
  - (vii) acquire or dispose of, or enter into or announce any agreement for the acquisition or disposal of, any asset or business, or entering into any corporate transaction, which would or would reasonably be likely to involve a material change in the manner in which the Target Group conducts its business or the nature (including balance sheet classification);
  - (viii) enter into a contract or commitment restraining a Target Group Member from competing with any person or conducting any activities in any market; or
  - (ix) do any thing that would result in a Target Warranty in clause 9.3(b)(x) being or becoming inaccurate, or the Bidder otherwise becoming aware that that warranty is not accurate;
- (g) provide, or enter into any contract or commitment to provide, financial accommodation (irrespective of what form of financial indebtedness that accommodation takes) in excess of \$20,000 (individually) other than:
- (i) to wholly owned members of the Target Group; or
  - (ii) where that financial accommodation is provided, or to be provided, in compliance with clause 7.1(b)(iii);
- (h) receive, or enter into any contract or commitment to receive, financial accommodation other than:
- (i) from one or more wholly owned Target Group Members; or

- (ii) draw-downs on existing banking facilities to provide financial accommodation permitted by clause 7.2(g)(ii) or that are consistent with the Target Group's current budget as Fairly Disclosed in the Target Disclosure Letter);
- (i) enter into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
- (j) enter into, or resolve to enter into, a transaction with any "related party" (as defined in section 228 of the Corporations Act) of the Target or another Target Group Member (other than a related party which is a wholly owned Target Group Member);
- (k) employ, or offer to employ, an individual who is not an employee of a Target Group Member as at the time of signing this deed where:
  - (i) the total remuneration payable to that individual would exceed \$150,000 (inclusive of superannuation and other entitlements) in any 12 month period; or
  - (ii) that individual will, or is intended to, report directly to the Chairman, Chief Executive Officer or Chief Financial Officer of the Target Group or any of their respective direct reports (other than as a direct replacement for a departed employee or as provided in the Target Group's current budget);
- (l) enter into or alter, vary or amend any employment, consulting, severance or similar agreement or arrangement with one or more of its existing officers, directors, other executives or employees, or accelerating or otherwise increasing compensation or benefits for any of the above, where the aggregate financial impact on the Target Group of all such entries, alterations, variations or amendments would be greater than \$300,000 in any 12 month period, other than:
  - (i) pursuant to contractual arrangements in effect on the date of this deed and which have been Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter;
  - (ii) as expressly provided for in the Target's policies and guidelines in effect on the date of this deed and which have been Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter;
  - (iii) as expressly provided for in clause 8; or
  - (iv) an increase in compensation or benefits that is in the ordinary and usual course of business, consistent with the Target Group's practice throughout the 12 months preceding the date of this deed, to employees other than executives, or members of the management team, of the Target Group;
- (m) pay or agree to pay any of its officers, directors, other executives or employees a termination or retention payment, bonus or other payment (whether provided in cash or as a non-cash benefit) exceeding \$200,000 in aggregate, other than a payment:
  - (i) that is in accordance with contractual arrangements in effect on the date of this deed which are Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter; and
  - (ii) that in aggregate with all other such payments after the date of this deed is in an amount that does not exceed the provisions for such payments in the accounts of the Target contained in the Due Diligence Material and/or the Target Disclosure Letter;
- (n) enter into any enterprise bargaining agreement;
- (o) amend in any material respect any arrangement with its Advisors or enter into agreements or arrangements with a new legal or financial advisor (other than a barrister to appear on behalf of the Target on the First Court Date or the Second Court Date), in respect of the Proposed Transaction or a Competing Proposal;
- (p) change any accounting policy applied by them to report their financial position other than any change in policy required by a change in accounting standards;
- (q) do anything that would result in a change in the Target Group's consolidated tax group; or

- (r) agree to do any of the matters set in clauses 7.2(a) to 7.2(q) (inclusive).

### 7.3 Permitted activities

The obligations of the Target under clauses 7.1(a) and 7.2 do not apply in respect of any event, change, circumstance, occurrence, matter or thing:

- (a) expressly required to be done or procured by the Target pursuant to, or which otherwise contemplated by, this deed or the Scheme;
- (b) required by law or by an order of a court or Government Agency (except where that requirement arises as a result of an action by a Target Group Member);
- (c) the undertaking or occurrence of which the Bidder has approved in writing (which approval must not be unreasonably withheld or delayed in respect of any event, change, circumstance, occurrence, matter or thing the subject of clauses 7.2(c), 7.2(d), 7.2(g), 7.2(h), 7.2(k), 7.2(l) or 7.2(m)); or
- (d) the undertaking or occurrence of which:
  - (i) relates directly to the Target's 'B2C rationalisation program' (as outlined in the Target Disclosure Letter);
  - (ii) the Target has given the Bidder reasonable notice, accompanied by all relevant information regarding that event, change, circumstance, occurrence, matter or thing; and
  - (iii) has been approved by the Bidder in writing (which approval must not be unreasonably withheld or delayed).

### 7.4 Access

- (a) In the period from the date of this deed to the Implementation Date, the Target must:
  - (i) respond to any reasonable request from the Bidder or its Authorised Persons (including in response to requests for information from financial markets and any Governmental Agency) for information concerning the Target Group and its business and operations as may be required solely in order to implement the Proposed Transaction and on the basis that such information will not be used for any purposes inconsistent with the Confidentiality Agreement; and
  - (ii) provide the Bidder and its Authorised Persons with all reasonable access during normal business hours and on reasonable notice to the management, offices, books, records and business operations of the Target that the Bidder reasonably requires in order to implement the Proposed Transaction or for the Bidder to prepare for the transition of ownership of the Target Group to the Bidder.
- (b) Nothing in this clause 7.4 obliges the Target to provide to the Bidder or its Authorised Persons with any information:
  - (i) concerning the Target Directors' consideration of the Scheme; or
  - (ii) which would breach an obligation of confidentiality to any person or any applicable privacy laws.
- (c) The Target will provide reasonable assistance to the Bidder for the purpose of satisfying the obligations which are imposed on the Target under this clause 7.4, but nothing in this clause 7.4 requires the Target to provide access to any documentation or to take any other action that would unreasonably disrupt the usual and ordinary course of the businesses and operations of the Target Group.

### 7.5 Access to the Bidder information

- (a) In the period from the date of this deed up until and including the Implementation Date, the Bidder must ensure that the Bidder Group Members respond to any reasonable request from the Target and its Authorised Persons (including in response to requests for information from financial markets and any Governmental Agency) for information concerning the Bidder Group and its business and operations as may be required solely in



order to implement the Proposed Transaction and on the basis that such information will not be used for any purposes inconsistent with the Confidentiality Agreement.

- (b) Nothing in this clause 7.5 requires the Bidder to provide the Target with any information:
  - (i) concerning the consideration of the Proposed Transaction by the board of directors of the Bidder; or
  - (ii) which would breach an obligation of confidentiality to any person or any applicable privacy laws.
- (c) The Bidder will provide reasonable assistance to the Target for the purpose of satisfying the obligations which are imposed on the Bidder under this clause 7.5, but nothing in this clause 7.5 requires the Bidder to provide access to any documentation or to take any other action that would disrupt the usual and ordinary course of the businesses and operations of the Bidder Group.

## 7.6 Change of control

- (a) As soon as practicable after the date of this deed, the Target and the Bidder must seek to identify any change of control or similar provisions in leases and material contracts to which a Target Group Member is a party which may be triggered by the implementation of the Proposed Transaction (**Change of Control Contract**).
- (b) In respect of each Change of Control Contract, the parties agree as follows, the Target and the Bidder will:
  - (i) use reasonable endeavours to agree a proposed course of action with respect to obtaining from each counterparty to the Change of Control Contract the consents and approvals required under the Change of Control Contract in relation to the implementation of the Proposed Transaction (**Counterparty Consent**); and
  - (ii) jointly initiate contact with each relevant counterparties to the Change of Control Contract and request that each such counterparty provide the required Counterparty Consent. The parties agree that no Bidder Group Member or any of its Authorised Persons may directly contact any counterparty to a Change of Control Contract in connection with obtaining the required Counterparty Consent without the Target's prior written consent.
- (c) The Target must cooperate with, and provide reasonable assistance to, the Bidder to obtain any required Counterparty Consent as expeditiously as possible, including by:
  - (i) promptly providing any information reasonably required by any counterparty to a Change of Control Contract; and
  - (ii) making available any Authorised Person of a Target Group Member, where necessary, to meet with any counterparty to a Change of Control Contract to deal with issues arising in relation to the change of control of the Target, the implementation of the Proposed Transaction and obtaining any required Counterparty Consent.
- (d) The Target and the Bidder acknowledge and agree that a failure by a Target Group Member to obtain any Counterparty Consent in relation to a Change of Control Contract will not constitute a breach of this deed by the Target and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed, provided that the existence of that Change of Control Contract was Fairly Disclosed in the Due Diligence Material and/or in the Target Disclosure Letter.

## 7.7 Payment of the Target Permitted Special Dividend

- (a) Despite any other provision of this deed, the Target may at any time in, its sole discretion, declare and/or pay a dividend but subject to all applicable laws and regulations (**Target Permitted Special Dividend**) to Target Shareholders, provided that in respect of the Target Permitted Special Dividend:
  - (i) the aggregate amount of the Target Permitted Special Dividend must not exceed \$7,300,000 and at least this amount has been received by the Target Group from

- the trust account referred to in the Target's announcement referred to in clause 9.3(b)(xxii);
  - (ii) the payment date for the Target Permitted Special Dividend will be determined by the Target at its discretion;
  - (iii) the Target Permitted Special Dividend will be franked to the maximum extent possible, subject to the franking account of the Target not being in deficit after the payment of the Target Permitted Special Dividend; and
  - (iv) the declaration and/or payment of the Target Permitted Special Dividend will not be in any way conditional on any aspect of the Scheme (including it becoming Effective).
- (b) Despite any other provision of this deed, the Target may, subject to all applicable laws and regulations, make any intra-group dividends, distributions and/or payments between Target Group Members to the extent necessary or desirable in order to be able to declare and/or pay the Target Permitted Special Dividend in accordance with clause 5.4(a).
  - (c) The Target and the Bidder each acknowledge and agree that if the Target Permitted Special Dividend is declared and/or paid in accordance with clause 5.4(a), the Scheme Consideration will not be reduced by any amount referable to the Target Permitted Special Dividend.

## 7.8 Bidder conduct

From the date of this deed up to and including the Implementation Date, and without limiting any other obligations of the Bidder under this deed, the Bidder must:

- (a) not take or fail to take (and procure that each other Bidder Group Member does not take or fail to take) any action that constitutes a Bidder Prescribed Occurrence or that could reasonably be expected to result in a Bidder Prescribed Occurrence;
- (b) not take or fail to take (and procure that each other Bidder Group Member does not take or fail to take) any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied; and
- (c) as soon as practicable following the Target's notification that it wishes to provide financial accommodation to a person of the type contemplated by clause 7.1(b)(iii):
  - (i) notify the Target of the Bidder's approval or rejection the proposed accommodation; and
  - (ii) if the proposed accommodation is approved by the Bidder, notify the Target of the term and conditions on which the financial accommodation is to be provided.

## 8. Reconstitution of the board of each Target Group Member

### 8.1 Appointment of directors

On or prior to the Implementation Date, the Target must take all actions necessary (and in accordance with the constitution of each relevant Target Group Member, the Corporations Act and the Listing Rules) to appoint with effect from implementation of the Scheme each person nominated by the Bidder prior to the Implementation Date as a director and/or secretary of a Target Group Member (**Incoming Officer**), subject to:

- (a) the Scheme Consideration having been provided in full by the Bidder to Scheme Shareholders; and
- (b) the Target having received from each Incoming Officer prior to the Implementation Date a signed consent to act as a director and/or secretary of each relevant Target Group Member that the Incoming Officer is proposed to be appointed as a director and/or secretary (as the case may be).

## 8.2 Resignation of directors

Without limiting clause 8.1, on or prior to the Implementation Date, the Target must take all actions necessary (and in accordance with the constitution of each relevant Target Group Member, the Corporations Act and the Listing Rules) to:

- (a) procure, prior to the Implementation Date, from each person acting immediately prior to the Implementation Date as a director and/or secretary of each Target Group Member (**Outgoing Officer**) a written resignation as a director and/or secretary (as the case may be) of the relevant Target Group Member and to the effect that the Outgoing Officer has no Claim outstanding against any Target Group Member in respect of the Outgoing Officer's office as a director and/or secretary of a Target Group Member; and
- (b) subject to the Scheme Consideration having been provided in full by the Bidder to Scheme Shareholders, cause each Outgoing Officer to resign as a director and/or secretary of the Target Group Member with effect from implementation of the Scheme.

## 9. Representations and warranties

### 9.1 Bidder representations and warranties

- (a) The Bidder represents and warrants to the Target (on the Target's own behalf and separately as trustee for each other Target Party) that each of the matters set out in clause 9.1(b) is true and correct as at the date of this deed and at all subsequent times until the Delivery Time (except that where any statement is expressed to be made at a particular date or time only it is given only at that date or time).
- (b) The Bidder represents and warrants to the Target that:
  - (i) the Bidder Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Target Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having been formed on a reasonable basis), including by way of omission from that statement;
  - (ii) the Bidder Information:
    - (A) will be provided to the Target in good faith and on the understanding that the Target and each other Target Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
    - (B) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,and all information provided by the Bidder to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
  - (iii) the Bidder will, as a continuing obligation, provide to the Target all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Target Information is not misleading or deceptive (including by way of omission);
  - (iv) the Bidder is a validly existing corporation registered under the laws of its place of incorporation;
  - (v) the execution and delivery of this deed has been properly authorised by all necessary corporate action of the Bidder;
  - (vi) the Bidder has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
  - (vii) this deed does not conflict with or result in the breach of or a default under:

- (A) any provision of the Bidder's constitution; or
- (B) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which the Bidder or any other Bidder Group Member is bound,

and it is not otherwise bound by any agreement that would prevent or restrict it from entering into or performing this deed;

- (viii) this deed is a valid and binding obligation of the Bidder, enforceable in accordance with its terms;
- (ix) the Bidder has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure, other than in relation to:
  - (A) the Proposed Transaction; or
  - (B) any matter disclosed in writing by the Bidder to the Target on or prior to the date of this deed;
- (x) the Bidder's capital structure, including all issued securities as at the date of this deed, is as set out below and the Bidder has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Bidder Shares and the Bidder is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Bidder Shares, options, warrants, performance rights or other securities or instruments in the Bidder:
  - (A) 265,300,492 Bidder Shares; and
  - (B) 15,270,000 options; and
  - (C) 3,350,000 rights;
- (xi) the Bidder does not require the approval of its shareholders or the approval or consent of any other person to enter into or perform any of its obligations under this deed;
- (xii) no Insolvency Event has occurred in relation to the Bidder or another substantial Bidder Group Member, nor has any regulatory action of any nature of which the Bidder is aware been taken that would prevent or restrict the Bidder's ability to fulfil its obligations under this deed;
- (xiii) each Bidder Group Member has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Governmental Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the Bidder Group as presently being conducted;
- (xiv) the Bidder has collated and prepared all of the disclosure materials concerning the Bidder Group provided to the Target in connection with the Proposed Transaction in good faith and, as far as the Bidder is aware, those disclosure materials have been collated with all reasonable care and skill;
- (xv) as at the date of this deed, the Bidder is not aware of any information relating to the Bidder Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this deed that has or could reasonably be expected to give rise to a material adverse change in respect of the Bidder Group that has not been disclosed to ASX or to the Target in writing prior to the date of this deed; and
- (xvi) all information the Bidder has provided to the Independent Expert or to the Target is not misleading in any material respect and it has not omitted any information required to make the information provided to the Independent Expert or the Target not misleading in any material respect.

## 9.2 Bidder's indemnity

The Bidder agrees with the Target (on the Target's own behalf and separately as trustee or nominee for each other Target Party) to indemnify and keep indemnified each Target Party from and against all Claims which any Target Party may suffer or incur by reason of any of the representations and warranties in clauses 9.1(a) or 9.1(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b).

## 9.3 Target representations and warranties

- (a) The Target represents and warrants to the Bidder (on the Bidder's own behalf and separately as trustee for each other Bidder Party) that each of the matters set out in clause 9.3(b) is true and correct as at the date of this deed and at all subsequent times until the Delivery Time (except that where any statement is expressed to be made at a particular date or time only it is given only at that date or time).
- (b) The Target represents and warrants to the Bidder that:
  - (i) the Target Information, as at the date the Scheme Booklet is despatched to Target Shareholders, will not contain any statement which is materially misleading or deceptive (with any statement of belief or opinion having being formed on a reasonable basis), including by way of omission from that statement;
  - (ii) the Target Information:
    - (A) will be prepared in good faith and on the understanding that the Bidder and each other Bidder Party will rely on that information for the purposes of determining whether to proceed with the Proposed Transaction; and
    - (B) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, RG 60 and the Listing Rules,and all information provided by the Target to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report;
  - (iii) the Target will, as a continuing obligation (but in respect of the Bidder Information, only to the extent that the Bidder provides the Target with updates to the Bidder Information), ensure that the Scheme Booklet is updated to include all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Target Information is not misleading or deceptive (including by way of omission);
  - (iv) the Target is a validly existing corporation registered under the laws of its place of incorporation;
  - (v) the execution and delivery of this deed has been properly authorised by all necessary corporate action of the Target;
  - (vi) the Target has full capacity, corporate power and lawful authority to execute, deliver and perform this deed;
  - (vii) this deed does not conflict with or result in the breach of or a default under:
    - (A) any provision of the Target's constitution; or
    - (B) any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which the Target or any other Target Group Member is bound,and it is not otherwise bound by any agreement that would prevent or restrict the Target from entering into or performing this deed;
  - (viii) this deed is a valid and binding obligation of the Target, enforceable in accordance with its terms;

- (ix) the Target has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure, other than in relation to:
  - (A) the Proposed Transaction; or
  - (B) any matter disclosed in writing by the Target to the Bidder prior to the date of this deed;
- (x) the Target's capital structure, including all issued securities as at the date of this deed, is as set out below and the Target has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Target Shares and the Target is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Target Shares, options, warrants, performance rights or other securities or instruments in the Target:
  - (A) 127,477,311 Target Shares;
  - (B) 4,375,636 Target Performance Rights (of which up to 1,309,732 may vest before the Effective Date),
 and, subject to receipt of any necessary waivers from ASX or approvals from Target Shareholders to permit the lapse of all unvested, or vested but unexercised, Target Performance Rights, the Target has done or will do all things necessary to ensure that on the Effective Date there will be no Target Performance Rights on issue;
- (xi) all the issued securities of each Target Group Member (other than the Target) are held by either the Target or a another Target Group Member that is directly or indirectly wholly-owned by the Target and no Target Group Member has issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into shares and no Target Group Member is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any shares, options, warrants, performance rights or other securities or instruments in a Target Group Member;
- (xii) any company, partnership, trust, joint venture or other enterprise or entity in which a Target Group Member owns or has an equity interest is set out in the Due Diligence Material and/or the Target Disclosure Letter
- (xiii) except for approval under section 411(4)(a)(ii) of the Corporations Act, the Target does not require the approval of its shareholders or, so far as the Target is aware, the approval or consent of any other person to enter into or perform any of its obligations under this deed;
- (xiv) no Insolvency Event has occurred in relation to the Target or another substantial Target Group Member, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
- (xv) each Target Group Member has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Governmental Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the Target Group as presently being conducted;
- (xvi) the Target has collated and prepared all of the Due Diligence Materials and the Target Disclosure Letter in good faith and, as far as the Target is aware, the Due Diligence Materials and Target Disclosure Letter have been collated and prepared with all reasonable care and skill;
- (xvii) as at the date of this deed, the Target is not aware of any information relating to the Target Group or its respective businesses or operations (having made reasonable enquiries) as at the date of this deed that has or could reasonably be

expected to give rise to a material adverse change in respect of the Target Group that has not been disclosed to ASX or to the Bidder in writing prior to the date of this deed;

- (xviii) all information the Target has provided to the Independent Expert or to the Bidder is not misleading in any material respect and it has not omitted any information required to make the information provided to the Independent Expert or the Bidder not misleading in any material respect;
- (xix) as far as the Target is aware, after diligent investigation with all reasonable care and skill, all leases and material contracts to which a Target Group Member is a party have been included in the Due Diligence Materials;
- (xx) the Target has provided complete and accurate information, as at the date of this deed, regarding fee levels in all retainers, mandates and fee estimates with its Advisers in relation to the Proposed Transaction and any other transaction where such retainer or mandate is current or under which the Target Group still has undischarged obligations;
- (xxi) it has not, before the date of this deed, received written notice of any material investigation, prosecution, arbitration, litigation or dispute threatened against a Target Group Member which could reasonably be expected to give rise to a liability for the Target Group in excess of A\$1,2500,000 (**Material Proceedings**) and, as at the date of this deed is not aware of circumstances which could reasonably be expected to give rise to any Material Proceedings; and
- (xxii) the announcement made by the Target dated 2 May 2017 titled *Variation of Lease – Sydney Premises* was accurate in all material respects at the time it was made and, as at the date of this deed, the payment from the landlord referred to in that announcement has been deposited in the Bidder's solicitors' trust account.

#### **9.4 Target's indemnity**

Target agrees with the Bidder (on the Bidder's own behalf and separately as trustee or nominee for each other Bidder Party) to indemnify and keep indemnified each Bidder Party from and against all Claims which any Bidder Party may suffer or incur by reason of any of the representations and warranties in clauses 9.3(a) or 9.3(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.3(a) or 9.3(b).

#### **9.5 Notifications**

Each party must promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which causes or may cause any of the representations and warranties given by it in under this clause 9 to be untrue or inaccurate or which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 9.

#### **9.6 Survival of representations**

Each representation and warranty in clauses 9.1 and 9.3:

- (a) is severable;
- (b) will survive the termination of this deed; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

#### **9.7 Survival of indemnities**

Each indemnity in this deed (including those in clauses 9.2 and 9.4) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survive the termination of this deed.



## **9.8 Limitations on Claims against the Target**

The Target's representations and warranties in clause 9.3 and the indemnity given by the Target in clause 9.4 are each subject to, and no Claim by any Bidder Party in connection with any representation and warranty in clauses 9.3(a) or 9.3(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.3(a) or 9.3(b) can be made against the Target, in respect of any fact, matter or thing:

- (a) which was Fairly Disclosed in an announcement made by the Target to the ASX in the six months prior to the date of this deed or a document lodged by the Target with ASIC in the six months prior to the date of this deed;
- (b) which was Fairly Disclosed in the Due Diligence Material and/or the Target Disclosure Letter; or
- (c) the undertaking of which the Bidder has approved in writing.

## **9.9 Limitation on Claims against the Bidder**

The Bidder's representations and warranties in clause 9.1 and the indemnity given by the Bidder in clause 9.2 are each subject to, and no Claim by any Target Party in connection with any representation and warranty in clauses 9.1(a) or 9.1(b) being untrue or incorrect or any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b) can be made against the Bidder in respect of any fact, matter or thing:

- (a) which was Fairly Disclosed in an announcement made by the Bidder to the ASX in the six months prior to the date of this deed or a document lodged by the Bidder with ASIC in the six months prior to the date of this deed;
- (b) which was Fairly Disclosed in the Bidder Disclosure Letter; or
- (c) the undertaking of which the Target has approved in writing.

# **10. Exclusivity**

## **10.1 No existing discussions**

Other than in relation to the discussions with the Bidder in connection with the Proposed Transaction, the Target represents and warrants to the Bidder that as at the date of this deed:

- (a) no Target Group Member nor any Authorised Person of a Target Group Member is a party to any agreement, arrangement or understanding with a Third Party in relation to any actual, proposed or potential Competing Proposal; and
- (b) no Target Group Member nor any Authorised Person of a Target Group Member is, directly or indirectly, participating in any discussions or negotiations with any Third Party that concern, or that could reasonably be expected to lead to, a Competing Proposal.

## **10.2 No-shop**

During the Exclusivity Period, the Target must not, and must ensure that each other Target Group Member and each Authorised Person of a Target Group Member does not, directly or indirectly:

- (a) solicit, invite, initiate or encourage (including, without limiting the application of clause 10.4, by the provision of any non-public information relating to the Target or any Target Group Member (or any of their respective businesses and operations) to any Third Party other than any Authorised Person of a Bidder Group Member) any enquiry, expression of interest, proposal, offer, discussion or negotiation in relation to, or that could reasonably be expected to encourage or lead to, the making of an actual, proposed or potential Competing Proposal; or
- (b) communicate to a Third Party (other than any Authorised Person of a Bidder Group Member) any intention to do any of the things referred to in clause 10.2(a).

### 10.3 No-talk

Subject to clause 10.7, during the Exclusivity Period, the Target must not, and must ensure that each other Target Group Member and each Authorised Person of a Target Group Member does not, directly or indirectly:

- (a) negotiate or enter into or participate in negotiations or discussions with any Third Party (other than any Authorised Person of a Bidder Group Member);
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding with any Third Party (other than any Authorised Person of a Bidder Group Member); or
- (c) communicate to any Third Party (other than any Authorised Person of a Bidder Group Member) any intention to do any of the things referred to in clauses 10.3(a) or 10.3(b), in relation to, or which may reasonably be expected to encourage or lead to, an actual, proposed or potential Competing Proposal, even if:
  - (d) that Third Party's actual, proposed or potential Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by a Target Group Member or any Authorised Person of a Target Group Member; or
  - (e) that Third Party has publicly announced the Competing Proposal.

### 10.4 No due diligence

- (a) Subject to clause 10.7, during the Exclusivity Period, except with the prior written consent of the Bidder, the Target must ensure that each Target Group Member and each Authorised Person of a Target Group Member does not, directly or indirectly, disclose, provide or otherwise make available to any Third Party, or permit any such person to receive any non-public information relating to the Target or any Target Group Member (or any of their respective businesses or operations) in connection with, with a view to obtaining or which could reasonably be expected to lead to, the formulation, development, finalisation or announcement of an actual, proposed or potential Competing Proposal (whether by that Third Party or another person), including providing such information for the purposes of the conduct of due diligence investigations in respect of the Target, any other Target Group Member or the business of the Target Group.
- (b) If the Target proposes that any non-public information be disclosed, provided or otherwise made available to a Third Party, then:
  - (i) before such information is disclosed, provided or made available by or on behalf of the Target, the Third Party must enter into a confidentiality agreement with the Target which contains obligations on the Third Party which are no less onerous in any material respect than the obligations of the Bidder under the Confidentiality Agreement; and
  - (ii) any non-public information disclosed, provided or made available to that Third Party must also be provided to the Bidder as soon as reasonably practicable after the non-public information is disclosed, provided or made available to that Third Party (unless the information has already been provided to the Bidder or an Authorised Person of a Bidder Group Member).

For the avoidance of doubt, any of the acts described in this clause 10.4(b) may only be taken by the Target or any Target Group Member or Authorised Person of a Target Group Member if not proscribed by clause 10.4(a).

### 10.5 Notification of approaches

- (a) During the Exclusivity Period, the Target must as soon as possible after becoming aware of any of the matters referred to in clauses 10.5(a)(i) or 10.5(a)(ii) (and, in any event, no later than 10:00am on the day being 2 Business Days after becoming aware of any such matters) notify the Bidder in writing of:

- (i) any negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate negotiations or discussions, in respect of any expression of interest, inquiry, offer or proposal in relation to any actual, proposed or potential Competing Proposal; or
- (ii) a proposal (whether or not made to the Target or any Target Group Member or Authorised Person of a Target Group Member) in connection with, or in respect of any exploration or consummation of an actual, proposed or potential Competing Proposal,

whether such matters are solicited or unsolicited, and in writing or otherwise.

- (b) For the avoidance of doubt, any of the acts described in clauses 10.5(a)(i) and 10.5(a)(ii) above may only be taken by the Target or any Target Group Member or Authorised Person of a Target Group Member if not proscribed by clauses 10.2 to 10.4 (inclusive).
- (c) A notification under clause 10.5(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal. The Target must also notify the Bidder in writing as soon as possible after becoming aware of any material developments in relation to such actual, proposed or potential Competing Proposal.

#### 10.6 Target's response to Rival Acquirer and the Bidder's right to respond

- (a) If the Target receives a Competing Proposal and as a result, any Target Director proposes to either:
  - (i) change, withdraw or modify his or her recommendation of the Scheme; or
  - (ii) approve or recommend the entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal,
 the Target must ensure that no Target Director does so until each of the following has occurred:
  - (iii) the Target Board has determined in good faith after consultation with Target's financial advisers that the Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal;
  - (iv) the Target has given the Bidder written notice (**Relevant Notice**) of the Target Director's proposal to take the action referred to in clauses 10.6(a)(i) or 10.6(a)(ii) (as applicable) (subject to the Bidder's rights under clause 10.6(b)), including details of the grounds on which the Target Director proposes to take such action;
  - (v) the Target has provided the Bidder with the identity of the relevant Third Party (**Rival Acquirer**) and the material terms of the Competing Proposal;
  - (vi) the Bidder's rights under clause 10.6(b) have been exhausted; and
  - (vii) the Target Board has determined in good faith after consultation with Target's financial advisers that that the Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal after the Bidder's rights under clause 10.6(b) have been exhausted and after evaluation of any Counter Proposal by the Bidder pursuant to 10.6(b).
- (b) If the Target gives a Relevant Notice to the Bidder under clause 10.6(a)(iv), the Bidder will have the right, but not the obligation, at any time during the period of 5 Business Days following the receipt of the Relevant Notice, to amend by notice in writing to the Target the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing any other form of transaction (**Counter Proposal**), and if the Bidder makes a Counter Proposal then the Target Directors must review the Counter Proposal in good faith and in consultation with Target's financial advisers. If the Target Directors determine in good faith after consultation with Target's financial advisers that the Counter Proposal would be more favourable, or at least no less favourable, to the Target and the Target Shareholders than the Competing Proposal which the Bidder has responded to with that Counter Proposal (having regard to the matters noted in clause 10.7), then:

- (i) the Target and the Bidder must use their respective best endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal; and
- (ii) the Target must use its best endeavours to procure that the Target Directors unanimously recommend the Counter Proposal to the Target Shareholders and not recommend the Competing Proposal which the Bidder has responded to with that Counter Proposal.
- (c) For the purposes of this clause 10.6, each successive material modification of any expression of interest, offer or proposal by a Third Party in relation to a Competing Proposal will constitute a new Competing Proposal in respect of which this clause 10.6 will apply.

## **10.7 Fiduciary out**

The restrictions in clauses 10.3 and 10.4 do not apply to the extent they restrict the Target or any Target Director from taking or refusing to take any action with respect to an actual, proposed or potential Competing Proposal in relation to which there has been no contravention by the Target of this clause 10, provided that:

- (a) the actual, proposed or potential Competing Proposal is bona fide; and
- (b) the Target Board has determined in good faith after:
  - (i) consultation with Target's financial advisers in respect of the financial aspects of the Competing Proposal, that the Competing Proposal is or would reasonably be expected to lead to a Superior Proposal; and
  - (ii) receiving written advice from the Target's external Australian legal adviser practising in the area of corporate law, that failing to take the action or refusing to take the action (as the case may be) with respect to the Competing Proposal would constitute or would be likely to constitute a breach of the fiduciary or statutory obligations of any Target Director.

## **11. Target Break Fee**

### **11.1 Background**

- (a) The Target and the Bidder acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, the Bidder will incur significant costs including those described in clause 11.2.
- (b) In the circumstances referred to in clause 11.1(a), the Bidder has requested that provision be made for the payments outlined in clause 11.3, without the benefit of which the Bidder would not have entered into this deed.
- (c) The Target Board believes that the Scheme will provide benefit to the Target and the Target Shareholders and that it is appropriate for the Target to agree to the payments referred to in this clause 11 in order to secure the Bidder's participation in the Proposed Transaction.

### **11.2 Costs incurred by the Bidder**

- (a) The fee payable under clause 11.3 has been calculated to reimburse the Bidder for the following:
  - (i) fees for reasonable legal, financial and other professional advice in planning and implementing the Proposed Transaction;
  - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
  - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction; and

- (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction,

in each case, incurred by the Bidder directly or indirectly as a result of having entered into this deed and pursuing the Proposed Transaction, and including any amounts in respect of GST incurred by the Bidder in respect of which it is not entitled to an input tax credit.

- (b) The parties acknowledge that:
  - (i) the amount of fees, costs and losses referred to in this clause 11.2 is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
  - (ii) the amount of the costs payable under clause 11.3 is a genuine and reasonable pre-estimate of those fees, costs and losses.

### 11.3 Payment by the Target to the Bidder

- (a) The Target agrees to pay to the Bidder \$1.79 million (exclusive of GST) (**Target Break Fee**) if:
  - (i) (**Competing Proposal**): a Competing Proposal is publicly announced prior to the Delivery Time (whether or not such proposal is stated to be subject to any preconditions) and, within 12 months from the date of the public announcement of that Competing Proposal, the proponent of that Competing Proposal (either alone or together with any Associates of the proponent of that Competing Proposal) or any Associate of that proponent:
    - (A) completes a Competing Proposal of a kind referred to in any of paragraphs (c), (d), (e) or (f) of the definition of 'Competing Proposal'; or
    - (B) becomes the legal holder of at least 50% of Target Shares;
  - (ii) (**Recommendation**): at any time prior to the Delivery Time, any Target Director:
    - (A) fails to recommend the Scheme in the manner described in clause 6;
    - (B) withdraws or adversely modifies or adversely qualifies his or her recommendation of the Scheme or support for it;
    - (C) makes any public statement to the effect that the Scheme is not, or is no longer, recommended or supported by that Target Director; or
    - (D) makes any public statement to the effect that the Target Director recommends or supports a Competing Proposal,
 except:
    - (E) where the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or addendum to, that report) that the Scheme is not in the best interest of Scheme Shareholders (except where that conclusion is due wholly or partly to the existence, announcement or publication of a Competing Proposal); or
    - (F) as a result of any matter or thing giving the Target the right to terminate this deed under clause 15.1(a); or
  - (iii) (**Material Breach**): the Target is:
    - (A) in material breach of any material obligations of the Target under this deed or in breach of any obligations of Target under clause 7.2 (in either case, other than a wilful, deliberate or reckless breach of a Target Excluded Obligation); or
    - (B) in material breach of any representations and warranties given by the Target under clause 9.3,
 and the Bidder terminates this deed in accordance with clause 15.1(a).

- (b) The Target must pay the Bidder the Target Break Fee within 5 Business Days of receipt by the Target of a demand for payment from the Bidder that is made after the occurrence of the event referred to in clause 11.3(a).
- (c) The maximum amount payable by the Target under this clause 11.3 is \$1.79 million (exclusive of GST).
- (d) The Target Break Fee:
  - (i) will not be payable to the Bidder if the Scheme becomes Effective; and
  - (ii) is only payable once.
- (e) For the avoidance of doubt, the Target Break Fee is not payable merely because the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii) of the Corporations Act.
- (f) Where the Target Break Fee becomes payable to the Bidder under this clause 11.3 and is actually paid to the Bidder, the Bidder (for itself and as agent of every other Bidder Group Member):
  - (i) releases all rights against, and agrees with the Target that the Bidder will not make a Claim against, any Target Party (other than a Claim under this clause 11) which relates solely to the event, fact, matter or circumstance that gave rise to the right to demand the payment of the Target Break Fee; and
  - (ii) indemnifies each Target Party against a Claim that is made by a Bidder Group Member contrary to the release under clause 11.3(f)(i).
- (g) Clause 11.3(f) has no application in relation to any Claim by the Bidder against the Target in connection with any wilful, deliberate or reckless breach by the Target of a Target Excluded Obligation.

## 12. Bidder Break Fee

### 12.1 Background

- (a) The Target and the Bidder acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, the Target will incur significant costs including those described in clause 12.2.
- (b) In the circumstances referred to in clause 12.1(a), the Target has requested that provision be made for the payments outlined in clause 12.3, without the benefit of which the Target would not have entered into this deed.
- (c) The board of directors of the Bidder believes that the Scheme will provide benefit to the Bidder (and its shareholders) and that it is appropriate for the Bidder to agree to the payments referred to in this clause 12.

### 12.2 Costs incurred by the Bidder

- (a) The fee payable under clause 12.3 has been calculated to reimburse the Target for the following:
  - (i) fees for reasonable legal, financial and other professional advice in planning and implementing the Proposed Transaction;
  - (ii) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
  - (iii) costs of management and directors' time in planning and implementing the Proposed Transaction; and
  - (iv) out of pocket expenses incurred in planning and implementing the Proposed Transaction,

in each case, incurred by the Target directly or indirectly as a result of having entered into this deed and pursuing the Proposed Transaction, and including any amounts in respect of GST incurred by the Target in respect of which it is not entitled to an input tax credit.

- (b) The parties acknowledge that:
  - (i) the amount of fees, costs and losses referred to in this clause 12.2 is inherently unascertainable and that, even after termination of this deed, the costs will not be able to be accurately ascertained; and
  - (ii) the amount of the costs payable under clause 12.3 is a genuine and reasonable pre-estimate of those fees, costs and losses.

### 12.3 Payment by the Bidder to the Target

- (a) The Bidder agrees to pay to the Target \$1.79 million (exclusive of GST) (**Bidder Break Fee**) if the Bidder is in material breach of any:
  - (i) material obligations of the Bidder under this deed (other than a wilful, deliberate or reckless breach of a Bidder Excluded Obligation); or
  - (ii) representations and warranties given by the Bidder under clause 9.1, and the Target terminates this deed in accordance with clause 15.1(a).
- (b) The Bidder must pay the Target the Bidder Break Fee within 5 Business Days of receipt by the Bidder of a demand for payment from the Target that is made after the occurrence of the event referred to in clause 12.3(a).
- (c) The maximum amount payable by the Target under this clause 12.3 is \$1.79 million (exclusive of GST).
- (d) The Bidder Break Fee:
  - (i) will not be payable to the Target if the Scheme becomes Effective; and
  - (ii) is only payable once.
- (e) Where the Bidder Break Fee becomes payable to the Target under this clause 12.3 and is actually paid to the Target, the Target (for itself and as agent of every other Target Group Member):
  - (i) releases all rights against, and agrees with the Bidder that the Target will not make a Claim against, any Bidder Party (other than a Claim under this clause 12) which relates solely to the event, fact, matter or circumstance that gave rise to the right to demand the payment of the Bidder Break Fee; and
  - (ii) indemnifies each Bidder Party against a Claim that is made by a Target Group Member contrary to the release under clause 12.3(e)(i).
- (f) Clause 12.3(e) has no application in relation to any Claim by the Target against the Bidder in connection with any wilful, deliberate or reckless breach by the Bidder of a Bidder Excluded Obligation.

## 13. Break Fee qualification

### 13.1 Determination by Governmental Agency

- If:
- (a) a Governmental Agency determines or declares that payment of all or any part of the Target Break Fee or Bidder Break Fee is unenforceable or unlawful (including because it involves a breach of the fiduciary or statutory duties of the members of the Target Board or board of directors of the Bidder (as applicable)) or constitutes 'unacceptable circumstances' (as that term is used in the Corporations Act) (**Impugned Amount**); and
  - (b) no appeal from or review of that determination or declaration is available, available appeals from or reviews of that determination or declaration have been exhausted, or the parties agree in writing not to appeal or seek review of that determination or declaration,



then:

- (c) the obligation of the Target to pay the Target Break Fee or the Bidder to pay the Bidder Break Fee (as applicable) does not apply to the extent of the Impugned Amount; and
- (d) if the Bidder or the Target (as applicable) has received any part of the Impugned Amount, it must refund it within five Business Days after that determination is made or the period for lodging has expired, whichever is later.

For the avoidance of doubt, any part of the Target Break Fee or Bidder Break Fee that does not comprise the Impugned Amount must be paid by the Target or Bidder (as applicable).

### **13.2 Obligations of the Bidder and the Target**

The parties must:

- (a) take all steps within their respective control (or that of their respective Related Bodies Corporate) to ensure that any determination or declaration referred to in clause 13.1 applies to the minimum extent possible; and
- (b) not cause or permit to be made, and must procure that their respective Related Bodies Corporate do not cause or permit to be made, any application to the Takeovers Panel, a court or other Governmental Agency for or in relation to a declaration or determination referred to in clause 13.1.

## **14. Confidentiality and Public Announcement**

### **14.1 Confidentiality**

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Agreement save that the terms of this deed will prevail over the Confidentiality Agreement to the extent of any inconsistency.

### **14.2 Agreed Announcement on execution**

Immediately after the execution of this deed, the parties must issue public announcements in a form previously agreed to in writing between them (**Agreed Announcement**).

### **14.3 Further public announcements**

Subject to clause 14.4, other than the Agreed Announcement, any further public announcements by the Target or the Bidder in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this deed or the Scheme may only be made in a form approved by each party in writing (acting reasonably).

### **14.4 Required announcement**

Where a party is required by applicable law, the ASX Listing Rules or any other applicable financial market regulation to make any announcement or to make any disclosure in connection with the Proposed Transaction or any other transaction the subject of this deed or the Scheme, it may do so but must use reasonable endeavours, to the extent practicable and lawful, to consult with the other party before making the relevant disclosure and must give the other party as much notice as reasonably practical.

### **14.5 Statements on termination**

The parties must use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clauses 14.3 and 14.4 apply to any such statements or disclosures.

### **14.6 Variations to Confidentiality Agreement**

The parties agree that the Confidentiality Agreement is amended as follows:

- (a) clause 8(a)(iii) is deleted;
- (b) the word “and” at the end of clause 8(a)(vi)(B) is deleted;
- (c) the period at the end of clause 8(a)(vii) is deleted and replaced with “; and”; and
- (d) a new clause 8(a)(viii) is inserted which reads:
  - “the provisions of clauses 8(a)(i) to 8(a)(v) shall cease with immediate effect to apply if:*
    - (A) *a Third Party publicly announces or proposes a Competing Proposal after the date of this deed or otherwise publicly indicates after the date of this deed that it is considering a scheme of arrangement, takeover or other control proposal for Target;*
    - (B) *any Third Party who is a substantial holder (as defined in the Corporations Act) in the Target as at the date of this deed, sends a notice to the ASX and I or the Target indicating that it (1) has acquired a Relevant Interest in an additional 3% or more of the shares in the Target or (2) has directly or indirectly acquired an interest in, or an economic exposure to, an additional 3% or more of the shares in the Target including through entering into any agreement or arrangement with any person involving the conferring of rights, the economic effect of which is equivalent or substantially equivalent to the acquisition, holding or disposal of target shares (including, but not limited to, cash-settled derivative contracts, swaps, contracts for differences or other derivative contracts) (**Equivalent Acquisition**);*
    - (C) *any Third Party who is not identified in a notice sent to ASX as a substantial holder (as defined in the Corporations Act) in Target as at the date of this deed, sends a notice to the ASX and I or the Target indicating that it (1) holds or has acquired a Relevant Interest in at least 5% of the shares in the Target or (2) has directly or indirectly acquired an interest in, or an economic exposure to, 5% or more of the shares in the Target, including through an Equivalent Acquisition; or*
    - (D) *the Target gives the Bidder a notice under clause 10.5 of the scheme implementation deed between the Target and the Bidder.”*

## 15. Termination

### 15.1 Termination by notice

A party (**Terminating Party**) may, by notice in writing to the other party (**Other Party**), terminate this deed at any time prior to the Delivery Time:

- (a) if the Other Party:
  - (i) is:
    - (A) either the Target or the Bidder, and is in material breach of any of its material obligations under this deed (except, in relation to the Target, those obligations in clause 7.2), including a material breach of a material representation or warranty given by the Other Party under clause 9.1 (if the Other Party is the Bidder) or clause 9.3 (if the Other Party is the Target). Without limiting the generality of the foregoing, the parties agree that any breach of the representations or warranties in clause 9.3(b)(x) and clause 9.3(b)(xx) will be deemed to be a material breach of a material representation or warranty; or
    - (B) the Target, and is in breach of any of its obligations under clause 7.2; and
  - (ii) has failed to remedy such breach prior to the earlier of the Delivery Time and the date being 5 Business Days after the date of receipt by the Other Party of a notice in writing from the Terminating Party setting out details of the relevant

circumstance and requesting the Other Party to remedy such breach to the reasonable satisfaction of the Terminating Party;

- (b) in accordance with clause 3.6;
- (c) if the Court refuses to make any order directing the Target to convene the Scheme Meeting;
- (d) if the Effective Date for the Scheme has not occurred on or before the End Date; or
- (e) such number of Target Directors as constitutes a majority of the Target Board:
  - (i) withdraws or adversely modifies or adversely qualifies their respective recommendation of the Scheme or support for it;
  - (ii) make any public statement to the effect that the Scheme is not, or is no longer, recommended or supported by those Target Directors; or
  - (iii) make any public statement to the effect that those Target Directors recommend a Competing Proposal,and do not, within 3 Business Days, reinstate their respective recommendation of the Scheme, provided that if the Terminating Party is the Target it may only terminate this deed under this clause 15.1(e) if:
  - (iv) the action described in clauses 15.1(e)(i) to 15.1(e)(iii) (inclusive) that is taken by the relevant Target Directors is permitted by clause 6(b); and
  - (v) the Bidder is entitled or will become entitled to the Target Break Fee as a result of that action by the one or more of the relevant Target Directors, that amount has been paid to the Bidder in accordance with clause 18.3.

## **15.2 Automatic termination**

Without limiting any other term of this deed, this deed will terminate automatically if the resolution submitted to the Scheme Meeting in respect of the Scheme is not approved by the majorities required under section 411(4)(a)(ii)(B) of the Corporations Act.

## **15.3 Effect of termination**

- (a) In the event of termination of this deed under clause 3.6, 15.1 or 15.2, this deed will become void and have no effect, except that the provisions of clauses 9.6, 9.7, 11, 12, 13, 14, 15, 16.1, 16.2 and 18.3 to 18.17 (inclusive) survive termination.
- (b) Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination.

# **16. Releases**

## **16.1 Release of Target Indemnified Parties**

- (a) Subject to any restrictions imposed by law, the Bidder releases, and will procure that Bidder Sub releases, any and all rights that it may have as at the date of this deed and from time to time, and agrees with the Target that it will not, and will procure that Bidder Sub will not, make any Claim, against a Target Indemnified Party in connection with:
  - (i) the Target's execution or delivery of this deed;
  - (ii) any breach of any representation, warranty, covenant or obligation of the Target in this deed;
  - (iii) the implementation of the Scheme; or
  - (iv) any disclosure made by any Target Indemnified Party which is false or misleading (whether by omission or otherwise),except to the extent the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 16.1(a) limits the rights of the Bidder to terminate this deed under clause 15.

- (b) The Target receives and holds the benefit of clause 16.1(a) as trustee for each Target Indemnified Party.

## **16.2 Release of Bidder Indemnified Parties**

- (a) Subject to any restrictions imposed by law, the Target releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with the Bidder that it will not make any Claim, against a Bidder Indemnified Party in connection with:
  - (i) the execution or delivery of this deed by the Bidder or the execution or delivery of the Deed Poll by the Bidder or the Bidder Sub;
  - (ii) any breach of any representation, warranty, covenant or obligation of the Bidder in this deed;
  - (iii) the implementation of the Scheme; or
  - (iv) any disclosure made by any Bidder Indemnified Party which is false or misleading (whether by omission or otherwise),except to the extent the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 16.2(a) limits the rights of the Target to terminate this deed under clause 15.
- (b) The Bidder receives and holds the benefit of clause 16.2(a) as trustee for each Bidder Indemnified Party.

## **16.3 Deeds of indemnity**

- (a) Subject to the Scheme becoming Effective, the Bidder undertakes in favour of the Target and each other person who is a Target Party that it will:
  - (i) ensure that the constitutions of the Target and each other Target Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Target Group Member; and
  - (ii) procure that the Target and each other Target Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.
- (b) The undertakings contained in clause 16.3(a) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (c) The Target receives and holds for the benefit of clause 16.3(a), to the extent it relates to any other Target Party, as trustee for them.
- (d) The undertakings contained in clause 16.3(a) are given:
  - (i) in the case of clause 16.3(a)(i), until the earlier of the time that the relevant Target Group Member ceases to be part of the Bidder Group or 7 years from the Implementation Date; or
  - (ii) in the case of clause 16.3(a)(ii), until the earlier of the time that the relevant Target Group Member ceases to be part of the Bidder Group or 7 years from the retirement of each director and officer.

## **16.4 Directors' and officers' insurance**

- (a) The Bidder acknowledges that the Target will in respect of the Target and all other Target Group Members:
  - (i) prior to the Effective Date, arrange for the cover currently provided under the directors' and officers' insurance policy for the Target and all other Target Group Members (**Policy**) to be extended for a further period of 12 months; and

- (ii) by no later than the Implementation Date, to the extent practicable at normal commercial rates, arrange for the cover provided under the Policy to be amended so as to provide run off cover in accordance with the terms of the Policy for a 7 year period from the end of the term of the Policy, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date,

and that any actions to facilitate that insurance or in connection therewith will not be or constitute a Target Prescribed Occurrence, a breach of clause 7, a Target Material Adverse Change or otherwise breach any provision of this deed.

- (b) The Target receives and holds the benefit of clause 16.4(a) as trustee for each director and officer of each Target Group Member.

## 17. Notices

Any communication under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as shown on the Details page (or as otherwise notified by that party to the other party from time to time);
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 17(b); and
- (e) will be deemed to be received by the addressee:
  - (i) **(in the case of prepaid post)**: on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
  - (ii) **(in the case of fax)**: at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day;
  - (iii) **(in the case of delivery by hand)**: on delivery at the address of the addressee as provided in clause 17(b), unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
  - (iv) **(in the case of email)**: at the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

## 18. General

### 18.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this deed.

### 18.2 Timetable

The parties agree that the Timetable is indicative only and is not binding on the parties. The parties agree to consult regularly with each other in relation to:

- (a) performing their respective obligations within the framework established by the Timetable; and
- (b) any need to modify the Timetable.

### 18.3 Payments

Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (**Receiving Party**) by the other party under this deed, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

### 18.4 Interest

- (a) If a party fails to pay any amount payable under this deed on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.
- (b) The interest payable under clause 18.4(a):
  - (i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
  - (ii) may be capitalised by the person to whom it is payable at monthly intervals.

### 18.5 Consents or approvals

A party may:

- (a) give conditionally or unconditionally; or
- (b) withhold,

its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

### 18.6 GST

- (a) Any reference in this clause 18.6 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 18.6(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 18.6(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 18.6 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided. A party need not make a payment for a taxable supply made pursuant to this deed until it receives a tax invoice for the supply to which the payment relates.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the

person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

- (f) Unless expressly included, any monetary thresholds specified in this deed are exclusive of GST.

#### **18.7 Stamp duty**

The Bidder must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme (including without limitation the acquisition or transfer of Scheme Shares pursuant to the Scheme).

#### **18.8 Expenses**

Except as otherwise provided in this deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this deed and the Scheme Booklet and the proposed, attempted or actual implementation of this deed and the Scheme.

#### **18.9 Amendments**

This deed may only be varied by a document signed by or on behalf of each of the parties.

#### **18.10 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.

#### **18.11 Business Day**

Except where otherwise expressly provided, where under this deed the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing will be done on the next Business Day.

#### **18.12 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

#### **18.13 Counterparts**

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same deed.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by facsimile machine or email to the facsimile number or email address (as the case may be) of the other party specified in the Details page (or as otherwise notified by that party to the other party from time to time), instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.



**18.14 Entire agreement**

- (a) This deed:
  - (i) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
  - (ii) supersedes any prior agreement (whether or not in writing) between the parties.
- (b) Despite clause 18.14(a), the Confidentiality Agreement (as varied by clause 14.6) continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this deed prevails.

**18.15 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

**18.16 No merger**

The rights and obligations of the parties will not merge on completion of any transaction under this deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

**18.17 Governing law**

- (a) This deed is governed by and will be construed according to the laws of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and of the courts competent to determine appeals from those courts.

## Schedule 1 – Indicative timetable

Event	Date
Enter into Scheme Implementation Deed	Thursday, 4 May 2017
Lodge Scheme Booklet with ASIC for review and comment	Thursday, 25 May 2017
First Court Date	Tuesday, 20 June 2017
Despatch Scheme Booklet to Target Shareholders	Thursday, 22 June 2017
Scheme Meeting	Tuesday, 25 July 2017
Second Court Date	Monday, 31 July 2017
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	Tuesday, 1 August 2017
Record Date	Tuesday, 8 August 2017
Implementation Date:	Tuesday, 15 August 2017
<ul style="list-style-type: none"><li>▪ Pay Scheme Consideration to Scheme Shareholders</li><li>▪ Reconstitute boards of each Target Group Member</li></ul>	

## Schedule 2 – Deed Poll

Not produced here – please see Appendix 6 of the Scheme Booklet

## Schedule 3 – Scheme

Not produced here – please see Appendix 3 of the Scheme Booklet

## Schedule 4 – Certificate

[Attached]

# Certificate

## Conditions precedent certificate

---

Date:

We refer to the scheme implementation deed dated 4 May 2017 between Grays eCommerce Group Limited ABN 94 125 736 914 (**Grays**) and Eclipx Group Limited ABN 85 131 557 901 (**Eclipx**) (**SID**).

1. Grays certifies, confirms and agrees that each of the following conditions precedent of the SID has been satisfied or is hereby waived in accordance with the terms of the SID:
  - clause 3.1(a) (**Shareholder approval**);
  - clause 3.1(c) (**Regulatory Approvals**);
  - clause 3.1(d) (**Restraints**);
  - clause 3.1(e) (**ASIC and ASX**);
  - clause 3.1(g) (**No Target Prescribed Occurrence**);
  - clause 3.1(h) (**No Target Material Adverse Change**);
  - clause 3.1(i) (**Target Warranties**); and
  - clause 3.1(m) (**Independent Expert**).
2. Eclipx certifies, confirms and agrees that each of the following conditions precedent of the SID has been satisfied or is hereby waived in accordance with the terms of the SID:
  - clause 3.1(c) (**Regulatory Approvals**);
  - clause 3.1(d) (**Restraints**);
  - clause 3.1(e) (**ASIC and ASX**);
  - clause 3.1(f) (**New Bidder Shares**);
  - clause 3.1(j) (**No Bidder Prescribed Occurrence**);
  - clause 3.1(k) (**No Bidder Material Adverse Change**); and
  - clause 3.1(l) (**Bidder Warranties**).
3. Eclipx and Grays certify, confirm and agree that each of the conditions in clauses 3(a)(i) and 3(a)(ii) of the scheme of arrangement between Grays and the relevant Grays shareholders which appears in an annexure to Gray's scheme booklet has been satisfied.

**Executed as a deed**

Signed sealed and delivered by  
**Grays eCommerce Group Limited**  
by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*print name* \_\_\_\_\_

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

\_\_\_\_\_

Signed sealed and delivered by  
**Eclipx Group Limited**  
by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*print name* \_\_\_\_\_

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

\_\_\_\_\_



## Signing page

**EXECUTED** as a deed.

Signed sealed and delivered by  
**Grays eCommerce Group Limited**  
by

sign here ►



Company Secretary/Director

print name

DAVID GRBIN

sign here ►



Director

print name

MARK BAYLISS.

Signed sealed and delivered by  
**Eclix Group Limited**  
by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name

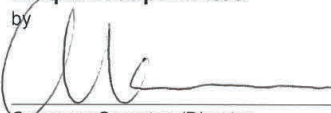

## Signing page

EXECUTED as a deed.

Signed sealed and delivered by  
**Grays eCommerce Group Limited**  
by

sign here ►	_____	sign here ►	_____
	Company Secretary/Director		Director
print name	_____	print name	_____

Signed sealed and delivered by  
**Eclix Group Limited**  
by

sign here ►		sign here ►	
	Company Secretary/Director		Director
print name	<u>Gary Melman</u>	print name	<u>IRWIN KLOTZ</u>

## APPENDIX 6 – DEED POLL



### Deed poll

—  
Eclix Group Limited (**Bidder**)

Leasing Finance (Australia) Pty Limited (**Bidder Sub**)  
—

Level 40 Governor Macquarie Tower 1 Farrer Place  
Sydney NSW 2000 Australia DX 117 Sydney  
T +61 2 9921 8888 F +61 2 9921 8123  
minterellison.com  
63137540

MinterEllison

# Deed poll

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---

# Details

Date

16 June 2017

## Deed poll made by

Name **Eclipx Group Limited**  
ABN 85 131 557 901  
Short form name **Bidder**  
Notice details Level 32, 1 O'Connell Street, Sydney, New South Wales, 2000  
Facsimile: +61 2 8973 7171  
Email: Matt.Sinnamon@eclipx.com  
Attention: Group General Counsel

and

Name **Leasing Finance (Australia) Pty Limited**  
ABN 39 121 167 824  
Short form name **Bidder Sub**  
Notice details Level 32, 1 O'Connell Street, Sydney, New South Wales, 2000  
Facsimile: +61 2 8973 7171  
Email: Matt.Sinnamon@eclipx.com  
Attention: Group General Counsel

in favour of

each person registered in the Target Register as a holder of fully paid ordinary shares in the Target as at the Record Date (other than Excluded Shareholders).

## Background

- A On 4 May 2017, Grays eCommerce Group Limited ABN 94 125 736 914 (**Target**) and the Bidder entered into the Scheme Implementation Deed to provide for (among other matters) the implementation of the Scheme.
- B The effect of the Scheme will be to transfer all Scheme Shares to Bidder Sub in return for the Scheme Consideration.
- C The Bidder and Bidder Sub enter this deed poll to covenant in favour of Scheme Shareholders to:
- (i) perform the steps attributed to them under the Scheme; and
  - (ii) provide the Scheme Consideration in accordance with the Scheme.

# Agreed terms

## 1. Defined terms & interpretation

### 1.1 Defined terms

In this document:

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders, the form of which is set out in Attachment 1, subject to any alterations or conditions made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by the Bidder and the Target.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 4 May 2017 between the Bidder and the Target.

### 1.2 Terms defined in Scheme Implementation Deed

Capitalised words and phrases defined in the Scheme have the same meaning in this deed poll unless the context requires otherwise.

### 1.3 Incorporation by reference

The provisions of clauses 1.2, 1.3 and 1.4 of the Scheme form part of this deed poll as if set out at length in this deed poll but with 'deed poll' substituted for 'deed' and with any reference to 'party' being taken to include the Scheme Shareholders.

## 2. Nature of this deed poll

The Bidder and Bidder Sub acknowledge that this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not a party to it.

## 3. Conditions

### 3.1 Conditions

This deed poll and the obligations of the Bidder and Bidder Sub under clause 4 are subject to the Scheme becoming Effective.

### 3.2 Termination

The obligations of the Bidder and Bidder Sub under this deed poll will automatically terminate and this deed poll will be of no further force or effect if:

- (a) the Scheme Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective on or before the End Date,

unless the Target, the Bidder and Bidder Sub otherwise agree in writing.

### 3.3 Consequences of termination

If this deed poll terminates under clause 3.2, in addition and without prejudice to any other rights, powers or remedies available to them:

- (a) the Bidder and Bidder Sub are released from their obligations to further perform this deed poll; and
- (b) Scheme Shareholders retain the rights they have against the Bidder and Bidder Sub in respect of any breach of this deed poll which occurred before it terminated.

## 4. Performance of obligations

### 4.1 Generally

Subject to clause 3, the Bidder and Bidder Sub covenant in favour of Scheme Shareholders to perform the actions attributed to them under, and otherwise comply with, the Scheme as if the Bidder and Bidder Sub were parties to the Scheme.

### 4.2 Provision of Scheme Consideration

- (a) Subject to clause 3, the Bidder undertakes in favour of each Scheme Shareholder to provide or procure the provision of the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme.
- (b) The obligations of the Bidder under clause 4.2(a) will be satisfied if, on or before the Implementation Date, in accordance with the provisions of the Scheme, the Bidder issues all of the New Bidder Shares which it is obliged to issue to Scheme Shareholders and to the Nominee under the Scheme and provides the Target with written confirmation that it has done so.

## 5. Warranties

Each of the Bidder and Bidder Sub represents and warrants to each Scheme Shareholder, in respect of itself, that:

- (a) **(status)**: it is a corporation duly incorporated and validly existing under the laws of the place of its incorporation;
- (b) **(power)**: it has the power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(corporate authorisations)**: it has taken all necessary corporate action to authorise the entry into and performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(documents binding)**: this deed poll is its valid and binding obligation enforceable in accordance with its terms;
- (e) **(transactions permitted)**: the execution and performance by it of this deed poll and each transaction contemplated by this deed poll did not and will not violate in any respect a provision of:
  - (i) a law or treaty or a judgment, ruling, order or decree of a Regulatory Authority binding on it;
  - (ii) its constitution or other constituent documents; or
  - (iii) any other document which is binding on it or its assets; and
- (f) **(solvency)**: it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

## 6. Continuing Obligations

### 6.1 Deed poll irrevocable

This deed poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) the Bidder and Bidder Sub having fully performed their obligations under this deed poll; and
- (b) termination of this deed poll under clause 3.2.



## 6.2 Variation

A provision of this deed poll may not be varied unless:

- (a) before the Second Court Date, the variation is agreed to in writing by the Target; or
- (b) on or after the Second Court Date, the variation is agreed to in writing by the Target and is approved by the Court,

in which event the Bidder and Bidder Sub will enter into a further deed poll in favour of each Scheme Shareholder giving effect to the variation.

## 7. Notices

Any notice, demand or other communication (**Notice**) in respect of this deed poll:

- (a) must be in writing and signed by the sender or a person duly authorised by it;
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number specified in the Details; and
- (c) will be conclusively taken to be duly given or made:
  - (i) in the case of delivery in person, when delivered at the address of the addressee as provided in clause 7(b), unless that delivery is not made on a Business Day, or is made after 5.00pm on a Business Day, in which case that Notice will be deemed to be received at 9.00am on the next Business Day;
  - (ii) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country);
  - (iii) in the case of fax, at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
  - (iv) if the case of email, at the local time (in the place of receipt of that email) which then equates to the time at which that email is sent as shown unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, that communication will be deemed to be received at 9.00am on the next Business Day.

## 8. General Provisions

### 8.1 Assignment

- (a) The rights and obligations of the Bidder, Bidder Sub and each Scheme Shareholder under this deed poll are personal. They cannot be assigned, charged, encumbered or otherwise dealt with at law or in equity without the prior written consent of the Target, the Bidder and Bidder Sub.
- (b) Any purported dealing in contravention of clause 8.1(a) is invalid.

### 8.2 Cumulative rights

The rights, powers and remedies of the Bidder, Bidder Sub and each Scheme Shareholder under this deed poll are cumulative with and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

### 8.3 No waiver

- (a) The Bidder and Bidder Sub may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) If a Scheme Shareholder does not exercise a right arising from a breach of this deed poll at a given time, it may, unless it has waived that right in writing, exercise the right at a later point in time.
- (c) No Scheme Shareholder may rely on words or conduct of the Bidder or Bidder Sub as a waiver of any right unless the waiver is in writing and signed by the Bidder or Bidder Sub, as appropriate.
- (d) The meanings of the terms used in this clause 8.4 are set out below.

**conduct** includes delay in the exercise of a right;

**right** means any right arising under or in connection with this deed poll and includes the right to rely on this clause; and

**waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

### 8.4 Stamp duty

The Bidder:

- (a) must pay or procure the payment of all stamp duty (if any) any related fines, penalties and interest in respect of the Scheme and this deed poll (including the acquisition or transfer of Scheme Shares pursuant to the Scheme), the performance of this deed poll and each transaction effected by or made under or pursuant to the Scheme and this deed poll; and
- (b) indemnifies and undertakes to keep indemnified each Scheme Shareholder against any liability arising from failure to comply with clause 8.4(a).

### 8.5 Further assurances

The Bidder and Bidder Sub will, at their own expense, do all things reasonably required of them to give full effect to this deed poll.


### 8.6 Governing law and jurisdiction

This deed poll is governed by the laws of the State of New South Wales. In relation to it and related non-contractual matters the Bidder and Bidder Sub irrevocably submit to the non-exclusive jurisdiction of courts with jurisdiction there, and waive any right to object to the venue on any ground.

## Signing page

**EXECUTED** as a deed poll.

**Executed by Eclix Group Limited**  
ABN 85 131 557 901 in accordance with  
Section 127 of the *Corporations Act 2001*

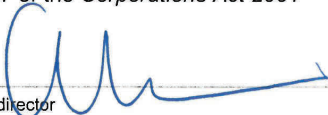
  
\_\_\_\_\_  
Signature of director

GARRY MCLENNAN  
\_\_\_\_\_  
Name of director (print)


  
\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

DOC KLOTZ  
\_\_\_\_\_  
Name of director/~~company secretary~~ (print)

**Executed by Leasing Finance (Australia) Pty Limited** ABN 39 121 167 824 in accordance with  
Section 127 of the *Corporations Act 2001*

  
\_\_\_\_\_  
Signature of director

GARRY MCLENNAN  
\_\_\_\_\_  
Name of director (print)

  
\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

DOC KLOTZ  
\_\_\_\_\_  
Name of director/~~company secretary~~ (print)

INTENTIONALLY BLANK

# CORPORATE DIRECTORY

## **Grays eCommerce Group Limited**

ABN 94 125 736 914  
Homebush Corporate Park, 29-33 Carter St  
Lidcombe, NSW 2141  
Telephone: +61 2 9741 9600  
Fax: +61 2 9741 9680  
Website: <http://www.graysecommercegroup.com/>

## **Directors**

Jonathan Pinshaw  
Will Vicars  
Bernie Campbell  
Nicolette Maury  
Mark Bayliss

## **Company Secretary**

Leanne Ralph

## **Appointed Auditor**

**Ernst & Young**  
200 George Street Sydney NSW 2000

## **Legal adviser**

**MinterEllison**  
Level 40, Governor Macquarie Tower,  
1 Farrer Place Sydney NSW 2000  
Telephone: +61 2 9921 8888

## **Independent Expert**

**Lonergan Edwards & Associates Limited**  
Level 7, 64 Castlereagh Street  
Sydney NSW 2000  
Telephone:  
+612 8235 7500

## **Grays Share Registry**

**Computershare Investor Services Pty Limited**  
ABN 48 078 279 277  
Level 4, 60 Carrington Street, Sydney, NSW 2000  
Telephone: +61 2 8234 5000  
Fax: +61 2 8234 5050

## **Financial adviser**

**Moelis Australia Advisory Pty Ltd**  
Level 27, Governor Phillip Tower,  
1 Farrer Place Sydney NSW 2000  
Telephone: +61 2 8288 5555  
Fax: +61 2 8288 5550

## **Investigating Accountant**

**KPMG Transaction Services,  
a division of KPMG Financial Advisory Services  
(Australia) Pty Ltd**  
Level 38, Tower 3, International Towers Sydney  
300 Barangaroo Avenue  
Sydney NSW 2000  
Telephone:  
+61 2 9335 7000  
Fax:  
+61 2 9335 7001



grays~~x~~ecommercegroup

# Grays eCommerce Group Limited

ABN 94 125 736 914

## Lodge your proxy:



Online:

[www.investorvote.com.au](http://www.investorvote.com.au)



By Mail:

Computershare Investor Services Pty Limited  
GPO Box 242 Melbourne  
Victoria 3001 Australia

Alternatively you can fax your form to  
(within Australia) 1800 783 447  
(outside Australia) +61 3 9473 2555

For Intermediary Online subscribers only  
(custodians) [www.intermediaryonline.com](http://www.intermediaryonline.com)

## For all enquiries call:

(within Australia) 1300 103 188  
(outside Australia) +61 3 9415 4232

GEG

MR SAM SAMPLE  
FLAT 123  
123 SAMPLE STREET  
THE SAMPLE HILL  
SAMPLE ESTATE  
SAMPLEVILLE VIC 3030

## Proxy Form

XX



To lodge your proxy and view the Notice of Scheme Meeting and Scheme Booklet online

- Go to [www.investorvote.com.au](http://www.investorvote.com.au) or scan the QR Code with your mobile device.
- Follow the instructions on the secure website.

### Your access information that you will need to lodge your proxy online:

Control Number: 9999999

SRN/HIN: I9999999999 PIN: 99999

PLEASE NOTE: For security reasons it is important that you keep your SRN/HIN confidential.



For your proxy to be effective it must be received by 11:30am (AEST) Monday 24, July 2017

## How to Vote on Items of Business

All your securities will be voted in accordance with your directions.

### Appointment of Proxy

**Voting 100% of your holding:** Direct your proxy how to vote by marking one of the boxes opposite each item of business. If you do not mark a box your proxy may vote or abstain as they choose (to the extent permitted by law). If you mark more than one box on an item your vote will be invalid on that item.

**Voting a portion of your holding:** Indicate a portion of your voting rights by inserting the percentage or number of securities you wish to vote in the For, Against or Abstain box or boxes. The sum of the votes cast must not exceed your voting entitlement or 100%.

**Appointing a second proxy:** You are entitled to appoint up to two proxies to attend the meeting and vote on a poll. If you appoint two proxies you must specify the percentage of votes or number of securities for each proxy, otherwise each proxy may exercise half of the votes. When appointing a second proxy write both names and the percentage of votes or number of securities for each in Step 1 overleaf.

**A proxy need not be a securityholder of the Company.**

## Signing Instructions for Postal Forms

**Individual:** Where the holding is in one name, the securityholder must sign.

**Joint Holding:** Where the holding is in more than one name, all of the securityholders should sign.

**Power of Attorney:** If you have not already lodged the Power of Attorney with the registry, please attach a certified photocopy of the Power of Attorney to this form when you return it.

**Companies:** Where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the Corporations Act 2001) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please sign in the appropriate place to indicate the office held. Delete titles as applicable.

## Attending the Meeting

Bring this form to assist registration. If a representative of a corporate securityholder or proxy is to attend the meeting you will need to provide the appropriate "Certificate of Appointment of Corporate Representative" prior to admission. A form of the certificate may be obtained from Computershare or online at [www.investorcentre.com](http://www.investorcentre.com) under the help tab, "Printable Forms".

**Comments & Questions:** If you have any comments or questions for the Company, please write them on a separate sheet of paper and return with this form.

**GO ONLINE TO LODGE YOUR PROXY,  
or turn over to complete the form →**



MR SAM SAMPLE  
FLAT 123  
123 SAMPLE STREET  
THE SAMPLE HILL  
SAMPLE ESTATE  
SAMPLEVILLE VIC 3030

☐

**Change of address.** If incorrect, mark this box and make the correction in the space to the left. Securityholders sponsored by a broker (reference number commences with 'X') should advise your broker of any changes.



I 9999999999

I ND

# Proxy Form

Please mark ☒ to indicate your directions

STEP 1

Appoint a Proxy to Vote on Your Behalf

XX

I/We being a member/s of Grays eCommerce Group Limited hereby appoint

☐ the Chairman of the Meeting

OR

**PLEASE NOTE:** Leave this box blank if you have selected the Chairman of the Meeting. Do not insert your own name(s).

or failing the individual or body corporate named, or if no individual or body corporate is named, the Chairman of the Meeting, or any Director or Company Secretary of Grays eCommerce Group Limited nominated by the Chairman of the Meeting, as my/our proxy to act generally at the meeting on my/our behalf and to vote in accordance with the following directions (or if no directions have been given, and to the extent permitted by law, as the proxy sees fit) at the Scheme Meeting of Grays eCommerce Group Limited to be held at Level 40, Governor Macquaire Tower, 1 Farrer Place, Sydney NSW 2000 on Wednesday, 26 July 2017 at 11:30am (AEST) and at any adjournment or postponement of that meeting.

Proxy appointments in favour of the Chairman of the Meeting, the Company Secretary or any Director of Grays eCommerce Group Limited which do not contain a direction will be voted in favour of the Resolution at the Scheme Meeting (in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of shareholders of Grays eCommerce Group Limited).

STEP 2

Item of Business

**PLEASE NOTE:** If you mark the **Abstain** box for an item, you are directing your proxy not to vote on your behalf on a show of hands or a poll and your votes will not be counted in computing the required majority.

Resolution

That, pursuant to and in accordance with section 411 of the Corporations Act, the Scheme proposed between the Company and Grays Shareholders, the terms of which are contained in and more particularly described in the Scheme Booklet (which accompanies the notice convening this meeting) is agreed to and the Directors of the Company are authorised to agree to such alterations or conditions as are thought fit by the Court, and subject to approval by the Court, to implement the Scheme with any such alterations or conditions.

For

Against

Abstain

☐

☐

☐

SIGN

Signature of Securityholder(s) *This section must be completed.*

Individual or Securityholder 1

Securityholder 2

Securityholder 3

Sole Director and Sole Company Secretary      Director      Director/Company Secretary

Contact Name

Contact Daytime Telephone

Date

/

/