

MYOB agrees to recommended scheme of arrangement with KKR at \$3.40 cash per share and 'go shop' arrangements

- Scheme agreed at \$3.40 per share in cash for MYOB shares that KKR does not already own
- Directors unanimously recommend shareholders vote in favour of the Scheme, in the absence of a Superior Proposal and subject to an independent expert concluding the transaction is in the best interests of shareholders
- MYOB free to solicit competing proposals until 22 February 2019
- KKR commits to selling into a Qualifying Superior Proposal without a break fee
- Confirms final FY18 earnings guidance
 - Organic revenue growth of approximately 7%
 - R&D spend of approximately 19% of revenue
 - Underlying EBITDA margin of approximately 42-43%
 - Free cash flow¹ above \$100 million

MYOB Group (**MYOB** or **Company**) today announced, following the conclusion of discussions with Kohlberg Kravis Roberts & Co. L.P. (together with its affiliates, **KKR**), that it has entered into a Scheme Implementation Agreement (**SIA**) (attached) under which KKR will acquire, for \$3.40 per share all cash consideration, all of the shares in MYOB it does not already own² by way of scheme of arrangement.

As part of the arrangements, MYOB has agreed to 'go shop' provisions with KKR that permit the Company and its advisers, until 22 February 2019, to solicit competing proposals and with a commitment from KKR to sell its shareholding into, or vote in favour of, any Qualifying Superior Proposal³. Following this date, customary matching rights and non-solicitation restrictions apply. No break fee is triggered in relation to the recommendation and acceptance of any Superior Proposal.

The Directors of MYOB unanimously recommend that shareholders vote in favour of the transaction in the absence of a Superior Proposal and subject to an independent expert concluding the transaction is in the best interests of shareholders. Subject to those qualifications, each Director of MYOB intends to vote all of the MYOB shares held or controlled by them in favour of the scheme.

¹ Free cash flow defined as statutory EBITDA less changes in net working capital and capital expenditure.

² KKR and its related entities currently have a legal and economic interest in 19.9% of the MYOB shares.

³ Qualifying Superior Proposal means a Superior Proposal in respect of 100% of MYOB shares that is at least 5% higher than KKR's scheme consideration of \$3.40 in cash, that is recommended by a majority of the MYOB Board and in respect of which MYOB enters into an implementation agreement.



In agreeing to the transaction, the Directors of MYOB have taken into account:

- the attractive terms of the SIA, including the ability to ensure a full and fair testing of the KKR Revised Proposal;
- current market volatility including share price declines of approximately 10% and 17% across the ASX and domestic technology companies respectively⁴;
- the significant short-term investment requirements to execute the strategic growth plan; and
- the potential disruptive impact of a failed transaction on the Company and its trading price, given the significant existing shareholding of KKR.

MYOB Chairman Justin Milne said: “We believe it is in the best interests of shareholders to put and recommend this transaction to shareholders having regard to market uncertainty and the longer-term nature of the strategic growth plan the Company has embarked upon. The unique provisions of the agreement with KKR provide a level of certainty for our shareholders and gives us the opportunity to ensure a full and fair market testing of the Revised Proposal over the implementation period.”

An update on the Company's performance (including the progress on its accelerated investment) will be provided to shareholders at its FY18 results presentation scheduled on 21 February 2019 prior to the Scheme Meeting targeted for 16 April 2019.

The Company announces that it expects FY18 earnings to reflect organic revenue growth of approximately 7%, R&D spend of approximately 19% of revenue, an underlying EBITDA margin between 42% and 43% and free cash flow above \$100 million.

Overview of the Scheme

Under the proposed transaction, MYOB shareholders at the relevant record date will be entitled to \$3.40 cash per share. The offer price assumes no full year dividend is paid.

For MYOB shareholders, the cash consideration of \$3.40 per share represents an attractive FY18 EV/Cash EBITDA multiple of approximately 17x⁵ and FY18 EV/free cash flow multiple of approximately 22x⁶.

MYOB shareholders should read the Scheme Booklet, which the Company is targeting to send to all shareholders in mid-March 2019, and seek appropriate advice before making a decision on how to vote.

⁴ Share price movement of ASX 200 and ASX 300 Information Technology Index between 8 October 2018 and 21 December 2018.

⁵ Cash EBITDA defined as underlying EBITDA less capitalised research and development costs.

⁶ Free cash flow defined as statutory EBITDA less net working capital and capital expenditure.



The Scheme is subject to customary conditions, including shareholder approval, court approval, no material adverse change and no prescribed occurrences or material breach of warranty in relation to MYOB.

In addition, the SIA contains certain exclusivity provisions commencing on 22 February 2019 including no shop restrictions, no talk restrictions and a matching right. The SIA also details the limited circumstances under which a break fee may be payable to KKR.

Indicative timetable and next steps

MYOB shareholders do not need to take any action at the present time.

A Scheme Booklet containing information relating to the Scheme, reasons for the Directors' unanimous recommendation, details of the Scheme meeting and the Independent Expert's Report is expected to be sent to shareholders in mid-March 2019.

Shareholders will be given the opportunity to vote on the Scheme at a meeting that is expected to be held in Sydney on 16 April 2019. Subject to shareholder approval and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented on 3 May 2019.

An indicative timetable for the Scheme is set out below:

Event	Expected date
First court hearing	11 March 2019
Despatch of Scheme Booklet to MYOB shareholders	Mid March 2019
Scheme Meeting	16 April 2019
Second court hearing	19 April 2019
Effective Date	19 April 2019
Implementation Date	3 May 2019

MYOB is being advised by UBS as financial adviser and Clayton Utz as legal adviser.

For further reference regarding the KKR Revised Proposal and previous announcements, please refer to our investor site: <http://investors.myob.com.au/Investors>.

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About MYOB

MYOB Group Ltd (ASX: MYO) is a leading provider of online business management solutions. It makes business life easier for approximately 1.2 million businesses and accountants across Australia and New Zealand by simplifying accounting, payroll, tax, practice management, CRM, job costing, inventory and more. MYOB operates across three core segments – Clients and Partners (business solutions to SMEs and Advisers); Enterprise Solutions (larger businesses) and Payment Solutions. It



provides ongoing support through client service channels including a network of over 40,000 accountants, bookkeepers and other consultants. It is committed to ongoing innovation, particularly through its Connected Practice Strategy and through the development of the MYOB Platform. For more information, visit <http://investors.myob.com.au/Investors> or follow @MYOB on Twitter.

Scheme Implementation Agreement

MYOB Group Limited

Target

ETA Australia Holdings III Pty Ltd

Bidder

ETA Asia Holdings II Pte. Ltd.

Bidder Holdco

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Scheme implementation agreement

Date	23 December 2018
Parties	MYOB Group Limited ACN 153 094 958 of Level 3, 235 Springvale Road, Glen Waverley VIC 3150 (Target) ETA Australia Holdings III Pty Ltd ACN 630 727 525 of Level 42, 1 Macquarie Place, Sydney NSW 2000 (Bidder) ETA Asia Holdings II Pte. Ltd. of 10 Changi Business Park Central 2, #05-01 Hansapoint@CBP, 486030 (Bidder Holdco)

Background

- A. Bidder proposes that it will acquire all of the Target Shares (other than the Excluded Shares) pursuant to a scheme of arrangement under section 411 of the Corporations Act between Target and the holders of such Target Shares.
- B. Target has agreed to propose the Scheme and issue the Explanatory Memorandum, and Target and Bidder have agreed to implement the Scheme on the terms and conditions of this agreement.
- C. Bidder Holdco is party to this agreement solely for the purposes of clause 11 and does not have any obligations or liability under or in connection with this agreement other than in respect of clause 11.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 12 of the Corporations Act.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Bidder Announcement means, if applicable, an announcement by Bidder, a draft of which has been provided to Target on or before the date of this agreement.

Bidder Board means the board of directors of Bidder.

Bidder Group means Bidder and each of its Subsidiaries.

Bidder Indemnified Parties means Bidder and its Related Bodies Corporate and their respective directors, officers and employees.

Bidder Information means such information regarding the Bidder Group and the Scheme Consideration that is provided by or on behalf of the Bidder Group to Target or the Independent Expert:

- (a) to enable the Explanatory Memorandum to be prepared and completed in compliance with all applicable laws; and
- (b) otherwise in compliance with Bidder's obligations under clause 4.4(a).

Bidder Warranties means the warranties made by Bidder set out in clause 13.1.

Bonus Payment has the meaning given in paragraph (j)(vii) of the definition of Target Prescribed Occurrence.

Business Day means a day which is a "Business Day" within the meaning given in the Listing Rules.

Competing Proposal means a proposed transaction or arrangement (whether by way of takeover, share acquisition, scheme of arrangement, reverse takeover, synthetic merger, capital reconstruction, acquisition of assets, dual listed structure, or otherwise) which, if implemented substantially in accordance with its terms, would result in one or more Third Parties:

- (a) directly or indirectly acquiring or having a right to acquire, or obtaining an economic interest in, all or a substantial part of the business, assets or undertakings of the Target Group;
- (b) acquiring Control of Target;
- (c) directly or indirectly acquiring a Relevant Interest in any Target Shares, as a result of which the Third Party or Third Parties (as applicable) will have Relevant Interests in 20% or more of the Target Shares in aggregate; or
- (d) otherwise directly or indirectly acquiring, or merging with, Target.

Condition means each condition specified in clause 3.1.

Confidentiality Deed means the deed of that name between Target and ETA Asia Holdings Pte. Ltd dated 6 November 2018.

Control has the meaning given in section 50AA of the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction as Target and Bidder agree in writing.

Debt Commitment means the financing commitments pursuant to the Debt Commitment Letters.

Debt Commitment Letters means the executed commitment letter(s) and accompanying term sheet(s) from certain banks or other financial institutions addressed to Bidder and dated on or about the date of this agreement.

Debt Documents means the definitive agreement related to the Debt Financing and the Debt Commitment Letters.

Debt Financing means the debt financing incurred or intended to be incurred pursuant to the Debt Commitment Letters.

Deed Poll means a deed poll to be executed by Bidder in favour of the Scheme Shareholders, substantially in the form set out in Annexure B or in such other form as Target and Bidder agree in writing.

Effective means, when used in relation to the Scheme, the coming into effect, pursuant to 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 the date on which the Scheme becomes Effective.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, 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, including any Security Interest.

End Date means 31 May 2019 or such other date agreed in writing between Target and Bidder.

Equity Commitment Letters means the binding, executed commitment letter(s) provided on or before the date of this agreement in a form acceptable to Bidder and Target.

ESP Incentives means the Target Incentives granted by Target under the Target Executive Share Plan.

ESP Participant means a participant in the Target Executive Share Plan to whom an ESP Incentive was granted.

ESP Sale Proceeds has the meaning given in clause 8(a)(ii)(B).

Excluded Share means any Target Share held by Bidder or any of its Associates.

Exclusivity Period means the period commencing on the date that is 60 days after the date of this agreement and ending on the earliest of:

- (a) the End Date;
- (b) the date this agreement is terminated in accordance with its terms; and
- (c) the Implementation Date.

Explanatory Memorandum means the explanatory memorandum to be prepared by Target pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this agreement and to be dispatched to the Target Shareholders.

Fairly Disclosed has the meaning given in clause 1.4(j).

Financing Arrangements has the meaning given to that term in clause 13.4(a)(x).

First Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

FY19 Incentives has the meaning given in clause 8(d).

Implementation Date means the date which is 5 Business Days after the Record Date or such other date as Target and Bidder agree in writing, provided that if such date falls on:

- (a) a Monday;

- (b) a day that is a public holiday in the United States of America and on which commercial banks are closed in the United States of America (such day, a **U.S. Holiday**); or
- (c) the day after a U.S. Holiday,

the 'Implementation Date' shall be the next Business Day on which none of (a), (b) or (c) apply. It is understood that the reference to a 'day' in the United States of America shall refer to the day immediately preceding the applicable day in Australia.

Impugned Amount has the meaning given in clause 10.8.

Independent Expert means the independent expert to be engaged by Target to express an opinion on whether the Scheme is fair and reasonable and in the best interests of the Target Shareholders.

Independent Expert's Report means the report (including the initial report and any update, revision, amendment, addendum or supplementary reports to it) prepared by and from the Independent Expert for inclusion in the Explanatory Memorandum, stating whether or not, in the opinion of the Independent Expert, the Scheme is fair and reasonable and in the best interests of the Target Shareholders and setting out the reasons for that opinion.

Insolvency Event means in relation to an entity:

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
- (b) the entity entering into an arrangement, compromise or composition with, or assignment for the benefit of, its creditors or a class of them;
- (c) a liquidator or provisional liquidator of the entity being appointed;
- (d) a court making an order for the winding up of the entity;
- (e) an administrator, controller or similar officer of the entity being appointed;
- (f) the entity ceasing, or threatening to cease, to carry on a substantial part of the business which is material to it as at the date of this agreement;
- (g) the entity being or becoming unable to pay its debts when they fall due;
- (h) the entity executing a deed of company arrangement;
- (i) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part of the property of the entity; or
- (j) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurring with respect to the entity.

IT means information technology.

Key Contracts means the following contracts:

- (a) the Business and Services Agreement between Microsoft Operations Pte Ltd., Microsoft Regional Sales Corporation, Microsoft Pty, Ltd. and MYOB Australia Pty Ltd (and any underlying agreements);
- (b) the Master Distribution Agreement between MYOB Australia Pty Ltd, ProjectX USA Inc and ProjectX, International Ltd.;

- (c) the AWS Enterprise Agreement between Amazon Web Services, Inc. and MYOB Australia Pty Ltd;
- (d) the Service Level Agreement between Interactive Pty Ltd and MYOB Australia Pty Ltd dated 25 January 2013;
- (e) the Platform Agreement between On Deck Capital Australia Pty Ltd and MYOB Australia Pty Ltd dated 15 April 2015;
- (f) the Payment Gateway Services Agreement between Vodafone Hutchison Australia Pty Limited and Paycorp Australia Pty Ltd dated October 2016;
- (g) the Master Merchant Business Solutions Card Acceptance Agreement dated 31 August 2009 between Westpac Banking Corporation Limited and Paycorp Holdings Pty Limited; and
- (h) the Payment Facilitator Program Services Agreement dated 10 February 2016 between Paycorp Payment Solutions Pty Limited and National Australia Bank Limited,

in each case as Fairly Disclosed in the Target Due Diligence Material.

Listing Rules means the official listing rules of the ASX.

Material Adverse Change means any event, occurrence, circumstance, change, matter, condition or thing which, individually or when aggregated with other such events, occurrences, circumstances, changes, matters, conditions or things, has had or would be reasonably likely to have the effect of reducing:

- (a) the value of the consolidated net assets of the Target Group, taken as a whole, by at least 12.5% as compared to what the average of the consolidated net assets of the Target Group, taken as a whole, was for the period from 1 July 2018 to 31 December 2018; or
- (b) the underlying earnings before interest, tax, depreciation and amortization of the Target Group, taken as a whole, (**Underlying EBITDA**) by at least 12.5% as compared to the Underlying EBITDA as at 31 December 2018,

provided that any events which (i) have occurred after the date of this deed but prior to 8.00 am on the Second Court Date, (ii) have a positive effect on the consolidated net assets of the Target Group or Underlying EBITDA, and (iii) are the result of actions undertaken by the Target Group in good faith and in the ordinary course of business (and, for the avoidance of doubt, not for the sole or predominant purpose of off-setting (in whole or in part) the impact of any other event that may cause or contribute to a Material Adverse Change), are taken into account in calculating whether a threshold in paragraph (a) or (b) has been reached, and in each case other than an event, occurrence, circumstance, change, matter, condition or thing:

- (c) to the extent that it was Fairly Disclosed in:
 - (i) the Target Due Diligence Material; or
 - (ii) any announcement to the ASX made by Target prior to the date of this agreement;
- (d) expressly required or permitted to be undertaken or procured by the Target Group pursuant to the Transaction Documents;
- (e) within the actual knowledge as at the date of this agreement of any director, secretary or senior officer of the Bidder or a Bidder Group company who has been involved in the assessment and/or negotiation of the Transaction before the date of

this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening);

- (f) relating to the costs and expenses incurred by the Target Group associated with the Scheme including all fees payable to external advisers of the Target and the funding of the same, to the extent such amounts are Fairly Disclosed in the Target Disclosure Letter;
- (g) comprising or resulting from any change or disruption to, or fluctuation in, general economic, business or political conditions, including any change in foreign exchange rates, interest rates or commodities prices, any change or disruption to, or fluctuation in, existing financial markets, or any act of terrorism, war or natural disaster or the like, in Australia or elsewhere, but in each case excluding any such change, disruption or fluctuation having an adverse effect on the Target Group, taken as a whole, that is materially disproportionate as compared to the adverse effect of the relevant change, disruption or fluctuation on other participants in the industries in which the Target Group operates; or
- (h) acknowledged or consented to in writing by Bidder, including any consequences of such event, occurrence, change, matter, thing or condition.

Material Contract means each Key Contract and each other contract or licence involving aggregate expenditure greater than \$5,000,000 per annum or annual revenue greater than \$5,000,000.

Non-Liable Person has the meaning given in clause 19.12(b).

Permitted Encumbrance means an encumbrance granted by any member of the Target Group in the ordinary course of business:

- (a) in respect of assets having a value not exceeding \$15,000,000, including title retention arrangements in respect of such assets; and/or
- (b) as permitted under the Target Group's current credit facilities.

Policy means the Target Group directors and officers insurance policy in effect at the date of this agreement, as Fairly Disclosed in the Target Due Diligence Material.

PPSR means the register of security interests maintained in accordance with the *Personal Property Securities Act 2009* (Cth).

Qualifying Superior Proposal means a Superior Proposal in respect of which each of paragraphs (a), (b) and (c) is satisfied:

- (a) the Superior Proposal is in respect of the acquisition of 100% of the Target Shares for cash consideration that is at least 5% higher than the Scheme Consideration;
- (b) the Superior Proposal is recommended by a majority of the Target directors; and
- (c) Target enters into a binding implementation agreement in respect of the Superior Proposal and such agreement is on foot and has not been terminated or expired.

Recommendation has the meaning given in clause 7.1(a)(i).

Record Date means 7.00 pm (Sydney time) on the date which is 5 Business Days after the Effective Date or such other time and date agreed in writing between Bidder and Target.

Regulator's Draft has the meaning given in clause 4.3(h).

Regulatory Authority means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Regulatory Guides means all regulatory guides published by ASIC and in force at the date of this agreement.

Regulatory Review Period means the period from the date on which Target provides the Regulator's Draft to ASIC in accordance with clause 4.3(h) to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

Relevant Interest has the meaning given in the Corporations Act.

Replacement Financing Letters has the meaning given in clause 6.8(a).

Representatives means, in relation to a party, all directors, officers, employees, professional advisers (including financiers, financial advisers, corporate advisers, legal advisers or technical or other expert advisers or consultants) and agents of the party or of its Related Bodies Corporate.

Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between Target and the Scheme Shareholders substantially in the form set out in Annexure A or in such other form as Target and Bidder agree in writing.

Scheme Consideration means an amount of \$3.40 for each Scheme Share.

Scheme Meeting means the meeting of Target Shareholders to be convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act.

Scheme Share means a Target Share (other than an Excluded Share) on issue as at the Record Date.

Scheme Shareholder means each person registered in the Target Share Register as the holder of the Scheme Shares as at the Record Date.

Second Court Date means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Security Interest has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

Share Registry means Link Market Services Limited of Level 12, 680 George Street, Sydney, NSW 2000.

Subsidiary has the meaning given to that term in the Corporations Act.

Superior Proposal means a bona fide written Competing Proposal, which in the determination of the Target Board (having regard to written advice from Target's financial advisers), acting in good faith and in order to satisfy what the Target Board reasonably considers, after having received written advice from external legal counsel, to be its fiduciary or statutory duties would, if it is completed substantially in accordance with its terms, be more favourable to Target Shareholders (as a whole) than the Transaction, taking into account all aspects of the Competing Proposal, including but not limited to:

- (a) the value and type of the consideration payable to Target Shareholders under the Competing Proposal and the Tax consequences related to payment of that consideration (as compared to the consideration available under the Transaction);
- (b) the conditions of the Competing Proposal, the likelihood of those conditions being satisfied and the level of certainty in respect of the funding required for the Competing Proposal; and
- (c) the likely timing required to implement or complete the Competing Proposal.

Target Announcement means an announcement by Target a draft of which has been provided to Bidder on or before the date of this agreement.

Target Board means the board of directors of Target.

Target Due Diligence Material means the information and documents disclosed or made available by or on behalf of the Target Group to Bidder and its Representatives, before 8.00am on the date of this agreement, in the online data room established for the purpose of this Transaction, the index for which is attached to the Target Disclosure Letter.

Target Disclosure Letter means the letter executed by Target and given to Bidder immediately before execution of this agreement.

Target Executive Share Plan means the executive share plan of Target in existence as at the date of this agreement.

Target Group means Target and each of its Subsidiaries.

Target Incentives means the incentive rights and securities granted by Target as governed under the rules of the Target Executive Share Plan and the Target Unified Incentive Plan, as Fairly Disclosed in the Target Due Diligence Material.

Target Indemnified Parties means Target and its Related Bodies Corporate and their respective directors, officers and employees.

Target Information means all information included in the Explanatory Memorandum, other than the Bidder Information, the Independent Expert's Report and any other report or letter issued by a Third Party.

Target Payment means \$20,000,000.

Target Prescribed Occurrence means the occurrence of any of the following events:

- (a) Target converts all or any of its securities into a larger or smaller number of securities;
- (b) Target or another member of the Target Group (other than a wholly-owned subsidiary of the Target) resolves to reduce its share capital in any way or resolves to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;

- (c) Target or another member of the Target Group (other than a wholly-owned subsidiary of 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 member of the Target Group issues shares, or grants an option or a performance right over its shares or agrees to make such an issue or grant such an option or a performance right (other than from any member of the Target Group to any other member of the Target Group and other than UIP Shares issued in accordance with clause 8(b)(ii));
- (e) any member of the Target Group issues, or agrees to issue, convertible notes or any other security convertible into shares or debt securities other than from any member of the Target Group to any other member of the Target Group;
- (f) any member of the Target Group disposes of the whole, or a substantial part, of its business and property;
- (g) any member of the Target Group creates, or agrees to create, any Encumbrance over, or declares itself the trustee of, any part of its business or property securing an indebtedness or performance of an obligation exceeding \$10,000,000 other than in respect of any transaction contemplated by this agreement or in the ordinary course of business (including as permitted under the Target Group's current credit facilities in place), the total costs of the Target Group incurred in relation to the Transaction, or the Bonus Payment;
- (h) an Insolvency Event occurs in relation to any member of the Target Group;
- (i) Target or any of its Subsidiaries adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (j) any member of the Target Group:
 - (i) increases the remuneration of, or pays any bonus or issues any securities to, or otherwise varies the employment arrangements with, any of its directors or executives;
 - (ii) accelerates the rights of any of its directors or executives to benefits of any kind; or
 - (iii) pays or gives, or agrees to pay or give, a director or executive a termination payment or benefit (including a 'golden parachute') or a payment or benefit upon, or in connection with, a change of control, or any other kind of bonus, compensation or benefit,

other than:

 - (iv) increase of base salary in the ordinary course as part of annual remuneration reviews consistent with past practices;
 - (v) as provided for in the Target's redundancy policy or an existing employment or services agreement;
 - (vi) any issue or vesting of UIP Shares in accordance with clause 8;
 - (vii) the payment of cash incentives or bonuses to existing executives of the Target Group in accordance with the terms of the incentive

arrangements as at the date of this agreement or as permitted under clause 8(d) (**Bonus Payment**); or

- (viii) as required by law; or
- (k) any member of the Target Group enters into, or resolved to enter into, a transaction with any related party of Target (other than a related party that is a member of the Target Group), as defined in section 228 of the Corporations Act,

other than an event:

- (l) required by law or Regulatory Authority;
- (m) expressly permitted or required to be undertaken or procured by the Target Group pursuant to the Transaction Documents;
- (n) to which Bidder has provided its prior written consent;
- (o) Fairly Disclosed in the Target Due Diligence Material or the Target Disclosure Letter; or
- (p) Fairly Disclosed in any announcement to the ASX made by Target prior to the date of this agreement.

Target Share Register means the register of members of Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

Target Shareholder means a person who is registered in the Target Share Register as a holder of Target Shares.

Target Shares means fully paid ordinary shares in the capital of Target.

Target Unified Incentive Plan means the employee incentive plan of Target in existence as at the date of this agreement.

Target Warranties means the warranties made by Target set out in clause 13.4.

Tax means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax (including royalty withholding tax), impost or withholding obligation of whatever nature, whether direct or indirect, (including any tax payable under a country's foreign source income attribution or anti-tax-deferral rules) by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction but excluding any stamp duty payable on any transfer of the Scheme Shares pursuant to the Scheme.

Third Party means a person other than Bidder, Target, or their respective Related Bodies Corporate.

Timetable means the indicative timetable in relation to the Scheme set out in Schedule 1, or such other indicative timetable as Target and Bidder agree in writing.

Transaction means the acquisition by Bidder of the Scheme Shares for the Scheme Consideration pursuant to the Scheme.

Transaction Documents means:

- (a) this agreement;
- (b) the Scheme; and

- (c) the Deed Poll.

Transaction Implementation Committee means a committee to be made up of:

- (a) representatives of each of Target and Bidder;
- (b) representatives from each of the legal advisers of Target and Bidder; and
- (c) such other persons as the parties may agree from time to time.

UIP Incentives means the Target Incentives granted by Target under the Target Unified Incentive Plan.

UIP Participant means a participant in the Target Unified Incentive Plan to whom a UIP Incentive was granted.

UIP Shares has the meaning given to that term in clause 8(b)(i)(B).

1.2 Best and reasonable endeavours

Any provision of this agreement which requires a party to use best endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation to:

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of:
 - (i) any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority; or
 - (ii) immaterial expenses or costs, including costs of advisers,
 to procure the relevant thing (except, in each case, in circumstances that are commercially onerous or unreasonable in the context of this agreement); or
- (b) commence or defend any legal action or proceeding against any person,

except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best or all reasonable endeavours where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

1.3 Business Day

If the day on which any act to be done under this agreement is a day other than a Business Day, that act must be done on the immediately preceding Business Day except where this agreement expressly specifies otherwise.

1.4 Interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;

- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to an event, matter or circumstance being **Fairly Disclosed** to a party means disclosed to that party or any of its Representatives in sufficient detail so as to enable a reasonable and sophisticated buyer experienced in transactions similar to the Transaction and experienced in business similar to any business conducted by the Target Group (if disclosed by Target) to identify the nature, substance and scope of the relevant event, matter or circumstance on the Target Group;
- (k) a reference to **\$** or **dollar** is to Australian currency;
- (l) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this agreement;
- (m) a reference to a date or time is to that date or time in Sydney, Australia; and
- (n) this agreement (including any term or condition of it) must not be construed adversely to a party solely on the basis that the party prepared it or caused it to be prepared.

2. Target to propose Scheme

- (a) Target agrees to propose the Scheme on and subject to the terms and conditions of this agreement.
- (b) Bidder agrees to assist Target to propose the Scheme on and subject to the terms and conditions of this agreement.

3. Conditions precedent

3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective until each of the conditions listed in the first column of the following table are either satisfied or waived in accordance with clause 3.5:

Condition	Right to benefit & waive	Responsibility to satisfy
(a) (No restraint) no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint preventing any of the transactions contemplated by this agreement is in effect as at 8.00 am on the Second Court Date;	Target and Bidder	Target and Bidder
(b) (Target Prescribed Occurrence) no Target Prescribed Occurrence has occurred or becomes known to Bidder or Target between the date of this agreement and 8.00 am on the Second Court Date;	Bidder	Target
(c) (Target Shareholder approval) Target Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;	None	Target and Bidder
(d) (Court approval) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;	None	Target and Bidder
(e) (Target Warranties) at all times on and before 8.00 am on the Second Court Date, the Target Warranties are true and correct in all material respects (other than the Target Warranties qualified by materiality, which must be true and correct in all respects) as at the time they are given;	Bidder	Target
(f) (Bidder Warranties) at all times on and before 8.00 am on the Second Court date, the Bidder Warranties are true and correct in all material respects (other than the Bidder Warranties qualified by materiality, which must be true and correct in all respects) as at the time they are given;	Target	Bidder
(g) (Employee incentive arrangements) Target has taken all necessary steps by 8.00 am on the Second Court Date to ensure that the Target Incentives are dealt with in accordance with clause 8 and on terms	Bidder	Target

	otherwise acceptable to Bidder (acting reasonably);		
(h)	(OIO approval) Bidder has received in writing all consents, approvals or clearances required under the <i>Overseas Investment Act 2005 (New Zealand)</i> and the <i>Overseas Investment Regulations 2005 (New Zealand)</i> for the implementation of the Scheme, either unconditionally or on terms that are acceptable to Bidder (acting reasonably), and such consents, approvals or clearances have not been withdrawn, suspended, revoked or materially adversely amended;	None	Bidder
(i)	(No Material Adverse Change) no Material Adverse Change occurs or becomes known to Bidder or Target between the date of this agreement and 8.00 am on the Second Court Date.	Bidder	Target

3.2 General obligations in relation to Conditions

Without prejudice to any other obligations of the parties under this agreement, in respect of any given Condition:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition, that party must use its best endeavours to procure that that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
- (b) if both parties are specified in the third column of the table in clause 3.1 opposite that Condition, both parties must, to the extent that it is within their respective control or influence, use their best endeavours to procure that that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require); and
- (c) each party must, to the extent that it is within its respective control or influence, use its best endeavours to procure that there is no occurrence that would prevent the Condition being satisfied.

Without limiting the foregoing, Target must provide such information in relation to the Target Group and its businesses, operations and affairs as may be reasonably requested by Bidder in connection with the satisfaction of the Condition in clause 3.1(h).

3.3 Obligations in relation to regulatory approvals

Without limiting clause 3.2, to the extent that clause 3.2 requires a party to use best endeavours to procure that a regulatory approval is obtained, that party must:

- (a) as soon as practicable prepare and, subject to clause 3.3(b), lodge, each notice or application required to be given by that party for the purposes of procuring that the regulatory approval is obtained and take all procedural steps it is responsible for as part of such approval process, including responding to requests for information at the earliest practicable time, and use best endeavours to obtain such approvals as soon as practicable after the date of this agreement;

- (b) to the extent practicable, consult with the other party, in advance, in relation to all material written communications with any Regulatory Authority relating to such regulatory approval;
- (c) keep the other party informed of progress in relation to such regulatory approval and of any material matters raised by, or conditions or other arrangements proposed by, or to, any Regulatory Authority which relate to such regulatory approval; and
- (d) provide copies of all documents provided to and received from each relevant Regulatory Authority in relation to such regulatory approval (including before the date of this agreement), on a confidential basis, to the other party,

provided that:

- (e) in relation to clause 3.3(d), the party applying for the approval may withhold or redact information or documents if and to the extent that they are confidential to a third party;
- (f) nothing in this clause 3.3 or any other provision of this agreement requires a party to:
 - (i) disclose commercially sensitive information to the other party; or
 - (ii) accept or agree to any conditions or undertakings imposed or proposed by any Regulatory Authority in respect of any regulatory approval (provided that the party applying for the approval must act reasonably when considering any such conditions or undertakings);
- (g) where any information or document is withheld or redacted for the reasons set out in subparagraph 3.3(g) and 3.3(h), the party applying for the approval must provide the other party with as much detail about the relevant information or document (and any other relevant circumstances) as is reasonably possible without disclosing information or documents that are confidential to a third party or commercially sensitive to the disclosing party; and
- (h) the party applying for the approval will not be prevented from taking procedural steps or communicating with or providing documents to a Regulatory Authority if the other party has not responded promptly under clause 3.3(b).

The other party must provide the applicant for a regulatory approval with all assistance and information reasonably requested by the applicant in connection with the application for and obtaining the approval.

3.4 Notice in relation to satisfaction of Conditions

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions in respect of which it is specified in the third column of the table in clause 3.1;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; and
- (c) in relation to any Condition, promptly notify the other party in writing of a breach or non-fulfilment of a Condition or any occurrence or event that will prevent a Condition from being satisfied.

3.5 Waiver of Conditions

- (a) A Condition is only for the benefit of:
 - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, that party; or
 - (ii) if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, both parties.
- (b) A Condition may be waived and may only be waived:
 - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, by that party by written notice to the other party; or
 - (ii) if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, by written agreement between the parties.
- (c) The Conditions in clauses 3.1(c), (d) and (h) cannot be waived.
- (d) A party entitled to waive or to agree to waive a Condition under this clause 3.5 may do so in its absolute discretion subject to the provision of written notice to the other party and subject to whatever conditions that party deems fit provided that the other party agrees to such conditions.
- (e) Any waiver of a Condition by a party who is entitled to do so pursuant to clause 3.5(b) is only effective if such waiver is given on or prior to 8.00 am on the Second Court Date.
- (f) A party that waives or agrees to waive a Condition is not prevented from bringing a claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.
- (g) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
 - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
 - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

3.6 Termination on failure of Conditions

- (a) If any event occurs which would, or in fact does, prevent a Condition being satisfied by the date specified for its satisfaction in this agreement and that Condition is not waived by Target or Bidder or both (as applicable) in accordance with clause 3.5, the parties must consult in good faith to:
 - (i) determine whether the Transaction may proceed by way of alternative means or method;
 - (ii) change the date of the application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by Target and Bidder (being a date no later than 5 Business Days before the End Date);

- (iii) extend the relevant date to a date no later than 5 Business Days before the End Date; and/or
 - (iv) extend the End Date.
- (b) If the parties are unable to reach an agreement under clause 3.6(a) within 5 Business Days of becoming aware of the relevant occurrence, then unless that Condition is waived by Target or Bidder or both (as applicable) in accordance with clause 3.5, either party may terminate this agreement without liability (except under clause 10, if applicable) to the other party because of that termination, unless the relevant occurrence or the failure of the Condition to be satisfied, or of the Scheme to become Effective, arises out of a breach by the terminating party.
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination, on termination of this agreement, no party shall have any rights against or obligations to any other party under this agreement except for those rights and obligations which accrued prior to termination.
- (d) If the Condition in clause 3.1(c) (Target Shareholder approval) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section, provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is given, the Condition in clause 3.1(c) (Target Shareholder approval) is deemed to be satisfied for all purposes.

4. Implementation of Scheme

4.1 Scheme

- (a) Target must propose a scheme of arrangement to Target Shareholders, pursuant to which all of the Scheme Shares will be transferred to Bidder and the Scheme Shareholders will be entitled to receive the Scheme Consideration subject to and on the terms and conditions set out in the Scheme.
- (b) Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Bidder (such consent not to be unreasonably withheld or delayed).

4.2 Timetable

Each party must:

- (a) use its best endeavours;
- (b) commit reasonably necessary resources; and
- (c) procure that its officers, employees and advisers work in good faith and in a timely and cooperative fashion with the other party,

to perform its obligations as set out in this clause 4 in accordance with the Timetable.

4.3 Target's obligations

Target must take all steps reasonably necessary to implement the Scheme as soon as is reasonably practicable after the date of this agreement in accordance with the Timetable and, in particular, Target must:

- (a) **(Explanatory Memorandum)** as soon as practicable after the date of this agreement, prepare the Explanatory Memorandum (excluding the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws and in particular the requirements of the Corporations Act, the Listing Rules and the Regulatory Guides;
- (b) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Explanatory Memorandum (other than the Bidder Information and the Independent Expert's Report);
- (c) **(Directors' Recommendation)** include a statement in the Explanatory Memorandum and the Announcement setting out (on the basis of statements made to Target by each Target director) the Recommendation and Voting Intention of each of the Target directors in accordance with clause 7.1;
- (d) **(Review of Bidder Information)** as soon as practicable after receiving a draft of the Bidder Information pursuant to clause 4.4(a), review and provide comments on the form and content of the Bidder Information to Bidder and liaise with Bidder to finalise the Bidder Information for inclusion in the Explanatory Memorandum;
- (e) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Explanatory Memorandum;
- (f) **(Provide draft Explanatory Memorandum to Bidder)** provide drafts of the Explanatory Memorandum (including, to the extent available, the Independent Expert's Report) to Bidder, consult with Bidder in relation to the content of those drafts, (acting reasonably and in good faith) take into account any comments from Bidder and its Representatives on those drafts and obtain prior written approval from Bidder for the form and content in which the Bidder Information appears in the Explanatory Memorandum (accepting that any review of the Independent Expert's Report by Bidder is to be limited to review for factual accuracy of those parts that include information relating to Bidder and Target makes no representation as to the extent to which the Independent Expert will consider those comments);
- (g) **(Approval of draft Explanatory Memorandum)** procure that a meeting of the Target Board is convened to approve the draft Explanatory Memorandum to be provided to ASIC for its review;
- (h) **(ASIC review)** as soon as reasonably practicable provide an advanced draft of the Explanatory Memorandum (**Regulator's Draft**) to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Bidder and:
 - (i) liaise with ASIC as necessary during the Regulatory Review Period; and
 - (ii) keep Bidder reasonably informed of any matters raised by ASIC in connection with the Explanatory Memorandum or the Scheme and use reasonable endeavours to consult with Bidder in good faith to resolve any such matters;
- (i) **(Section 411(17)(b) statement)** apply to ASIC for the production of:
 - (i) a 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;

- (j) **(Court documents)** consult with Bidder in relation to the content of the documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith comments on, and suggested amendments to, those documents from Bidder and its Representatives;
- (k) **(First Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;
- (l) **(Approval of Explanatory Memorandum)** procure that a meeting of the Target Board is convened to approve the Explanatory Memorandum for registration with ASIC and dispatch to Target Shareholders;
- (m) **(Register Explanatory Memorandum)** request that ASIC register the explanatory statement included in the Explanatory Memorandum in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (n) **(Dispatch and compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, dispatching the Explanatory Memorandum to Target Shareholders, provided that, before dispatch, Target must obtain the written consent of Bidder to the inclusion of Bidder Information in the Explanatory Memorandum, in the form and context in which it appears (such consent not to be unreasonably withheld or delayed);
- (o) **(Update Explanatory Memorandum)** until the date of the Scheme Meeting, promptly update the Explanatory Memorandum if it becomes aware of:
 - (i) any information that is required to be disclosed to Target Shareholders in the Explanatory Memorandum under any applicable law, which has not already been disclosed to Target Shareholders; or
 - (ii) any information included in the Explanatory Memorandum that is or has become misleading or deceptive in any material respect or contains any material omission,

and provide such further or new information as is required to ensure that the information is no longer misleading or deceptive in any material respect or contains any material omissions, provided that Target must:

 - (iii) consult with Bidder in relation to the form and content of any updates to the Explanatory Memorandum; and
 - (iv) acting reasonably and in good faith, take into account any comments from Bidder and its Representatives on such updates (to the extent reasonably practicable in the circumstances)
- (p) **(Convene Scheme Meeting)** convene and hold the Scheme Meeting to seek the Target Shareholder's agreement to the Scheme in accordance with the orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (q) **(Court approval application)** if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or where clause 3.6 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act) and subject to all other Conditions (other than the Condition in clause 3.1(d)) being satisfied or waived in accordance with this agreement, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;

- (r) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(1) and section 411(4)(b) of the Corporations Act;
- (s) **(Promote Transaction)**
- (i) participate in efforts reasonably requested by Bidder to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Target Shareholders at the reasonable request of Bidder; and
 - (ii) provide all necessary information, and procure that the Share Registry provides all necessary information, in each case in a form reasonably requested by Bidder, for the purpose of understanding legal and beneficial ownership of Target Shares and proxy appointments and directions received by Target prior to the Scheme Meeting;
- (t) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(d)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to Bidder by 5.00 pm on the Business Day prior to the Second Court Date;
- (u) **(Lodge copy of Court order)** if the Scheme is approved by the Court, lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act before 5:00pm on the Business Day on which such office copy is received (or such later date as is agreed between the parties in writing);
- (v) **(ASX listing)** not do anything to cause the Target to cease to be admitted to the ASX, or the Target Shares to cease continue to be quoted for trading (and not permanently suspended) on ASX, until the close of business on the Business Day after the Implementation Date; and
- (w) **(Implementation of Scheme)** if the Scheme becomes Effective:
- (i) apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date;
 - (ii) close the Target Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
 - (iii) provide to Bidder, or procure that the Share Registry provides to Bidder, all necessary information about the Scheme and the Scheme Shareholders that Bidder reasonably requires in order for Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme;
 - (iv) subject to Bidder paying the Scheme Consideration in accordance with its obligations under clause 5, on the Implementation Date (or as soon as practicable thereafter) register all transfers of Scheme Shares to Bidder in accordance with the Scheme; and
 - (v) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme, in accordance with all applicable laws and regulations.

4.4 Bidder's obligations

Bidder must take all steps reasonably necessary to assist Target to implement the Scheme as soon as is reasonably practicable after the date of this agreement in accordance with the Timetable and, in particular, Bidder must:

- (a) **(draft of Bidder Information)** prepare and provide to Target a draft of the Bidder Information as soon as reasonably practicable after the date of this agreement and consult with Target in relation to the content of drafts of Bidder Information and (acting reasonably and in good faith) take into account any comments from Target and its Representatives on those drafts;
- (b) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information;
- (c) **(final form of Bidder Information)** provide to Target the Bidder Information in a form appropriate for inclusion in the Explanatory Memorandum;
- (d) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report for inclusion in the Explanatory Memorandum;
- (e) **(assistance with Explanatory Memorandum)** promptly provide all assistance and information reasonably requested by Target or its Representatives in connection with the preparation of the Explanatory Memorandum (including any supplementary disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme;
- (f) **(review Explanatory Memorandum)** review the drafts of the Explanatory Memorandum provided by Target and provide comments on those drafts as soon as reasonably practicable and in good faith;
- (g) **(Approval of Bidder Information)** as soon as reasonably practicable after receipt of the draft Explanatory Memorandum from Target, and in any event, before a draft of the Explanatory Memorandum is lodged with ASIC, and again before the Explanatory Memorandum is dispatched to Target Shareholders, confirm in writing to Target:
 - (i) Bidder's consent to the inclusion of the Bidder Information in the Explanatory Memorandum in the form and context in which it appears in the Explanatory Memorandum such consent not to be unreasonably withheld or delayed; and
 - (ii) the accuracy and completeness of the Bidder Information, in the form and context in which it appears in the Explanatory Memorandum, including that it is not misleading or deceptive in any material respect and does not contain any material omission and is in a form appropriate for dispatch to the Target Shareholders (subject to the approval of the Court);
- (h) **(Update the Bidder Information)** until the date of the Scheme Meeting, promptly inform Target if it becomes aware of:
 - (i) any information that is required to be disclosed to Target Shareholders in the Bidder Information under any applicable law, which has not already been disclosed to Target Shareholders; or
 - (ii) any information included in the Explanatory Memorandum that is or has become misleading or deceptive in any material respect or contains any material omission,

and provide such further or new information as is required to ensure that the information is no longer misleading or deceptive in any material respect or contains any material omissions;

- (i) **(promote merits of Transaction)** participate in efforts reasonably requested by Target to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Target Shareholders at the reasonable request of Target;
- (j) **(Deed Poll)** by no later than the Business Day prior to the First Court Date, execute the Deed Poll and deliver the executed Deed Poll to Target;
- (k) **(Representation)** procure that, if requested by Target, it is represented by counsel at the Court hearings convened for the purposes of section 411(1) and section 411(4)(b) of the Corporations Act, at which, through its counsel and, if requested by the Court, Bidder will undertake 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 agreement and the Scheme;
- (l) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(d)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to Target by 5.00 pm on the Business Day prior to the Second Court Date;
- (m) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration on the Implementation Date in accordance with clause 5 and the terms of the Scheme and Deed Poll;
- (n) **(Share transfer)** if the Scheme becomes Effective, accept the transfer of the Scheme Shares as contemplated by clause 4.3(w)(iv) and execute any instruments of transfer required to effect the transfer of the Scheme Shares; and
- (o) **(Other things necessary)** promptly do all other things contemplated by or reasonably necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

4.5 Dispute as to Explanatory Memorandum

If, after a reasonable period of consultation, the parties, each acting reasonably and in good faith, are unable to agree on the form or content of the Explanatory Memorandum, then:

- (a) if the disagreement relates to the form or content of Bidder Information (or any information solely derived from, or prepared solely in reliance on, Bidder Information), Target will, acting in good faith, make such amendments to that information in the Explanatory Memorandum as Bidder may require (acting reasonably and in good faith); and
- (b) if the disagreement relates to the form or content of the Target Information (or any information solely derived from, or prepared solely in reliance on, information provided by or on behalf of Target, or extracted from announcements made by Target to ASX regarding the Target Group), Target will, acting reasonably and in good faith, decide the final form of that information in the Explanatory Memorandum.

4.6 Reconstitution of Target Board

With effect on and from the Implementation Date, but subject to Bidder having provided the Scheme Consideration in accordance with this agreement, Target must:

- (a) Cause the appointment to the Target Board and to the boards of each Subsidiary of Target those persons nominated by Bidder in writing to Target, and cause the appointment of such persons nominated by Bidder in writing to Target as secretaries of Target and each of its Subsidiaries, in each case subject to those persons being appointed having provided to Target duly executed consents to act as directors and/or secretaries (as applicable) of the relevant companies; and
- (b) procure that all Target directors and secretaries and the directors and secretaries of each Subsidiary of Target (other than, in each case, those appointed pursuant to clause 4.6(a)) resign,

in each case, in accordance with the Target constitution (or constitution of the relevant Subsidiary of Target, as the case may be), the Corporations Act and the Listing Rules.

4.7 Responsibility statement

The Explanatory Memorandum will contain a responsibility statement to the effect that:

- (a) Bidder is responsible for the Bidder Information contained in the Explanatory Memorandum and, to the maximum extent permitted by law, Target will not be responsible for any Bidder Information and will disclaim any liability for Bidder Information appearing in the Explanatory Memorandum; and
- (b) Target is responsible for the Target Information contained in the Explanatory Memorandum and, to the maximum extent permitted by law, none of the Bidder Indemnified Parties will be responsible for any information contained in the Explanatory Memorandum that is not Bidder Information and each such party will disclaim any liability for any such information.

4.8 Removal of Target from official list of ASX

If directed by Bidder in writing, Target must take all steps necessary for Target to be removed from the official list of ASX on the day immediately following the Implementation Date, including by lodging a request for removal with ASX prior to the Implementation Date.

4.9 Court representation

- (a) Bidder is entitled to separate representation at all Court proceedings relating to the Scheme at its own cost.
- (b) Target must support any application by Bidder for leave of the Court to be represented, or the separate representation of Bidder, at any hearing held by the Court in relation to the Scheme whether following a request by Target or otherwise.

5. Scheme Consideration

5.1 Bidder undertakings in relation to Scheme Consideration

- (a) Under the Scheme and subject to the Scheme becoming Effective, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder at the Record Date.
- (b) Bidder undertakes to Target (in Target's own right and separately as trustee for each of the Scheme Shareholders) that, if the Scheme becomes Effective, in consideration for the transfer to Bidder of all Scheme Shares held by Scheme Shareholders under the terms of the Scheme, Bidder will:
 - (i) accept that transfer on the Implementation Date; and

- (ii) pay, or procure the payment, into a trust account operated by Target as trustee for the Scheme Shareholders of an amount in cleared funds equal to the aggregate amount of the Scheme Consideration for all Scheme Shares, by no later than the Business Day before the Implementation Date (provided that any interest on the amount so deposited (less bank fees and other charges) will accrue for the benefit of Bidder).

5.2 Rounding up

Where the calculation of the Scheme Consideration to be provided to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up to the nearest whole cent.

6. Conduct of business

6.1 Conduct of Target's business

From the date of this agreement up to and including the Implementation Date, Target must:

- (a) procure that each member of the Target Group:
 - (i) conducts its businesses and operations in the ordinary and usual course and substantially consistent (subject to any applicable laws, regulations and licence conditions) with the manner in which each such business and operation is conducted prior to the date of this agreement including using all reasonable endeavours to preserve its current business organisation, the services of its current officers and employees and its current relationship with third parties (including Regulatory Authorities, rating agencies, customers, suppliers, licensors, licensees and others having material business dealings with it);
 - (ii) conducts its businesses and operations substantially in accordance with all applicable laws and regulations;
 - (iii) uses reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice; and
 - (iv) complies in all material respects with all Material Contracts to which such Target Group member is a party and does not waive any material rights under any such Material Contract or terminate or amend in any material respect any such Material Contract (or agree to do any of the foregoing);
- (b) ensure that no member of the Target Group:
 - (i) disposes of any securities, business, asset, interest in a joint venture, entity or undertaking, the value of which exceeds \$10,000,000 in aggregate, to any person other than another entity within the Target Group, excluding any disposal approved by the Target Board prior to the date of this agreement that has been Fairly Disclosed in the Target Due Diligence Material;
 - (ii) acquires any securities, business, assets, interest in a joint venture, entity or undertaking, the price of which exceeds \$10,000,000 in aggregate, from another person other than another entity within the Target Group, excluding any acquisition approved by the Target Board that has been Fairly Disclosed in the Target Due Diligence Material;
 - (iii) incurs any indebtedness, or provides any financial accommodation (irrespective of what form that indebtedness or financial accommodation

takes), exceeding \$10,000,000 (individually or in aggregate), excluding any borrowing under its existing bank facilities, such exclusion to include any borrowings as may be permitted under the Target Group's current credit facilities, or any indebtedness approved by the Target Board that has been Fairly Disclosed in the Target Due Diligence Material or any indebtedness incurred in respect of any transaction contemplated by this agreement (including, but not limited to, the payment of the Bonus Payment or the payment of the total costs of the Target Group incurred in relation to the Transaction);

- (iv) makes, commences, settles or admits liability in relation to any legal proceedings, claim, investigation, arbitration or other like proceeding where the settlement amount, the amount of the claim or the exposure of the Target Group (as applicable) exceeds \$10,000,000;
 - (v) enters into:
 - A. any Material Contract; or
 - B. a joint venture or strategic partnership with any person where the contractually committed investment by the Target Group exceeds \$10,000,000;
 - (vi) incurs, commits to or undertakes any capital expenditure or project expenditure (other than any capital expenditure and project expenditure budgeted for and the amount of which has been Fairly Disclosed in the Target Due Diligence Material) of an amount exceeding \$15,000,000 (in aggregate);
 - (vii) employs or engages any individual for a term of 12 months or longer as an officer, employee, contractor or consultant having a total annual employment or engagement cost of more than \$500,000;
 - (viii) terminates the employment or engagement of, or amends, in any material respect, the terms of employment or engagement of any individual employed or engaged, for a term of 12 months or longer, as an officer, employee, contractor or consultant having a total annual employment or engagement cost of more than \$500,000;
 - (ix) waives or forgives any loans made to any officer or employee of any member of the Target Group (other than in accordance with clause 8(a)(ii)(C));
 - (x) announces, declares, determines to pay or pays any dividend or other distribution, or returns capital to its members;
 - (xi) changes its accounting policies other than as required by applicable accounting standards; or
 - (xii) authorises, or commits, resolves or agrees to do, any of the matters set out above; and
- (c) ensure that no Target Prescribed Occurrence occurs,
- except to the extent that any action undertaken by Target relates to any matter or event:
- (d) that is expressly required to be done or procured by Target or another member of the Target Group pursuant to, or which is otherwise expressly permitted by, the Transaction Documents;

- (e) for which Bidder has provided its prior written consent (such consent not to be unreasonably withheld or delayed, provided that, for the avoidance doubt, it is acknowledged and agreed by the parties that it would not be unreasonable for Bidder to withhold its consent to any action referred to in clause 6.1(b)(x));
- (f) which arises as a result of court or Regulatory Authority order, injunction or undertaking or is otherwise required in order to comply with any applicable law or regulation;
- (g) which has been Fairly Disclosed to ASX prior to the date of this agreement;
- (h) which is Fairly Disclosed in the Target Due Diligence Material or the Target Disclosure Letter; or
- (i) which is in accordance with contractual rights and obligations that existed at the date of this agreement, provided such rights and obligations have been Fairly Disclosed in the Target Due Diligence Material.

6.2 Access

- (a) Between the date of this agreement and the Implementation Date, Target must provide Bidder and its Representatives with reasonable, non-disruptive access during normal business hours and on reasonable notice to Target's officers and senior executives, as well as any documents, records and other information of the Target Group, which Bidder reasonably requires for the purposes of:
 - (i) understanding the Target's financial position (including its cash flow and working capital position), trading performance and management control systems (including information technology and data);
 - (ii) implementation of the Scheme (including seeking and obtaining any necessary approvals, consents or waivers);
 - (iii) preparing for carrying on the business of the Target Group following implementation of the Scheme; or
 - (iv) any other purpose which is agreed in writing between the parties (each acting reasonably).
- (b) Nothing in this clause 6.2 requires Target to provide Bidder or its Representatives with any document, record or information:
 - (i) concerning Target's directors' consideration of the Transaction; or
 - (ii) which would breach any obligation of confidentiality to any Third Party or any applicable privacy law.
- (c) The parties acknowledge and agree that nothing in this clause 6.2 requires Target to provide any document, record or information that is different or in addition to the documents, records or information Target provides or makes available to its Board and senior executives in the usual and ordinary course.
- (d) Target will provide reasonable assistance to Bidder for purposes of satisfying Target's obligations under this clause 6.2, but nothing in this clause 6.2 requires Target to provide access to its people, documentation or information or to take any other action which would significantly disrupt the usual and ordinary course of Target's business and operations.

6.3 Transaction Implementation Committee

- (a) The parties must establish a Transaction Implementation Committee as soon as reasonably practicable after the date of this agreement and work together in good faith to consult with each other and plan to:
- (i) implement the Transaction in accordance with this agreement; and
 - (ii) ensure the smooth transition of the management of the business and the affairs of the Target Group to Bidder following the implementation of the Scheme, including to coordinate the matters set out in this clause 6.
- (b) At meetings of the Transaction Implementation Committee, the Target must report on a monthly basis, to the Bidder on the quantum of Third Party costs in respect of the Transaction it has incurred (as against the estimate of those Third Party costs which has been Fairly Disclosed in the Target Disclosure Letter).

6.4 Existing financing and security

- (a) The Target must cooperate with, and undertake all steps reasonably required or requested in connection with any repayment of existing debt of the Target Group as may be required in connection with the Transaction, including:
- (i) liaising with Bidder in good faith in relation to the using of the existing cash reserves of the Target for this purpose;
 - (ii) issuing prepayment notices in relation to existing Target Group debt facilities and closing out any hedging positions;
 - (iii) using all reasonable endeavours to procure deeds of release, discharges of real property mortgages and registrations on the PPSR from secured parties in relation to any security interest granted by a member of the Target Group in favour of that party and procuring the return of any title documents held by a secured party.
- (b) Bidder agrees to reimburse the Target for reasonable fees, costs and expenses reasonably incurred in complying with this clause 6.4 on provision of written evidence of the payment of such fees, costs and expenses.

6.5 Bidder financing obligations

- (a) Bidder must use commercially reasonable efforts (including enforcing its rights under the Debt Commitment Letters) to obtain the proceeds of the Debt Financing on the terms and conditions described in the Debt Commitment Letters on or prior to the Implementation Date, including by using reasonable efforts to:
- (i) maintain in effect the Debt Commitment Letters;
 - (ii) negotiate definitive agreements with respect to the Debt Financing on other terms which do not:
 - A. reduce the aggregate amount of the Debt Financing such that the aggregate funds available to Bidder on the Implementation Date would not be sufficient to satisfy Bidder's obligations hereunder; or
 - B. impose new or additional conditions precedent (other than conditions precedent that have already been satisfied at the time they are so added) or adversely modify any existing conditions precedent to the receipt of the Debt Financing; and

- (iii) satisfy on a timely basis all conditions precedent to funding of the Debt Financing.
- (b) Bidder must give Target prompt written notice of:
 - (i) any termination or repudiation of the Debt Commitment Letters of which Bidder has knowledge; or
 - (ii) any breach or default of any of the Debt Commitment Letters by any party thereto of which Bidder has knowledge that could reasonably be expected to materially and adversely affect the ability or likelihood of Bidder to consummate the transactions contemplated by this agreement in accordance with the Timetable.
- (c) Bidder will not, without the prior written consent of Target:
 - (i) permit any material amendment or modification to, or any waiver of any provision or remedy under any of the Debt Commitment Letters which is materially prejudicial to the Bidder's ability to comply with its obligations under this agreement, the Scheme and the Deed Poll; or
 - (ii) terminate any of the Debt Commitment Letters.
- (d) Notwithstanding anything in this clause 6.5, Bidder may in its sole discretion reduce the amount of Debt Financing provided that Bidder furnishes to Target one or more additional equity commitment letters (on the same terms as the Equity Commitment Letters) for the amount of the relevant reduction in Debt Financing.
- (e) In the event that any portion of the Debt Financing becomes unavailable, regardless of the reason, Bidder will:
 - (i) promptly notify Target of such unavailability and the reason; and
 - (ii) use reasonable efforts to obtain alternative debt financing (in an amount sufficient, when taken together with the available portion of the Debt Financing, to perform its obligations hereunder) from the same or other sources, and on terms which do not include any conditions to the consummation of such alternative financing that are more onerous than the conditions contained in the Debt Commitment Letters.

6.6 Financing cooperation

- (a) During the period from the date of this agreement to the earlier of the Implementation Date and the termination of this agreement in accordance with its terms:
 - (i) the Target Group entities shall furnish at least 10 Business Days prior to the Implementation Date all documentation and other information, to the extent not provided in the Due Diligence Material, with respect to the Target Group entities required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act, as required to satisfy the conditions in the Debt Documents provided that all relevant documentation and other information required under this paragraph has been requested in writing at least 10 Business Days prior to the date it is required to be furnished; and
 - (ii) the Target Group entities shall use reasonable efforts to provide, and shall cause the respective directors, managers, officers, employees and other representatives of the Target Group entities to provide, in each

case in a timely manner, all reasonable cooperation and assistance to Bidder in connection with the arrangement of the Debt Financing that is customary for a financing of such type, including, as requested, using reasonable efforts to:

- A. make appropriate officers and employees available for participation in a reasonable number of meetings, due diligence sessions, presentations, and sessions with ratings agencies and prospective financings sources;
 - B. provide reasonable assistance in the preparation of offering documents reasonably requested by Bidder or the financiers in respect of the Debt Financing;
 - C. furnish Bidder and its financing sources within a reasonable timeframe with such financial and operating data and other information with respect to the Target Group entities as is reasonably requested by Bidder or the financiers in respect of the Debt Financing;
 - D. provide reasonable assistance with marketing efforts of Bidder and its financing sources for all or any portion of the Debt Financing (including by making available such senior executives of Target as reasonably requested by Bidder and at mutually convenient times);
 - E. provide reasonable assistance to Bidder in procuring a credit rating for the relevant borrower under the financing and/or the debt facilities which constitute all or part of the Debt Financing; and
 - F. issue any prepayment notices (and related payoff letters, security releases and other documents) in relation to existing debt facilities and closing out hedging arrangements.
- (b) Bidder must indemnify Target (in its own right and separately as trustee or nominee for each Target Indemnified Party) and each of the Target Indemnified Parties against any claim, action, damage, loss, liability, cost, expense or payment, of whatever nature and however arising, suffered or incurred by any of them in connection with any Debt Financing and any information utilised in connection with any Debt Financing, in each case other than to the extent any of the foregoing arises from the bad faith or wilful misconduct of, or breach of this agreement by, Target or a Target Indemnified Party. No Target Group member or Target Indemnified Party will be required to execute, credit agreements, pledge or security documents or legal opinions, certificates or other documents in connection with the Debt Financing (other than authorization letters as contemplated by the Debt Commitment).
- (c) Bidder agrees to reimburse Target for its reasonable costs and expenses incurred as a result of complying with its obligations under this clause 6.6. Notwithstanding anything to the contrary in this clause 6.6, nothing herein shall require such assistance or cooperation to the extent it would (i) cause any Condition to not be satisfied, (ii) cause a breach of this deed, or (iii) unreasonably interfere with the ongoing business or operations of Target and Target shall receive reasonable advance notice of any requested assistance or cooperation.

6.7 Change of control

- (a) Target must use all reasonable endeavours to procure that, as soon as practicable following the date of this agreement (and, in any event, before the Second Court Date), each member of the Target Group has complied with and discharged all contractual obligations notified to Target in writing by Bidder or of which Target is

otherwise aware requiring such member of the Target Group to give notice to, or to apply for the approval or consent of, a Third Party in connection with this agreement or the transactions contemplated by it (including, for the avoidance of doubt, in respect of the change in control of Target resulting from implementation of the Scheme).

- (b) Target must consult with Bidder, and Bidder must provide reasonable assistance to Target, in connection with giving any notice or seeking any approval or consent under clause 6.7(a). Without limiting the foregoing, Target must:
- (i) give Bidder as much prior notice as reasonably practicable of any material discussions with any Third Party in connection with clause 6.7(a) and give Bidder a reasonable opportunity to participate in such discussions;
 - (ii) give Bidder a reasonable opportunity to review drafts of any material communications to Third Parties in connection with clause 6.7(a) and, acting reasonably and in good faith, take into account any comments provided by Bidder or its Representatives on such drafts; and
 - (iii) promptly provide Bidder with copies of all material communications received from Third Parties in connection with clause 6.7(a).
- (c) Any notice, approval or consent of a kind referred to in clause 6.7(a) may only be given or sought by Target in a form and on terms approved by Bidder.

6.8 Alternative financing

- (a) Notwithstanding anything to the contrary contained in this agreement, a Debt Commitment Letter may be superseded at the option of the Bidder after the date of this agreement but prior to the Implementation Date by instruments (the **Replacement Financing Letters**) that replace the existing Debt Commitments and/or contemplate co-investment by or financing from one or more debt financing sources or other or additional parties, provided that:
- (i) the terms of any Replacement Financing Letter shall not reduce the aggregate amount of the Debt Financing below an amount necessary to fund the aggregate Scheme Consideration payable for all the Scheme Shares or expand upon the conditions precedent to the Debt Financing as set forth in the Debt Commitment Letters; and
 - (ii) neither the arrangement or negotiation of any Replacement Financing Letters nor the terms thereof delay the Implementation Date.
- (b) For the purposes of this agreement:
- (i) the references to “Debt Financing” shall include the financing contemplated by the Debt Commitment as permitted by this clause 6.8 to be amended, modified or replaced; and
 - (ii) the references to “Debt Commitment Letters” shall include such documents (including any fee letter in connection with such Debt Commitment Letters and Debt Documents) as permitted by this clause 6.8 to be amended, modified or replaced,

in each case from and after such amendment, modification and replacement.

6.9 Business updates

From the date of this agreement up to and including the Implementation Date, Target must use reasonable endeavours to notify Bidder in writing of any of the following matters of which Target becomes aware:

- (a) events, facts, matters or circumstances which have had, or are reasonably likely (in the reasonable opinion of MYOB) to have, a material adverse effect on:
 - (i) the financial or operational performance of, or the reputation of, the Target Group (taken as a whole); or
 - (ii) the Target Group's relationships with Regulatory Authorities or the counterparties to Material Contracts;
- (b) changes to the composition of Target's executive management team; and
- (c) any material breach of this agreement by Target.

7. Recommendation, intentions and announcements

7.1 Target Board Recommendation and Voting Intention

- (a) Target must ensure that the Target Announcement and the Explanatory Memorandum state that each Target director:
 - (i) recommends that Target Shareholders vote in favour of the resolution to approve the Scheme (**Recommendation**); and
 - (ii) intends to cause any Target Shares in which they have a Relevant Interest to be voted in favour of the resolution to approve the Scheme (**Voting Intention**),

which statements must not be qualified in any way other than by words to the effect of "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 Target Shareholders".

- (b) Bidder acknowledges that, subject to the other terms of this agreement, each Target director may publicly (or otherwise) withdraw, change or in any way qualify their Recommendation or Voting Intention if:
 - (i) there is a Superior Proposal and Target has complied with its obligations under clause 9.5 (if applicable) in respect of such Superior Proposal; or
 - (ii) the Independent Expert concludes in the Independent Expert's Report (either in the initial report or any update, revision, amendment, addendum or supplementary reports to it) that the Scheme is not in the best interests of the Target Shareholders.
- (c) Target undertakes in favour of Bidder to procure that no Target director publicly (or otherwise) withdraws, changes or in any way qualifies their Recommendation or Voting Intention in any circumstances other than those specified in clause 7.1(b)(i) or 7.1(b)(ii).

7.2 Announcements

- (a) Immediately after the execution of this agreement, Target must issue the Target Announcement to the ASX.

- (b) Subject to clause 7.2(c), any further public announcement or public disclosure made by Target or Bidder in relation to the Transaction or any other transaction the subject of this agreement, the Deed Poll or the Scheme, may only be made in a form approved by Target and Bidder in writing (acting reasonably). Such approval must not be unreasonably withheld, conditioned or delayed.
- (c) Where Target or Bidder is required by applicable law, Listing Rules or the requirements of any Regulatory Authority to make any announcement or to make any disclosure in relation to the Transaction or any other transaction the subject of this agreement, the Deed Poll or the Scheme, it may do so to the extent legally required and only then after it has used all reasonable endeavours, to the extent practicable in the circumstances, to notify and consult with the other party prior to making the relevant announcement or disclosure and take account of any reasonable comments received from the other party in relation to the form and content of the announcement or disclosure.

8. Target Incentives

- (a) In respect of all ESP Incentives, Target confirms and undertakes in favour of Bidder that:
- (i) the Target Board will not exercise any discretion with respect to the vesting of any ESP Incentives; and
 - (ii) prior to the Record Date:
 - A. all ESP Incentives shall lapse;
 - B. all Target Shares representing ESP Incentives shall be sold on-market and the proceeds of such sale (**ESP Sale Proceeds**) shall be retained by Target and held by Target as at the Implementation Date;
 - C. to the extent that the loans in respect of the ESP Incentives are not deemed to be repaid out of the ESP Sale Proceeds, such loans shall be forgiven; and
 - D. the ESP Participants shall cease to have any rights or entitlements in respect of ESP Incentives or otherwise under the Target Executive Share Plan.
- (b) In respect of all UIP Incentives granted in respect of the financial year ending 31 December 2018, Target confirms and undertakes in favour of Bidder that:
- (i) as soon as practicable following 31 December 2018:
 - A. the Target Board shall determine the extent to which the performance hurdles in respect of the UIP Incentives have been achieved, which determination shall be made based solely on the terms on which the UIP Incentives were granted (and, for the avoidance of doubt, without the Target Board exercising any discretions conferred on it by the Target Unified Incentive Plan Rules (or otherwise)); and
 - B. Target shall notify Bidder in writing of the Target Board's determination, which notice shall include reasonable details of the relevant calculations and shall specify the number of Target Shares (if any) to be allocated to each UIP Participant in accordance with the terms of the UIP Incentives granted to that UIP Participant (such Target Shares, **UIP Shares**);

- (ii) all UIP Shares shall be vested and issued or transferred to UIP Participants prior to the deadline for voting at the Scheme Meeting; and
 - (iii) on and from the date that the UIP Shares are issued or transferred in accordance with sub-paragraph (ii), the UIP Participants shall cease to have any rights or entitlements in respect of the UIP Incentives or otherwise under the Target Unified Incentive Plan.
- (c) To the extent that the transactions or matters contemplated in clause 8(a) or 8(b) require Target to put in place any arrangements, Target shall consult in good faith with the Bidder before putting such arrangements in place.
- (d) Notwithstanding clause 8(a) or 8(b), Target has the right to determine and grant incentives under the Target Unified Incentive Plan in respect of the financial year ending 31 December 2019 (**FY19 Incentives**) and determine to substitute cash in lieu of any Target Shares in relation to such FY19 Incentives, provided that:
- (i) Target must consult with Bidder in good faith in relation to any grant of FY19 Incentives (including the amount, value, allocation, vesting conditions and other terms and conditions of such FY19 Incentives);
 - (ii) any grant of FY19 Incentives must be consistent with the past practices of the Target Group;
 - (iii) the Target Board may not, and Target must procure that the Target Board does not, exercise any discretion with respect to the vesting of any FY19 Incentives in connection with the Transaction without Bidder's prior written consent (not to be unreasonably withheld); and
 - (iv) unless Bidder otherwise agrees (in its absolute discretion), Target must ensure that any FY19 Incentives that do not vest in accordance with sub-paragraph (iii) lapse on the Effective Date such that, on and from the Effective Date, the holders of such FY19 Incentives cease to have any rights or entitlements in respect of the FY19 Incentives or otherwise under the Target Unified Incentive Plan.

For the avoidance of doubt, in determining whether or not to grant consent under sub-paragraph (iii) above, Bidder may have regard to (among other things) the amount of the applicable performance period that will have elapsed as at the Effective Date and the performance of the Target Group against the applicable vesting conditions between the start of the applicable performance period and the Effective Date.

9. Exclusivity arrangements

9.1 No shop

During the Exclusivity Period, Target must not, and must ensure that its Representatives do not, except with the prior written consent of Bidder, directly or indirectly solicit, invite, initiate or encourage any Competing Proposal or any inquiry, expression of interest, offer, proposal, negotiations or discussions by or with any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, or communicate any intention to any person to do any of those things.

9.2 No talk and no due diligence

Subject to clause 9.3, during the Exclusivity Period, Target must not, and must ensure that its Representatives do not, except with the prior written consent of Bidder, directly or indirectly:

- (a) enter into, continue or participate in any negotiations or discussions with, or accept or enter into, or offer to accept or enter into, any agreement, arrangement or understanding with, any Third Party in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or
- (b) make available to any Third Party, or permit any Third Party to receive, any non-public information relating to any member of the Target Group in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, or a proposal which may reasonably be expected to lead to a Competing Proposal (including without limitation providing such information for the purposes of the conduct of due diligence investigations in respect of the Target); or
- (c) communicate to any person an intention to do anything referred to in this clause 9.2.

9.3 Limitation to no talk and no due diligence

Target, its Related Bodies Corporate and their Representatives may undertake any action that would otherwise be prohibited by clause 9.2 in relation to a bona fide written Competing Proposal:

- (a) which was not solicited by any of them during the Exclusivity Period and was not otherwise brought about as a result of any breach by Target of its obligations under this clause 9;
- (b) which is or is reasonably likely to be a Superior Proposal; and
- (c) where the Target Board, acting in good faith and after having considered written advice from the Target Board's external legal advisers, determines that not undertaking that act would be likely to involve a breach of the Target directors' fiduciary or statutory duties.

9.4 Notification obligation

During the Exclusivity Period, Target must promptly (and, in any event, within 24 hours) notify Bidder in writing of any Competing Proposal or any approach regarding a Competing Proposal, which notice must include reasonable details of the Competing Proposal or approach (as applicable) (including the material terms and conditions and the identity of the party or parties making the Competing Proposal or approach (as applicable)).

9.5 Matching right

- (a) During the Exclusivity Period, Target must procure that none of its directors publicly recommend, endorse or support a Competing Proposal unless:
 - (i) the Competing Proposal is a Superior Proposal; and
 - (ii) Target has provided Bidder with all material terms and conditions of the Competing Proposal (including the identity of the party or parties making the Competing Proposal) and, as at the date that is 3 Business Days after the date on which Target provided Bidder with such terms and conditions, either:
 - A. Bidder has not proposed an amendment to the Scheme which constitutes an irrevocable offer to the Target (**Bidder Counter Proposal**); or
 - B. Bidder has delivered a Bidder Counter Proposal to Target which the Target Board, acting in good faith, determines (after

having taken written advice from Target's external financial advisers) is not more favourable to Target Shareholders (on an overall basis) than the Competing Proposal.

Target's obligations under this clause 9.5(a) apply in respect of each new Competing Proposal and any variation or amendment to an existing Competing Proposal.

- (b) If the Target Board determines that a Bidder Counter Proposal is more favourable to Target Shareholders (on an overall basis) than the Competing Proposal, then:
 - (i) the parties must as soon as reasonably practicable use their best endeavours to agree such amendments to this agreement and the Scheme as are necessary to reflect the Bidder Counter Proposal; and
 - (ii) as soon as reasonably practicable following such amendments having been agreed, Target must ensure that the Target Board publicly announces its unanimous recommendation of the Bidder Counter Proposal on the same basis as clause 7.1.
- (c) If Bidder makes a Bidder Counter Proposal, Target must ensure that the Target Board considers such proposal as soon as practicable and must notify Bidder of the Target Board's determination in respect of such proposal within 5 Business Days of such proposal being made.
- (d) For the avoidance of doubt, the making of a Bidder Counter Proposal shall not require the consent of Target under the Confidentiality Deed (or otherwise) and shall not breach the standstill clause under such deed.

9.6 Normal provision of information

Nothing in this clause 9 prevents Target from:

- (a) providing information to its Representatives;
- (b) providing information to any Regulatory Authority;
- (c) providing information to its auditors, advisers, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information to its advisers acting in that capacity in connection with the Transaction or a Competing Proposal;
- (e) providing information required to be provided by law, Listing Rules or any Regulatory Authority; or
- (f) making presentations to brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business or for the purposes of promoting the Transaction.

10. Reimbursement of Costs

10.1 Background to Target Payment

- (a) The parties each acknowledge that, if they enter into this agreement and the Scheme is subsequently not implemented, Bidder will incur significant costs as set out in clause 10.4.

- (b) In these circumstances, Target has agreed that provision be made for the payment outlined in clause 10.2, without which Bidder would not have entered into this agreement or otherwise agreed to implement the Scheme.
- (c) Target and the Target Board believe, having taken advice from their advisers, that the implementation of the Scheme will provide benefits to Target Shareholders and that it is appropriate for Target to agree to the payment referred to in clause 10.2 in order to secure Bidder's participation in the Transaction.

10.2 Target Payment

Target must pay the Target Payment to Bidder if:

- (a) any of the Target directors:
 - (i) withdraws, changes or adversely revises their Recommendation or Voting Intention; or
 - (ii) recommends, supports or endorses a Competing Proposal,
 unless:
 - (iii) in connection with, or in respect of, a Superior Proposal and, if applicable, Target has complied with its obligations under clause 9.5 in respect of such Superior Proposal;
 - (iv) the Independent Expert concludes in the Independent Expert's Report (including the initial report or any update, revision, amendment, addendum or supplementary reports to it) that the Scheme is not in the best interests of Target Shareholders, except where the Independent Expert reached such conclusion as a result of a Competing Proposal which is not a Superior Proposal; or
 - (v) Target is entitled to terminate this agreement pursuant to clause 15.3(b)(i) and has given the appropriate termination notice to Bidder; or
- (b) Bidder becomes entitled to terminate this agreement under clause 15.2(b)(i) and Bidder terminates this agreement on the basis of such entitlement.

10.3 Timing

- (a) A demand by Bidder for payment of the Target Payment under clause 10.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account into which the party is to pay the Target Payment.
- (b) Target must pay the Target Payment into the account nominated by Bidder, without set-off or withholding, within 5 Business Days after receiving a demand for payment where Bidder is entitled under clause 10.2 to the Target Payment.

10.4 Basis of Target Payment

The Target Payment has been calculated to reimburse Bidder for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Transaction incurred (excluding success fees);
- (b) costs of management and directors' time in planning and implementing the Transaction;
- (c) out of pocket expenses incurred by Bidder and Bidder's employees, advisors and agents in planning and implementing the Transaction; and
- (d) opportunity costs incurred in pursuing the Transaction and in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further business and objectives,

and the parties agree that:

- (e) the costs actually incurred by Bidder will be of such a nature that they cannot all be accurately ascertained;
- (f) the Target Payment is a genuine and reasonable pre-estimate of those costs; and
- (g) both parties have received advice from their respective legal advisors on the operation of this clause 10.

10.5 No payment if Scheme becomes Effective

No Target Payment is payable if the Scheme becomes Effective. To the extent that any amount has already been paid under this clause 10 and the Scheme becomes Effective, such amount must be refunded to Target within 4 Business Days.

10.6 Target Payment payable once

Where the Target Payment becomes payable to Bidder under clause 10.2 and is actually paid to Bidder, Bidder cannot make any claim against Target for payment of any subsequent Target Payment.

10.7 Other claims

Where the Target Payment becomes payable to Bidder under clause 10.2 and is actually paid to Bidder in full, Bidder cannot make any claim against Target which relates to the event that gave rise to the right to make a demand under clause 10.3, unless the claim arises from the fraud of the Target or a wilful breach by Target of this agreement.

10.8 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Target Payment required to be paid under clause 10.2 (**Impugned Amount**):

- (a) is unlawful;
- (b) involves a breach of directors' duties; or
- (c) constitutes unacceptable circumstances or breaches an order of the Takeovers Panel,

then,

- (d) the requirement to pay the Target Payment does not apply to the extent of the Impugned Amount; and

- (e) if Bidder has received the Impugned Amount, it must refund it within five Business Days of the final determination being made.

10.9 Regulatory Intervention

If any Regulatory Authority (including ASIC or the Takeovers Panel) or a court requires any modification (including requiring such a modification as a condition of consenting to or approving the Scheme or as a condition of not opposing the Scheme) to the Target Payment including as to the amount or circumstances in which it is to be paid, then:

- (a) the parties will accept this determination and amend this agreement to that extent; and
- (b) it will not result in a breach of this agreement or termination of the transactions contemplated by it.

11. Acceptance of Qualifying Superior Proposal

- (a) If a:
- (i) Qualifying Superior Proposal is made after the date of this agreement and prior to the Exclusivity Period; or
- (ii) Qualifying Superior Proposal is made during the Exclusivity Period in respect of which clause 9.5(a)(ii) applies,
- Bidder Holdco undertakes to:
- (iii) vote all of its Target Shares in favour of such Qualifying Superior Proposal; or
- (iv) accept all of its Target Shares into such Qualifying Superior Proposal prior to the end of the offer period,
- as applicable.
- (b) Bidder Holdco agrees not to take or procure any action with the intention or preventing or delaying any Qualifying Superior Proposal referred to in clause 11(a)(i) or 11(a)(ii) or otherwise reducing the likelihood that such Qualifying Superior Proposal is successfully completed.
- (c) If Bidder Holdco transfers any of its Target Shares, it will procure that such transferee complies with this clause 11 in respect of any Qualifying Superior Proposal referred to in clause 11(a)(i) or 11(a)(ii).
- (d) For the avoidance of doubt, Bidder Holdco's obligations under this clause 11 in respect of a Qualifying Superior Proposal are only binding upon Bidder Holdco for so long as the requirements in each of paragraphs (a), (b) and (c) of the definition of Qualifying Superior Proposal are satisfied.

12. Liability of directors, officers and employees

12.1 Liability of directors, officers and employees

To the maximum extent permitted by law, each party releases all rights against, and agrees that it will not make any claim against, the respective past or present directors, officers and employees of each of the other party and the other party's Related Bodies Corporate in relation to:

- (a) information provided to the first party in relation to the Transaction; or
- (b) any breach of any representations, covenants and warranties of the other party in this agreement,

except to the extent that the relevant director, officer or employee has not acted in good faith or has engaged in fraud or wilful misconduct.

12.2 Directors and officers insurance

Bidder acknowledges that Target will:

- (a) arrange for the cover provided under the Policy for a further period until the End Date; and
- (b) by no later than the Implementation Date, 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 Implementation Date, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until the end of that 7 year period.

12.3 Obligations in relation to directors and officers insurance

From the Implementation Date, Bidder must procure that Target does not:

- (a) vary or cancel the Policy in any material respect; or
- (b) unless required under the Policy, commit any act or omission that may prejudice any claim under the Policy as extended pursuant to clause 12.2(b) above.

12.4 Directors and officers indemnities

- (a) Without limiting any other term of this agreement, from the Effective Date for the Scheme, Bidder undertakes to Target that it will, in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by a Target Group entity (**Relevant Entity**) in favour of a director, officer or employee of Target or its Related Bodies Corporate, whether past or present, (**Indemnified Party**) from time to time procure that:
 - (i) the Relevant Entity complies with the Relevant Deed; and
 - (ii) to the extent that the Relevant Entity ceases to exist after the Implementation Date, each Indemnified Party has the benefit of a deed from Bidder on terms no less favourable to the Indemnified Party than those contained in the Relevant Deed as at the Effective Date.
- (b) This clause 12.4 applies to the maximum extent permitted by the Corporations Act and will be read down accordingly.

12.5 Compliance with law and benefit

- (a) Clause 12.1 is subject to any restriction under the Corporations Act and will (if and to the extent required) be read down accordingly.
- (b) The parties agree that:
 - (i) Target holds the benefit of this clause 12 to the extent it relates to each of Target, its Related Bodies Corporate and their respective past or present directors, officers and employees as trustee for them, and, as

such, each such Target Indemnified Party may enforce this clause 12 against Bidder; and

- (ii) Bidder holds the benefit of this clause 12 to the extent it relates to each Bidder Indemnified Party as trustee for them, and, as such, each such Bidder Indemnified Party may enforce this clause 12 against Target.

13. Representations, warranties and indemnities

13.1 Representations and warranties by Bidder

Bidder represents and warrants to Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that:

- (a) on each date from the date of this agreement until (and including) the Second Court Date:
 - (i) it is a company properly incorporated and validly existing under the laws of its place of incorporation;
 - (ii) the execution and delivery by Bidder of the Transaction Documents to which Bidder is party has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
 - (iii) the Transaction Documents to which Bidder is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms, and do not conflict with or result in a breach of or default under:
 - A. the constitution or equivalent constituent documents of Bidder or any of its Subsidiaries; or
 - B. any writ, order or injunction, judgment, law, rule, obligation or regulation to which Bidder or any of its Subsidiaries is party, or by which Bidder or any of its Subsidiaries is bound; and
 - (iv) other than as expressly contemplated by clause 3, no shareholder or Regulatory Authority approvals (including any approvals, exemptions, notifications or otherwise as may be required under the *Foreign Acquisition and Takeovers Act 1975 (Cth)*) are required to be obtained by the Bidder Group in order for it to execute and perform the Transaction Documents to which it is a party;
- (b) on each date from the date of this agreement until (and including) the Implementation Date, no Insolvency Event has occurred in relation to Bidder or any other member of the Bidder Group, nor has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this agreement;
- (c) on the First Court Date and the Second Court Date:
 - (i) the Bidder Information has been prepared and included in the Explanatory Memorandum in good faith and on the understanding that Target and the Target Indemnified Parties have relied on that information for the purposes of considering and approving the Target Information in the Explanatory Memorandum and that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report;

- (ii) the Bidder Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides), and includes all information regarding Bidder, its Related Bodies Corporate and the Scheme Consideration that is required by the Corporations Act, Regulatory Guides and Listing Rules to be included in the Explanatory Memorandum;
 - (iii) the Bidder Information (other than to the extent that it consists of information relating to the Target Group that was provided by or on behalf of Target, or has been extracted from announcements made by Target to the ASX regarding the Target Group) in the form and context in which it appears in the Explanatory Memorandum is not misleading or deceptive in any material respect and does not contain any material omission;
 - (iv) Bidder has complied with its obligations under clause 4.4(h); and
 - (v) all information provided by or on behalf of Bidder to the Independent Expert is not misleading or deceptive in any material respect and does not contain any material omission and has been prepared and provided in good faith and on the understanding that the Independent Expert have relied on the information for the purposes of preparing the Independent Expert's Report;
- (d) on each date from the date of this agreement until (and including) the Implementation Date, neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any Target Shareholder under which that Target Shareholder (or an Associate of that Target Shareholder) would be entitled to receive consideration for their Target Shares different from the Scheme Consideration or under which the Target Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal;
- (e) on each date from the date of this agreement until (and including) the Implementation Date, neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any director, officer or employee of Target relating in any way to the Transaction or operations of Target after the Effective Date;
- (f) as at 8:00am on the Second Court Date, Bidder will have sufficient cash amounts (whether from internal cash resources or external financial commitments, or a combination of both) available to it on an unconditional basis (other than conditions relating to the approval of the Court and related procedural matters or documentary requirements which, by their terms or nature, can only be satisfied or performed after the Second Court Date), to ensure that the Scheme Consideration is paid to Scheme Shareholders in accordance with the terms of this agreement, the Scheme and the Deed Poll;
- (g) the Equity Commitment Letters have each been duly executed by the parties to them and constitute legally binding obligations on those parties that are enforceable in accordance with their respective terms, and the Equity Commitment Letters have not been terminated;
- (h) each Debt Commitment Letter:
- (i) is a true and complete copy executed by all parties thereto;
 - (ii) has not been terminated, modified or rescinded, and no event has occurred which with notice, lapse of time or both, would result in a default under that Debt Commitment Letter;

- (iii) is enforceable in accordance with its terms and Bidder is not in default thereunder; and
- (iv) provides a Debt Commitment of an amount sufficient (when aggregated with the amounts available under the Equity Commitment Letters) to satisfy all of Bidder's payment obligations under this agreement, as and when those payment obligations become due, including paying the Scheme Consideration on the Implementation Date and any expenses of Bidder in connection with the consummation of the transaction contemplated hereby, and for any proposed repayment or refinancing of any outstanding indebtedness of the Target Group in connection with the transactions contemplated hereby (including, but not limited to, the payment of the Bonus Payment); and
- (i) any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief.

13.2 Bidder warranty certificate

Bidder must provide to Target by 8.00am on the Second Court Date a certificate signed by a director of Bidder and made in accordance with a resolution of the Bidder Board stating, as at that date, that the representations or warranties given by Bidder in clause 13.1 remain true and correct or, if any such representation or warranty is not true and correct as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or incorrect.

13.3 Reliance on Bidder Warranties

- (a) Bidder acknowledges and agrees that in entering into this agreement Target and the Target Indemnified Parties have relied on the Bidder Warranties.
- (b) Bidder indemnifies Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) against any claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising, which may be suffered or incurred by reason of any breach of any of the Bidder Warranties.

13.4 Representations and warranties by Target

Target represents and warrants to Bidder (on its own behalf and separately as trustee for each of Bidder Indemnified Parties) that:

- (a) on each date from the date of this agreement until (and including) the Second Court Date:
 - (i) it is a company properly incorporated and validly existing under the laws of its place of incorporation;
 - (ii) the execution and delivery by Target of the Transaction Documents to which Target is party has been properly authorised by all necessary corporate action and Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
 - (iii) the Transaction Documents to which Target is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms, and do not conflict with or result in a breach of or default under:

- A. the constitution or equivalent constituent documents of Target or any of its Subsidiaries; or
 - B. any writ, order or injunction, judgment, law, rule, obligation or regulation to which Target or any of its Subsidiaries is party, or by which Target or any of its Subsidiaries is bound; and
- (iv) other than as expressly contemplated by clause 3, no shareholder or Regulatory Authority approvals are required to be obtained by the Target Group in order for Target to execute and perform the Transaction Documents to which it is a party;
 - (v) as far as the Target is aware, it has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and as at the date of this agreement is not withholding any information (other than the fact of its discussions and negotiations with Bidder relating to the Transaction and the subject matter of this agreement) from ASX under Listing Rule 3.1A that has not been fully and Fairly Disclosed in the Target Due Diligence Material;
 - (vi) the Target Group has all material licences, permits, authorisations and approvals necessary for it to conduct its business in the manner in which it is conducted as at the date of this agreement, and no member of the Target Group is in material breach of, or default under, any such licence, permit, authorisation or approval, nor has any member of the Target Group received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, permit, authorisation or approval;
 - (vii) as at the date of this agreement there are 590,802,197 Target Shares on issue, and Target has not issued (and is not required to issue and may not become required to issue) any other securities or instruments or rights which are still outstanding (or may become outstanding) and which may convert to Target Shares other than the UIP Incentives, UIP Shares and FY19 Incentives;
 - (viii) each member of the Target Group has complied in all material respects with all applicable laws and regulations, including (without limitation):
 - A. financial services laws and regulations;
 - B. privacy and data protection laws and regulations;
 - C. Tax laws and regulations;
 - D. employment laws and regulations; and
 - E. laws and regulations relating to anti-money laundering, anti-bribery and anti-corruption (including the Australian laws implemented pursuant to the OECD Anti-Bribery Convention),

in each case in each applicable jurisdiction that the Target Group operates, and Target is not aware of, and has not received notice of, any actual or alleged material breach of any such laws or regulations by any member of the Target Group;
 - (ix) each member of the Target Group has complied in all material respects with each Material Contract to which it is a party, and no member of the Target Group is aware of any intention on the part of any counterparty to

a Material Contract to terminate such Material Contract or amend the terms of such Material Contract in any material respect;

- (x) no outstanding calls or demands have been made under, or in respect of, any of the financing or security arrangements to which any member of the Target Group is a party or by which any member of the Target Group (or any assets thereof) is bound (such arrangements, the **Financing Arrangements**);
 - (xi) there is no existing or unremedied material breach of, nor any material default, event of default, cancellation event, review event, prepayment event or similar event currently subsisting under, any Financing Arrangements;
 - (xii) no member of the Target Group is a party to or the subject of any investigation, action, proceeding, dispute, claim, demand, notice, direction, declaration, inquiry, arbitration, mediation, dispute resolution or litigation that will or may have a material adverse effect on the trading or financial performance, profitability, prospects or reputation of the Target Group (taken as a whole);
 - (xiii) Target has prepared, compiled and made available to Bidder and its Representatives the Target Due Diligence Material in good faith and Target is not aware of any information:
 - A. contained in the Target Due Diligence Material that is false or misleading in any material respect (including by omission); or
 - B. which is not included in the Target Due Diligence Material and which could reasonably be expected to be material to the evaluation of the Target Group and its businesses, operations and affairs by a reasonable and sophisticated buyer;
- (b) on the First Court Date and the Second Court Date:
- (i) the Target Information has been prepared and included in the Explanatory Memorandum in good faith and on the understanding that Bidder and the Bidder Indemnified Parties have relied on that information for the purposes of considering and approving the Bidder Information in the Explanatory Memorandum and that the Independent Expert has relied on the information for the purposes of preparing the Independent Expert's Report;
 - (ii) the Target Information (as well as any Bidder Information to the extent that it consists of information relating to the Target Group that was provided to Bidder by or on behalf of Target, or has been extracted from announcements made by Target to the ASX regarding the Target Group) does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission; and
 - (iii) the Target Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
- (c) on the Implementation Date, there are no Encumbrances (other than Permitted Encumbrances) over all or any of the Target Group's present or future assets or revenues; and
- (d) any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief.

13.5 Qualification of Target Warranties

- (a) The Target Warranties are subject to matters which:
 - (i) expressly required or permitted by this agreement or the Scheme;
 - (ii) are within the actual knowledge of Bidder or its Representatives as at the date of this agreement; or
 - (iii) have been Fairly Disclosed in the Target Due Diligence Material, Target Disclosure Letter or Target's announcements to the ASX regarding the Target Group prior to the date of this agreement.
- (b) Any representations and warranties given pursuant to clause 13.4, subject to Target's awareness, knowledge or belief are given by reference to the actual awareness, knowledge or belief of Tim Reed, Richard Moore, Andrew Birch, Ian Boylan, Hugh Fahy and John Moss.

13.6 Target warranty certificate

Target must provide to Bidder by 8.00am on the Second Court Date a certificate signed by a director of Target and made in accordance with a resolution of the Target Board stating, as at that date, that the representations or warranties given by Target in clause 13.4 remain true and correct or, if any such representation or warranty is not true and correct as at that date, providing complete particulars of the facts and matters which make the representation or warranty untrue or incorrect.

13.7 Reliance on Target Warranties

- (a) Target acknowledges and agrees that in entering into this agreement Bidder and the Bidder Indemnified Parties have relied on the Target Warranties.
- (b) Target indemnifies Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) against any claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising, which may be suffered or incurred by reason of any breach of any of the Target Warranties.

13.8 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 13.

13.9 Status of representations and warranties

Each representation and warranty in this clause 13:

- (a) is severable;
- (b) will survive the termination of this agreement; 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 agreement.

13.10 Status and enforcement of indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

- (b) It is not necessary for a party to incur expenses or to make any payment before enforcing a right of indemnity conferred by this agreement.

13.11 Timing of representations and warranties

Each representation and warranty made or given under clauses 13.1 or 13.4 is given at the date of this agreement, the date the Explanatory Memorandum is dispatched to Target Shareholders and as at 8.00 am on the Second Court Date, unless that representation or warranty is expressed to be given only at a particular time, in which case, it is given only at that time.

14. Confidentiality and communications

14.1 Confidentiality Deed

Each party acknowledges and agrees that they continue to be bound by the Confidentiality Deed after the date of this agreement in respect of all information received by it from the other party on, before or after the date of this agreement and that the terms of this agreement will prevail over the terms of the Confidentiality Deed to the extent of any inconsistency.

14.2 Survival of obligations

The rights and obligations of the parties under the Confidentiality Deed survive termination of this agreement.

14.3 Disclosure on termination of agreement

The parties agree that, if this agreement is terminated under clause 15, any party may disclose:

- (a) the fact that this agreement has been terminated, where such disclosure is required by the Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed; and
- (b) the fact that this agreement has been terminated to ASIC.

15. Termination and remedies

15.1 Limited termination events

This agreement may only be terminated by either party in the circumstances contemplated by clauses 15.2 and 15.3, or if the parties agree in writing to terminate this agreement.

15.2 Termination by Bidder

Bidder may terminate this agreement at any time before 8.00 am on the Second Court Date:

- (a) in accordance with clause 3.6; or
- (b) by notice in writing to Target if:
 - (i) Target is in material breach of any of clause of this agreement, (including the Target Warranties or in relation to a Target Prescribed Occurrence), provided that Bidder is only entitled to terminate if it has given notice to Target setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 5.00 pm on the day one

Business Day before the Second Court Date) from the time such notice is received by Target; or

- (ii) any Target director publicly changes, withdraws or adversely revises their Recommendation or Voting Intention or publicly recommends, supports or endorses a Competing Proposal, for any reason, whether or not permitted to do so under this agreement.

15.3 Termination by Target

Target may terminate this agreement at any time before 8.00 am on the Second Court Date:

- (a) in accordance with clause 3.6; or
- (b) by notice in writing to Bidder if:
 - (i) as at the time before 8.00 am on the Second Court Date, Bidder is in material breach of any clause of this agreement (including the Bidder Warranties) provided that Target is only entitled to terminate if it has given notice to Bidder setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist 5 Business Days (or any shorter period ending at 5.00 pm on the day one Business Day before the Second Court Date) from the time such notice is received by Bidder; or
 - (ii) a majority of Target directors publicly change or withdraw their Recommendation or Voting Intention or publicly recommend a Competing Proposal, in each case where permitted to do so under this agreement; or
 - (iii) the Independent Expert concludes in the Independent Expert's Report (including the initial report or any update, revision, amendment, addendum or supplementary reports to it) that the Scheme is not in the best interests of Target Shareholders, and does not change or withdraw those statements or recommendations once made.

15.4 Effect of termination

If this agreement is terminated:

- (a) the provisions of this agreement shall cease to have effect except for the provisions of clauses 1, 10, 12, 14, 15.4, 16, 17, 18, 19.1 to 19.6 (inclusive), 19.8 to 19.12 (inclusive) and 20 which will survive termination; and
- (b) subject to any rights or obligations arising under or pursuant to those clauses referred to in clause 15.4(a) which will survive termination, no party shall have any rights against or obligations to any other party under this agreement, except for those rights and obligations accrued prior to termination of the agreement.

15.5 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this agreement. Specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this agreement by any party, notwithstanding the ability of the other party to terminate this agreement or seek damages for such a breach or threatened breach or to demand payment of the Target Payment.

15.6 Target's limitation of liability

Notwithstanding any other provision of this agreement and other than in the case of fraud or wilful default, the maximum liability of Target to Bidder under or in connection with this agreement will be the amount of the Target Payment and no further damages, fees, expenses or reimbursements of any kind will be payable by Target under or in connection with this agreement.

16. Notices

16.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing and in English;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
 - (i) if to Target:
 - Address: Level 3, 235 Springvale Road, Glen Waverley VIC 3150
 - Email: ian.boylan@myob.com / peter.hamblin@myob.com
 - Attention: Ian Boylan / Peter Hamblin
 - with a copy to: Niro Ananda
 - Email: nananda@claytonutz.com
 - (ii) if to Bidder:
 - Address: Level 42, 1 Macquarie Place, Sydney NSW 2000
 - Email: david.lang@kk.com and george.aitken@kk.com
 - Attention: Directors
 - with a copy to:
 - Email: pcook@gtlaw.com.au and akauye@gtlaw.com.au
 - (iii) if to Bidder Holdco:
 - Address: 10 Changi Business Park Central 2, #05-01 Hansapoint@CBP, 486030
 - Email: yijun.ooi@kk.com
 - Attention: Yi Jun Ooi
 - with a copy to:

Email: pcook@gtlaw.com.au and akauye@gtlaw.com.au

- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must state that the email is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with this clause 16.1.

16.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 16.1, 4 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day (**working day** meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

17. GST

17.1 Interpretation

- (a) Except where the context suggests otherwise, and subject to clause 17.1(b), terms used in this clause have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) A reference to an input tax credit entitlement of an entity includes an input tax credit for an acquisition made by that entity but to which the representative member of any GST group to which that entity may belong is entitled. A reference to the GST payable by an entity includes GST payable by the representative member of any GST group to which that entity may belong
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (d) Any consideration for a supply that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to that supply for the purpose of this clause.

17.2 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

17.3 GST payable

- (a) If GST is payable by a party (**Supplier**) in relation to a taxable supply the Supplier has made under or in connection with this agreement, then the party (**Recipient**) that is required to provide consideration for that supply must, subject to clause 17.1(d), pay an additional amount to the Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 17.3(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) Where additional amounts are payable between parties to this agreement pursuant to clause 17.3(a), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to provide the tax invoice referred to in clause 17.3(b) no later than the time at which any consideration is to be first provided for that supply.
- (d) If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 17.3(a) then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 17.3(a). Where there is an adjustment event, the Supplier must promptly issue an adjustment note to the Recipient.

18. Entire agreement

The Transaction Documents and the Confidentiality Deed constitute the entire agreement between the parties in relation to their subject matter and supersede all previous agreements and understandings between the parties in relation to their subject matter.

19. General

19.1 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 agreement, except for representations or inducements expressly set out in this agreement and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this agreement, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this agreement 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 agreement.

19.2 Amendments

This agreement may only be varied by a document signed by or on behalf of each party.

19.3 Assignment

- (a) Subject to clause 19.3(b) below, a party may not assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.
- (b) Bidder may assign, grant a security interest over, novate or otherwise transfer by way of security, any of its rights or obligations under this agreement to a financier or financiers (or a security agent or security trustee thereof) without the prior written consent of Target solely for the purpose of obtaining finance or providing security in connection with the Transaction.

19.4 Consents

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

19.5 Costs

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing each Transaction Document.

19.6 Counterparts

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

19.7 Further acts and documents

Each party must promptly do 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 another party to give effect to this agreement.

19.8 No merger

A party's rights and obligations do not merge on completion of any transaction contemplated by this agreement.

19.9 Severance

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

19.10 Stamp duties

Bidder must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under this agreement and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause 19.10.

19.11 Waivers

Without limiting any other provision of this agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement;
- (b) a waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

19.12 No recourse

- (a) Only the parties to this agreement shall have any obligation or liability under or in respect of this agreement.
- (b) Notwithstanding anything that may be expressed or implied in this agreement, no recourse shall be had against:
 - (i) any current or future affiliate of Bidder or any portfolio company of such affiliate;
 - (ii) any current or future direct or indirect shareholder, member, director or officer, general or limited partner, controlling person or beneficial owner of Bidder or any affiliate or portfolio company referred to in sub-paragraph (i); or
 - (iii) any of the respective representatives, successors or assigns of any person referred to in sub-paragraph (i) or (ii),

it being expressly agreed and acknowledged that no liability whatsoever shall attach to, be imposed on or otherwise be incurred by any person referred to in sub-paragraph (i), (ii) or (iii) (each a **Non-Liable Person**) for any obligation of any party under this agreement or for any claim based on, in respect of or by reason of any such obligation.

- (c) Bidder holds the benefit of this clause 19.12 as trustee for each Non-Liable Person such that each Non-Liable Person may enforce this clause 19.12 notwithstanding that such Non-Liable Person is not a party to this agreement.

20. Governing law, jurisdiction and service of process

20.1 Governing law

This agreement is governed by the law applying in New South Wales, Australia.

20.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings

have been brought in an inconvenient forum, if that venue falls within clause 20.2(a).

Schedule 1 Timetable

Event	Date
Send Explanatory Memorandum to ASIC	22 February 2019
First Court Date	11 March 2019
Scheme Meeting	16 April 2019
Second Court Date	19 April 2019
Effective Date	19 April 2019
Implementation Date	3 May 2019

Executed as an agreement.

Executed by MYOB Group Limited ACN 153 094 958 in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

Timothy Reed

Full name of director



Signature of company secretary/director

Peter Hamblin

Full name of company secretary/director

Executed by ETA AUSTRALIA HOLDINGS III
PTY LTD ACN 630 727 552 in accordance with
section 127 of the Corporations Act 2001 (Cth):



Signature of director

DAVID PETER LANG
Full name of director



Signature of company secretary/director

NICHOLAS AITKEN
Full name of company secretary/director

Executed by ETA ASIA HOLDINGS II PTE.
LTD.:



Signature of director

Wong Wai Kin

Full name of director



Signature of company ~~secretary~~/director

David Tan Wei Ming

Full name of company ~~secretary~~/director

Annexure A Scheme

Scheme of arrangement made under section 411 of the Corporations Act

Date

Parties MYOB Group Limited ACN 153 094 958 of Level 3, 235 Springvale Road, Glen Waverley VIC 3150 (Target)

Each person registered as a holder of fully paid ordinary shares in the capital of the Target on the Record Date

Background

- A. The Target and the Bidder have entered into the Implementation Agreement, pursuant to which, amongst other things, the Target has agreed to propose this Scheme to Target Shareholders and each of the Target and the Bidder have agreed to take certain steps to give effect to this Scheme.
- B. If this Scheme becomes Effective, the Bidder will provide the Scheme Consideration to the Scheme Shareholders in accordance with the provisions of this Scheme, and the Bidder will acquire all Scheme Shares and the Target will enter the Bidder in the Share Register as the holder of the Scheme Shares.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement:

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in section 12 of the Corporations Act.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Bidder means ETA Australia Holdings III Pty Ltd ACN 630 727 525.

Business Day means a day which is a "Business Day" within the meaning given in the Listing Rules.

CHESS means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited, a wholly-owned Subsidiary of ASX.

Corporations Act means the Corporations Act 2001 (Cth).

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction as Target and Bidder agree in writing.

Deed Poll means the deed poll executed by Bidder in favour of the Scheme Shareholders dated [•].

Effective means, when used in relation to this Scheme, the coming into effect, pursuant to 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 the date on which this Scheme becomes Effective.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, Security Interest, 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 May 2019 or such other date agreed in writing between Target and Bidder.

Excluded Share means any Target Share held by Bidder or any of its Associates.

Implementation Agreement means the scheme implementation agreement entered into between the Target and the Bidder on or about 23 December 2018 relating to (among other things) the implementation of this Scheme.

Implementation Date means the date which is 5 Business Days after the Record Date or such other date as Target and Bidder agree in writing, provided that if such date falls on:

- (a) a Monday;
- (b) a day that is a public holiday in the United States of America and on which commercial banks are closed in the United States of America (such day, a **U.S. Holiday**); or
- (c) the date after a U.S. Holiday,

the 'Implementation Date' shall be the next Business Day on which none of (a), (b) or (c) apply. It is understood that the reference to a 'day' in the United States of America shall refer to the day immediately preceding the applicable day in Australia.

Listing Rules means the official listing rules of the ASX.

Marketable Parcel has the meaning given to that term in the Listing Rules.

Record Date means 7.00 pm (Sydney time) on the date which is 5 Business Days after the Effective Date or such other time and date agreed in writing between Bidder and Target.

Registered Address means, in relation to a Scheme Shareholder, the address of the Scheme Shareholder as recorded in the Target Share Register.

Related Body Corporate has the meaning given in section 50 of the Corporations Act.

Representatives means, in relation to a party, all directors, officers, employees, professional advisers (including financiers, financial advisers, corporate advisers, legal advisers or technical or other expert advisers or consultants) and agents of the party or of its Related Bodies Corporate.

Scheme means this scheme of arrangement subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by Bidder and Target.

Scheme Consideration means an amount of \$3.40 for each Scheme Share.

Scheme Meeting means the meeting of Target Shareholders convened by the Court in relation to this Scheme pursuant to section 411(1) of the Corporations Act.

Scheme Share means a Target Share (other than an Excluded Share) on issue as at the Record Date.

Scheme Shareholder means each person registered in the Target Share Register as the holder of one or more Scheme Shares as at the Record Date.

Scheme Transfer means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

Second Court Date means the first day of hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Security Interest has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

Share Registry means Link Market Services Limited of Level 12, 680 George Street, Sydney, NSW 2000.

Subsidiary has the meaning given to that term in the Corporations Act.

Target Board means the board of directors of Target.

Target Group means Target and each of its Subsidiaries.

Target Share Register means the register of members of Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

Target Shareholder means a person who is registered in the Target Share Register as a holder of Target Shares.

Target Shares means fully paid ordinary shares in the capital of Target.

Transaction means the acquisition by Bidder of the Scheme Shares for the Scheme Consideration pursuant to this Scheme.

Trust Account means an Australian dollar denominated trust account which attracts interest at a commercial rate and is operated by Target as trustee for the Scheme Shareholders (except that any interest on the amount deposited (less bank fees and other charges) will accrue for the benefit of Bidder), details of which Target must notify to Bidder no later than 5 Business Days before the Implementation Date.

1.2 Business Days

If the day on which any act to be done under this Scheme is a day other than a Business Day, that act must be done on or by the next Business Day except where this Scheme expressly specifies otherwise.

1.3 Listing rules are law

A Listing Rule or business rule of a financial market or securities exchange will be regarded as a law for the purposes of this Scheme.

1.4 General rules of interpretation

In this Scheme headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;

- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Scheme, and a reference to this Scheme includes all schedules, exhibits, attachments and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to **\$** or **dollar** is to Australian currency;
- (k) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this agreement;
- (l) a reference to a date or time is to that date or time in Sydney, Australia; and
- (m) this agreement (including any term or condition of it) must not be construed adversely to a party solely on the basis that the party prepared it or caused it to be prepared.

2. Preliminary matters

2.1 Target

- (a) The Target is a public company limited by shares, incorporated in Australia and registered in the State of Victoria.
- (b) The Target is admitted to the official list of ASX and Target Shares are officially quoted on the ASX.
- (c) As at the date of the Implementation Agreement, the Target had 590,802,197 Target Shares on issue.

2.2 Bidder

The Bidder is a proprietary company limited by shares, incorporated and registered in Victoria.

2.3 Implementation Agreement

The Bidder and the Target have agreed, by executing the Implementation Agreement, to implement this Scheme (among other things).

2.4 Deed Poll

The Bidder has agreed, by executing the Deed Poll, to do the things contemplated of it under this Scheme, including providing the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme.

3. Conditions precedent

3.1 Conditions

This Scheme is conditional on and will have no force or effect until each of the following conditions is satisfied:

- (a) all the conditions precedent in clause 3.1 of the Implementation Agreement (other than the condition precedent in clause 3.1(d) of the Implementation Agreement relating to the Court approval of this Scheme) having been satisfied or waived (other than the conditions precedent which cannot be waived) in accordance with the terms of the Implementation Agreement by 8.00am on the Second Court Date;
- (b) neither the Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 8.00am on the Second Court Date;
- (c) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with such other conditions imposed by the Court under section 411(6) of the Corporations Act, as are acceptable to the Target and the Bidder (each acting reasonably), having been satisfied; and
- (d) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme coming into effect, under section 411(10) of the Corporations Act.

The Scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date unless Target and Bidder otherwise agree in writing.

3.2 Certificate in relation to conditions

The Target and the Bidder must each 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 as at 8.00am on the Second Court Date all the conditions precedent in clause 3.1 of the Implementation Agreement (other than the condition precedent in clause 3.1(d)) have been satisfied or waived (other than the conditions precedent which cannot be waived) in accordance with the terms of the Implementation Agreement.

4. Implementation

4.1 Lodgement of Court orders

The Target must lodge with ASIC an office copy of any Court orders under section 411(10) of the Corporations Act approving this Scheme by 5.00pm on the Business Day following the day on which such office copy is received (or such later date as is agreed between the parties in writing).

4.2 Consequences of this Scheme becoming Effective

If this Scheme becomes Effective:

- (a) the Bidder must (pursuant to its obligations under the Deed Poll) provide the Scheme Consideration in the manner contemplated by this Scheme;

- (b) subject to the provision of the Scheme Consideration as contemplated by clause 4.2(a), all the Scheme Shares (together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date) will be transferred to the Bidder; and
- (c) the Target will enter the name of the Bidder in the Target Share Register in respect of all the Scheme Shares.

4.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5.2, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to the Bidder, 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 for the Scheme Shareholders under clause 7.5 or otherwise) by:
 - (i) the Target delivering to the Bidder on behalf of the Scheme Shareholders (as transferors) a duly completed and executed Scheme Transfer form to transfer all of the Scheme Shares to the Bidder; and
 - (ii) the Bidder duly executing such Scheme Transfer (as transferee), attending to the stamping of the Scheme Transfer (if required) and delivering it to the Target for registration; and
- (b) as soon as practicable after receipt of the Scheme Transfer form in accordance with clause 4.3(a)(ii), the Target must enter the name of the Bidder in the Target Share Register in respect of all the Scheme Shares.

4.4 Suspension of trading

Provided that this Scheme has been implemented in accordance with its terms, the Target will apply to ASX to suspend trading in Target Shares with effect from the close of trading on ASX on the Effective Date.

4.5 Removal of Target from official list of ASX

The Target will apply for Target to be removed from the official list of ASX with effect on and from the close of trading on the trading day following, or shortly after, the Implementation Date, as determined by the Bidder.

5. Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder will be entitled to \$3.40 for each Scheme Share.

5.2 Provision of Scheme Consideration

- (a) In consideration for the transfer to the Bidder of the Scheme Shares, Bidder will provide the aggregate Scheme Consideration by depositing (or procuring the deposit) in cleared funds an amount equal to the aggregate amount of the Scheme Consideration for all Scheme Shares into the Trust Account on the Business Day before the Implementation Date, such amount to be held by the Target on trust for the Scheme Shareholders (provided that any interest on the amount so deposited (less bank fees and other charges) will accrue for the benefit of the Bidder).
- (b) Subject to Bidder having complied with clause 5.2, the Target must, on the Implementation Date, from the Trust Account, pay to each Scheme Shareholder the

Scheme Consideration attributable to that Scheme Shareholder based on the number of Scheme Shares held by that Scheme Shareholder as at the Record Date, which obligation will be satisfied by Target:

- (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Share Registry to receive dividend payments from Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
 - (ii) whether or not a Scheme Shareholder has made an election referred to in clause 5.2(b)(i), dispatching, or procuring the dispatch of, a cheque in Australian currency for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with clause 5.3).
- (c) In the event that:
- (i) either:
 - A. a Scheme Shareholder does not have a Registered Address; or
 - B. the Target as the trustee for the Scheme Shareholders believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address,

and no account has been notified in accordance with clause 5.2(b) or a deposit into such an account is rejected or refunded; or
 - (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.4(a),
- the Target as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Target (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995 (NSW)*. To avoid doubt, if the amount is not credited to the Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with *the Unclaimed Money Act 1995 (NSW)*. Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 1995 (NSW)*, Target must hold the amount on trust for the relevant Scheme Shareholder, and any interest or other benefit accruing from the amount will be to the benefit of such Scheme Shareholder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). Target must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.
- (d) To the extent that there is a surplus in the amount held by Target as the trustee for the Scheme Shareholders in the Trust Account, that surplus may remain with the Target following the satisfaction of the Target's obligations as the trustee for the Scheme Shareholders under this clause 5.2(a) (provided that, for the avoidance of doubt, any interest on the amount deposited in the Trust Account (less bank fees and other charges) will accrue for the benefit of the Bidder).
 - (e) If any amount is required under any law or by any government or any governmental, semi-governmental or judicial entity or authority to be:
 - (i) withheld from an amount payable under clause 5 and paid to that entity or authority; or

(ii) retained by the Target out of an amount payable under clause 5,

its payment or retention by the Target (or the Share Registry) will constitute full discharge of the Target's obligations under the Scheme with respect to the amount so paid or retained until it is no longer required to be retained.

5.3 Joint holders

In the case of any Scheme Shares held in joint names:

- (a) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent at the sole discretion of the Target, either to the holder whose name appears first in the Share Register as at the Record Date or to the joint holders (unless the joint holders have nominated a bank account under clause 5.2(b)(i), in which case the amount must be deposited directly to the nominated bank account of the joint holders); and
- (b) any other document required to be sent under this Scheme will be forwarded at the sole discretion of the Target, either to the holder whose name appears first in the Share Register as at the Record Date or to the joint holders.

5.4 Cancellation and re-issue of cheques

- (a) Target may cancel a cheque issued under clause 5 if the cheque:
 - (i) is returned to Target; or
 - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Share Registry) (which request may not be made until the date which is 5 Business Days after the Implementation Date), a cheque that was previously cancelled under this clause 5.4 must be reissued.

5.5 Rounding Up

Where the calculation of the Scheme Consideration to be provided to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up to the nearest whole cent.

6. Dealings in Target Shares

6.1 Dealings in Target Shares by Target Shareholders

To establish the identity of the Scheme Shareholders, dealings in Target Shares or other alterations to the Target Share Register 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 Share Register as the holder of the relevant 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 Share Register is kept,

and for the purpose of establishing the persons who are Scheme Shareholders, the Target will not accept for registration nor recognise any transfer or transmission application in respect of the Target Shares received after the Record Date or received prior to such times but not in registrable form.

6.2 Target Share Register

- (a) The Target must maintain the Target Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been provided to the Scheme Shareholders and the Target Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (b) The Target must register valid registrable transmission applications or transfers of the kind referred to in clause 6.1(b) by no later than the Record Date (provided that, for the avoidance of doubt, nothing in this clause 6.2(b) 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).
- (c) The Target will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Target Shares received after the Record Date.
- (d) From the Record Date until the earlier of registration of the Bidder in respect of all Scheme Shares under clause 4.3(b) or the End Date, no Target Shareholder may deal with Target Shares in any way except as set out in this Scheme and any attempt to do so will have no effect and Target may disregard any such dealing.

6.3 Information to be made available to the Bidder

As soon as practicable after the Record Date and in any event at least 2 Business Days before the Implementation Date, the Target will ensure that details of the names, Registered Addresses and holdings of Target Shares for each Scheme Shareholder are available to the Bidder.

6.4 Effect of share certificates and holding statements

- (a) Each entry which is current on the Target Share Register as at 7.00pm on the Record Date is the sole evidence of entitlement to the Scheme Consideration in respect of the Target Shares relating to that entry.
- (b) Upon the Scheme Consideration being provided to the Scheme Shareholders in accordance with this Scheme, all certificates and statements of holding for Target Shares will cease to have any effect as documents of title in respect of those shares (other than statements of holding in favour of the Bidder and its successors in title).

7. General scheme provisions

7.1 Consent

If the Court proposes to approve this Scheme subject to any alterations or conditions, 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 and each Scheme Shareholder agrees to any such alterations or conditions which counsel for Target has so consented to.

7.2 Binding effect of the 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 the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of the Target to the extent of any inconsistency.

7.3 Agreement of Scheme Shareholders

Each Scheme Shareholder:

- (a) agrees to the transfer of their Target Shares in accordance with terms of this Scheme and agrees to the variation, cancellation or modification of the rights attached to their Target Shares constituted by or resulting from this Scheme; and
- (b) 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 the Scheme Meeting).

7.4 Warranties by Scheme Shareholders

- (a) Each Scheme Shareholder is deemed to have warranted to the Target and the Bidder, and appointed and authorised the Target as its attorney and agent to warrant to the Bidder that:
 - (i) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) which are transferred to the Bidder under this Scheme will, on the date they are transferred to the Bidder, be fully paid;
 - (ii) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) which are transferred to the Bidder under this Scheme will, on the date they are transferred to the Bidder, be free from all Encumbrances and third party rights or interests of any kind; and
 - (iii) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) to the Bidder.
- (b) The Target undertakes that it will provide such warranty to the Bidder as agent and attorney for each Scheme Shareholder.

7.5 Authority given to the Target

Upon this Scheme becoming Effective, each Scheme Shareholder without the need for any further act:

- (a) irrevocably appoints the Target and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:
 - (i) enforcing the Deed Poll against the Bidder; and
 - (ii) executing any document necessary to give effect to this Scheme, including 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 or part of the Scheme Shares,
 and the Target accepts such appointment; and
- (b) will be deemed to have authorised the Target to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary to implement 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 7.5(a).

7.6 Appointment of sole proxy

Upon the Scheme Consideration being provided to the Scheme Shareholders and until the Target registers the Bidder as the holder of all Target Shares in the Target Share Register, each Scheme Shareholder:

- (a) is deemed to have irrevocably appointed the Bidder as its attorney and agent (and directed the Bidder in such capacity) to appoint any director, officer, secretary or agent nominated by the Bidder 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 their name and sign any Target Shareholders' resolutions, whether in person, by proxy or by corporate Representative;

- (b) undertakes not to otherwise attend or vote at any of those meetings or sign or vote on any resolutions (whether in person, by proxy or by corporate representative) other than as pursuant to clause 7.6(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as the Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 7.6(a) the Bidder and any director, officer, secretary or agent nominated by the Bidder under clause 7.6(a) may act in the best interests of the Bidder as the intended registered holder of the Scheme Shares.

7.7 Title to Target Shares

Upon the Scheme Consideration being provided to the Scheme Shareholders and until the Target registers the Bidder as the holder of all Target Shares in the Target Share Register, the Bidder will be beneficially entitled to all of the Scheme Shares transferred to it under this Scheme.

8. General

8.1 Stamp duties

The Bidder must pursuant to their obligations under the Deed Poll:

- (a) pay all stamp duties and any related fines and penalties in respect of the transfer of the Scheme Shares to the Bidder and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause 8.1(a); and
- (b) indemnify each Scheme Shareholder against any liability from a failure to comply with clause 8.1(a).

8.2 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme 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 place where the Target's Share Registry is kept.
- (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.

8.3 Further acts and documents

The Target must do all further acts (on its own behalf and on behalf of each Scheme Shareholder) and execute and deliver all further documents required by law or necessary to give effect to this Scheme and the transactions contemplated by it.

8.4 No liability when acting in good faith

Neither Target nor Bidder (nor any director, officer or secretary of any of those companies or any of their respective Related Bodies Corporate) will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

9. Governing law and jurisdiction

9.1 Governing law

This Scheme is governed by the law applying in New South Wales.

9.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.2(a).

Annexure B Deed Poll

Deed poll dated

By **ETA Australia Holdings III Pty Ltd ACN 630 727 525** of Level 42, 1 Macquarie Place, Sydney NSW 2000 (**Bidder**)

In favour of Each person registered as a holder of fully paid ordinary shares in the capital of MYOB Group Limited ACN 153 094 958 of Level 3, 235 Springvale Road, Glen Waverley VIC 3150 (**Target**) on issue as at the Record Date (**Scheme Shareholders**)

Background

- A. On 23 December 2018, the Target and the Bidder entered into a scheme implementation agreement (**Implementation Agreement**) under which the Bidder is to pay the Scheme Consideration and acquire all Scheme Shares held by Scheme Shareholders under the Scheme, and also under which the Bidder has agreed to enter into this deed poll.
- B. The Bidder is entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to procure and undertake the actions attributed to the Bidder under the Scheme.

It is declared as follows

1. Definitions and interpretation

1.1 Definitions

In this deed poll:

Scheme means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between the Target and its shareholders, in substantially the same form as set out in Annexure A to the Implementation Agreement or in such other form as Target and Bidder agree in writing.

1.2 Terms defined in the Scheme

Capitalised words and phrases defined in the Scheme and not in this deed poll have the same meaning in this deed poll as in the Scheme unless the context requires otherwise.

1.3 Interpretation

The provisions of clauses 1.2, 1.3 and 1.4 of the Scheme form part of this deed poll as if set out in full in this deed poll, except that references to "scheme" in those clauses will be taken to be references to "deed poll".

1.4 Nature of this deed poll

The Bidder acknowledges and agrees that:

- (a) 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 party to it; and

- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Target and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder.

2. Condition precedent

2.1 Condition

The obligations of the Bidder under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The obligations of the Bidder under this deed poll will automatically terminate and this deed poll will be of no further force or effect if:

- (a) the Implementation Agreement is terminated in accordance with its terms prior to the Court approving the Scheme; or
- (b) the Scheme is not Effective by the End Date,

unless the Bidder and the Target otherwise agree in writing.

2.3 Consequences of termination

If this deed poll terminates under clause 2.2, in addition to and without prejudice to any other rights, powers or remedies available to it:

- (a) the Bidder is released from its obligations to further perform this deed poll; and
- (b) each Scheme Shareholder retains the rights they have against the Bidder in respect of any breach of this deed poll which occurs before it was terminated.

3. Scheme Obligations

Subject to clause 2, the Bidder undertakes in favour of each Scheme Shareholder:

- (a) to deposit the aggregate amount of the Scheme Consideration for all Scheme Shares in cleared funds into the Trust Account; and
- (b) to undertake all other actions attributed to it under the Scheme,

in each case subject to and in accordance with the terms of the Scheme.

4. Warranties

The Bidder represents and warrants to each Scheme Shareholder that:

- (a) it is a company properly incorporated and validly existing under the laws of the country or jurisdiction of its incorporation;
- (b) it has the legal right and full corporate power and capacity to execute, deliver and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;

- (d) this deed poll constitutes (or will when executed constitute) valid legal and binding obligations of it and is enforceable against it in accordance with its terms;
- (e) it is solvent and no resolutions have been passed nor has any other step been taken or legal 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 (or any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in this paragraph);
- (f) the execution, delivery and performance of this deed poll by it does not and will not result in a breach of or constitute a default under:
 - (i) any agreement to which it is a party;
 - (ii) any provision of the constitution or articles of association (as applicable); or
 - (iii) any law or regulation or any order, judgment or determination of any court or Regulatory Authority by which it is bound.
- (g) as at the date of this deed poll and so far as it is aware, no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this deed poll.

5. Continuing obligations

This deed poll is irrevocable and remains in full force and effect until the Bidder has fully performed its obligations under this deed poll or the earlier termination of this deed poll under clause 2.

6. Further Assurances

The Bidder will, at its own expense, do all things reasonably required of it and execute all documents reasonably necessary to give full effect to this deed poll and the transactions contemplated by it.

7. General

7.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed poll:

- (a) may be given by personal service, post or email;
- (b) must be in writing and in English;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

- (i) if to Target:

Address: Level 3, 235 Springvale Road, Glen Waverley VIC 3150

Email: ian.boylan@myob.com / Peter.Hamblin@myob.com

Attention: Ian Boylan / Peter Hamblin

with a copy to: Niro Ananda

Email: nananda@claytonutz.com

(ii) if to Bidder:

Address: Level 42, 1 Macquarie Place, Sydney NSW 2000

Email: [david.lang@kkr.com](mailto: david.lang@kkr.com) and [george.aitken@kkr.com](mailto: george.aitken@kkr.com)

Attention: Directors

with a copy to:

Email: [pcook@gtlaw.com.au](mailto: pcook@gtlaw.com.au) and [akauye@gtlaw.com.au](mailto: akauye@gtlaw.com.au)

- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must state that the email is a communication under this deed poll; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with this clause 7.1.

7.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed poll is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 7.1, 4 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

7.3 Governing law

This deed poll is governed by and must be construed according to the law applying in New South Wales.

7.4 Jurisdiction

The Bidder irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, Commonwealth courts having jurisdiction in that state and the courts competent to

determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed poll; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause (a).

7.5 Amendments

This deed poll may be amended only by another deed poll entered into by the Bidder, and then only if the amendment is agreed to by the Target in writing and the Court indicates that the amendment would not preclude approval of the Scheme.

7.6 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed poll by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.
- (b) A waiver or consent given by a party under this deed poll is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed poll operates as a waiver of another breach of that term or of a breach of any other term of this deed poll.

7.7 Assignment

The rights of each Scheme Shareholder under this deed poll are personal and cannot be assigned, novated or otherwise transferred without the prior written consent of the Bidder.

7.8 Stamp duties

The Bidder must:

- (a) pay all stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause; and
- (b) indemnify each Scheme Shareholder against any liability arising from a failure to comply with clause 6.9(a).

7.9 Cumulative rights

The rights, powers and remedies of the Bidder and each Scheme Shareholder under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this deed poll.

7.10 Counterparts

This deed poll may be executed in counterparts, all of which taken together constitute one document.

Execution Page

Executed and delivered as a deed poll.

**Executed by ETA Australia Holdings III Pty Ltd
ACN 630 727 525** in accordance with section 127
of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director