

## SCHEDULE 1

<b>ITEM 1:</b>	<b>LENDER:</b>	<p>Name: Stuart Bruce JAMES and Gillian Doreen JAMES as trustees of the S.B. JAMES SUPERANNUATION FUND</p> <p>Address: c/- 7 Glan Avon Road, Hawthorn, Victoria 3122, Australia</p> <p>Email: <i>(insert details)</i>.....</p> <p>Fax: <i>(insert details)</i>.....</p>
<b>ITEM 2:</b>	<b>BORROWER:</b>	<p>Name: Evolve Education Group Limited (company number 5236443)</p> <p>Address: c/- Minter Ellison Rudd Watts</p> <p>Email: Neil.Millar@minterellison.co.nz</p> <p>Fax: +64 9 353 9701</p> <p>Attention: Neil Millar</p>
<b>ITEM 3:</b>	<b>LOAN AMOUNT:</b>	Australian dollars \$100,000
<b>ITEM 4:</b>	<b>REPAYMENT DATE:</b>	<p><b>For a Listing:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Listing Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p> <p><b>For a Third Party Sale:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Completion Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p>
<b>ITEM 5:</b>	<b>LOAN DATE:</b>	The date that is 2 Business Days after the date of this Agreement.
<b>ITEM 6:</b>	<b>SUNSET DATE:</b>	31 March 2015
<b>ITEM 7:</b>	<b>APPROVED PURPOSE:</b>	The Loan Amount may be used by the Borrower to pay for any costs relating to the acquisition of child care businesses by the Borrower and the Borrower seeking a Listing, or alternatively a Third Party Sale.
<b>ITEM 8:</b>	<b>RETURN AMOUNT:</b>	<p><b>For a Listing:</b></p> <p>(a) Australian dollars \$100,000; or (b) the New Zealand dollar</p>

		<p>equivalent of Australian dollars \$100,000 (such rate to be based on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Listing Date on its website (or if the Listing Date has no published rate, then the published mid rate for the next Business Day), as nominated by the Borrower.</p> <p><b>For a Third Party Sale:</b> (a) Australian dollars \$100,000; or (b) the New Zealand dollar equivalent of Australian dollars \$100,000 (such rate to be based on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Completion Date on its website (or if the Completion Date has no published rate, then the published mid rate for the next Business Day).</p>
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**Dated**

10 November

2014

## **LOAN AGREEMENT**

between

**STUART BRUCE JAMES AND GILLIAN DOREEN  
JAMES AS TRUSTEES OF THE S.B. JAMES  
SUPERANNUATION FUND**

and

**EVOLVE EDUCATION GROUP LIMITED**

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## PARTIES

- (1) The parties named at Item 1 of Schedule 1 (together the "**Lender**")

## AND

- (2) The party named at Item 2 of Schedule 1 (the "**Borrower**")

## BACKGROUND

- A. The Lender has agreed, at the request of the Borrower, to provide a Loan to the Borrower for the Loan Amount.
- B. The Lender and the Borrower have agreed to enter into this Agreement to set out the terms and conditions of the Loan.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

In this document:

**Approved Purpose** means the purpose described in Item 7 of Schedule 1.

**Agreement** means this document and any schedules and annexures to it.

**ASX** means ASX Limited.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Auckland, New Zealand.

**Completion Date** means the date of completion of the Third Party Sale.

**Evolve Shares** means fully paid ordinary shares in the Borrower.

**Event of Default** means any of the events, omissions or occurrence specified in clause 5.2.

**Insolvency Event** means, in relation to a party, the occurrence of any of the following events:

- (a) that party ceases or threatens to cease to carry on all or any material part of its business or operations;
- (b) an application is made (which is not stayed or dismissed within 10 Business Days of being made) to a court for an order, or an order is made, or an effective resolution is passed or legal proceedings issued (other than a vexatious or frivolous proceeding), or any corporate action is taken, notice is given or other step is taken for the dissolution or reorganisation of that party except for the purpose of, and followed by, a solvent reconstruction, merger,

consolidation or voluntary liquidation on terms approved by the other party before that step is taken;

- (c) that party convenes a meeting for the purpose of making, or proposes to enter into, any general assignment, arrangement, compromise or composition with or for the benefit of any of its creditors with a view to avoiding insolvency or a notice of intention to remove it from the register (on which the party is legally registered to carry on business, or an equivalent or analogous procedure under the law of any jurisdiction in which the party is incorporated, domiciled, resident, carries on business or has assets) is given, in each case except for the purpose of, and followed by, a solvent reconstruction, merger, consolidation or voluntary liquidation previously approved in writing by the other party or an equivalent or analogous procedure under the law of any jurisdiction in which the party is incorporated, domiciled, resident, carries on business or has assets);
- (d) an encumbrancer takes possession, or a trustee, receiver, receiver and manager, administrator, liquidator, provisional liquidator, inspector under any companies or securities legislation, or similar official, is appointed in respect of that party or the whole or any material part of its assets, or steps are taken or threatened with a view to any such appointment;
- (e) an attachment or other execution is levied or enforced upon, or commenced against, any assets of that party and is not discharged or stayed within 10 Business Days, except, in each case, where the other party is satisfied that that party is contesting the same in good faith by appropriate proceedings;
- (f) that party is declared or becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable legislation;
- (g) that party suspends or stops or threatens to suspend or stop payments generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness;
- (h) that party seeks or obtains protection from its creditors under any statute or any other law;
- (i) that party is declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989;
- (j) a statutory or judicial manager is appointed over all or any of the assets of that party;
- (k) any recommendation is made by the Securities Commission to the Minister of Justice or, as the case may be, the Minister of Finance that that party or any associated person of that party be placed in statutory management under the Corporations (Investigation and Management) Act 1989; or
- (l) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (k) above happens under the laws of any applicable jurisdiction in respect of that party.

**IPO Price** means the issue price for Evolve Shares set out in the Offer Document (if applicable) or otherwise set out in the allotment notice to the NZX and/or ASX (as applicable) on and in conjunction with Listing.

**Listing** means admission of the Borrower to:

- (a) the NZX and quotation of Evolve Shares on the NZX Main Board; or
- (b) the NZAX and quotation of Evolve Shares on the NZAX; and/or
- (c) the official list of ASX and granting of quotation of the Evolve Shares.

**Listing Date** means the date that the Listing occurs.

**Loan** means the provision of the Loan Amount to the Borrower by the Lender.

**Loan Amount** means the amount described in Item 3 of Schedule 1.

**Loan Date** means the date specified in Item 5 of Schedule 1.

**NZAX** means the alternative market operated by NZX.

**NZX** means NZX Limited also known as the New Zealand Stock Exchange.

**NZX Main Board** means the main board equity security market, operated by NZX.

**Offer Document** means the investment statement and prospectus (or product disclosure statements or equivalent documents) to the public offer of Evolve Shares.

**Repayment Date** means, subject to the provisions of clause 3.2, the date specified in Item 4 of Schedule 1.

**Return Amount** means the amount set out in Item 8 of Schedule 1 (as it applies either to a Listing or a Third Party Sale).

**Sale Price** means the final sale price for shares or assets in the Borrower (calculated as a price per share) determined in accordance with the terms and conditions of the SPA.

**SPA** means, in respect of a Third Party Sale, the sale and purchase agreement for shares or assets in the Borrower between: (i) if a share sale, the shareholders of the Borrower; or (ii) if an asset sale, the Borrower, and a third party purchaser.

**Sunset Date** means the date specified in Item 6 of Schedule 1.

**Third Party Sale** means completion of the sale of all of the shares or all (or substantially all) of the assets of the Borrower to a third party purchaser as part of a transaction or series of transactions.

## 1.2 Interpretation

Unless expressed to the contrary:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where an expression is defined anywhere in this Agreement another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to:
  - (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;

- (ii) any gender includes all genders;
- (iii) the singular includes the plural and vice versa;
- (iv) recitals, clauses, schedules or annexures are to recitals, clauses, schedules or annexures of or to this Agreement;
- (v) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
- (vi) unless otherwise stated, money is to New Zealand currency;
- (vii) this Agreement or another document includes the document as varied or replaced; and
- (viii) any party to this Agreement, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.

## **2. LOAN**

### **2.1 Loan**

- (a) The Lender agrees to advance the Loan Amount to the Borrower on the Loan Date.
- (b) For the purposes of clause 2.1(a), the Loan Amount must be advanced by the Lender:
  - (i) by way of direct deposit into a bank account to be nominated by the Borrower; and
  - (ii) in Australian dollars in immediately available funds,
 by no later than 12 noon New Zealand time on the Loan Date.

### **2.2 Interest and Security**

The parties agree that the Loan under this Agreement is to be made on an unsecured and interest free basis.

## **3. REPAYMENT**

### **3.1 Repayment in the event of a Listing by the Sunset Date**

- (a) If a Listing occurs in respect of the Borrower on or before the Sunset Date, then:
  - (i) the Borrower must repay and finally discharge the Loan Amount in full:
    - (1) by way of direct deposit into a bank account to be nominated by the Lender; and
    - (2) in Australian dollars in immediately available funds,
 by no later than 12 noon New Zealand time on the Repayment Date; and
  - (ii) the Borrower must, either:
    - (1) on the Repayment Date, pay the Return Amount to the Lender by issue and allotment of an equivalent amount of Evolve Shares (rounded to the nearest whole number of Evolve Shares) at the IPO Price; or

- (2) by no later than 12 noon on the Repayment Date, pay an amount equivalent to the Loan Amount by way of direct deposit into a bank account to be nominated by the Lender in Australian dollars and in immediately available funds,

the Borrower being entitled to nominate the method of payment in (ii) above in its sole discretion.

### **3.2 Repayment in the event of a Third Party Sale by the Sunset Date**

- (a) If no Listing occurs before the Sunset Date but alternatively a Third Party Sale occurs in respect of the Borrower on or before the Sunset Date, then:

- (i) the Borrower must repay and finally discharge the Loan Amount in full:

- (1) by way of direct deposit into a bank account to be nominated by the Lender; and

- (2) in Australian dollars in immediately available funds,

by no later than 12 noon New Zealand time on the Repayment Date; and

- (ii) the Borrower must, either:

- (1) if all of the consideration for the sale is to be paid in the form of shares in the purchaser (or the purchaser's related company) pay the Return Amount to the Lender prior to the Completion Date, by issuing to the Lender an equivalent amount of Evolve Shares (rounded to the nearest whole number of Evolve Shares) at the Sale Price on the condition that the Lender agrees to adhere to and sell those recently acquired Evolve Shares under the terms of the SPA; or

- (2) by no later than 12 noon on the Repayment Date, pay an amount equivalent to the Loan Amount by way of direct deposit into a bank account to be nominated by the Lender in Australian dollars and in immediately available funds,

the Lender being entitled to nominate the method of payment in (ii) above in its sole discretion provided that where it is not practical or possible without breaching any law or agreement to issue Evolve Shares to the Lender prior to the Completion Date in accordance with paragraph (1) above (for example, the issue of Evolve Shares would adversely affect the Borrower's ability to complete the Third Party Sale on terms acceptable to the Borrower) that option shall not be available to the Lender.

### **3.3 Discharge of obligations**

The Lender acknowledges and agrees that following satisfaction of the Borrower's obligations under clause 3.1(a) or 3.2(a), the Borrower is immediately released and discharged from all obligations and liability of any nature under or in connection with repayment of the Loan Amount or any other debt or liability owed by the Borrower to the Lender under this Agreement.

### **3.4 Repayment in the event of no Listing and no Third Party Sale by the Sunset Date**

If neither a Listing nor a Third Party Sale has not occurred in respect of the Borrower on or before the Sunset Date, then:

- (a) the Lender waives repayment of the Loan Amount;

- (b) the Loan Amount vests absolutely in the Borrower; and
- (c) the Lender acknowledges and agrees that the Borrower is immediately released and discharged from all obligations and liability of any nature under or in connection with repayment of the Loan Amount or any other debt or liability owed by the Borrower to the Lender under this Agreement.

### **3.5 Borrower's Undertaking**

For as long as the Loan Amount remains outstanding under this Agreement to the Lender, the Borrower undertakes with the Lender as follows:

- (a) until such time as it is no longer practical, commercially viable or reasonably sensible to do so, the Borrower will use all means commercially reasonable to pursue a strategy of contracting to acquire child care businesses with a view to achieving a Listing, or alternatively a Third Party Sale, of the Borrower by the Sunset Date;
- (b) to apply the Loan for the Approved Purpose only;
- (c) to immediately notify the Lender of any event or change in the Borrower's circumstances, the effect of which either would or might render any representation or warranty made in this Agreement untrue or incorrect in any respect; and
- (d) to immediately deliver all financial and other information in respect of the Borrower which the Lender reasonably requires from time to time.

## **4. WARRANTIES**

### **4.1 Mutual Warranties**

Each party warrants to each other party, at the date of this Agreement and at the Repayment Date, that:

- (a) it has the power and authority to enter into and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement by it will constitute legal, valid and binding obligations of it, enforceable in accordance with its terms;
- (c) it is not subject to any Insolvency Event; and
- (d) the execution, delivery and performance of this Agreement will not violate:
  - (i) any legislation or rule of law or regulation, authorisation, consent or any order or decree of any governmental authority to which it may from time to time be subject;
  - (ii) its constitution or any legislation, rules or other document constituting that party or governing its activities; or
  - (iii) any instrument to which it is a party or which is binding on it or any of its assets, and will not result in the creation or imposition of any encumbrance or restriction of any nature on any of its assets.

### **4.2 Borrower Warranties**

The Borrower warrants to the Lender that:

- (a) it is not in default under any deed, agreement or other document or obligation to which it is a party or by which it is bound, or in respect of any financial commitment or obligation (including obligations under guarantees or other contingent liabilities);
- (b) it is in full and ongoing compliance with its constitution and all companies and securities legislation and regulations and the Borrower is in full and ongoing compliance with all other legislation and regulations to which the Borrower may at any time and from time to time be subject;
- (c) if the Evolve Shares are issued pursuant to:
  - (i) clause 3.1(a)(ii), on their allotment and issue; or
  - (ii) clause 3.2(a)(ii)(1), on their issue,the Evolve Shares will be fully paid ordinary shares and will rank equally in all respects with the then existing issued ordinary shares.

#### **4.3 Lender Warranties**

The Lender warrants and represents that:

- (a) all information given by the Lender to the Borrower is true, accurate and correct;
- (b) the Lender does not in entering into and performing its obligations under this Agreement rely on any warranty or representation made by the Borrower not otherwise set out in this Agreement; and
- (c) the Lender has obtained comprehensive legal and financial advice concerning this Agreement.

### **5. DEFAULT AND TERMINATION**

#### **5.1 Consequences of default**

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or notice, and notwithstanding any delay or previous waiver of the right to exercise that option, all of the Loan Amount immediately becomes repayable.

#### **5.2 Events of default**

Each of the following events is an Event of Default:

- (a) if the Borrower fails to repay any of the Loan Amount when due; or
- (b) if the Borrower fails to perform or observe any of the covenants or provisions of this Agreement or any other agreement, instrument or document between the Lender and Borrower; or
- (c) if the Lender ascertains that any warranty made by the Borrower under this Agreement proves to be untrue or misleading when made or deemed to have been made; or
- (d) if this Agreement becomes wholly or partly void, voidable or unenforceable; or

- (e) if the authority or power of the Borrower to perform its obligations under this Agreement is revoked or so amended that the Borrower (as the case requires) is unable to fully and duly perform and observe those obligations; or
- (f) the continued performance of the obligations of the Borrower under this Agreement contravenes, or might in the Lender's opinion contravene, any applicable statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority.

### **5.3 Acceptance of money**

The Lender may exercise its rights under clause 5.1:

- (a) notwithstanding acceptance of any part of any of the amounts payable under this Agreement after the occurrence of any Event of Default;
- (b) notwithstanding the occurrence of any previous or other Event of Default; and
- (c) without the necessity for any notice to, or of any consent or concurrence on the part of, the Borrower or any other person.

## **6. GENERAL**

### **6.1 GST**

Without limiting any other provision contained in this Agreement, should any payment to be made to or received by the Lender under this Agreement be subject to the payment of GST, as a result of the operation of the Goods and Services Tax Act 1985, the Borrower must:

- (a) pay to the Lender such further sum; and
- (b) do all things reasonably necessary,

as will result in the receipt by the Lender of the full amount (including any applicable GST) to be paid to or received by the Lender as contemplated by this Agreement.

### **6.2 Non-merger**

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### **6.3 Trust Provisions**

Where a party has executed this Agreement in its capacity as trustee of a trust (Trust), whether or not the fact that a party is a trustee is disclosed to the other party, the party that is a trustee acknowledges that this Agreement is binding on that party personally and in its capacity as trustee of the Trust.

### **6.4 Statutes not to abrogate agreement**

Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially



affect any rights, powers, remedies or discretions given or accruing to the Lender under this Agreement.

**6.5 Assignments**

The Lender may assign the benefit of this Agreement.

**6.6 Time of the essence**

Time is of the essence of the Borrower's obligations under this Agreement unless otherwise agreed in writing by the Lender.

**6.7 Prohibition on oral amendments**

Neither this Agreement nor any provision of this Agreement may be amended, modified, waived, discharged or terminated orally.

**6.8 Defective execution**

If there is any defect in the execution of this Agreement by the Borrower or the Lender, that party may re execute or ratify its purported execution. That re execution or ratification will relate back to the original purported execution by that party.

**6.9 Execution by attorney**

If this Agreement is executed on behalf of the Borrower or the Lender by a person authorised to execute it under power of attorney, that person, by his or her execution of this Agreement, states that at the time of such execution they had no notice of the revocation of that power of attorney.

**6.10 Notices**

- (a) Any notice or other communication to a party under this Agreement must be in writing and delivered personally, sent by prepaid mail, email, or sent by facsimile transmission to the recipient at the address, email address or the facsimile number appearing in Schedule 1 or such other address as may have been notified to the sender.
- (b) A notice is deemed to be received:
  - (i) if delivered personally, on the date of delivery;
  - (ii) if sent by prepaid post, 2 Business Days after posting;
  - (iii) if sent by email, when actually received in readable form by the recipient; and
  - (iv) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission report confirming receipt.

**6.11 Counterparts**

This Agreement may be executed and delivered in any number of counterparts (including by way of electronic transmission) and all counterparts taken together will be deemed to be a single instrument.

#### **6.12 Confidentiality**

- (a) The terms and conditions of this Agreement and all negotiations between the parties relating to the subject matter of this Agreement are confidential.
- (b) A party must not make any public disclosure, communication or announcement about this Agreement except with the prior written consent of the other party or to comply with accounting, legal, stock exchange or other regulatory requirements.

#### **6.13 Waiver**

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or default under this Agreement as constituting a waiver of that right, power, authority, discretion or remedy.

#### **6.14 Further Assurance**

All parties must do all things reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

#### **6.15 Severability**

If any part of this Agreement is, or becomes, legally invalid or unenforceable, the remainder of this Agreement subsists and remains enforceable.

#### **6.16 Entire Understanding**

This Agreement contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this Agreement and relating to any matter dealt with in this Agreement are merged in this Agreement and do not have any effect from the date of this Agreement.

#### **6.17 Governing Law**

- (a) This Agreement is governed by the law of New Zealand.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

***(Execution clauses follow on the next page)***

EXECUTED as an agreement

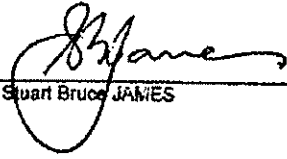
SIGNED for and on behalf of  
EVOLVE EDUCATION GROUP LIMITED )  
BY

RUSSELL DALY  
Print Name

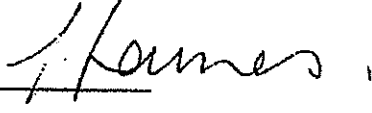
  
Signature

DIRECTOR  
Position

SIGNED by  
STUART BRUCE JAMES AS TRUSTEE  
OF THE S.B. JAMES  
SUPERANNUATION FUND

  
Stuart Bruce JAMES

SIGNED by  
GILLIAN DOREEN JAMES AS  
TRUSTEE OF THE S.B. JAMES  
SUPERANNUATION FUND

  
Gillian Doreen JAMES

## SCHEDULE 1

<b>ITEM 1:</b>	<b>LENDER:</b>	<p>Name: Stuart Bruce JAMES and Gillian Doreen JAMES as trustees of the S.B. JAMES SUPERANNUATION FUND</p> <p>Address: c/- 7 Glan Avon Road, Hawthorn, Victoria 3122, Australia</p> <p>Email: <i>(insert details)</i>.....</p> <p>Fax: <i>(insert details)</i>.....</p>
<b>ITEM 2:</b>	<b>BORROWER:</b>	<p>Name: Evolve Education Group Limited (company number 5236443)</p> <p>Address: c/- Minter Ellison Rudd Watts</p> <p>Email: Neil.Millar@minterellison.co.nz</p> <p>Fax: +64 9 353 9701</p> <p>Attention: Neil Millar</p>
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<b>ITEM 4:</b>	<b>REPAYMENT DATE:</b>	<p><b>For a Listing:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Listing Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p> <p><b>For a Third Party Sale:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Completion Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p>
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		<p>equivalent of Australian dollars \$100,000 (such rate to be based on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Listing Date on its website (or if the Listing Date has no published rate, then the published mid rate for the next Business Day), as nominated by the Borrower.</p> <p><b>For a Third Party Sale:</b> (a) Australian dollars \$100,000; or (b) the New Zealand dollar equivalent of Australian dollars \$100,000 (such rate to be based on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Completion Date on its website (or if the Completion Date has no published rate, then the published mid rate for the next Business Day).</p>
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Dated

23 October

2014

## **LOAN AGREEMENT**

between

**KERN GROUP NZ LIMITED**

and

**EVOLVE EDUCATION GROUP LIMITED**

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## AND

- (2) The party named at Item 2 of Schedule 1 (the "**Borrower**")

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- B. The Lender and the Borrower have agreed to enter into this Agreement to set out the terms and conditions of the Loan.

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**Insolvency Event** means, in relation to a party, the occurrence of any of the following events:

- (a) that party ceases or threatens to cease to carry on all or any material part of its business or operations;
- (b) an application is made (which is not stayed or dismissed within 10 Business Days of being made) to a court for an order, or an order is made, or an effective resolution is passed or legal proceedings issued (other than a vexatious or frivolous proceeding), or any corporate action is taken, notice is given or other step is taken for the dissolution or reorganisation of that party except for the purpose of, and followed by, a solvent reconstruction, merger,



consolidation or voluntary liquidation on terms approved by the other party before that step is taken;

- (c) that party convenes a meeting for the purpose of making, or proposes to enter into, any general assignment, arrangement, compromise or composition with or for the benefit of any of its creditors with a view to avoiding insolvency or a notice of intention to remove it from the register (on which the party is legally registered to carry on business, or an equivalent or analogous procedure under the law of any jurisdiction in which the party is incorporated, domiciled, resident, carries on business or has assets) is given, in each case except for the purpose of, and followed by, a solvent reconstruction, merger, consolidation or voluntary liquidation previously approved in writing by the other party or an equivalent or analogous procedure under the law of any jurisdiction in which the party is incorporated, domiciled, resident, carries on business or has assets);
- (d) an encumbrancer takes possession, or a trustee, receiver, receiver and manager, administrator, liquidator, provisional liquidator, inspector under any companies or securities legislation, or similar official, is appointed in respect of that party or the whole or any material part of its assets, or steps are taken or threatened with a view to any such appointment;
- (e) an attachment or other execution is levied or enforced upon, or commenced against, any assets of that party and is not discharged or stayed within 10 Business Days, except, in each case, where the other party is satisfied that that party is contesting the same in good faith by appropriate proceedings;
- (f) that party is declared or becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable legislation;
- (g) that party suspends or stops or threatens to suspend or stop payments generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness;
- (h) that party seeks or obtains protection from its creditors under any statute or any other law;
- (i) that party is declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989;
- (j) a statutory or judicial manager is appointed over all or any of the assets of that party;
- (k) any recommendation is made by the Securities Commission to the Minister of Justice or, as the case may be, the Minister of Finance that that party or any associated person of that party be placed in statutory management under the Corporations (Investigation and Management) Act 1989; or
- (l) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (k) above happens under the laws of any applicable jurisdiction in respect of that party.

**IPO Price** means the issue price for Evolve Shares set out in the Offer Document (if applicable) or otherwise set out in the allotment notice to the NZX and/or ASX (as applicable) on and in conjunction with Listing.

**Listing** means admission of the Borrower to:

- (a) the NZX and quotation of Evolve Shares on the NZX Main Board; or
- (b) the NZAX and quotation of Evolve Shares on the NZAX; and/or
- (c) the official list of ASX and granting of quotation of the Evolve Shares.

**Listing Date** means the date that the Listing occurs.

**Loan** means the provision of the Loan Amount to the Borrower by the Lender.

**Loan Amount** means the amount described in Item 3 of Schedule 1.

**Loan Date** means the date specified in Item 5 of Schedule 1.

**NZAX** means the alternative market operated by NZX.

**NZX** means NZX Limited also known as the New Zealand Stock Exchange.

**NZX Main Board** means the main board equity security market, operated by NZX.

**Offer Document** means the investment statement and prospectus (or product disclosure statements or equivalent documents) to the public offer of Evolve Shares.

**Repayment Date** means, subject to the provisions of clause 3.2, the date specified in Item 4 of Schedule 1.

**Return Amount** means the amount set out in Item 8 of Schedule 1 (as it applies either to a Listing or a Third Party Sale).

**Sale Price** means the final sale price for shares or assets in the Borrower (calculated as a price per share) determined in accordance with the terms and conditions of the SPA.

**SPA** means, in respect of a Third Party Sale, the sale and purchase agreement for shares or assets in the Borrower between: (i) if a share sale, the shareholders of the Borrower; or (ii) if an asset sale, the Borrower, and a third party purchaser.

**Sunset Date** means the date specified in Item 6 of Schedule 1.

**Third Party Sale** means completion of the sale of all of the shares or all (or substantially all) of the assets of the Borrower to a third party purchaser as part of a transaction or series of transactions.

## 1.2 Interpretation

Unless expressed to the contrary:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where an expression is defined anywhere in this Agreement another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to:
  - (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;

- (ii) any gender includes all genders;
- (iii) the singular includes the plural and vice versa;
- (iv) recitals, clauses, schedules or annexures are to recitals, clauses, schedules or annexures of or to this Agreement;
- (v) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
- (vi) unless otherwise stated, money is to New Zealand currency;
- (vii) this Agreement or another document includes the document as varied or replaced; and
- (viii) any party to this Agreement, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.

## **2. LOAN**

### **2.1 Loan**

- (a) The Lender agrees to advance the Loan Amount to the Borrower on the Loan Date.
- (b) For the purposes of clause 2.1(a), the Loan Amount must be advanced by the Lender:
  - (i) by way of direct deposit into a bank account to be nominated by the Borrower; and
  - (ii) in Australian dollars in immediately available funds,
 by no later than 12 noon New Zealand time on the Loan Date.

### **2.2 Interest and Security**

The parties agree that the Loan under this Agreement is to be made on an unsecured and interest free basis.

## **3. REPAYMENT**

### **3.1 Repayment in the event of a Listing by the Sunset Date**

- (a) If a Listing occurs in respect of the Borrower on or before the Sunset Date, then:
  - (i) the Borrower must repay and finally discharge the Loan Amount in full:
    - (1) by way of direct deposit into a bank account to be nominated by the Lender; and
    - (2) in Australian dollars in immediately available funds,
 by no later than 12 noon New Zealand time on the Repayment Date; and
  - (ii) the Borrower must, either:
    - (1) on the Repayment Date, pay the Return Amount to the Lender by issue and allotment of an equivalent amount of Evolve Shares (rounded to the nearest whole number of Evolve Shares) at the IPO Price; or

- (2) by no later than 12 noon on the Repayment Date, pay an amount equivalent to the Loan Amount by way of direct deposit into a bank account to be nominated by the Lender in Australian dollars and in immediately available funds,

the Borrower being entitled to nominate the method of payment in (ii) above in its sole discretion.

### **3.2 Repayment in the event of a Third Party Sale by the Sunset Date**

- (a) If no Listing occurs before the Sunset Date but alternatively a Third Party Sale occurs in respect of the Borrower on or before the Sunset Date, then:

- (i) the Borrower must repay and finally discharge the Loan Amount in full:

- (1) by way of direct deposit into a bank account to be nominated by the Lender; and

- (2) in Australian dollars in immediately available funds,

by no later than 12 noon New Zealand time on the Repayment Date; and

- (ii) the Borrower must, either:

- (1) if all of the consideration for the sale is to be paid in the form of shares in the purchaser (or the purchaser's related company) pay the Return Amount to the Lender prior to the Completion Date, by issuing to the Lender an equivalent amount of Evolve Shares (rounded to the nearest whole number of Evolve Shares) at the Sale Price on the condition that the Lender agrees to adhere to and sell those recently acquired Evolve Shares under the terms of the SPA; or

- (2) by no later than 12 noon on the Repayment Date, pay an amount equivalent to the Loan Amount by way of direct deposit into a bank account to be nominated by the Lender in Australian dollars and in immediately available funds,

the Lender being entitled to nominate the method of payment in (ii) above in its sole discretion provided that where it is not practical or possible without breaching any law or agreement to issue Evolve Shares to the Lender prior to the Completion Date in accordance with paragraph (1) above (for example, the issue of Evolve Shares would adversely affect the Borrower's ability to complete the Third Party Sale on terms acceptable to the Borrower) that option shall not be available to the Lender.

### **3.3 Discharge of obligations**

The Lender acknowledges and agrees that following satisfaction of the Borrower's obligations under clause 3.1(a) or 3.2(a), the Borrower is immediately released and discharged from all obligations and liability of any nature under or in connection with repayment of the Loan Amount or any other debt or liability owed by the Borrower to the Lender under this Agreement.

### **3.4 Repayment in the event of no Listing and no Third Party Sale by the Sunset Date**

If neither a Listing nor a Third Party Sale has not occurred in respect of the Borrower on or before the Sunset Date, then:

- (a) the Lender waives repayment of the Loan Amount;

- (b) the Loan Amount vests absolutely in the Borrower; and
- (c) the Lender acknowledges and agrees that the Borrower is immediately released and discharged from all obligations and liability of any nature under or in connection with repayment of the Loan Amount or any other debt or liability owed by the Borrower to the Lender under this Agreement.

### **3.5 Borrower's Undertaking**

For as long as the Loan Amount remains outstanding under this Agreement to the Lender, the Borrower undertakes with the Lender as follows:

- (a) until such time as it is no longer practical, commercially viable or reasonably sensible to do so, the Borrower will use all means commercially reasonable to pursue a strategy of contracting to acquire child care businesses with a view to achieving a Listing, or alternatively a Third Party Sale, of the Borrower by the Sunset Date;
- (b) to apply the Loan for the Approved Purpose only;
- (c) to immediately notify the Lender of any event or change in the Borrower's circumstances, the effect of which either would or might render any representation or warranty made in this Agreement untrue or incorrect in any respect; and
- (d) to immediately deliver all financial and other information in respect of the Borrower which the Lender reasonably requires from time to time.

## **4. WARRANTIES**

### **4.1 Mutual Warranties**

Each party warrants to each other party, at the date of this Agreement and at the Repayment Date, that:

- (a) it has the power and authority to enter into and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement by it will constitute legal, valid and binding obligations of it, enforceable in accordance with its terms;
- (c) it is not subject to any Insolvency Event; and
- (d) the execution, delivery and performance of this Agreement will not violate:
  - (i) any legislation or rule of law or regulation, authorisation, consent or any order or decree of any governmental authority to which it may from time to time be subject;
  - (ii) its constitution or any legislation, rules or other document constituting that party or governing its activities; or
  - (iii) any instrument to which it is a party or which is binding on it or any of its assets, and will not result in the creation or imposition of any encumbrance or restriction of any nature on any of its assets.

### **4.2 Borrower Warranties**

The Borrower warrants to the Lender that:

- (a) it is not in default under any deed, agreement or other document or obligation to which it is a party or by which it is bound, or in respect of any financial commitment or obligation (including obligations under guarantees or other contingent liabilities);
- (b) it is in full and ongoing compliance with its constitution and all companies and securities legislation and regulations and the Borrower is in full and ongoing compliance with all other legislation and regulations to which the Borrower may at any time and from time to time be subject;
- (c) if the Evolve Shares are issued pursuant to:
  - (i) clause 3.1(a)(ii), on their allotment and issue; or
  - (ii) clause 3.2(a)(ii)(1), on their issue,the Evolve Shares will be fully paid ordinary shares and will rank equally in all respects with the then existing issued ordinary shares.

#### **4.3 Lender Warranties**

The Lender warrants and represents that:

- (a) all information given by the Lender to the Borrower is true, accurate and correct;
- (b) the Lender does not in entering into and performing its obligations under this Agreement rely on any warranty or representation made by the Borrower not otherwise set out in this Agreement; and
- (c) the Lender has obtained comprehensive legal and financial advice concerning this Agreement.

### **5. DEFAULT AND TERMINATION**

#### **5.1 Consequences of default**

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or notice, and notwithstanding any delay or previous waiver of the right to exercise that option, all of the Loan Amount immediately becomes repayable.

#### **5.2 Events of default**

Each of the following events is an Event of Default:

- (a) if the Borrower fails to repay any of the Loan Amount when due; or
- (b) if the Borrower fails to perform or observe any of the covenants or provisions of this Agreement or any other agreement, instrument or document between the Lender and Borrower; or
- (c) if the Lender ascertains that any warranty made by the Borrower under this Agreement proves to be untrue or misleading when made or deemed to have been made; or
- (d) if this Agreement becomes wholly or partly void, voidable or unenforceable; or

- (e) if the authority or power of the Borrower to perform its obligations under this Agreement is revoked or so amended that the Borrower (as the case requires) is unable to fully and duly perform and observe those obligations; or
- (f) the continued performance of the obligations of the Borrower under this Agreement contravenes, or might in the Lender's opinion contravene, any applicable statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority.

### **5.3 Acceptance of money**

The Lender may exercise its rights under clause 5.1:

- (a) notwithstanding acceptance of any part of any of the amounts payable under this Agreement after the occurrence of any Event of Default;
- (b) notwithstanding the occurrence of any previous or other Event of Default; and
- (c) without the necessity for any notice to, or of any consent or concurrence on the part of, the Borrower or any other person.

## **6. GENERAL**

### **6.1 GST**

Without limiting any other provision contained in this Agreement, should any payment to be made to or received by the Lender under this Agreement be subject to the payment of GST, as a result of the operation of the Goods and Services Tax Act 1985, the Borrower must:

- (a) pay to the Lender such further sum; and
- (b) do all things reasonably necessary,

as will result in the receipt by the Lender of the full amount (including any applicable GST) to be paid to or received by the Lender as contemplated by this Agreement.

### **6.2 Non-merger**

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### **6.3 Trust Provisions**

Where a party has executed this Agreement in its capacity as trustee of a trust (Trust), whether or not the fact that a party is a trustee is disclosed to the other party, the party that is a trustee acknowledges that this Agreement is binding on that party personally and in its capacity as trustee of the Trust.

### **6.4 Statutes not to abrogate agreement**

Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially

affect any rights, powers, remedies or discretions given or accruing to the Lender under this Agreement.

**6.5 Assignments**

The Lender may assign the benefit of this Agreement.

**6.6 Time of the essence**

Time is of the essence of the Borrower's obligations under this Agreement unless otherwise agreed in writing by the Lender.

**6.7 Prohibition on oral amendments**

Neither this Agreement nor any provision of this Agreement may be amended, modified, waived, discharged or terminated orally.

**6.8 Defective execution**

If there is any defect in the execution of this Agreement by the Borrower or the Lender, that party may re execute or ratify its purported execution. That re execution or ratification will relate back to the original purported execution by that party.

**6.9 Execution by attorney**

If this Agreement is executed on behalf of the Borrower or the Lender by a person authorised to execute it under power of attorney, that person, by his or her execution of this Agreement, states that at the time of such execution they had no notice of the revocation of that power of attorney.

**6.10 Notices**

- (a) Any notice or other communication to a party under this Agreement must be in writing and delivered personally, sent by prepaid mail, email, or sent by facsimile transmission to the recipient at the address, email address or the facsimile number appearing in Schedule 1 or such other address as may have been notified to the sender.
- (b) A notice is deemed to be received:
  - (i) if delivered personally, on the date of delivery;
  - (ii) if sent by prepaid post, 2 Business Days after posting;
  - (iii) if sent by email, when actually received in readable form by the recipient; and
  - (iv) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission report confirming receipt.

**6.11 Counterparts**

This Agreement may be executed and delivered in any number of counterparts (including by way of electronic transmission) and all counterparts taken together will be deemed to be a single instrument.



#### **6.12 Confidentiality**

- (a) The terms and conditions of this Agreement and all negotiations between the parties relating to the subject matter of this Agreement are confidential.
- (b) A party must not make any public disclosure, communication or announcement about this Agreement except with the prior written consent of the other party or to comply with accounting, legal, stock exchange or other regulatory requirements.

#### **6.13 Waiver**

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or default under this Agreement as constituting a waiver of that right, power, authority, discretion or remedy.

#### **6.14 Further Assurance**

All parties must do all things reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

#### **6.15 Severability**

If any part of this Agreement is, or becomes, legally invalid or unenforceable, the remainder of this Agreement subsists and remains enforceable.

#### **6.16 Entire Understanding**

This Agreement contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this Agreement and relating to any matter dealt with in this Agreement are merged in this Agreement and do not have any effect from the date of this Agreement.

#### **6.17 Governing Law**

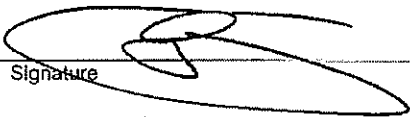
- (a) This Agreement is governed by the law of New Zealand.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

***(Execution clauses follow on the next page)***

EXECUTED as an agreement


SIGNED for and on behalf of )  
EVOLVE EDUCATION GROUP LIMITED )  
by )

Wissen Dany  
Print Name

  
Signature  
DIRECTOR  
Position

SIGNED for and on behalf of )  
KERN GROUP NZ LIMITED by )  
)

GREG KERN  
Print Name

  
Signature  
DIRECTOR  
Position

## SCHEDULE 1

ITEM 1:	LENDER:	<p>Name: Kern Group NZ Limited</p> <p>Address: Level 18, PricewaterhouseCoopers Tower, 188 Quay Street, Auckland Central, Auckland, 1010 , New Zealand</p> <p>Email: <i>(insert details)</i>.....</p> <p>Fax: <i>(insert details)</i>.....</p>
ITEM 2:	BORROWER:	<p>Name: Evolve Education Group Limited (company number 5236443)</p> <p>Address: c/- Minter Ellison Rudd Watts</p> <p>Email: Neil.Millar@minterellison.co.nz</p> <p>Fax: +64 9 353 9701</p> <p>Attention: Neil Millar</p>
ITEM 3:	LOAN AMOUNT:	Australian dollars \$100,000
ITEM 4:	REPAYMENT DATE:	<p><b>For a Listing:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Listing Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p> <p><b>For a Third Party Sale:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Completion Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p>
ITEM 5:	LOAN DATE:	The date that is 2 Business Days after the date of this Agreement.
ITEM 6:	SUNSET DATE:	31 March 2015
ITEM 7:	APPROVED PURPOSE:	The Loan Amount may be used by the Borrower to pay for any costs relating to the acquisition of child care businesses by the Borrower and the Borrower seeking a Listing, or alternatively a Third Party Sale.
ITEM 8:	RETURN AMOUNT:	<p>For a Listing:</p> <p>(a) Australian dollars \$100,000; or (b) the New Zealand dollar equivalent of Australian dollars \$100,000 (such rate to be based</p>

		<p>on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Listing Date on its website (or if the Listing Date has no published rate, then the published mid rate for the next Business Day), as nominated by the Borrower.</p> <p><b>For a Third Party Sale:</b> (a) Australian dollars \$100,000; or (b) the New Zealand dollar equivalent of Australian dollars \$100,000 (such rate to be based on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Completion Date on its website (or if the Completion Date has no published rate, then the published mid rate for the next Business Day)).</p>
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Dated

7 November

2014

## **LOAN AGREEMENT**

between

**KERN GROUP NZ LIMITED**

and

**EVOLVE EDUCATION GROUP LIMITED**

CONTENTS

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## PARTIES

- (1) The parties named at Item 1 of Schedule 1 (together the "**Lender**")

## AND

- (2) The party named at Item 2 of Schedule 1 (the "**Borrower**")

## BACKGROUND

- A. The Lender has agreed, at the request of the Borrower, to provide a Loan to the Borrower for the Loan Amount.
- B. The Lender and the Borrower have agreed to enter into this Agreement to set out the terms and conditions of the Loan.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

In this document:

**Approved Purpose** means the purpose described in Item 7 of Schedule 1.

**Agreement** means this document and any schedules and annexures to it.

**ASX** means ASX Limited.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Auckland, New Zealand.

**Completion Date** means the date of completion of the Third Party Sale.

**Evolve Shares** means fully paid ordinary shares in the Borrower.

**Event of Default** means any of the events, omissions or occurrence specified in clause 5.2.

**Insolvency Event** means, in relation to a party, the occurrence of any of the following events:

- (a) that party ceases or threatens to cease to carry on all or any material part of its business or operations;
- (b) an application is made (which is not stayed or dismissed within 10 Business Days of being made) to a court for an order, or an order is made, or an effective resolution is passed or legal proceedings issued (other than a vexatious or frivolous proceeding), or any corporate action is taken, notice is given or other step is taken for the dissolution or reorganisation of that party except for the purpose of, and followed by, a solvent reconstruction, merger,

consolidation or voluntary liquidation on terms approved by the other party before that step is taken;

- (c) that party convenes a meeting for the purpose of making, or proposes to enter into, any general assignment, arrangement, compromise or composition with or for the benefit of any of its creditors with a view to avoiding insolvency or a notice of intention to remove it from the register (on which the party is legally registered to carry on business, or an equivalent or analogous procedure under the law of any jurisdiction in which the party is incorporated, domiciled, resident, carries on business or has assets) is given, in each case except for the purpose of, and followed by, a solvent reconstruction, merger, consolidation or voluntary liquidation previously approved in writing by the other party or an equivalent or analogous procedure under the law of any jurisdiction in which the party is incorporated, domiciled, resident, carries on business or has assets);
- (d) an encumbrancer takes possession, or a trustee, receiver, receiver and manager, administrator, liquidator, provisional liquidator, inspector under any companies or securities legislation, or similar official, is appointed in respect of that party or the whole or any material part of its assets, or steps are taken or threatened with a view to any such appointment;
- (e) an attachment or other execution is levied or enforced upon, or commenced against, any assets of that party and is not discharged or stayed within 10 Business Days, except, in each case, where the other party is satisfied that that party is contesting the same in good faith by appropriate proceedings;
- (f) that party is declared or becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable legislation;
- (g) that party suspends or stops or threatens to suspend or stop payments generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness;
- (h) that party seeks or obtains protection from its creditors under any statute or any other law;
- (i) that party is declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989;
- (j) a statutory or judicial manager is appointed over all or any of the assets of that party;
- (k) any recommendation is made by the Securities Commission to the Minister of Justice or, as the case may be, the Minister of Finance that that party or any associated person of that party be placed in statutory management under the Corporations (Investigation and Management) Act 1989; or
- (l) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (k) above happens under the laws of any applicable jurisdiction in respect of that party.

**IPO Price** means the issue price for Evolve Shares set out in the Offer Document (if applicable) or otherwise set out in the allotment notice to the NZX and/or ASX (as applicable) on and in conjunction with Listing.



**Listing** means admission of the Borrower to:

- (a) the NZX and quotation of Evolve Shares on the NZX Main Board; or
- (b) the NZAX and quotation of Evolve Shares on the NZAX; and/or
- (c) the official list of ASX and granting of quotation of the Evolve Shares.

**Listing Date** means the date that the Listing occurs.

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**NZX** means NZX Limited also known as the New Zealand Stock Exchange.

**NZX Main Board** means the main board equity security market, operated by NZX.

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**Sale Price** means the final sale price for shares or assets in the Borrower (calculated as a price per share) determined in accordance with the terms and conditions of the SPA.

**SPA** means, in respect of a Third Party Sale, the sale and purchase agreement for shares or assets in the Borrower between: (i) if a share sale, the shareholders of the Borrower; or (ii) if an asset sale, the Borrower, and a third party purchaser.

**Sunset Date** means the date specified in Item 6 of Schedule 1.

**Third Party Sale** means completion of the sale of all of the shares or all (or substantially all) of the assets of the Borrower to a third party purchaser as part of a transaction or series of transactions.

## 1.2 Interpretation

Unless expressed to the contrary:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where an expression is defined anywhere in this Agreement another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to:
  - (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;

- (ii) any gender includes all genders;
- (iii) the singular includes the plural and vice versa;
- (iv) recitals, clauses, schedules or annexures are to recitals, clauses, schedules or annexures of or to this Agreement;
- (v) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
- (vi) unless otherwise stated, money is to New Zealand currency;
- (vii) this Agreement or another document includes the document as varied or replaced; and
- (viii) any party to this Agreement, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.

## **2. LOAN**

### **2.1 Loan**

- (a) The Lender agrees to advance the Loan Amount to the Borrower on the Loan Date.
- (b) For the purposes of clause 2.1(a), the Loan Amount must be advanced by the Lender:
  - (i) by way of direct deposit into a bank account to be nominated by the Borrower; and
  - (ii) in Australian dollars in immediately available funds,
 by no later than 12 noon New Zealand time on the Loan Date.

### **2.2 Interest and Security**

The parties agree that the Loan under this Agreement is to be made on an unsecured and interest free basis.

## **3. REPAYMENT**

### **3.1 Repayment in the event of a Listing by the Sunset Date**

- (a) If a Listing occurs in respect of the Borrower on or before the Sunset Date, then:
  - (i) the Borrower must repay and finally discharge the Loan Amount in full:
    - (1) by way of direct deposit into a bank account to be nominated by the Lender; and
    - (2) in Australian dollars in immediately available funds,
 by no later than 12 noon New Zealand time on the Repayment Date; and
  - (ii) the Borrower must, either:
    - (1) on the Repayment Date, pay the Return Amount to the Lender by issue and allotment of an equivalent amount of Evolve Shares (rounded to the nearest whole number of Evolve Shares) at the IPO Price; or

- (2) by no later than 12 noon on the Repayment Date, pay an amount equivalent to the Loan Amount by way of direct deposit into a bank account to be nominated by the Lender in Australian dollars and in immediately available funds,

the Borrower being entitled to nominate the method of payment in (ii) above in its sole discretion.

### **3.2 Repayment in the event of a Third Party Sale by the Sunset Date**

- (a) If no Listing occurs before the Sunset Date but alternatively a Third Party Sale occurs in respect of the Borrower on or before the Sunset Date, then:

- (i) the Borrower must repay and finally discharge the Loan Amount in full:

- (1) by way of direct deposit into a bank account to be nominated by the Lender; and

- (2) in Australian dollars in immediately available funds,

by no later than 12 noon New Zealand time on the Repayment Date; and

- (ii) the Borrower must, either:

- (1) if all of the consideration for the sale is to be paid in the form of shares in the purchaser (or the purchaser's related company) pay the Return Amount to the Lender prior to the Completion Date, by issuing to the Lender an equivalent amount of Evolve Shares (rounded to the nearest whole number of Evolve Shares) at the Sale Price on the condition that the Lender agrees to adhere to and sell those recently acquired Evolve Shares under the terms of the SPA; or

- (2) by no later than 12 noon on the Repayment Date, pay an amount equivalent to the Loan Amount by way of direct deposit into a bank account to be nominated by the Lender in Australian dollars and in immediately available funds,

the Lender being entitled to nominate the method of payment in (ii) above in its sole discretion provided that where it is not practical or possible without breaching any law or agreement to issue Evolve Shares to the Lender prior to the Completion Date in accordance with paragraph (1) above (for example, the issue of Evolve Shares would adversely affect the Borrower's ability to complete the Third Party Sale on terms acceptable to the Borrower) that option shall not be available to the Lender.

### **3.3 Discharge of obligations**

The Lender acknowledges and agrees that following satisfaction of the Borrower's obligations under clause 3.1(a) or 3.2(a), the Borrower is immediately released and discharged from all obligations and liability of any nature under or in connection with repayment of the Loan Amount or any other debt or liability owed by the Borrower to the Lender under this Agreement.

### **3.4 Repayment in the event of no Listing and no Third Party Sale by the Sunset Date**

If neither a Listing nor a Third Party Sale has not occurred in respect of the Borrower on or before the Sunset Date, then:

- (a) the Lender waives repayment of the Loan Amount;

- (b) the Loan Amount vests absolutely in the Borrower; and
- (c) the Lender acknowledges and agrees that the Borrower is immediately released and discharged from all obligations and liability of any nature under or in connection with repayment of the Loan Amount or any other debt or liability owed by the Borrower to the Lender under this Agreement.

### **3.5 Borrower's Undertaking**

For as long as the Loan Amount remains outstanding under this Agreement to the Lender, the Borrower undertakes with the Lender as follows:

- (a) until such time as it is no longer practical, commercially viable or reasonably sensible to do so, the Borrower will use all means commercially reasonable to pursue a strategy of contracting to acquire child care businesses with a view to achieving a Listing, or alternatively a Third Party Sale, of the Borrower by the Sunset Date;
- (b) to apply the Loan for the Approved Purpose only;
- (c) to immediately notify the Lender of any event or change in the Borrower's circumstances, the effect of which either would or might render any representation or warranty made in this Agreement untrue or incorrect in any respect; and
- (d) to immediately deliver all financial and other information in respect of the Borrower which the Lender reasonably requires from time to time.

## **4. WARRANTIES**

### **4.1 Mutual Warranties**

Each party warrants to each other party, at the date of this Agreement and at the Repayment Date, that:

- (a) it has the power and authority to enter into and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement by it will constitute legal, valid and binding obligations of it, enforceable in accordance with its terms;
- (c) it is not subject to any Insolvency Event; and
- (d) the execution, delivery and performance of this Agreement will not violate:
  - (i) any legislation or rule of law or regulation, authorisation, consent or any order or decree of any governmental authority to which it may from time to time be subject;
  - (ii) its constitution or any legislation, rules or other document constituting that party or governing its activities; or
  - (iii) any instrument to which it is a party or which is binding on it or any of its assets,
 and will not result in the creation or imposition of any encumbrance or restriction of any nature on any of its assets.

### **4.2 Borrower Warranties**

The Borrower warrants to the Lender that:

- (a) it is not in default under any deed, agreement or other document or obligation to which it is a party or by which it is bound, or in respect of any financial commitment or obligation (including obligations under guarantees or other contingent liabilities);
- (b) it is in full and ongoing compliance with its constitution and all companies and securities legislation and regulations and the Borrower is in full and ongoing compliance with all other legislation and regulations to which the Borrower may at any time and from time to time be subject;
- (c) if the Evolve Shares are issued pursuant to:
  - (i) clause 3.1(a)(ii), on their allotment and issue; or
  - (ii) clause 3.2(a)(ii)(1), on their issue,the Evolve Shares will be fully paid ordinary shares and will rank equally in all respects with the then existing issued ordinary shares.

#### **4.3 Lender Warranties**

The Lender warrants and represents that:

- (a) all information given by the Lender to the Borrower is true, accurate and correct;
- (b) the Lender does not in entering into and performing its obligations under this Agreement rely on any warranty or representation made by the Borrower not otherwise set out in this Agreement; and
- (c) the Lender has obtained comprehensive legal and financial advice concerning this Agreement.

### **5. DEFAULT AND TERMINATION**

#### **5.1 Consequences of default**

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or notice, and notwithstanding any delay or previous waiver of the right to exercise that option, all of the Loan Amount immediately becomes repayable.

#### **5.2 Events of default**

Each of the following events is an Event of Default:

- (a) if the Borrower fails to repay any of the Loan Amount when due; or
- (b) if the Borrower fails to perform or observe any of the covenants or provisions of this Agreement or any other agreement, instrument or document between the Lender and Borrower; or
- (c) if the Lender ascertains that any warranty made by the Borrower under this Agreement proves to be untrue or misleading when made or deemed to have been made; or
- (d) if this Agreement becomes wholly or partly void, voidable or unenforceable; or

- (e) if the authority or power of the Borrower to perform its obligations under this Agreement is revoked or so amended that the Borrower (as the case requires) is unable to fully and duly perform and observe those obligations; or
- (f) the continued performance of the obligations of the Borrower under this Agreement contravenes, or might in the Lender's opinion contravene, any applicable statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority.

### **5.3 Acceptance of money**

The Lender may exercise its rights under clause 5.1:

- (a) notwithstanding acceptance of any part of any of the amounts payable under this Agreement after the occurrence of any Event of Default;
- (b) notwithstanding the occurrence of any previous or other Event of Default; and
- (c) without the necessity for any notice to, or of any consent or concurrence on the part of, the Borrower or any other person.

## **6. GENERAL**

### **6.1 GST**

Without limiting any other provision contained in this Agreement, should any payment to be made to or received by the Lender under this Agreement be subject to the payment of GST, as a result of the operation of the Goods and Services Tax Act 1985, the Borrower must:

- (a) pay to the Lender such further sum; and
- (b) do all things reasonably necessary,

as will result in the receipt by the Lender of the full amount (including any applicable GST) to be paid to or received by the Lender as contemplated by this Agreement.

### **6.2 Non-merger**

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### **6.3 Trust Provisions**

Where a party has executed this Agreement in its capacity as trustee of a trust (Trust), whether or not the fact that a party is a trustee is disclosed to the other party, the party that is a trustee acknowledges that this Agreement is binding on that party personally and in its capacity as trustee of the Trust.

### **6.4 Statutes not to abrogate agreement**

Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially

affect any rights, powers, remedies or discretions given or accruing to the Lender under this Agreement.

**6.5 Assignments**

The Lender may assign the benefit of this Agreement.

**6.6 Time of the essence**

Time is of the essence of the Borrower's obligations under this Agreement unless otherwise agreed in writing by the Lender.

**6.7 Prohibition on oral amendments**

Neither this Agreement nor any provision of this Agreement may be amended, modified, waived, discharged or terminated orally.

**6.8 Defective execution**

If there is any defect in the execution of this Agreement by the Borrower or the Lender, that party may re execute or ratify its purported execution. That re execution or ratification will relate back to the original purported execution by that party.

**6.9 Execution by attorney**

If this Agreement is executed on behalf of the Borrower or the Lender by a person authorised to execute it under power of attorney, that person, by his or her execution of this Agreement, states that at the time of such execution they had no notice of the revocation of that power of attorney.

**6.10 Notices**

- (a) Any notice or other communication to a party under this Agreement must be in writing and delivered personally, sent by prepaid mail, email, or sent by facsimile transmission to the recipient at the address, email address or the facsimile number appearing in Schedule 1 or such other address as may have been notified to the sender.
- (b) A notice is deemed to be received:
  - (i) if delivered personally, on the date of delivery;
  - (ii) if sent by prepaid post, 2 Business Days after posting;
  - (iii) if sent by email, when actually received in readable form by the recipient; and
  - (iv) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission report confirming receipt.

**6.11 Counterparts**

This Agreement may be executed and delivered in any number of counterparts (including by way of electronic transmission) and all counterparts taken together will be deemed to be a single instrument.

#### **6.12 Confidentiality**

- (a) The terms and conditions of this Agreement and all negotiations between the parties relating to the subject matter of this Agreement are confidential.
- (b) A party must not make any public disclosure, communication or announcement about this Agreement except with the prior written consent of the other party or to comply with accounting, legal, stock exchange or other regulatory requirements.

#### **6.13 Waiver**

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or default under this Agreement as constituting a waiver of that right, power, authority, discretion or remedy.

#### **6.14 Further Assurance**

All parties must do all things reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

#### **6.15 Severability**

If any part of this Agreement is, or becomes, legally invalid or unenforceable, the remainder of this Agreement subsists and remains enforceable.

#### **6.16 Entire Understanding**

This Agreement contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this Agreement and relating to any matter dealt with in this Agreement are merged in this Agreement and do not have any effect from the date of this Agreement.

#### **6.17 Governing Law**

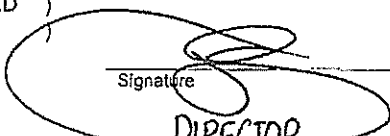
- (a) This Agreement is governed by the law of New Zealand.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

***(Execution clauses follow on the next page)***



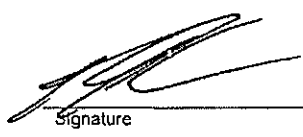
EXECUTED as an agreement

SIGNED for and on behalf of  
EVOLVE EDUCATION GROUP LIMITED  
by

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)  
)  
Signature   
\_\_\_\_\_  
Position DIRECTOR  
\_\_\_\_\_

RUSSELL DALY  
\_\_\_\_\_  
Print Name

SIGNED for and on behalf of  
KERN GROUP NZ LIMITED by

)  
)  
)  
Signature   
\_\_\_\_\_  
Position DIRECTOR  
\_\_\_\_\_

GREG KERN  
\_\_\_\_\_  
Print Name

## SCHEDULE 1

<b>ITEM 1:</b>	<b>LENDER:</b>	<p>Name: Kern Group NZ Limited</p> <p>Address: Level 18, PricewaterhouseCoopers Tower, 188 Quay Street, Auckland Central, Auckland, 1010 , New Zealand</p> <p>Email: <i>(insert details)</i>.....</p> <p>Fax: <i>(insert details)</i>.....</p>
<b>ITEM 2:</b>	<b>BORROWER:</b>	<p>Name: Evolve Education Group Limited (company number 5236443)</p> <p>Address: c/- Minter Ellison Rudd Watts</p> <p>Email: Neil.Millar@minterellison.co.nz</p> <p>Fax: +64 9 353 9701</p> <p>Attention: Neil Millar</p>
<b>ITEM 3:</b>	<b>LOAN AMOUNT:</b>	Australian dollars \$100,000
<b>ITEM 4:</b>	<b>REPAYMENT DATE:</b>	<p><b>For a Listing:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Listing Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p> <p><b>For a Third Party Sale:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Completion Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p>
<b>ITEM 5:</b>	<b>LOAN DATE:</b>	The date that is 2 Business Days after the date of this Agreement.
<b>ITEM 6:</b>	<b>SUNSET DATE:</b>	31 March 2015
<b>ITEM 7:</b>	<b>APPROVED PURPOSE:</b>	The Loan Amount may be used by the Borrower to pay for any costs relating to the acquisition of child care businesses by the Borrower and the Borrower seeking a Listing, or alternatively a Third Party Sale.
<b>ITEM 8:</b>	<b>RETURN AMOUNT:</b>	<p>For a Listing:</p> <p>(a) Australian dollars \$100,000; or (b) the New Zealand dollar equivalent of Australian dollars \$100,000 (such rate to be based</p>

		<p>on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Listing Date on its website (or if the Listing Date has no published rate, then the published mid rate for the next Business Day), as nominated by the Borrower.</p> <p><b>For a Third Party Sale:</b> (a) Australian dollars \$100,000; or (b) the New Zealand dollar equivalent of Australian dollars \$100,000 (such rate to be based on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Completion Date on its website (or if the Completion Date has no published rate, then the published mid rate for the next Business Day)).</p>
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Dated

28 October

2014

## **LOAN AGREEMENT**

between

**WRAITH CAPITAL GROUP NZ LIMITED**

and

**EVOLVE EDUCATION GROUP LIMITED**

**CONTENTS**

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## **PARTIES**

- (1) The parties named at Item 1 of Schedule 1 (together the "**Lender**")

## **AND**

- (2) The party named at Item 2 of Schedule 1 (the "**Borrower**")

## **BACKGROUND**

- A. The Lender has agreed, at the request of the Borrower, to provide a Loan to the Borrower for the Loan Amount.
- B. The Lender and the Borrower have agreed to enter into this Agreement to set out the terms and conditions of the Loan.

## **AGREEMENT**

### **1. DEFINITIONS AND INTERPRETATIONS**

#### **1.1 Definitions**

In this document:

**Approved Purpose** means the purpose described in Item 7 of Schedule 1.

**Agreement** means this document and any schedules and annexures to it.

**ASX** means ASX Limited.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Auckland, New Zealand.

**Completion Date** means the date of completion of the Third Party Sale.

**Evolve Shares** means fully paid ordinary shares in the Borrower.

**Event of Default** means any of the events, omissions or occurrence specified in clause 5.2.

**Insolvency Event** means, in relation to a party, the occurrence of any of the following events:

- (a) that party ceases or threatens to cease to carry on all or any material part of its business or operations;
- (b) an application is made (which is not stayed or dismissed within 10 Business Days of being made) to a court for an order, or an order is made, or an effective resolution is passed or legal proceedings issued (other than a vexatious or frivolous proceeding), or any corporate action is taken, notice is given or other step is taken for the dissolution or reorganisation of that party except for the purpose of, and followed by, a solvent reconstruction, merger,

consolidation or voluntary liquidation on terms approved by the other party before that step is taken;

- (c) that party convenes a meeting for the purpose of making, or proposes to enter into, any general assignment, arrangement, compromise or composition with or for the benefit of any of its creditors with a view to avoiding insolvency or a notice of intention to remove it from the register (on which the party is legally registered to carry on business, or an equivalent or analogous procedure under the law of any jurisdiction in which the party is incorporated, domiciled, resident, carries on business or has assets) is given, in each case except for the purpose of, and followed by, a solvent reconstruction, merger, consolidation or voluntary liquidation previously approved in writing by the other party or an equivalent or analogous procedure under the law of any jurisdiction in which the party is incorporated, domiciled, resident, carries on business or has assets);
- (d) an encumbrancer takes possession, or a trustee, receiver, receiver and manager, administrator, liquidator, provisional liquidator, inspector under any companies or securities legislation, or similar official, is appointed in respect of that party or the whole or any material part of its assets, or steps are taken or threatened with a view to any such appointment;
- (e) an attachment or other execution is levied or enforced upon, or commenced against, any assets of that party and is not discharged or stayed within 10 Business Days, except, in each case, where the other party is satisfied that that party is contesting the same in good faith by appropriate proceedings;
- (f) that party is declared or becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable legislation;
- (g) that party suspends or stops or threatens to suspend or stop payments generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness;
- (h) that party seeks or obtains protection from its creditors under any statute or any other law;
- (i) that party is declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989;
- (j) a statutory or judicial manager is appointed over all or any of the assets of that party;
- (k) any recommendation is made by the Securities Commission to the Minister of Justice or, as the case may be, the Minister of Finance that that party or any associated person of that party be placed in statutory management under the Corporations (Investigation and Management) Act 1989; or
- (l) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (k) above happens under the laws of any applicable jurisdiction in respect of that party.

**IPO Price** means the issue price for Evolve Shares set out in the Offer Document (if applicable) or otherwise set out in the allotment notice to the NZX and/or ASX (as applicable) on and in conjunction with Listing.

**Listing** means admission of the Borrower to:

- (a) the NZX and quotation of Evolve Shares on the NZX Main Board; or
- (b) the NZAX and quotation of Evolve Shares on the NZAX; and/or
- (c) the official list of ASX and granting of quotation of the Evolve Shares.

**Listing Date** means the date that the Listing occurs.

**Loan** means the provision of the Loan Amount to the Borrower by the Lender.

**Loan Amount** means the amount described in Item 3 of Schedule 1.

**Loan Date** means the date specified in Item 5 of Schedule 1.

**NZAX** means the alternative market operated by NZX.

**NZX** means NZX Limited also known as the New Zealand Stock Exchange.

**NZX Main Board** means the main board equity security market, operated by NZX.

**Offer Document** means the investment statement and prospectus (or product disclosure statements or equivalent documents) to the public offer of Evolve Shares.

**Repayment Date** means, subject to the provisions of clause 3.2, the date specified in Item 4 of Schedule 1.

**Return Amount** means the amount set out in Item 8 of Schedule 1 (as it applies either to a Listing or a Third Party Sale).

**Sale Price** means the final sale price for shares or assets in the Borrower (calculated as a price per share) determined in accordance with the terms and conditions of the SPA.

**SPA** means, in respect of a Third Party Sale, the sale and purchase agreement for shares or assets in the Borrower between: (i) if a share sale, the shareholders of the Borrower; or (ii) if an asset sale, the Borrower, and a third party purchaser.

**Sunset Date** means the date specified in Item 6 of Schedule 1.

**Third Party Sale** means completion of the sale of all of the shares or all (or substantially all) of the assets of the Borrower to a third party purchaser as part of a transaction or series of transactions.

## 1.2 Interpretation

Unless expressed to the contrary:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where an expression is defined anywhere in this Agreement another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to:
  - (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;



- (ii) any gender includes all genders;
- (iii) the singular includes the plural and vice versa;
- (iv) recitals, clauses, schedules or annexures are to recitals, clauses, schedules or annexures of or to this Agreement;
- (v) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
- (vi) unless otherwise stated, money is to New Zealand currency;
- (vii) this Agreement or another document includes the document as varied or replaced; and
- (viii) any party to this Agreement, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.

## **2. LOAN**

### **2.1 Loan**

- (a) The Lender agrees to advance the Loan Amount to the Borrower on the Loan Date.
- (b) For the purposes of clause 2.1(a), the Loan Amount must be advanced by the Lender:
  - (i) by way of direct deposit into a bank account to be nominated by the Borrower; and
  - (ii) in Australian dollars in immediately available funds,
 by no later than 12 noon New Zealand time on the Loan Date.

### **2.2 Interest and Security**

The parties agree that the Loan under this Agreement is to be made on an unsecured and interest free basis.

## **3. REPAYMENT**

### **3.1 Repayment in the event of a Listing by the Sunset Date**

- (a) If a Listing occurs in respect of the Borrower on or before the Sunset Date, then:
  - (i) the Borrower must repay and finally discharge the Loan Amount in full:
    - (1) by way of direct deposit into a bank account to be nominated by the Lender; and
    - (2) in Australian dollars in immediately available funds,
 by no later than 12 noon New Zealand time on the Repayment Date; and
  - (ii) the Borrower must, either:
    - (1) on the Repayment Date, pay the Return Amount to the Lender by issue and allotment of an equivalent amount of Evolve Shares (rounded to the nearest whole number of Evolve Shares) at the IPO Price; or

- (2) by no later than 12 noon on the Repayment Date, pay an amount equivalent to the Loan Amount by way of direct deposit into a bank account to be nominated by the Lender in Australian dollars and in immediately available funds,

the Borrower being entitled to nominate the method of payment in (ii) above in its sole discretion.

### **3.2 Repayment in the event of a Third Party Sale by the Sunset Date**

- (a) If no Listing occurs before the Sunset Date but alternatively a Third Party Sale occurs in respect of the Borrower on or before the Sunset Date, then:
  - (i) the Borrower must repay and finally discharge the Loan Amount in full:
    - (1) by way of direct deposit into a bank account to be nominated by the Lender; and
    - (2) in Australian dollars in immediately available funds,by no later than 12 noon New Zealand time on the Repayment Date; and
  - (ii) the Borrower must, either:
    - (1) if all of the consideration for the sale is to be paid in the form of shares in the purchaser (or the purchaser's related company) pay the Return Amount to the Lender prior to the Completion Date, by issuing to the Lender an equivalent amount of Evolve Shares (rounded to the nearest whole number of Evolve Shares) at the Sale Price on the condition that the Lender agrees to adhere to and sell those recently acquired Evolve Shares under the terms of the SPA; or
    - (2) by no later than 12 noon on the Repayment Date, pay an amount equivalent to the Loan Amount by way of direct deposit into a bank account to be nominated by the Lender in Australian dollars and in immediately available funds,

the Lender being entitled to nominate the method of payment in (ii) above in its sole discretion provided that where is not practical or possible without breaching any law or agreement to issue Evolve Shares to the Lender prior to the Completion Date in accordance with paragraph (1) above (for example, the issue of Evolve Shares would adversely affect the Borrower's ability to complete the Third Party Sale on terms acceptable to the Borrower) that option shall not be available to the Lender.

### **3.3 Discharge of obligations**

The Lender acknowledges and agrees that following satisfaction of the Borrower's obligations under clause 3.1(a) or 3.2(a), the Borrower is immediately released and discharged from all obligations and liability of any nature under or in connection with repayment of the Loan Amount or any other debt or liability owed by the Borrower to the Lender under this Agreement.

### **3.4 Repayment in the event of no Listing and no Third Party Sale by the Sunset Date**

If neither a Listing nor a Third Party Sale has not occurred in respect of the Borrower on or before the Sunset Date, then:

- (a) the Lender waives repayment of the Loan Amount;

- (b) the Loan Amount vests absolutely in the Borrower; and
- (c) the Lender acknowledges and agrees that the Borrower is immediately released and discharged from all obligations and liability of any nature under or in connection with repayment of the Loan Amount or any other debt or liability owed by the Borrower to the Lender under this Agreement.

### **3.5 Borrower's Undertaking**

For as long as the Loan Amount remains outstanding under this Agreement to the Lender, the Borrower undertakes with the Lender as follows:

- (a) until such time as it is no longer practical, commercially viable or reasonably sensible to do so, the Borrower will use all means commercially reasonable to pursue a strategy of contracting to acquire child care businesses with a view to achieving a Listing, or alternatively a Third Party Sale, of the Borrower by the Sunset Date;
- (b) to apply the Loan for the Approved Purpose only;
- (c) to immediately notify the Lender of any event or change in the Borrower's circumstances, the effect of which either would or might render any representation or warranty made in this Agreement untrue or incorrect in any respect; and
- (d) to immediately deliver all financial and other information in respect of the Borrower which the Lender reasonably requires from time to time.

## **4. WARRANTIES**

### **4.1 Mutual Warranties**

Each party warrants to each other party, at the date of this Agreement and at the Repayment Date, that:

- (a) it has the power and authority to enter into and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement by it will constitute legal, valid and binding obligations of it, enforceable in accordance with its terms;
- (c) it is not subject to any Insolvency Event; and
- (d) the execution, delivery and performance of this Agreement will not violate:
  - (i) any legislation or rule of law or regulation, authorisation, consent or any order or decree of any governmental authority to which it may from time to time be subject;
  - (ii) its constitution or any legislation, rules or other document constituting that party or governing its activities; or
  - (iii) any instrument to which it is a party or which is binding on it or any of its assets, and will not result in the creation or imposition of any encumbrance or restriction of any nature on any of its assets.

### **4.2 Borrower Warranties**

The Borrower warrants to the Lender that:

- (a) it is not in default under any deed, agreement or other document or obligation to which it is a party or by which it is bound, or in respect of any financial commitment or obligation (including obligations under guarantees or other contingent liabilities);
- (b) it is in full and ongoing compliance with its constitution and all companies and securities legislation and regulations and the Borrower is in full and ongoing compliance with all other legislation and regulations to which the Borrower may at any time and from time to time be subject;
- (c) if the Evolve Shares are issued pursuant to:
  - (i) clause 3.1(a)(ii), on their allotment and issue; or
  - (ii) clause 3.2(a)(ii)(1), on their issue,the Evolve Shares will be fully paid ordinary shares and will rank equally in all respects with the then existing issued ordinary shares.

#### **4.3 Lender Warranties**

The Lender warrants and represents that:

- (a) all information given by the Lender to the Borrower is true, accurate and correct;
- (b) the Lender does not in entering into and performing its obligations under this Agreement rely on any warranty or representation made by the Borrower not otherwise set out in this Agreement; and
- (c) the Lender has obtained comprehensive legal and financial advice concerning this Agreement.

### **5. DEFAULT AND TERMINATION**

#### **5.1 Consequences of default**

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or notice, and notwithstanding any delay or previous waiver of the right to exercise that option, all of the Loan Amount immediately becomes repayable.

#### **5.2 Events of default**

Each of the following events is an Event of Default:

- (a) if the Borrower fails to repay any of the Loan Amount when due; or
- (b) if the Borrower fails to perform or observe any of the covenants or provisions of this Agreement or any other agreement, instrument or document between the Lender and Borrower; or
- (c) if the Lender ascertains that any warranty made by the Borrower under this Agreement proves to be untrue or misleading when made or deemed to have been made; or
- (d) if this Agreement becomes wholly or partly void, voidable or unenforceable; or

- (e) if the authority or power of the Borrower to perform its obligations under this Agreement is revoked or so amended that the Borrower (as the case requires) is unable to fully and duly perform and observe those obligations; or
- (f) the continued performance of the obligations of the Borrower under this Agreement contravenes, or might in the Lender's opinion contravene, any applicable statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority.

### 5.3 **Acceptance of money**

The Lender may exercise its rights under clause 5.1:

- (a) notwithstanding acceptance of any part of any of the amounts payable under this Agreement after the occurrence of any Event of Default;
- (b) notwithstanding the occurrence of any previous or other Event of Default; and
- (c) without the necessity for any notice to, or of any consent or concurrence on the part of, the Borrower or any other person.

## 6. **GENERAL**

### 6.1 **GST**

Without limiting any other provision contained in this Agreement, should any payment to be made to or received by the Lender under this Agreement be subject to the payment of GST, as a result of the operation of the Goods and Services Tax Act 1985, the Borrower must:

- (a) pay to the Lender such further sum; and
- (b) do all things reasonably necessary,

as will result in the receipt by the Lender of the full amount (including any applicable GST) to be paid to or received by the Lender as contemplated by this Agreement.

### 6.2 **Non-merger**

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### 6.3 **Trust Provisions**

Where a party has executed this Agreement in its capacity as trustee of a trust (Trust), whether or not the fact that a party is a trustee is disclosed to the other party, the party that is a trustee acknowledges that this Agreement is binding on that party personally and in its capacity as trustee of the Trust.

### 6.4 **Statutes not to abrogate agreement**

Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially

affect any rights, powers, remedies or discretions given or accruing to the Lender under this Agreement.

#### **6.5 Assignments**

The Lender may assign the benefit of this Agreement.

#### **6.6 Time of the essence**

Time is of the essence of the Borrower's obligations under this Agreement unless otherwise agreed in writing by the Lender.

#### **6.7 Prohibition on oral amendments**

Neither this Agreement nor any provision of this Agreement may be amended, modified, waived, discharged or terminated orally.

#### **6.8 Defective execution**

If there is any defect in the execution of this Agreement by the Borrower or the Lender, that party may re execute or ratify its purported execution. That re execution or ratification will relate back to the original purported execution by that party.

#### **6.9 Execution by attorney**

If this Agreement is executed on behalf of the Borrower or the Lender by a person authorised to execute it under power of attorney, that person, by his or her execution of this Agreement, states that at the time of such execution they had no notice of the revocation of that power of attorney.

#### **6.10 Notices**

- (a) Any notice or other communication to a party under this Agreement must be in writing and delivered personally, sent by prepaid mail, email, or sent by facsimile transmission to the recipient at the address, email address or the facsimile number appearing in Schedule 1 or such other address as may have been notified to the sender.
- (b) A notice is deemed to be received:
  - (i) if delivered personally, on the date of delivery;
  - (ii) if sent by prepaid post, 2 Business Days after posting;
  - (iii) if sent by email, when actually received in readable form by the recipient; and
  - (iv) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission report confirming receipt.

#### **6.11 Counterparts**

This Agreement may be executed and delivered in any number of counterparts (including by way of electronic transmission) and all counterparts taken together will be deemed to be a single instrument.

#### **6.12 Confidentiality**

- (a) The terms and conditions of this Agreement and all negotiations between the parties relating to the subject matter of this Agreement are confidential.
- (b) A party must not make any public disclosure, communication or announcement about this Agreement except with the prior written consent of the other party or to comply with accounting, legal, stock exchange or other regulatory requirements.

#### **6.13 Waiver**

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or default under this Agreement as constituting a waiver of that right, power, authority, discretion or remedy.

#### **6.14 Further Assurance**

All parties must do all things reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

#### **6.15 Severability**

If any part of this Agreement is, or becomes, legally invalid or unenforceable, the remainder of this Agreement subsists and remains enforceable.

#### **6.16 Entire Understanding**

This Agreement contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this Agreement and relating to any matter dealt with in this Agreement are merged in this Agreement and do not have any effect from the date of this Agreement.


#### **6.17 Governing Law**

- (a) This Agreement is governed by the law of New Zealand.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

***(Execution clauses follow on the next page)***

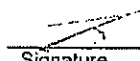
EXECUTED as an agreement

SIGNED for and on behalf of  
EVOLVE EDUCATION GROUP LIMITED  
by

)  
)  
)  
Signature   
Position DIRECTOR

Waseem Durrani  
Print Name

SIGNED for and on behalf of  
WRAITH CAPITALGROUP NZ LIMITED  
by

)  
)  
)  
Signature   
Position DIRECTOR

SAMUEL C. CLARKE  
Print Name



## SCHEDULE 1

ITEM 1:	LENDER:	<p>Name: Wraith Capital Group NZ Limited</p> <p>Address: Level 18, PricewaterhouseCoopers Tower, 188 Quay Street, Auckland Central, Auckland, 1010 , New Zealand</p> <p>Email: <i>(insert details)</i>.....</p> <p>Fax: <i>(insert details)</i>.....</p>
ITEM 2:	BORROWER:	<p>Name: Evolve Education Group Limited (company number 5236443)</p> <p>Address: c/- Minter Ellison Rudd Watts</p> <p>Email: Neil.Millar@Minterellison.co.nz</p> <p>Fax: /+64 9 535 9701</p> <p>Attention: Neil Millar</p>
ITEM 3:	LOAN AMOUNT:	Australian dollars \$100,000
ITEM 4:	REPAYMENT DATE:	<p><b>For a Listing:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Listing Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p> <p><b>For a Third Party Sale:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Completion Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p>
ITEM 5:	LOAN DATE:	The date that is 2 Business Days after the date of this Agreement.
ITEM 6:	SUNSET DATE:	31 March 2015
ITEM 7:	APPROVED PURPOSE:	The Loan Amount may be used by the Borrower to pay for any costs relating to the acquisition of child care businesses by the Borrower and the Borrower seeking a Listing, or alternatively a Third Party Sale.
ITEM 8:	RETURN AMOUNT:	<p><b>For a Listing:</b></p> <p>(a) Australian dollars \$100,000; or (b) the New Zealand dollar equivalent of Australian dollars \$100,000 (such rate to be based</p>

		<p>on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Listing Date on its website (or if the Listing Date has no published rate, then the published mid rate for the next Business Day), as nominated by the Borrower.</p> <p><b>For a Third Party Sale:</b> (a) Australian dollars \$100,000; or (b) the New Zealand dollar equivalent of Australian dollars \$100,000 (such rate to be based on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Completion Date on its website (or if the Completion Date has no published rate, then the published mid rate for the next Business Day)).</p>
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Dated

11 November

2014

## **LOAN AGREEMENT**

between

**WRAITH CAPITAL GROUP NZ LIMITED**

and

**EVOLVE EDUCATION GROUP LIMITED**

**CONTENTS**

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## PARTIES

- (1) The parties named at Item 1 of Schedule 1 (together the "**Lender**")

## AND

- (2) The party named at Item 2 of Schedule 1 (the "**Borrower**")

## BACKGROUND

- A. The Lender has agreed, at the request of the Borrower, to provide a Loan to the Borrower for the Loan Amount.
- B. The Lender and the Borrower have agreed to enter into this Agreement to set out the terms and conditions of the Loan.

## AGREEMENT

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

In this document:

**Approved Purpose** means the purpose described in Item 7 of Schedule 1.

**Agreement** means this document and any schedules and annexures to it.

**ASX** means ASX Limited.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Auckland, New Zealand.

**Completion Date** means the date of completion of the Third Party Sale.

**Evolve Shares** means fully paid ordinary shares in the Borrower.

**Event of Default** means any of the events, omissions or occurrence specified in clause 5.2.

**Insolvency Event** means, in relation to a party, the occurrence of any of the following events:

- (a) that party ceases or threatens to cease to carry on all or any material part of its business or operations;
- (b) an application is made (which is not stayed or dismissed within 10 Business Days of being made) to a court for an order, or an order is made, or an effective resolution is passed or legal proceedings issued (other than a vexatious or frivolous proceeding), or any corporate action is taken, notice is given or other step is taken for the dissolution or reorganisation of that party except for the purpose of, and followed by, a solvent reconstruction, merger,

consolidation or voluntary liquidation on terms approved by the other party before that step is taken;

- (c) that party convenes a meeting for the purpose of making, or proposes to enter into, any general assignment, arrangement, compromise or composition with or for the benefit of any of its creditors with a view to avoiding insolvency or a notice of intention to remove it from the register (on which the party is legally registered to carry on business, or an equivalent or analogous procedure under the law of any jurisdiction in which the party is incorporated, domiciled, resident, carries on business or has assets) is given, in each case except for the purpose of, and followed by, a solvent reconstruction, merger, consolidation or voluntary liquidation previously approved in writing by the other party or an equivalent or analogous procedure under the law of any jurisdiction in which the party is incorporated, domiciled, resident, carries on business or has assets);
- (d) an encumbrancer takes possession, or a trustee, receiver, receiver and manager, administrator, liquidator, provisional liquidator, inspector under any companies or securities legislation, or similar official, is appointed in respect of that party or the whole or any material part of its assets, or steps are taken or threatened with a view to any such appointment;
- (e) an attachment or other execution is levied or enforced upon, or commenced against, any assets of that party and is not discharged or stayed within 10 Business Days, except, in each case, where the other party is satisfied that that party is contesting the same in good faith by appropriate proceedings;
- (f) that party is declared or becomes insolvent, is unable to pay its debts when they fall due, or is presumed unable to pay its debts in accordance with any applicable legislation;
- (g) that party suspends or stops or threatens to suspend or stop payments generally or a moratorium is agreed or declared in respect of or affecting all or any material part of its indebtedness;
- (h) that party seeks or obtains protection from its creditors under any statute or any other law;
- (i) that party is declared to be a corporation at risk under the Corporations (Investigation and Management) Act 1989;
- (j) a statutory or judicial manager is appointed over all or any of the assets of that party;
- (k) any recommendation is made by the Securities Commission to the Minister of Justice or, as the case may be, the Minister of Finance that that party or any associated person of that party be placed in statutory management under the Corporations (Investigation and Management) Act 1989; or
- (l) anything analogous or having a substantially similar effect to any of the events specified in paragraphs (a) to (k) above happens under the laws of any applicable jurisdiction in respect of that party.

**IPO Price** means the issue price for Evolve Shares set out in the Offer Document (if applicable) or otherwise set out in the allotment notice to the NZX and/or ASX (as applicable) on and in conjunction with Listing.

**Listing** means admission of the Borrower to:

- (a) the NZX and quotation of Evolve Shares on the NZX Main Board; or
- (b) the NZAX and quotation of Evolve Shares on the NZAX; and/or
- (c) the official list of ASX and granting of quotation of the Evolve Shares.

**Listing Date** means the date that the Listing occurs.

**Loan** means the provision of the Loan Amount to the Borrower by the Lender.

**Loan Amount** means the amount described in Item 3 of Schedule 1.

**Loan Date** means the date specified in Item 5 of Schedule 1.

**NZAX** means the alternative market operated by NZX.

**NZX** means NZX Limited also known as the New Zealand Stock Exchange.

**NZX Main Board** means the main board equity security market, operated by NZX.

**Offer Document** means the investment statement and prospectus (or product disclosure statements or equivalent documents) to the public offer of Evolve Shares.

**Repayment Date** means, subject to the provisions of clause 3.2, the date specified in Item 4 of Schedule 1.

**Return Amount** means the amount set out in Item 8 of Schedule 1 (as it applies either to a Listing or a Third Party Sale).

**Sale Price** means the final sale price for shares or assets in the Borrower (calculated as a price per share) determined in accordance with the terms and conditions of the SPA.

**SPA** means, in respect of a Third Party Sale, the sale and purchase agreement for shares or assets in the Borrower between: (i) if a share sale, the shareholders of the Borrower; or (ii) if an asset sale, the Borrower, and a third party purchaser.

**Sunset Date** means the date specified in Item 6 of Schedule 1.

**Third Party Sale** means completion of the sale of all of the shares or all (or substantially all) of the assets of the Borrower to a third party purchaser as part of a transaction or series of transactions.

## 1.2 Interpretation

Unless expressed to the contrary:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Agreement;
- (b) where an expression is defined anywhere in this Agreement another part of speech or grammatical form of that expression has a corresponding meaning;
- (c) a reference to:
  - (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;

- (ii) any gender includes all genders;
- (iii) the singular includes the plural and vice versa;
- (iv) recitals, clauses, schedules or annexures are to recitals, clauses, schedules or annexures of or to this Agreement;
- (v) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
- (vi) unless otherwise stated, money is to New Zealand currency;
- (vii) this Agreement or another document includes the document as varied or replaced; and
- (viii) any party to this Agreement, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.

## **2. LOAN**

### **2.1 Loan**

- (a) The Lender agrees to advance the Loan Amount to the Borrower on the Loan Date.
- (b) For the purposes of clause 2.1(a), the Loan Amount must be advanced by the Lender:
  - (i) by way of direct deposit into a bank account to be nominated by the Borrower; and
  - (ii) in Australian dollars in immediately available funds,
 by no later than 12 noon New Zealand time on the Loan Date.

### **2.2 Interest and Security**

The parties agree that the Loan under this Agreement is to be made on an unsecured and interest free basis.

## **3. REPAYMENT**

### **3.1 Repayment in the event of a Listing by the Sunset Date**

- (a) If a Listing occurs in respect of the Borrower on or before the Sunset Date, then:
  - (i) the Borrower must repay and finally discharge the Loan Amount in full:
    - (1) by way of direct deposit into a bank account to be nominated by the Lender; and
    - (2) in Australian dollars in immediately available funds,
 by no later than 12 noon New Zealand time on the Repayment Date; and
  - (ii) the Borrower must, either:
    - (1) on the Repayment Date, pay the Return Amount to the Lender by issue and allotment of an equivalent amount of Evolve Shares (rounded to the nearest whole number of Evolve Shares) at the IPO Price; or



- (2) by no later than 12 noon on the Repayment Date, pay an amount equivalent to the Loan Amount by way of direct deposit into a bank account to be nominated by the Lender in Australian dollars and in immediately available funds,
- the Borrower being entitled to nominate the method of payment in (ii) above in its sole discretion.

### **3.2 Repayment in the event of a Third Party Sale by the Sunset Date**

- (a) If no Listing occurs before the Sunset Date but alternatively a Third Party Sale occurs in respect of the Borrower on or before the Sunset Date, then:
  - (i) the Borrower must repay and finally discharge the Loan Amount in full:
    - (1) by way of direct deposit into a bank account to be nominated by the Lender; and
    - (2) in Australian dollars in immediately available funds,by no later than 12 noon New Zealand time on the Repayment Date; and
  - (ii) the Borrower must, either:
    - (1) if all of the consideration for the sale is to be paid in the form of shares in the purchaser (or the purchaser's related company) pay the Return Amount to the Lender prior to the Completion Date, by issuing to the Lender an equivalent amount of Evolve Shares (rounded to the nearest whole number of Evolve Shares) at the Sale Price on the condition that the Lender agrees to adhere to and sell those recently acquired Evolve Shares under the terms of the SPA; or
    - (2) by no later than 12 noon on the Repayment Date, pay an amount equivalent to the Loan Amount by way of direct deposit into a bank account to be nominated by the Lender in Australian dollars and in immediately available funds,the Lender being entitled to nominate the method of payment in (ii) above in its sole discretion provided that where is not practical or possible without breaching any law or agreement to issue Evolve Shares to the Lender prior to the Completion Date in accordance with paragraph (1) above (for example, the issue of Evolve Shares would adversely affect the Borrower's ability to complete the Third Party Sale on terms acceptable to the Borrower) that option shall not be available to the Lender.

### **3.3 Discharge of obligations**

The Lender acknowledges and agrees that following satisfaction of the Borrower's obligations under clause 3.1(a) or 3.2(a), the Borrower is immediately released and discharged from all obligations and liability of any nature under or in connection with repayment of the Loan Amount or any other debt or liability owed by the Borrower to the Lender under this Agreement.

### **3.4 Repayment in the event of no Listing and no Third Party Sale by the Sunset Date**

If neither a Listing nor a Third Party Sale has not occurred in respect of the Borrower on or before the Sunset Date, then:

- (a) the Lender waives repayment of the Loan Amount;

- (b) the Loan Amount vests absolutely in the Borrower; and
- (c) the Lender acknowledges and agrees that the Borrower is immediately released and discharged from all obligations and liability of any nature under or in connection with repayment of the Loan Amount or any other debt or liability owed by the Borrower to the Lender under this Agreement.

### **3.5 Borrower's Undertaking**

For as long as the Loan Amount remains outstanding under this Agreement to the Lender, the Borrower undertakes with the Lender as follows:

- (a) until such time as it is no longer practical, commercially viable or reasonably sensible to do so, the Borrower will use all means commercially reasonable to pursue a strategy of contracting to acquire child care businesses with a view to achieving a Listing, or alternatively a Third Party Sale, of the Borrower by the Sunset Date;
- (b) to apply the Loan for the Approved Purpose only;
- (c) to immediately notify the Lender of any event or change in the Borrower's circumstances, the effect of which either would or might render any representation or warranty made in this Agreement untrue or incorrect in any respect; and
- (d) to immediately deliver all financial and other information in respect of the Borrower which the Lender reasonably requires from time to time.

## **4. WARRANTIES**

### **4.1 Mutual Warranties**

Each party warrants to each other party, at the date of this Agreement and at the Repayment Date, that:

- (a) it has the power and authority to enter into and perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement by it will constitute legal, valid and binding obligations of it, enforceable in accordance with its terms;
- (c) it is not subject to any Insolvency Event; and
- (d) the execution, delivery and performance of this Agreement will not violate:
  - (i) any legislation or rule of law or regulation, authorisation, consent or any order or decree of any governmental authority to which it may from time to time be subject;
  - (ii) its constitution or any legislation, rules or other document constituting that party or governing its activities; or
  - (iii) any instrument to which it is a party or which is binding on it or any of its assets, and will not result in the creation or imposition of any encumbrance or restriction of any nature on any of its assets.

### **4.2 Borrower Warranties**

The Borrower warrants to the Lender that:

- (a) it is not in default under any deed, agreement or other document or obligation to which it is a party or by which it is bound, or in respect of any financial commitment or obligation (including obligations under guarantees or other contingent liabilities);
- (b) it is in full and ongoing compliance with its constitution and all companies and securities legislation and regulations and the Borrower is in full and ongoing compliance with all other legislation and regulations to which the Borrower may at any time and from time to time be subject;
- (c) if the Evolve Shares are issued pursuant to:
  - (i) clause 3.1(a)(ii), on their allotment and issue; or
  - (ii) clause 3.2(a)(ii)(1), on their issue,the Evolve Shares will be fully paid ordinary shares and will rank equally in all respects with the then existing issued ordinary shares.

#### **4.3 Lender Warranties**

The Lender warrants and represents that:

- (a) all information given by the Lender to the Borrower is true, accurate and correct;
- (b) the Lender does not in entering into and performing its obligations under this Agreement rely on any warranty or representation made by the Borrower not otherwise set out in this Agreement; and
- (c) the Lender has obtained comprehensive legal and financial advice concerning this Agreement.

### **5. DEFAULT AND TERMINATION**

#### **5.1 Consequences of default**

If an Event of Default occurs or is deemed to have occurred, then at the Lender's option, without any demand or notice, and notwithstanding any delay or previous waiver of the right to exercise that option, all of the Loan Amount immediately becomes repayable.

#### **5.2 Events of default**

Each of the following events is an Event of Default:

- (a) if the Borrower fails to repay any of the Loan Amount when due; or
- (b) if the Borrower fails to perform or observe any of the covenants or provisions of this Agreement or any other agreement, instrument or document between the Lender and Borrower; or
- (c) if the Lender ascertains that any warranty made by the Borrower under this Agreement proves to be untrue or misleading when made or deemed to have been made; or
- (d) if this Agreement becomes wholly or partly void, voidable or unenforceable; or

- (e) if the authority or power of the Borrower to perform its obligations under this Agreement is revoked or so amended that the Borrower (as the case requires) is unable to fully and duly perform and observe those obligations; or
- (f) the continued performance of the obligations of the Borrower under this Agreement contravenes, or might in the Lender's opinion contravene, any applicable statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority.

### **5.3 Acceptance of money**

The Lender may exercise its rights under clause 5.1:

- (a) notwithstanding acceptance of any part of any of the amounts payable under this Agreement after the occurrence of any Event of Default;
- (b) notwithstanding the occurrence of any previous or other Event of Default; and
- (c) without the necessity for any notice to, or of any consent or concurrence on the part of, the Borrower or any other person.

## **6. GENERAL**

### **6.1 GST**

Without limiting any other provision contained in this Agreement, should any payment to be made to or received by the Lender under this Agreement be subject to the payment of GST, as a result of the operation of the Goods and Services Tax Act 1985, the Borrower must:

- (a) pay to the Lender such further sum; and
- (b) do all things reasonably necessary,

as will result in the receipt by the Lender of the full amount (including any applicable GST) to be paid to or received by the Lender as contemplated by this Agreement.

### **6.2 Non-merger**

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

### **6.3 Trust Provisions**

Where a party has executed this Agreement in its capacity as trustee of a trust (Trust), whether or not the fact that a party is a trustee is disclosed to the other party, the party that is a trustee acknowledges that this Agreement is binding on that party personally and in its capacity as trustee of the Trust.

### **6.4 Statutes not to abrogate agreement**

Unless application is mandatory by law, no statute, ordinance, proclamation, rule, order, regulation, moratorium or decree of any governmental or other authority, present or future, will apply to this Agreement so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially

affect any rights, powers, remedies or discretions given or accruing to the Lender under this Agreement.

#### **6.5 Assignments**

The Lender may assign the benefit of this Agreement.

#### **6.6 Time of the essence**

Time is of the essence of the Borrower's obligations under this Agreement unless otherwise agreed in writing by the Lender.

#### **6.7 Prohibition on oral amendments**

Neither this Agreement nor any provision of this Agreement may be amended, modified, waived, discharged or terminated orally.

#### **6.8 Defective execution**

If there is any defect in the execution of this Agreement by the Borrower or the Lender, that party may re execute or ratify its purported execution. That re execution or ratification will relate back to the original purported execution by that party.

#### **6.9 Execution by attorney**

If this Agreement is executed on behalf of the Borrower or the Lender by a person authorised to execute it under power of attorney, that person, by his or her execution of this Agreement, states that at the time of such execution they had no notice of the revocation of that power of attorney.

#### **6.10 Notices**

- (a) Any notice or other communication to a party under this Agreement must be in writing and delivered personally, sent by prepaid mail, email, or sent by facsimile transmission to the recipient at the address, email address or the facsimile number appearing in Schedule 1 or such other address as may have been notified to the sender.
- (b) A notice is deemed to be received:
  - (i) if delivered personally, on the date of delivery;
  - (ii) if sent by prepaid post, 2 Business Days after posting;
  - (iii) if sent by email, when actually received in readable form by the recipient; and
  - (iv) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission report confirming receipt.

#### **6.11 Counterparts**

This Agreement may be executed and delivered in any number of counterparts (including by way of electronic transmission) and all counterparts taken together will be deemed to be a single instrument.

#### **6.12 Confidentiality**

- (a) The terms and conditions of this Agreement and all negotiations between the parties relating to the subject matter of this Agreement are confidential.
- (b) A party must not make any public disclosure, communication or announcement about this Agreement except with the prior written consent of the other party or to comply with accounting, legal, stock exchange or other regulatory requirements.

#### **6.13 Waiver**

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Agreement or default under this Agreement as constituting a waiver of that right, power, authority, discretion or remedy.

#### **6.14 Further Assurance**

All parties must do all things reasonably necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

#### **6.15 Severability**

If any part of this Agreement is, or becomes, legally invalid or unenforceable, the remainder of this Agreement subsists and remains enforceable.

#### **6.16 Entire Understanding**

This Agreement contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this Agreement and relating to any matter dealt with in this Agreement are merged in this Agreement and do not have any effect from the date of this Agreement.

#### **6.17 Governing Law**


- (a) This Agreement is governed by the law of New Zealand.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New Zealand and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

***(Execution clauses follow on the next page)***

EXECUTED as an agreement

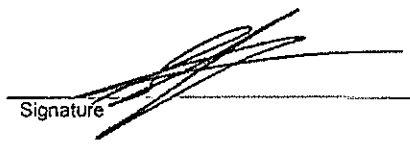
SIGNED for and on behalf of )  
EVOLVE EDUCATION GROUP LIMITED )  
by )

RUSSELL DALY  
Print Name

  
Signature  
DIRECTOR  
Position

SIGNED for and on behalf of )  
WRAITH CAPITALGROUP NZ LIMITED )  
by )

CHRIS GIUFRE  
Print Name

  
Signature  
DIRECTOR  
Position

## SCHEDULE 1

ITEM 1:	LENDER:	<p>Name: Wraith Capital Group NZ Limited</p> <p>Address: Level 18, PricewaterhouseCoopers Tower, 188 Quay Street, Auckland Central, Auckland, 1010 , New Zealand</p> <p>Email: <i>(insert details)</i>.....</p> <p>Fax: <i>(insert details)</i>.....</p>
ITEM 2:	BORROWER:	<p>Name: Evolve Education Group Limited (company number 5236443)</p> <p>Address: c/- Minter Ellison Rudd Watts</p> <p>Email: Neil.Millar@Minterellison.co.nz</p> <p>Fax: /+64 9 535 9701</p> <p>Attention: Neil Millar</p>
ITEM 3:	LOAN AMOUNT:	Australian dollars \$100,000
ITEM 4:	REPAYMENT DATE:	<p><b>For a Listing:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Listing Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p> <p><b>For a Third Party Sale:</b></p> <p>The sooner of:</p> <p>(a) the date that is 2 Business Days after the Completion Date; or</p> <p>(b) the date that is 2 Business Days after the Sunset Date.</p>
ITEM 5:	LOAN DATE:	The date that is 2 Business Days after the date of this Agreement.
ITEM 6:	SUNSET DATE:	31 March 2015
ITEM 7:	APPROVED PURPOSE:	The Loan Amount may be used by the Borrower to pay for any costs relating to the acquisition of child care businesses by the Borrower and the Borrower seeking a Listing, or alternatively a Third Party Sale.
ITEM 8:	RETURN AMOUNT:	<p><b>For a Listing:</b></p> <p>(a) Australian dollars \$100,000; or (b) the New Zealand dollar equivalent of Australian dollars \$100,000 (such rate to be based</p>



		<p>on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Listing Date on its website (or if the Listing Date has no published rate, then the published mid rate for the next Business Day), as nominated by the Borrower.</p> <p><b>For a Third Party Sale:</b> (a) Australian dollars \$100,000; or (b) the New Zealand dollar equivalent of Australian dollars \$100,000 (such rate to be based on the mid rate exchange rate for New Zealand dollars published by the Reserve Bank of New Zealand for the Completion Date on its website (or if the Completion Date has no published rate, then the published mid rate for the next Business Day)).</p>
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# Escrow Deed

relating to the initial public offering of  
shares in Evolve Education Group  
Limited

---

Evolve Education Group Limited (**Evolve Education**)

The persons named in the Schedule (**Holders**)

MinterEllisonRuddWatts

L A W Y E R S

20th Floor, Lumley Centre, 88 Shortland Street, Auckland 1010  
TEL + 64 9 3539700 FAX + 64 9 3539701  
[www.minterellison.co.nz](http://www.minterellison.co.nz)

# Escrow Deed relating to the initial public offering of shares in Evolve Education Group Limited

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# Details

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Date 14 NOVEMBER 2014

## Parties

Name	Evolve Education Group Limited
Short name	<b>Evolve Education</b>
Notice Details	Level 2, 54 Fort Street, Auckland
Email	<a href="mailto:vivek.singh@evolveeducation.co.nz">vivek.singh@evolveeducation.co.nz</a>
Attention	Chief Financial Officer

Name	The persons named in the Schedule
Short name	<b>Holders</b> and each a <b>Holder</b>
Notice Details	As set out in the Schedule

## Background

- A Evolve Education is intending to undertake an IPO, pursuant to which Evolve Education will offer new shares in Evolve Education under a separate investment statement and prospectus. Application has been or will be made to NZX and ASX for Evolve Education's shares to be quoted on the NZX Main Board and ASX.
- B For the purposes of the IPO, each Holder has agreed that, except as expressly permitted under this Deed, it will, during the Embargo Period, retain the legal and beneficial ownership of any shares in Evolve Education that are issued to it by Evolve Education.

# Agreed terms

---

## 1. Defined terms and interpretation

### 1.1 Defined terms

In this deed:

**Associated Person** has the meaning given to that term from time to time in the NZX Main Board Listing Rules.

**Business Day** means a day on which the NZX Main Board is open for trading.

**Director** means a director of Evolve Education.

**Embargo Period** means the period commencing on the date of this deed and ending at 8am on the date that is 2 years after the date of commencement of quotation and trading of the Shares on the NZX Main Board.

**Holding** means the number of Shares that are set out next to each Holder's name in the Schedule.

**IPO** means the initial public offering of shares in Evolve Education.

**Non-Interested Directors** means, in relation to any decision, Directors that are not "interested" for the purposes of the Companies Act 1993.

**NZX Main Board** means the main board equity securities market operated by NZX.

**NZX Main Board Listing Rules** means the main board listing rules of the NZX (by whatever name called), as amended from time to time.

**NZX** means NZX Limited.

**Schedule** means the schedule to this deed.

**Shares** means ordinary shares in Evolve Education.

**Takeovers Code means** the Takeovers Code set out in the schedule to the Takeovers Code Approval Order 2000, as amended or replaced from time to time.

### 1.2 Interpretation

In this deed references to the singular include the plural and vice versa.

## 2. Retain Ownership

Each Holder unconditionally and irrevocably agrees and undertakes to the Non-Interested Directors, Evolve Education and NZX, that, subject to clause 4, it will retain the legal and beneficial ownership of its Holding for the Embargo Period.

## 3. Prohibition on disposal or transfer of shareholding

Each Holder unconditionally and irrevocably agrees and undertakes to the Non-Interested Directors, Evolve Education and NZX, that, subject to clause 4, during the Embargo Period it will not:

- (a) sell, grant an option over, assign, transfer by way of security or otherwise dispose of, or offer for sale or agree to sell, grant an option over, assign, transfer by way of security or otherwise dispose of, directly or indirectly; or
- (b) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of,

the rights, title and interest (legal or beneficial) in all or any part of its Holding. If at any time during the Embargo Period the Shares are sub-divided or consolidated then the provisions of this deed shall continue to apply in respect of the Holding as sub-divided or consolidated (and all references to “Holding” in this deed shall be read accordingly). The rights of the Holders to deal with its Holding are also subject to the NZX Main Board Listing Rules, the ASX Listing Rules (if applicable), the Securities Markets Act 1988, and the Financial Markets Conduct Act 2013.

## **4. Permitted sale and security interests**

### **4.1 Offer under Takeovers Code, Amalgamations and Scheme of Arrangements**

Notwithstanding clauses 2 and 3, if a partial or full offer is made under the Takeovers Code for the Shares during the Embargo Period, or an amalgamation or scheme of arrangement with respect to the Shares is proposed, then the Holders may sell, or agree or offer to sell, all or any part of its Holding to the offeror under that takeover offer or dispose of its Holding in the context of the amalgamation or scheme of arrangement.

### **4.2 Compliance with Takeovers Code**

Notwithstanding clauses 2 and 3, the Holders may sell, or agree or offer to sell, all or any part of its Holding to the extent required to comply with the Takeovers Code.

### **4.3 Security interest permitted**

Notwithstanding clauses 2 and 3, the Holders may create, or agree to create, a mortgage, charge or other form of security interest over or in respect of all or any part of its Holding in favour of a recognised bank or other similar recognised lending institution provided that the lender enters into an escrow deed with Evolve Education in relation to the relevant Shares on the same terms as this deed, to take effect from the enforcement of the security interest, for the remainder of the Embargo Period.

### **4.4 Change in Trustee**

Notwithstanding clauses 2 and 3, Stuart James and Gillian James may transfer all of their Holding to any new or replacement trustee of the S.B. James Superannuation Fund provided that the new or replacement trustee first enters into an escrow deed with Evolve Education in relation to the relevant Shares on the same terms as this deed for the remainder of the Embargo Period.

### **4.5 Transfer to Associated Persons**

Notwithstanding clauses 2 and 3, each of the Holders may transfer all of its Holding to an Associated Person of that Holder with the prior written approval of the Non-Interested Directors (to be given at their sole discretion), provided that the Associated Person enters into an escrow deed with Evolve Education in relation to the relevant Shares on the same terms as this deed for the remainder of the Embargo Period (with such deed to also require such person to transfer such Holding back to the Holder if it ceases to be an Associated Person of the Holder).

## **5. Share register matters**

### **5.1 Direction to share registrar**

To give effect to clauses 2 and 3 of this deed, each Holder will sign and deliver to Evolve Education's share registrar a direction in respect of its Holding, in favour of Evolve Education, requesting that Evolve Education's share registrar tag the Holding in its system as being unavailable for transfer during the Embargo Period.

### **5.2 Notice to registrar of release from restrictions**

If the Holding (or any part of it), in respect of which a direction has been given under clause 5.1, is to be released from the restrictions in accordance with clause 4 of this deed, the relevant Holder may, by notice in writing to Evolve Education, request that Evolve Education instruct its share registrar to remove or amend the tag attaching to the Holding (or any part of it) and to release the same from the restrictions on transfer to the extent permitted under clause 4.

### **5.3 Removal of restrictions**

Following receipt of a notice referred to in clause 5.2, Evolve Education shall procure that its share registrar immediately remove or amend the tag attaching to the Holding and release the same from the restrictions on transfer to the extent permitted under clause 4.

## **6. Limitation Of Liability Of Trustees**

### **6.1 Trustee Limitation of Liability (S.B. James Superannuation Fund)**

- (a) Stuart James and Gillian James have entered into this agreement in their capacity as trustees of the S.B. James Superannuation Fund and not personally; and
- (b) the liability under this agreement of Stuart James and Gillian James and their successors as trustees of the S.B. James Superannuation Fund is not an unlimited personal liability but is limited to the assets of the S.B. James Superannuation Fund in their hands.

## **7. General**

### **7.1 Alterations to deed**

No waiver, modification or alteration of, or addition to, any of the provisions of this deed shall be made unless agreed by each of the Holders, the Non-Interested Directors and Evolve Education in writing. Before agreeing to any such waiver, modification or alteration of, or addition to, this deed, Evolve Education must first obtain the written approval of NZX in accordance with NZX Main Board Listing Rule 7.9.2.

### **7.2 Liability**

The liability of each Holder under or otherwise in connection with this deed, is several only and shall not be joint or collective.

### **7.3 Independent legal advice**

Each of the Holders acknowledges that it has had the opportunity to obtain independent legal advice with respect to this deed.

### **7.4 Counterparts and facsimiles**

This deed may be executed in two or more counterparts (including facsimile or email copies) each of which shall be deemed an original, but all of which together shall constitute the same instrument.

## **7.5 Termination if not listed**

This deed will terminate and be of no further force or effect if Evolve Education is not first listed on the NZX Main Board before 31 December 2014, or if Evolve Education ceases (otherwise than by way of suspension) to be listed on the NZX Main Board.

## **7.6 Specific Performance**

Each Holder agrees that damages alone would be an inadequate remedy for breach of its obligations under this deed and the appropriate remedies for such a breach will include orders for specific performance, injunctive relief, any other equitable relief and/or damages.

## **7.7 Enforceability**

For the purposes of the Contracts (Privity) Act 1982, this deed and its provisions are for the benefit of, and are intended to be enforceable by, the Non-Interested Directors, Evolve Education and NZX. Evolve Education shall advise NZX immediately if it becomes aware of a breach or likely breach of this deed and shall in consultation with NZX take such steps as NZX may require to enforce this deed or prevent or remedy a breach of this deed.

## **7.8 Compliance with ASX Listing Rules**

During the Embargo Period, and if, and for so long as, the Company is listed on the official list of the ASX:

- (a) notwithstanding anything contained in this Deed, if the ASX Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this Deed prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision;
- (e) if the ASX Listing Rules require this Deed not to contain a provision and it contains such a provision, this Deed is deemed not to contain that provision; and
- (f) if any provision of this Deed is or becomes inconsistent with the ASX Listing Rules, this Deed is deemed not to contain that provision to the extent of the inconsistency.

## **7.9 Notices**

- (a) Any written notice required to be given pursuant to this deed shall (without limitation) be deemed validly given if:
  - (i) delivered by hand or sent by email (provided that the sender's email system confirms transmission to the intended recipient) to the intended recipient's physical address or email, as set out in this deed (or to such other physical address or email as the intended recipient shall notify to the other party by written notice from time to time); and
  - (ii) signed by the party giving that notice.
- (b) For the purposes of this deed, any notice delivered or transmitted by email after 5.00 pm on a Business Day, or at any time on a non Business Day, shall be deemed received at 9.00 am on the next Business Day.



### **7.10 Governing law and jurisdiction**

This deed is governed by the laws of New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

# Schedule

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Holder	Notice Details	Number of Shares
Kern Group NZ Limited	<b>Address:</b>  Level 18, PricewaterhouseCoopers Tower, 188 Quay Street, Auckland Central, Auckland, 1010, New Zealand <b>Email:</b> <a href="mailto:kerng@kerngroup.com.au">kerng@kerngroup.com.au</a>	2,285,369
Wraith Capital Group NZ Limited	<b>Address:</b>  Level 18, PricewaterhouseCoopers Tower, 188 Quay Street, Auckland Central, Auckland, 1010, New Zealand <b>Email:</b> <a href="mailto:chris@giufre.com.au">chris@giufre.com.au</a>	2,285,369
Stuart and Gillian James as trustees of the S.B. James Superannuation Fund	<b>Address:</b>  7 Glan Avon Road, Hawthorn, Victoria, 3122, Australia <b>Email:</b> <a href="mailto:stuartjames1948@hotmail.com">stuartjames1948@hotmail.com</a>	2,285,369

# Signing page

**EXECUTED** as a deed

**EVOLVE EDUCATION GROUP LIMITED** by:

\_\_\_\_\_  
Signature of director

Areg Kern

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

Mark Finlay

\_\_\_\_\_  
Name of director

**KERN GROUP NZ LIMITED** by:

DH/SwE

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

Daria Helen Sutherland  
Solicitor

\_\_\_\_\_  
Occupation of witness

Auckland

\_\_\_\_\_  
City/town of residence

\_\_\_\_\_  
Signature of Gregory Kern

**WRAITH CAPITAL GROUP NZ LIMITED**  
by:

\_\_\_\_\_  
Signature of Samuel Giufre

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
City/town of residence

# Signing page

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EXECUTED as a deed

EVOLVE EDUCATION GROUP LIMITED by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

KERN GROUP NZ LIMITED by:

\_\_\_\_\_  
Signature of Gregory Kern

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
City/town of residence

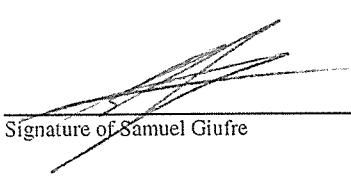
WRAITH CAPITAL GROUP NZ LIMITED  
by:

\_\_\_\_\_  
Signature of witness

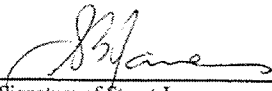
\_\_\_\_\_  
Name of witness

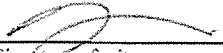
\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
City/town of residence


  
\_\_\_\_\_  
Signature of Samuel Giufre

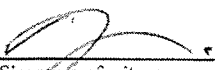
SIGNED by STUART JAMES as a trustee of  
the S.B. JAMES SUPERANNUATION  
FUND:

  
\_\_\_\_\_  
Signature of Stuart James

  
\_\_\_\_\_  
Signature of witness  
SCOTT JAMES  
\_\_\_\_\_  
Name of witness  
RECRUITMENT MANAGER  
\_\_\_\_\_  
Occupation of witness  
HAWTHORN VILT  
\_\_\_\_\_  
City/town of residence

SIGNED by GILLIAN JAMES as a trustee of  
the S.B. JAMES SUPERANNUATION  
FUND:

  
\_\_\_\_\_  
Signature of Gillian James

  
\_\_\_\_\_  
Signature of witness  
SCOTT JAMES  
\_\_\_\_\_  
Name of witness  
RECRUITMENT MANAGER  
\_\_\_\_\_  
Occupation of witness  
HAWTHORN VILT  
\_\_\_\_\_  
City/town of residence

# Escrow Deed

relating to the initial public offering of  
shares in Evolve Education Group  
Limited

---

Evolve Education Group Limited (**Evolve Education**)

The persons named in the Schedule (**Holders**)

MinterEllisonRuddWatts

L A W Y E R S

20th Floor, Lumley Centre, 88 Shortland Street, Auckland 1010  
TEL + 64 9 3539700 FAX + 64 9 3539701  
[www.minterellison.co.nz](http://www.minterellison.co.nz)

# Escrow Deed relating to the initial public offering of shares in Evolve Education Group Limited

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<b>Details</b>	<b>3</b>
<b>Agreed terms</b>	<b>4</b>
1. <b>Defined terms and interpretation</b>	<b>4</b>
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6.10 Governing law and jurisdiction	7
<b>Schedule</b>	<b>8</b>
<b>Signing page</b>	<b>9</b>

# Details

---

## Date

14 NOVEMBER 2014

## Parties

Name	Evolve Education Group Limited
Short name	<b>Evolve Education</b>
Notice Details	Level 2, 54 Fort Street, Auckland
Email	<u><a href="mailto:vivek.singh@evolveeducation.co.nz">vivek.singh@evolveeducation.co.nz</a></u>
Attention	Chief Financial Officer

Name	The persons named in the Schedule
Short name	<b>Holders</b> and each a <b>Holder</b>
Notice Details	As set out in the Schedule

## Background

- A Evolve Education is intending to undertake an IPO, pursuant to which Evolve Education will offer new shares in Evolve Education under a separate investment statement and prospectus. Application has been or will be made to NZX and ASX for Evolve Education's shares to be quoted on the NZX Main Board and ASX.
- B For the purposes of the IPO, each Holder has agreed that, except as expressly permitted under this Deed, it will, during the Embargo Period, retain the legal and beneficial ownership of any shares in Evolve Education that are issued to it by Evolve Education.



# Agreed terms

---

## 1. Defined terms and interpretation

### 1.1 Defined terms

In this deed:

**Associated Person** has the meaning given to that term from time to time in the NZX Main Board Listing Rules.

**Business Day** means a day on which the NZX Main Board is open for trading.

**Director** means a director of Evolve Education.

**Embargo Period** means the period commencing on the date of this deed and ending at 8am on the date that is 2 years after the date of commencement of quotation and trading of the Shares on the NZX Main Board.

**Holding** means the number of Shares that are set out next to each Holder's name in the Schedule.

**IPO** means the initial public offering of shares in Evolve Education.

**Non-Interested Directors** means, in relation to any decision, Directors that are not "interested" for the purposes of the Companies Act 1993.

**NZX Main Board** means the main board equity securities market operated by NZX.

**NZX Main Board Listing Rules** means the main board listing rules of the NZX (by whatever name called), as amended from time to time.

**NZX** means NZX Limited.

**Schedule** means the schedule to this deed.

**Shares** means ordinary shares in Evolve Education.

**Takeovers Code** means the Takeovers Code set out in the schedule to the Takeovers Code Approval Order 2000, as amended or replaced from time to time.

### 1.2 Interpretation

In this deed references to the singular include the plural and vice versa.

## 2. Retain Ownership

Each Holder unconditionally and irrevocably agrees and undertakes to the Non-Interested Directors, Evolve Education and NZX, that, subject to clause 4, it will retain the legal and beneficial ownership of its Holding for the Embargo Period.

## 3. Prohibition on disposal or transfer of shareholding

Each Holder unconditionally and irrevocably agrees and undertakes to the Non-Interested Directors, Evolve Education and NZX, that, subject to clause 4, during the Embargo Period it will not:

- (a) sell, grant an option over, assign, transfer by way of security or otherwise dispose of, or offer for sale or agree to sell, grant an option over, assign, transfer by way of security or otherwise dispose of, directly or indirectly; or
- (b) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of,

the rights, title and interest (legal or beneficial) in all or any part of its Holding. If at any time during the Embargo Period the Shares are sub-divided or consolidated then the provisions of this deed shall continue to apply in respect of the Holding as sub-divided or consolidated (and all references to “Holding” in this deed shall be read accordingly). The rights of the Holders to deal with its Holding are also subject to the NZX Main Board Listing Rules, the ASX Listing Rules (if applicable), the Securities Markets Act 1988, and the Financial Markets Conduct Act 2013.

## 4. Permitted sale and security interests

### 4.1 Offer under Takeovers Code, Amalgamations and Scheme of Arrangements

Notwithstanding clauses 2 and 3, if a partial or full offer is made under the Takeovers Code for the Shares during the Embargo Period, or an amalgamation or scheme of arrangement with respect to the Shares is proposed, then the Holders may sell, or agree or offer to sell, all or any part of its Holding to the offeror under that takeover offer or dispose of its Holding in the context of the amalgamation or scheme of arrangement.

### 4.2 Compliance with Takeovers Code

Notwithstanding clauses 2 and 3, the Holders may sell, or agree or offer to sell, all or any part of its Holding to the extent required to comply with the Takeovers Code.

### 4.3 Security interest permitted

Notwithstanding clauses 2 and 3, the Holders may create, or agree to create, a mortgage, charge or other form of security interest over or in respect of all or any part of its Holding in favour of a recognised bank or other similar recognised lending institution provided that the lender enters into an escrow deed with Evolve Education in relation to the relevant Shares on the same terms as this deed, to take effect from the enforcement of the security interest, for the remainder of the Embargo Period.

### 4.4 Transfer to Associated Persons

Notwithstanding clauses 2 and 3, each of the Holders may transfer all of its Holding to an Associated Person of that Holder with the prior written approval of the Non-Interested Directors (to be given at their sole discretion), provided that the Associated Person enters into an escrow deed with Evolve Education in relation to the relevant Shares on the same terms as this deed for the remainder of the Embargo Period (with such deed to also require such person to transfer such Holding back to the Holder if it ceases to be an Associated Person of the Holder).

## 5. Share register matters

### 5.1 Direction to share registrar

To give effect to clauses 2 and 3 of this deed, each Holder will sign and deliver to Evolve Education’s share registrar a direction in respect of its Holding, in favour of Evolve Education, requesting that Evolve Education’s share registrar tag the Holding in its system as being unavailable for transfer during the Embargo Period.

## **5.2 Notice to registrar of release from restrictions**

If the Holding (or any part of it), in respect of which a direction has been given under clause 5.1, is to be released from the restrictions in accordance with clause 4 of this deed, the relevant Holder may, by notice in writing to Evolve Education, request that Evolve Education instruct its share registrar to remove or amend the tag attaching to the Holding (or any part of it) and to release the same from the restrictions on transfer to the extent permitted under clause 4.

## **5.3 Removal of restrictions**

Following receipt of a notice referred to in clause 5.2, Evolve Education shall procure that its share registrar immediately remove or amend the tag attaching to the Holding and release the same from the restrictions on transfer to the extent permitted under clause 4.

# **6. General**

## **6.1 Alterations to deed**

No waiver, modification or alteration of, or addition to, any of the provisions of this deed shall be made unless agreed by each of the Holders, the Non-Interested Directors and Evolve Education in writing. Before agreeing to any such waiver, modification or alteration of, or addition to, this deed, Evolve Education must first obtain the written approval of NZX in accordance with NZX Main Board Listing Rule 7.9.2.

## **6.2 Liability**

The liability of each Holder under or otherwise in connection with this deed, is several only and shall not be joint or collective.

## **6.3 Independent legal advice**

Each of the Holders acknowledges that it has had the opportunity to obtain independent legal advice with respect to this deed.

## **6.4 Counterparts and facsimiles**

This deed may be executed in two or more counterparts (including facsimile or email copies) each of which shall be deemed an original, but all of which together shall constitute the same instrument.

## **6.5 Termination if not listed**

This deed will terminate and be of no further force or effect if Evolve Education is not first listed on the NZX Main Board before 31 December 2014, or if Evolve Education ceases (otherwise than by way of suspension) to be listed on the NZX Main Board.

## **6.6 Specific Performance**

Each Holder agrees that damages alone would be an inadequate remedy for breach of its obligations under this deed and the appropriate remedies for such a breach will include orders for specific performance, injunctive relief, any other equitable relief and/or damages.

## **6.7 Enforceability**

For the purposes of the Contracts (Privity) Act 1982, this deed and its provisions are for the benefit of, and are intended to be enforceable by, the Non-Interested Directors, Evolve Education and NZX. Evolve Education shall advise NZX immediately if it becomes aware of a breach or likely breach of this deed and shall in consultation with NZX take such steps as NZX may require to enforce this deed or prevent or remedy a breach of this deed.

## **6.8 Compliance with ASX Listing Rules**

During the Embargo Period, and if, and for so long as, the Company is listed on the official list of the ASX:

- (a) notwithstanding anything contained in this Deed, if the ASX Listing Rules prohibit an act being done, that act must not be done;
- (b) nothing contained in this Deed prevents an act being done that the ASX Listing Rules require to be done;
- (c) if the ASX Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
- (d) if the ASX Listing Rules require this Deed to contain a provision and it does not contain such a provision, this Deed is deemed to contain that provision;
- (e) if the ASX Listing Rules require this Deed not to contain a provision and it contains such a provisions, this Deed is deemed not to contain that provision; and
- (f) if any provision of this Deed is or becomes inconsistent with the ASX Listing Rules, this Deed is deemed not to contain that provision to the extent of the inconsistency.

## **6.9 Notices**

- (a) Any written notice required to be given pursuant to this deed shall (without limitation) be deemed validly given if:
  - (i) delivered by hand or sent by email (provided that the sender's email system confirms transmission to the intended recipient) to the intended recipient's physical address or email, as set out in this deed (or to such other physical address or email as the intended recipient shall notify to the other party by written notice from time to time); and
  - (ii) signed by the party giving that notice.
- (b) For the purposes of this deed, any notice delivered or transmitted by email after 5.00 pm on a Business Day, or at any time on a non Business Day, shall be deemed received at 9.00 am on the next Business Day.

## **6.10 Governing law and jurisdiction**

This deed is governed by the laws of New Zealand and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

# Schedule

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Holder	Notice Details	Number of Shares
Norah Barlow	<b>Address:</b> 4/30 Allen Street, Te Aro, Wellington 6011 <b>Email:</b> <a href="mailto:norah.barlow@merseyside.co.nz">norah.barlow@merseyside.co.nz</a>	80,000
Alistair Ryan	<b>Address:</b> 6 Melford Street, St Marys Bay, Auckland 1011 <b>Email:</b> <a href="mailto:alistair@abryan.co.nz">alistair@abryan.co.nz</a>	80,000
Alan Wham	<b>Address:</b> 138 Long Drive, St Heliers, Auckland 1071 <b>Email:</b> <a href="mailto:alan.wham@evolveeducation.co.nz">alan.wham@evolveeducation.co.nz</a>	550,000
Vivek Singh	<b>Address:</b> 15A Ballin Street, Ellerslie, Auckland 1051 <b>Email:</b> <a href="mailto:vivek.singh@evolveeducation.co.nz">vivek.singh@evolveeducation.co.nz</a>	300,000
David Smith	<b>Address:</b> c/- Evolve Education, Level 2, 54 Fort Street, Auckland <b>Email:</b> <a href="mailto:david.smith@evolveeducation.co.nz">david.smith@evolveeducation.co.nz</a>	80,000
Beverley Gordon	<b>Address:</b> c/- Lollipops Educare, Level 2, 54 Fort Street, Auckland <b>Email:</b> <a href="mailto:bev.gordon@ledu.co.nz">bev.gordon@ledu.co.nz</a>	80,000
Paula Hawking	<b>Address:</b> c/- Lollipops Educare, Level 2, 54 Fort Street, Auckland <b>Email:</b> <a href="mailto:paula.hawking@ledu.co.nz">paula.hawking@ledu.co.nz</a>	80,000

# Signing page

**EXECUTED** as a deed

**EVOLVE EDUCATION GROUP LIMITED** by:

Signature of director

Areg Kern

Name of director

Signature of director

A. B. Ryan

Name of director

**SIGNED** by **NORAH BARLOW:**

Signature of Norah Barlow

Signature of witness

Signature of witness

Name of witness **Tayla Grace Johnston**  
**Solicitor**  
**Auckland**

Occupation of witness

City/town of residence

**SIGNED** by **ALISTAIR RYAN:**

Signature of Alistair Ryan

Signature of witness


Signature of witness


Name of witness **Tayla Grace Johnston**  
**Solicitor**  
**Auckland**

Occupation of witness

City/town of residence

**SIGNED by ALAN WHAM:**

  
\_\_\_\_\_  
Signature of Alan Wham

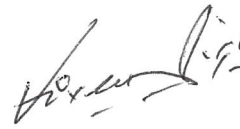
  
\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness **Tayla Grace Johnston**  
**Solicitor**  
**Auckland**


\_\_\_\_\_  
Occupation of witness

\_\_\_\_\_  
City/town of residence

**SIGNED by VIVEK SINGH:**



Signature of **Vivek Singh**

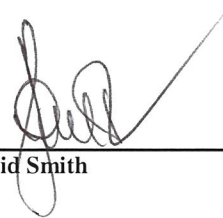
  
Signature of witness

Name of witness **Tayla Grace Johnston**  
**Solicitor**  
**Auckland**

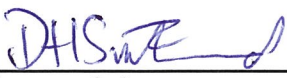
Occupation of witness

City/town of residence

**SIGNED by DAVID SMITH:**



Signature of **David Smith**

  
Signature of witness

Name of witness **Daria Helen Sutherland**  
**Solicitor**  
**Auckland**


Occupation of witness

City/town of residence

**SIGNED by BEVERLEY GORDON:**



Signature of **Beverley Gordon**

  
Signature of witness

Name of witness **Daria Helen Sutherland**  
**Solicitor**  
**Auckland**


Occupation of witness

City/town of residence

**SIGNED by PAULA HAWKINGS:**



Signature of **Paula Hawkins**

  
Signature of witness

Name of witness **Daria Helen Sutherland**  
**Solicitor**  
**Auckland**

Occupation of witness

City/town of residence



**EVOLVE EDUCATION GROUP LIMITED**

**DEED OF INDEMNITY AND ACCESS BY DEED POLL**

**BY: EVOLVE EDUCATION GROUP LIMITED (Company)**

## INTRODUCTION

The Company wishes to indemnify its directors and certain of its employees, and those of its Related Companies, on the terms set out in this deed poll.

## DEFINITIONS

**Director** means a person who is, has been or will be appointed or elected to the position of director of the Company or a Related Company, including an alternate director;

**Employee** means an employee of the Company or a Related Company and to whom the board of the Company advises in writing shall be indemnified under this deed poll;

**Indemnified Person** means each Director and each Employee; and

**Related Company** means a related company (having the meaning given that term by section 2(3) of the Companies Act 1993) of the Company.

## COVENANTS

### 1. INDEMNITY

1.1 Subject to this deed poll and to the applicable provisions of the Companies Act 1993, the Company indemnifies and will keep indemnified the Indemnified Person against:

- (a) all reasonable costs incurred by the Indemnified Person in any proceeding that relates to liability for any act or omission by the Indemnified Person as a director or employee of the Company or a Related Company and in which judgment is given in the Indemnified Person's favour, or in which the Indemnified Person is acquitted or which is discontinued; and
- (b) liability (not being criminal liability or liability in respect of a breach, in the case of a director, of the duty specified in section 131 of the Companies Act 1993 or, in the case of an employee, of any fiduciary duty owed to the Company or a Related Company) to any person other than the Company or a Related Company, for any act or omission by the Indemnified Person as a director or employee of the Company or a Related Company and all reasonable costs incurred by the Indemnified Person in defending or settling any claim or proceeding relating to any such liability,

(together "**Claims**").

1.2 The indemnities contained in clause 1.1 shall not apply in respect of any Claims or liabilities resulting from:

- (a) the settlement or admission by the Indemnified Person of any Claim without the prior written consent of the Company which would (in the reasonable opinion of the Company) prejudice the successful defence thereof by the Company;

- (b) any separate legal costs, charges and expenses which may result from the engagement by the Indemnified Person of the Indemnified Person's own advisers in connection with any Claim after the defence of such Claim has been assumed by the Company under clause 3, save where separate representation for the Indemnified Person is reasonably necessary; or
- (c) any liability in respect of which and to the extent that an indemnity is prohibited by law.

1.3 The indemnities given pursuant to clause 1.1:

- (a) are effective with respect to acts and omissions that occurred prior to the execution date of this deed poll while the Indemnified Person was a director or employee of the Company or a Related Company; and
- (b) extend to all acts and omissions of the Indemnified Person in the Indemnified Person's role as a director or employee of the Company or a Related Company while the Indemnified Person is or was a director or employee of the Company or a Related Company.

## 2. NOTIFICATION

- 2.1 If any Claim is brought or threatened to be brought against the Indemnified Person, as a result of which the Indemnified Person may seek to have recourse to the indemnities in clause 1.1, the Indemnified Person shall notify the Company in writing of the existence of the Claim as soon as practicable and will make available to the Company and its advisers all such information, books and records, and will cooperate with the Company in such manner as the Company and its advisers may require in respect of that Claim. The Indemnified Person's costs (if any) of meeting the Indemnified Person's obligations in this clause 2.1 will be met by the Company within 10 days of the Indemnified Person providing to the Company evidence reasonably satisfactory to the Company that such costs have been incurred. For the avoidance of doubt and for the purposes of this clause 2.1, "costs" means any expenses incurred by the Indemnified Person in meeting his or her obligations under this clause 2.1, but excludes any fees incurred or losses suffered by the Indemnified Person as a result of time worked or opportunities forgone.
- 2.2 The amount of the Company's liability under this deed poll shall be reduced by the amount of any additional liability or expense suffered or incurred by the Company as a result of any breach of any of the Indemnified Person's obligations under clause 2.1.

## 3. ASSUMPTION OF DEFENCE

- 3.1 Where the Company is notified of any potential Claim, the Company shall be entitled to assume the defence thereof and shall consult the Indemnified Person in relation to the selection of counsel for the Indemnified Person. Where the Company assumes the defence of any Claim it shall be entitled to determine the conduct of such Claim. Whoever conducts the defence of any Claim shall ensure that:
- (a) the other party is kept informed on a timely basis of any development in relation to the Claim; and
  - (b) to the extent practicable, the other party and its legal counsel are consulted in a timely manner prior to taking any significant steps in relation to the Claim.
- 3.2 Where the Company conducts the defence of any Claim, it shall ensure that no settlement or compromise is made without the Indemnified Person's consent (such consent not to be unreasonably withheld or delayed) if, and to the extent to which, the Company reasonably considers that it might result in, crystallise or increase any liabilities for the Indemnified Person, unless the Company at the same time confirms that those liabilities are indemnified under this

deed poll and that the Company will not deny the obligation to indemnify the Indemnified Person in respect of such liabilities.

- 3.3 Where the Company does not assume the defence of any Claim or, pursuant to clause 4, any Claim (or part thereof) which the Company intends to assert that the indemnity in clause 1.1 does not apply, then the Company shall make available to the Indemnified Person and the Indemnified Person's advisors all relevant information, books and records, and will cooperate with the Indemnified Person in such manner as is reasonable in respect of the Claim.

#### **4. RESUMPTION OF CONDUCT OF ACTIONS**

- 4.1 If, in respect of any Claim brought against the Indemnified Person, the defence of which has been assumed by the Company pursuant to clause 3, the Company intends (whether by reason of any fact or matter which is asserted or proven in such proceedings or otherwise) to assert that the indemnity contained in clause 1.1 does not apply, the Company shall promptly notify the Indemnified Person accordingly. In that event the Indemnified Person shall be entitled to resume the conduct of such parts of such Claim as relate to the matters for which the Company disputes its liability to indemnify the Indemnified Person and it shall be agreed or determined, as between the Indemnified Person and the Company, whether the indemnity contained in clause 1.1 applies. Neither the Indemnified Person nor the Company shall compromise or settle any such Claim until such matter is agreed or determined.
- 4.2 Notwithstanding the foregoing, any adjudication of a Claim prior to agreement or determination as to whether the indemnity does, or does not, apply shall not prejudice the right of the Indemnified Person or the Company to assert thereafter that the indemnity does, or does not, apply.
- 4.3 The Indemnified Person may by written notice to the Company at any time assume the unrestricted conduct of the defence of any Claim on the basis that the Indemnified Person thereby waives all rights to indemnity from the Company in relation to that Claim.

#### **5. CONTINUING INDEMNITY**

- 5.1 The indemnities in clause 1.1 are irrevocable, unconditional, continuing and principal obligations of the Company despite:
- (a) the resignation or removal of the Indemnified Person as a director or employee of the Company or a Related Company;
  - (b) the settlement of any dispute between the Indemnified Person and the Company or any third party; or
  - (c) the occurrence of any other thing,
- and remain in full force until released by the Indemnified Person.
- 5.2 Neither the obligations of the Company under this deed poll nor the rights, powers and remedies conferred by the Company upon the Indemnified Person either by law, by this deed poll or by any document or agreement to which this deed poll relates shall be discharged, impaired or otherwise affected by:
- (a) any of the obligations of the Company under this deed poll or any other document or agreement to which this deed poll relates being or becoming illegal, invalid, unenforceable or ineffective in any respect;
  - (b) any time or other indulgence being granted or agreed to be granted to the Company in respect of its obligations under this deed poll or any other document or agreement to which this deed poll relates; or

- (c) any other act, event or omission which, but for this clause 5, might operate to discharge, impair or otherwise affect any of the obligations of the Company under this deed poll or any document or agreement to which this deed poll relates or any of the rights, powers or remedies conferred upon the Indemnified Person by this deed poll or such documents or agreements or by law.

## **6. ADVANCES TO INDEMNIFIED PERSON**

- (a) Subject to paragraphs (b) and (c) of this clause 6, the Company will advance money to the Indemnified Person to enable the Indemnified Person to pay, or to reimburse the Indemnified Person for, any reasonable legal costs reasonably incurred or reasonably expected to be incurred (before the outcome of the Claim is known) by the Indemnified Person in defending a Claim for liability incurred or allegedly incurred by the Indemnified Person as a director or employee of the Company or a Related Company (including such legal costs incurred after the Indemnified Person ceases to be a director or employee of the Company or a Related Company).
- (b) Any amount advanced by the Company under paragraph (a) will be limited to such amount:
  - (i) as may be reasonably required by a lawyer as payment on account for services to be rendered in defending the Claim and disbursements that the Indemnified Person reasonably expects to incur upon prompt payment of such account for services; and
  - (ii) as the Company (acting reasonably) is satisfied, after receiving evidence from the Indemnified Person, has been or will be genuinely incurred in defending the Claim.
- (c) The Company will advance any money required in accordance with paragraph (a) within ten (10) days after receiving:
  - (i) a request from the Indemnified Person to do so; and
  - (ii) evidence from the Indemnified Person reasonably satisfactory to the Company:
    - A. that the Indemnified Person is or is entitled to be indemnified under this deed poll; and
    - B. that the amounts claimed are reasonable and have been, or will be, genuinely incurred in defending the Claim.
- (d) Where the Company has made any payment pursuant to the provisions of this deed poll, and it is subsequently established that the Company was not liable under this deed poll to make that payment, or that a lesser amount was actually payable by way of indemnity pursuant to this deed poll, then the Indemnified Person shall promptly repay and reimburse the Company for any such amounts or excess amounts paid by the Company that should not have been so paid, and in no event later than three months after receipt of written demand for such reimbursement or repayment from the Company. This clause shall not apply to the extent to which the Company has assumed the defence of the Claim and has settled it without the consent of the Indemnified Person or if the Company has otherwise made any payment without the consent of the Indemnified Person.

## **7. SUBROGATION**

- 7.1 If the Company makes, agrees to make or is obliged to make any payment under this deed poll in respect of any liability or costs for which the Indemnified Person is entitled to indemnification, then the Company shall be entitled to be subrogated to all of the Indemnified Person's rights against any other person or entity (including, without limitation, any rights of recovery or indemnity) in relation to or arising out of the act or omission which gave rise to the Indemnified Person's right of indemnification under this deed poll. The Indemnified Person must, at the Company's expense, do and concur in doing anything reasonably required by the Company for the purpose of enforcing any such rights.

## **8. TAXES**

- 8.1 If for any reason any governmental authority imposes any tax on any sum paid to the Indemnified Person hereunder, then the Company must pay to the Indemnified Person such additional amount as is required to ensure that the total amount paid, less any tax imposed on such amount, is equal to the amount that would otherwise be payable hereunder.
- 8.2 In addition to any payment by the Company to the Indemnified Person hereunder, the Company must pay to the Indemnified Person an amount equal to any goods and services tax in terms of the Goods and Services Tax Act 1985 (**GST**) that is or becomes payable by the Indemnified Person on the supply for which the indemnity payment is made, provided that no additional amount is payable on account of GST under this clause unless the Indemnified Person issues a tax invoice to the Company for that supply. Any payment by the Company to the Indemnified Person for a loss, cost or expense incurred by the Indemnified Person must be reduced by the amount of any input tax credit to which the Indemnified Person is entitled for that loss, cost or expense.

## **9. INSURANCE**

- 9.1 The Company agrees to procure, pay the premium in respect of, and maintain for the benefit of the Indemnified Person from the date of this deed poll:

- (a) directors and officers liability insurance for usual perils related to the activities of the Indemnified Person in relation to the Company;
- (b) for an amount not less than NZ\$30,000,000 on an aggregate basis for liability for all Directors and Employees and a separate amount of not less than NZ\$5,000,000 on an aggregate basis for all Directors and Employees solely for legal defence costs (or such lesser sums as the Indemnified Person may agree, but excluding liabilities and costs that the Company is not permitted to offer insurance for under section 162(5) of the Companies Act 1993 or section 61B of the Securities Act 1978); and
- (c) in respect of the Company and directors, appropriate statutory liability insurance.

In respect of the period following the date that the Indemnified Person ceases to be a director or employee of the Company or a Related Company, such insurance shall be provided as "run-off cover" such that the Indemnified Person remains insured for events occurring during the time that the Indemnified Person was a director or employee of the Company or a Related Company, for at least seven years after the Indemnified Person ceased to be a director or employee of the Company or a Related Company.

- 9.2 Where the Indemnified Person has an insurance policy that expressly covers his or her liability as a director or employee of the Company or a Related Company, then the Indemnified Person must make a claim under that policy in respect of any liability for which the Indemnified Person may be able to claim under this deed poll. If the Company has made a payment under this deed poll in respect of a liability for which the Indemnified Person has such insurance, the Indemnified Person must on receipt pay any relevant proceeds of that policy to the Company.

## **10. ACCESS TO COMPANY BOOKS**

- 10.1 During the period that the Indemnified Person is a director or employee of the Company or a Related Company, the Company shall provide the Indemnified Person at such reasonable times as the Indemnified Person may request with access to such books, records, files, databases and other information of the Company or a Related Company as is reasonably required to enable the Indemnified Person to defend any action, proceedings or claims brought against the Indemnified Person that relate to liability for any act or omission of that Indemnified Person in his or her capacity as a director or employee of the Company or a Related Company.

## **11. NOTICES TO THE COMPANY**

- 11.1 All notices and other communications given pursuant to this deed poll by a Indemnified Person to the Company shall be sent by mail with postage prepaid, by hand delivery or email transmission to the address specified below (or to such other notice details as the Company may specify from time to time):

Attention: The Chief Financial Officer  
 Evolve Education Group Limited  
 Level2, 54 Fort Street  
 Auckland  
 Email: vivek.singh@evolveeducation.co.nz

- 11.2 All such notices or communications shall be deemed to have been duly given or made:

- (a) if mailed, three days after being deposited in the mail by the sender;
- (b) if hand delivered, on delivery; or
- (c) if transmitted by email, on the date and time at which it enters the addressee's information system (as shown in a confirmation delivery report from the sender's information system which indicates the email was sent to the email address of the addressee notified for the purposes of this clause 11),

but if the receipt, delivery or transmission is not on a working day or is after 5.00pm on a working day, the notice or other form of communication is taken to be received at 8.30am on the next working day.

## **12. AMENDMENT**

- 12.1 Subject to clause 5.1, the Company may vary or amend any of the provisions contained in this deed poll by notice in writing to each Indemnified Person, provided that no variation or amendment to this deed poll will prejudicially affect any indemnity that is being provided at the time of the variation or amendment, and no reduction in the insurance cover put in place at the time of this deed poll may be made without the consent of the Indemnified Person.

## **13. JURISDICTION**

- 13.1 This deed poll shall be construed in accordance with and be governed by the laws of New Zealand and the Company submits to the exclusive jurisdiction of the Courts of New Zealand.

## **14. ENTIRE AGREEMENT**

- 14.1 This deed poll supersedes and extinguishes all prior agreements, statements, representations and understandings, whether verbal or written, given by or made relating to the matters dealt with in this deed poll.

**15. THIRD PARTY RIGHTS**

- 15.1 For the purposes of the Contracts (Privity) Act 1982, the Company acknowledges that the promises in this deed poll confer a legally enforceable benefit on each Indemnified Person, subject to the other terms of this deed poll.

**16. SEVERABILITY**

- 16.1 Part or all of a provision of this deed poll that is illegal or unenforceable may be severed from this deed poll and the remaining parts of the provision or provisions of this deed poll continue in force.

**EXECUTED AND DELIVERED AS A DEED POLL**

**EVOLVE EDUCATION GROUP LIMITED** by:

\_\_\_\_\_  
Signature of director

*Areg Kern*  
\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Signature of director

*Nord Berlin*  
\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director



# Underwriting Agreement

**Goldman Sachs New Zealand Limited**

**and**

**Forsyth Barr Limited**

**and**

**Evolve Education Group Limited**

**Date** 14 November 2014

**BELL GULLY**

AUCKLAND VERO CENTRE, 48 SHORTLAND STREET  
PO BOX 4199, AUCKLAND 1140, DX CP20509, NEW ZEALAND  
TEL 64 9 916 8800 FAX 64 9 916 8801

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This **Underwriting Agreement** is made on 14 November 2014

between (1) **Goldman Sachs New Zealand Limited (GS)**  
 and (2) **Forsyth Barr Limited (FB)**  
 and (3) **Evolve Education Group Limited (Company)**

## Introduction

- A. The Company proposes to conduct the Offer of 132,317,278 Offer Shares at the Offer Price of \$1.00.
- B. The Offer will be made to retail and institutional investors in New Zealand, to retail investors and certain institutional investors in Australia (in reliance on the Australian Mutual Recognition Regulations) and to institutional investors in certain other jurisdictions.
- C. The Company proposes to list on NZX and seek admission to the official list of ASX, and to quote the Shares on the NZX Main Board and ASX.
- D. The Company and each of the Joint Lead Managers entered into the respective Engagement Letters, which appointed the Joint Lead Managers to provide the services set out in those letters and contemplated that the Company and the Joint Lead Managers would enter into this Agreement with respect to the Offer.
- E. The Underwriter has agreed to arrange and underwrite the Institutional Offer and the Broker Firm Offer on the terms set out in this Agreement.

## It is agreed

### 1. Interpretation

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#### 1.1 Definitions

The following words have these meanings in this Agreement (including in the Introduction section) unless the contrary intention appears:

**Acquisition Agreements** means the Key Acquisition Agreements and the Additional Acquisition Agreements;

**Additional Acquisition Agreements** means the various agreements (other than the Key Acquisition Agreements) entered into on or before the Settlement Date by the Company and vendors of various early childhood education centres and the other related businesses to be acquired the Company, as described more fully in the Prospectus and in each case in a form duly and validly executed by each party thereto, together with any variations or amendments to those agreements;

**Additional Acquisition Agreement List** means a list of the Additional Acquisition Agreements specifying the parties, the target entity or assets to be acquired, the purchase price, the finance date and the completion date (including noting if the Underwriter has consented to any extension of the relevant finance or completion dates) in respect of each agreement;

**Additional Acquisition Businesses** means the businesses (taken as a whole) in respect of which the assets to be acquired by the Company under the Additional Acquisition Agreement operate;

**Advertisement** has the meaning given to it in section 2A of the Securities Act (which, for the avoidance of doubt, includes the Investment Statement);

**Affiliate** means, in relation to a specified person, any person that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, the person specified;

**Application Form** means the application form accompanying the Investment Statement in relation to the Offer;

**ASIC** means the Australian Securities and Investments Commission;

**ASX** means ASX Limited (ABN 98 008 624 691) or the securities market operated by it (as the context requires);

**ASX Listing Rules** means the listing rules of ASX except as waived or modified from time to time;

**Australian Information Document** means the additional information document containing disclosure relevant to Australian investors which is required to accompany or be incorporated within the Prospectus and/or the Investment Statement by the Australian Mutual Recognition Regulations;

**Australian Mutual Recognition Regulations** means Chapter 8 of the Corporations Act and Chapter 8 of the Corporations Regulations 2001 (Cth), as waived or modified by ASIC from time to time;

**Authorisation** includes:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action,

including any renewal or amendment;

**Broker** means:

- (a) participating organisations of NZX or licensed financial planners; and
- (b) any company, firm, organisation or corporation designated as a market participant by ASX,

distributing Offer Shares under the Broker Firm Offer;

**Broker Confirm** means a confirmation, in a form determined by the Underwriter, which has been, or will be, sent to Brokers confirming their firm allocation under the Broker Firm Offer;

**Broker Firm Offer** means the invitation under the Prospectus and Investment Statement to Retail Investors resident in New Zealand or in Australia who have received a firm allocation of Offer Shares from their Broker;

**Broker Firm Offer Closing Date** has the meaning set out in Schedule 1;

**Broker Firm Offer Opening Date** has the meaning set out in Schedule 1;

**Business Day** has the meaning given to that term in the NZX Listing Rules;

**Certificate** means a certificate to be given by the Company in the form set out in Schedule 2 signed on behalf of the Company by a director or duly authorised officer of the Company and where such certificate is signed by an officer, accompanied by a copy of the relevant authorisation;

**CHES** means ASX's Clearing House Electronic Subregister System;

**CHES Rules** means ASX Settlement Operating Rules and the provisions of the Corporations Act and ASX Listing Rules concerning CHES as and to the extent that they apply to the Company;

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, judgment, award, suit or demand of any nature (and in each case whether or not successful, compromised or settled and whether joint or several), howsoever arising, and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise, and for the avoidance of doubt, for the purposes of clause 11, a Claim includes any Inquiry;

**Companies Act** means the New Zealand Companies Act 1993;

**Company's Solicitors** means Minter Ellison Rudd Watts;

**Confirmation Letter** means a letter, in a form determined by the Underwriter, which has been, or will be, sent by the Underwriter to acceptors under the Institutional Offer;

**Confirmation of Allocation** means a confirmation, in the form attached to the Confirmation Letter, confirming an Institutional Investor's acceptance of an allocation of Offer Shares under the Institutional Offer;

**Contracts (Privity) Act** means the New Zealand Contracts (Privity) Act 1982;

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

**Deed of Release** means the deed of release dated on or around the date of this Agreement between, amongst others, the Joint Lead Managers and the Promoters;

**Due Diligence Committee** means the due diligence committee formed under the Due Diligence Planning Memorandum in connection with the Offer;

**Due Diligence Committee Report** means the report of the Due Diligence Committee (including all the attachments, appendices and schedules included, or referred to, in that report) in the form set out in schedule 3 of the Due Diligence Planning Memorandum;

**Due Diligence Investigations** means the activities referred to in clause 6.1;

**Due Diligence Planning Memorandum** means the due diligence planning memorandum in relation to the Offer, adopted by the Due Diligence Committee;

**Eligible US Fund Manager** means dealers or other professional fiduciary organised, incorporated or (if an individual) resident in the United States that are acting for an account (other than an estate or trust) held for the benefit or account of persons that are not US Persons for which they have and are exercising investment discretion, within the meaning of Rule 902(k)(2)(i) of Regulation S;

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect;

**Engagement Letters** means the FB Engagement Letter and the GS Engagement Letter;

**Environmental Claim** means any claim relating to any Environmental Laws;

**Environmental Law** means any statute, rule, regulation, decision or order of any Governmental Agency or body or any court, domestic or foreign, relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants;

**Escrow Deeds** means:

- (a) the escrow deed dated 14 November 2014 between Kern Group NZ Limited, Wraith Capital Group NZ Limited, and Stuart James and Gillian James as trustees of the S.B. James Superannuation Fund; and
- (b) the escrow deed dated 14 November 2014 between Norah Barlow, Alistair Ryan, Alan Wham, Vivek Singh, David Smith, Beverley Gordon and Paula Hawkings,

as described in paragraph 17 of Part 10 of the Prospectus under the heading "Material Contracts";

**Facility Agreement** means the facility agreement to be entered into between ASB Bank Limited and the Company, as contemplated by the Facility Agreement Terms Sheet;

**Facility Agreement Terms Sheet** means the credit approved terms sheet dated 13 November 2014 provided by ASB Bank Limited to the Company as described in section 7.9 of the Prospectus under the heading "Description of the Evolve Group's Financing Arrangements";

**Fair Trading Act** means the Fair Trading Act 1986;

**FB Engagement Letter** means the letter between the Company and FB dated 14 August 2014 appointing the FB and its Affiliates to act as joint lead manager in relation to the Offer;

**Financial Markets Conduct Act** means the New Zealand Financial Markets Conduct Act 2013;

**FMA** means the New Zealand Financial Markets Authority;

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal, judicial, investigative, review or regulatory body, department, commission, authority, tribunal, agency, stock exchange or entity in any jurisdiction;

**Governmental Licence** means a certificate, permit, licence, franchise, approval, consent, Authorisation, order or other concession of or from a Governmental Agency that is necessary to own or lease the properties and conduct the businesses of the Group as described in the Prospectus or Investment Statement;

**Group** means the Company and its subsidiaries from time to time, and for the purposes of this Agreement will be deemed to include all of the Material Subsidiaries and all subsidiaries and assets to be acquired pursuant to the Acquisition Agreements, whether or not such entities do become a subsidiary of the Company or such assets are acquired on or before the Settlement Date;

**GS Engagement Letter** means the letter between the Company and GS dated 7 August 2014 (as amended and restated on 24 September 2014) appointing GS to act as sole arranger, joint lead manager and sole bookrunner in relation to the Offer;

**GST** means tax charged under the GST Act;

**GST Act** means the New Zealand Goods and Services Tax Act 1985 or if applicable in relation to a supply, the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**Indemnified Person** means each of:

- (a) FB, its Affiliates, associated companies, subsidiaries and branches and their respective directors, officers, employees, consultants, control persons and agents and any successor or assignee of any such persons (each, a **FB Person**); and
- (b) GS, its Affiliates, associated companies, subsidiaries and branches and their respective directors, officers, employees, consultants, control persons and agents and any successor or assignee of any such persons (each, a **GS Person**);

**Inquiry** means an actual or threatened investigation or inquiry, in relation to the Offer or the Offering Materials by the FMA, NZX, ASIC, ASX or any other Governmental Agency or any actual or threatened litigation proceedings in relation to the Offer or the Offering Materials;

**Insolvency Event** means, in relation to an entity or person:

- (a) an order being made, or the entity's shareholders passing a resolution or any steps being taken to pass such a resolution, for an entity's liquidation or for the entity to be placed under official management or otherwise wound up, liquidated or dissolved;
- (b) an application being made to a court for an order for the entity's liquidation or for the entity to be placed under official management or otherwise wound up, liquidated or dissolved (other than any such application which is frivolous or vexatious), or any steps being taken to seek such an order;
- (c) an administrator or statutory manager or similar official being appointed to the entity or a material part of the entity's assets;
- (d) an act of bankruptcy occurs, or any steps are taken in relation to an act of bankruptcy, under the Insolvency Act 2006;
- (e) the entity resolving to appoint, or any steps being taken to appoint, an administrator under voluntary administration, a receiver or analogous person to that entity or to any material part of that entity's property;
- (f) an application being made to a court for an order to appoint a receiver, provisional liquidator, trustee for creditors, administrator or analogous person to the entity or any material part of the entity's property (other than any such application which is frivolous or vexatious);
- (g) an appointment of the kind referred to in paragraph (f) of this definition being made (whether or not following an application);

- (h) the holder of a security interest taking possession of any material part of the entity's or person's property;
- (i) the entity or person suspending payment of its debts (that are not the subject of a bona fide dispute), ceasing (or threatening to cease) to carry on the majority of its business or being or becoming unable to pay its debts when they are due; or
- (j) the entity or person taking any step to enable it to enter into a court-sanctioned compromise or arrangement with, or assignment for the benefit of, any of its creditors, unless such event takes place as part of a solvent reconstruction, amalgamation, merger or consolidation, or if it would not have a material adverse effect on the ability or capacity of the entity to perform this Agreement in accordance with its terms;

**Institutional Investor** means an investor who the Joint Lead Managers reasonably believe to be a person to whom an offer or invitation in respect of Offer Shares may be made without the need for a registered or lodged Offering Material or other formality, including:

- (a) in New Zealand, persons whose principal business is the investment of money or who, in the course of and for the purposes of their business, habitually invest money, within the meaning of section 3(2)(a)(ii) of the Securities Act; or
- (b) in Australia, persons who satisfy the criteria for "sophisticated investors" under section 708(8) or are "professional investors" under section 708(11) of the Corporations Act,

provided that in all such cases such an investor may not be located in the United States with the exception of an Eligible US Fund Manager;

**Institutional Offer** means the invitation pursuant to the Prospectus to subscribe for Offer Shares made to:

- (a) New Zealand and Australian resident Institutional Investors as part of the Offer; and
- (b) Institutional Investors in a number of other jurisdictions outside New Zealand and Australia, as part of the ROW Offer;

**Investment Statement** means the investment statement to be lodged with ASIC and in the form approved by the board of the Company for distribution in respect of the Offer;

**Joint Lead Managers** means each of GS and FB;

**Key Acquisition Agreements** means the agreements listed in rows 3 and 4 of Schedule 4 of this Agreement, in each case in a form duly and validly executed by each party thereto, together with any variations or amendments to those agreements;

**Key Documents** means the documents listed in Schedule 4 of this Agreement;

**Lollipops Educare** means Lollipops Educare Holdings Limited;

**Loss** means all Claims, demands, liabilities, losses, costs, charges or expenses (including legal expenses) and liabilities (including all such losses suffered or incurred in disputing, defending, investigating, preparing or providing evidence in connection with any Claims or Inquiries and/or in establishing a right to be indemnified under clause 11.1 and/or in seeking advice in relation to any Claims or in any way related to or in connection with the indemnity in clause 11.1) and whether joint or several;

**Material Adverse Change** means a material adverse change (whether individually or in the aggregate), or any event or development which could reasonably be expected to give rise to a material adverse change (whether individually or in the aggregate), in or affecting the



condition (financial, operational, legal or otherwise), assets, liabilities, financial position or performance, profits, losses, results of operations, earnings, prospects or forecasts, or business affairs of (i) the Company (ii) a Material Subsidiary (other than PORSE) (iii) PORSE (iv) the Group considered as one enterprise or (v) the Additional Acquisition Businesses, in each case whether or not arising in the ordinary course of business;

**Material Subsidiaries** means the entities set out in Part B of Schedule 5, whether or not such entities do become a subsidiary of the Company on or before the Settlement Date and **Material Subsidiary** means any one of them;

**Mutual Recognition Regulations** means the New Zealand Securities (Mutual Recognition of Securities Offerings – Australia) Regulations 2008;

**NZ Clear** means the securities clearing and settlement facility known as the "NZ Clear Settlement System";

**NZ IFRS** means New Zealand equivalents to the International Financial Reporting Standards and other authoritative pronouncements of the New Zealand Accounting Standards Board;

**NZX** means NZX Limited;

**NZX Listing Rules** means the Main Board/Debt Market Listing Rules of NZX, except as waived or modified from time to time;

**NZX Main Board** means the main board equity securities market operated by NZX;

**NZX Participant Rules** means the participant rules made by NZX;

**Offer** means the offer of 132,317,278 Offer Shares comprising the Institutional Offer and the Broker Firm Offer;

**Offering Materials** means all documents issued, published or used by or on behalf of the Company, whether before or after the date of this Agreement, in connection with the Offer including the Prospectus and Investment Statement, any Supplementary Disclosure Document, the Australian Information Document, each Advertisement in respect of the Offer, the Roadshow Presentation, any NZX or ASX announcements, media statements, advertising, publicity or other communications issued, published or used by or on behalf of the Company in connection with the Offer, and any other document that supplements or replaces any of those documents, and any website pages on which any such documents are made available by or on behalf of the Company;

**Offer Price** means NZ\$1.00 per Offer Share;

**Offer Share** means a Share to be offered by the Company for subscription pursuant to the Offer;

**PORSE** means PORSE In-Home Childcare (NZ) Limited, PORSE Franchising (NZ) Limited, PORSE Education & Training (NZ) Limited and FOR Life Education & Training (NZ) Limited;

**Promoters** has the meaning given to such term in the Prospectus;

**Prospectus** means the prospectus (which includes the Australian Information Document) to be lodged with the Registrar of Financial Service Providers and ASIC in respect of the Offer (and for the purposes of clause 7 shall include any Supplementary Disclosure Document issued in compliance with clause 6.4);

**Prospectus Lodgement Date** has the meaning set out in Schedule 1;

**Quotation Date** has the meaning set out in Schedule 1;

**Registrar of Financial Service Providers** means the New Zealand Registrar of Financial Service Providers;

**Regulation S** means Regulation S under the US Securities Act;

**Retail Investor** means an investor resident in New Zealand or in Australia who is eligible to participate in the Broker Firm Offer provided that such investor is not located in the United States;

**Roadshow Presentation** means the materials prepared and used by the Company in presentations, or otherwise made available, to prospective Institutional Investors in connection with the Offer (including the draft "pathfinder" version of the Prospectus), whether before or after the date of this Agreement;

**ROW Offer** means the offer of Offer Shares under the Institutional Offer to:

- (a) Institutional Investors in selected jurisdictions outside the United States, New Zealand and Australia to whom the Offer Shares may lawfully be offered for subscription in those jurisdictions without registration, lodgement or other formality or breach of laws or regulatory policies of that jurisdiction; and
- (b) Eligible US Fund Managers in the United States, in each case in "offshore transactions" (as defined in Rule 902(h) under Regulation S) in reliance on Regulation S;

**Securities Act** means the New Zealand Securities Act 1978;

**Securities Regulations** means the New Zealand Securities Regulations 2009;

**Selling Syndicate** means the syndicate appointed in accordance with the rules prepared and approved and agreed by the members of the syndicate to provide selling services in relation to the Offer;

**Settlement** will occur when all of the Offer Shares have been issued in accordance with clause 4;

**Settlement Date** has the meaning set out in Schedule 1;

**Share Registrar** means Link Market Services Limited;

**Share** means an ordinary share in the Company;

**Shortfall Shares** has the meaning given to that term in clause 5.2;

**Statement Despatch Date** has the meaning set out in Schedule 1;

**Subsidiaries** means entities set out in Part A of Schedule 5 and **Subsidiary** means any one of them;

**Supplementary Disclosure Document** means any amended or replacement Investment Statement or Prospectus registered with the Registrar of Financial Service Providers and lodged with ASIC (if required) in connection with the Offer;

**Timetable** means the timetable set out in Schedule 1, as amended from time to time in accordance with clause 3.4;

**Underwriter** means Goldman Sachs New Zealand Limited;

**United States** has the meaning given to that term in Rule 902(l) under the US Securities Act;

**US Person** has the meaning given to that term in Rule 902(k) under the US Securities Act;

**US Securities Act** means the United States Securities Act of 1933; and

**Valid Application** means:

- (a) if application is made under the Institutional Offer, a binding and irrevocable bid to acquire Offer Shares and/or a duly completed Confirmation of Allocation and registration form in respect of the relevant Offer Shares from an Institutional Investor submitted in accordance with the requirements of the Underwriter; and
- (b) if application is made under the Broker Firm Offer, a duly completed Application Form stamped and lodged by a Broker or a member of the Selling Syndicate together with payment of application monies in full and in cleared funds, in each case submitted in accordance with the requirements of the Underwriter on or before the Broker Firm Offer Closing Date.

## 1.2 **This Agreement takes precedence over the Engagement Letters**

The parties acknowledge that this Agreement will take precedence over, and will apply to the extent of any inconsistency with, the Engagement Letters.

## 1.3 **Timetable**

All references to dates in this Agreement have the same meaning as in the Timetable, and any defined terms not defined in clause 1.1 but defined in the Timetable have the meaning given to them in the Timetable.

## 1.4 **References to certain general terms**

Unless the contrary intention appears, a reference in this Agreement to:

- (a) **control** (including the terms **controlling, controlled by** and **under common control with**) means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of securities, by contract or agency or otherwise and the term **person** is deemed to include a partnership;
- (b) **subsidiary** means a subsidiary as defined in sections 5 and 6 of the Companies Act and, where applicable, read as if the expression **company** in those sections includes any body corporate, wherever incorporated or established;
- (c) the effect of any matter on the **outcome** of the Offer is determined by assessing the likely effect of that matter on a decision of an investor to invest in the Offer Shares as if that decision to invest were made after the occurrence of that matter, and not by considering the number and extent of applications received before the occurrence of that matter;
- (d) **(variations or replacement)** a document (including this Agreement) includes any variation or replacement of it;
- (e) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Agreement;

- (f) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) **(applicable law)** references to **applicable law** include all laws and regulations of jurisdictions applicable to the Offer, a member of the Group or other entities, as the case may be (including the Securities Act, the Securities Regulations, the Financial Markets Conduct Act, the Mutual Recognition Regulations, the Australian Mutual Recognition Regulations, the Corporations Act, the Companies Act and any other laws, regulations and licence conditions within or outside New Zealand and Australia), and rules, policies, official directives, guidelines, orders, requests or requirements of any Governmental Agency, including the NZX Listing Rules, the applicable listing requirements of NZX, the ASX Listing Rules and the applicable listing requirements of ASX, except to the extent compliance is modified, waived or exempted in favour of a person in the relevant circumstances;
- (h) **(singular includes plural)** the singular includes the plural and vice versa;
- (i) **(person)** the word **person** includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body, an association and any Governmental Agency;
- (j) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novating) and assigns;
- (k) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (l) **(dollars)** New Zealand dollars, dollars, NZ\$ or \$ is a reference to the lawful currency of New Zealand;
- (m) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) **(meaning not limited)** the words **include, including, for example** or **such as** are not used as, nor are they to be interpreted as, words of limitations, and, when introducing an example, do not limit the meaning of the words to which the example relates, that example or examples of a similar kind; and
- (p) **(time of day)** except as may be specified, time is a reference to New Zealand time.

## 1.5 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.

## 1.6 Relationship of the parties

- (a) The obligations of the Joint Lead Managers under any clause are several and not joint or joint and several, and no Joint Lead Manager has responsibility or liability for the obligations of the other Joint Lead Manager.
- (b) Except where the contrary intention is indicated, a right of a party under this Agreement is held by that party severally and each party exercises its rights, powers

and benefits under this Agreement individually. Similarly, an obligation of a party under this Agreement binds that party severally, except where the contrary intention is indicated.

- (c) Any reference to the Joint Lead Managers in this Agreement is a reference to each Joint Lead Manager separately, so that (for example) a representation, warranty or undertaking is given by each Joint Lead Manager separately and in respect of itself only.
- (d) Any references to GS as a Joint Lead Manager or the Underwriter is deemed to include a reference to GS acting in any of those capacities, and such references do not limit any rights which GS has under this Agreement.
- (e) Any references to the Company as a party to an Acquisition Agreement or Key Document is deemed to include a reference to the Company's nominee or subsidiary.
- (f) Where the consent, approval, waiver or determination (or other decision) of two or more parties is required under this Agreement, that consent, approval, waiver or determination (or other decision) must be obtained from each of those parties.
- (g) The Joint Lead Managers will not:
  - (i) represent themselves or allow themselves to be represented as an employee or agent of the Company except as expressly provided by this Agreement; or
  - (ii) by virtue of this Agreement be or become an employee or agent of the Company.
- (h) Nothing in this Agreement will be construed so as to constitute an agency, partnership or a fiduciary relationship between GS, FB, the Selling Syndicate, the Company, or any of them, or so as to constitute any of them as the agent, partner, fiduciary or legal representative of any other of them.
- (i) No party to this Agreement has the authority to bind any other party separately, except as expressly provided by this Agreement.

## 2. Conditions

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### 2.1 Conditional obligations of the Joint Lead Managers

- (a) The obligations of each Joint Lead Manager and the Underwriter under this Agreement are conditional on:
  - (i) **(regulatory requirements)**
    - (A) the Company obtaining the following regulatory approvals in respect of the Offer before the earlier of lodgement of the Prospectus with the Registrar of Financial Service Providers and midday on the Prospectus Lodgement Date:
      - (1) from the FMA, the Securities Act (Evolve Education Group Limited) Exemption Notice 2014 in the form previously disclosed to the Joint Lead Managers;
      - (2) from the Takeovers Panel, the Takeovers Code (Evolve Education Group Limited) Exemption Notice 2014 in the form previously disclosed to the Joint Lead Managers;

- (3) from ASIC, confirmation under section 1200B(3) of the Corporations Act that the Offer will be a 'recognised offer' within the meaning of section 1200B(1) of the Corporations Act notwithstanding technical non-compliance with section 1200C(5) of the Corporations Act;
  - (4) from NZX, all necessary or customary approvals under the NZX Listing Rules; and
  - (5) from ASX, all necessary or customary waivers from, and rulings/approvals under, the ASX Listing Rules,

such regulatory approvals being in full force and effect;
- (B) in accordance with regulation 15 and regulation 18 of the Mutual Recognition Regulations, the Company (or its agents or representatives) having given notice to the Registrar of Financial Service Providers of its intention to make the Offer in Australia not later than the time at which the Company (or its agents or representatives) notifies ASIC of the intention to make the Offer in Australia;
- (ii) **(Key Documents)** each Key Document (other than the Facility Agreement) having been duly executed by each party to it before midday on the Prospectus Lodgement Date;
- (iii) **(Due Diligence Committee Report)**
  - (A) the Joint Lead Managers being satisfied that the Due Diligence Committee has completed its due diligence investigations (including any bring-down due diligence investigations) in respect of the Offer in accordance with the Due Diligence Planning Memorandum; and
  - (B) receipt by the Joint Lead Managers of a copy of the final Due Diligence Committee Report contemplated by the Due Diligence Planning Memorandum, signed by each member of the Due Diligence Committee, including the advice, opinions, reports and sign-offs comprising the schedules, appendices and attachments to, or provided with, the final Due Diligence Committee Report, by 10.00am on the Prospectus Lodgement Date;
- (iv) **(NZX quotation approval)** application having been made to NZX for permission for the Shares to be quoted on the NZX Main Board and all the requirements of NZX relating thereto that can be complied with on or before the Prospectus Lodgement Date having been duly complied with by the earlier of lodgement of the Prospectus with the Registrar of Financial Service Providers and midday on the Prospectus Lodgement Date;
- (v) **(ASX quotation pre-approval)** application having been made to ASX for permission for the Shares to be quoted on ASX and all the requirements of ASX relating thereto that can be complied with on or before the Prospectus Lodgement Date having been duly complied with by 3.00pm (Sydney time) on the Prospectus Lodgement Date;
- (vi) **(Prospectus registration in New Zealand)** the Prospectus (in form and substance acceptable to the Joint Lead Managers) having been accepted for registration by the Registrar of Financial Service Providers by 5.00pm on the Prospectus Lodgement Date;

- (vii) **(Australian lodgement)** the Prospectus, Australian Information Document and Investment Statement (together with any additional documents required by the Australian Mutual Recognition Regulations) having been lodged with ASIC by 3.00pm (Sydney time) on the Prospectus Lodgement Date, and the Company (or its agents or representatives) having taken all other steps required to obtain the benefit of the Australian Mutual Recognition Regulations;
- (viii) **(Escrow Deeds)** each of the Escrow Deeds having been entered into by the parties thereto by midday on the Prospectus Lodgement Date, remaining in full force and effect and not having been varied, terminated or breached;
- (ix) **(Deed of Release)** the Deed of Release, in the form previously agreed with the Joint Lead Managers, having been entered into by each of the Releasing Parties (as defined therein) by midday on the Prospectus Lodgement Date, remaining in full force and effect and not having been varied, terminated or breached;
- (x) **(Legal Opinion)** receipt by the Joint Lead Managers of each of the Company's Solicitor's New Zealand legal opinion and the Company's Australian counsel's Australian legal opinion in respect of the Offer in the forms previously agreed with the Joint Lead Managers by midday on the Prospectus Lodgement Date; and
- (xi) **(Acquisition Agreements)**
  - (A) each of the Acquisition Agreements having been duly executed and entered into by the parties thereto by the date of this Agreement;
  - (B) each of the Acquisition Agreements remaining in full force and effect and not having been varied (including in relation to any extension of any finance date or completion date), terminated or breached (or being reasonably likely to be terminated or breached) and no condition to which any Acquisition Agreement is subject having been waived (except with the prior written consent of the Underwriter (such consent not to be unreasonably withheld; it being acknowledged that the Underwriter has not consented in writing to the extension of any finance dates or completion dates for any of the Acquisition Agreements, except to the extent specified in the Additional Acquisition Agreement List) as at midday on the Settlement Date;
  - (C) each condition to which any Acquisition Agreement is subject which is due to be satisfied by a specified time that is prior to midday on the Settlement Date having been satisfied or waived, or not becoming reasonably unlikely to be satisfied, or incapable of satisfaction or waiver, prior to that time, in accordance with the terms of the relevant Acquisition Agreement;
  - (D) no condition to which any Acquisition Agreement is subject which is due to be satisfied by a specified time that is on or after midday on the Settlement Date becoming reasonably unlikely to be satisfied, or incapable of satisfaction or waiver, prior to midday on the Settlement Date;
  - (E) receipt by the Joint Lead Managers of a copy of the Additional Acquisition Agreements List by, and current and up-to-date as at, midday on the Prospectus Lodgement Date; and

- (F) nothing having occurred that indicates that the aggregate consideration to be provided by the Company for the assets to be acquired by it under the Additional Acquisition Agreements is inappropriate or unreasonable.
- (b) The obligations of the Underwriter under clause 5 are conditional on:
- (i) **(clause 2.1(a) conditions)** each condition referred to in clause 2.1(a) having been:
    - (A) satisfied by the date and time specified in the relevant clause, or if none is specified, such condition having not become incapable of satisfaction; or
    - (B) waived (if capable of waiver) in accordance with this Agreement;
  - (ii) **(ASX quotation approval)** ASX having indicated in writing on or before 2.00pm on the Business Day prior to the Settlement Date that it will grant permission for the official quotation of the Shares on ASX (subject only to customary pre-quotation listing conditions);
  - (iii) **(recognised offer in Australia)** no later than the day the Offer is made in Australia, the Company (or its agents or representatives) having taken all steps to ensure that the conditions in section 1200C of the Corporations Act are met in relation to the Offer on that day (as amended in respect of section 1200C(5) of the Corporations Act pursuant to the declaration provided by ASIC as described in clause 2.1(a)(i)(A)(3) above);
  - (iv) **(Certificate)** receipt by the Joint Lead Managers of a Certificate from the Company by 8.00am on the Settlement Date;
  - (v) **(Facility Agreement)**
    - (A) entry into the Facility Agreement by the parties to it by 5.00pm on the Business Day prior to the Settlement Date; and
    - (B) all conditions precedent to which the Facility Agreement is subject (other than completion of the Offer) having been satisfied prior to Settlement and all monies under the Facility Agreement that are intended to be drawn down by the Company on completion of the Offer being available for drawdown;
  - (vi) **(Key Acquisition Agreements)** evidence satisfactory to the Joint Lead Managers that share transfers are held in escrow in accordance with the terms of the Key Acquisition Agreements pursuant to which the Company (or its nominee) has the right to be registered in the share registers of Lollipops Educare, PORSE In-Home Childcare (NZ) Limited, PORSE Franchising (NZ) Limited, PORSE Education & Training (NZ) Limited and FOR Life Education & Training (NZ) Limited, as the holder of all of the shares in each such company on the Completion Date (as such term is defined in each Key Acquisition Agreement), by 8.00am on the Settlement Date; and
  - (vii) **(Settlement schedule)** receipt by the Joint Lead Managers from the Company of a schedule in relation to funds flows in respect of the acquisitions under the Key Acquisition Agreements, in a form previously agreed with the Joint Lead Managers, by 8.00am on the Settlement Date.



## 2.2 **Conditions not satisfied:**

- (a) The Company must use all reasonable endeavours to procure that each of the conditions in clause 2.1 is satisfied by its respective deadline, or if none is specified, then by 8.00am on the Settlement Date.
- (b) The conditions in clause 2.1 are for the benefit of GS and FB only.
- (c) GS may waive one or more of the conditions in clause 2.1 (if capable of waiver) in its absolute discretion, on behalf of the Joint Lead Managers and the Underwriter together, by giving written notice to the Company.

## 3. **Appointment and conduct of the offer**

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### 3.1 **Appointment**

The Company has appointed:

- (a) the Joint Lead Managers as joint lead managers to the Offer; and
- (b) GS as sole arranger, bookrunner and underwriter to the Offer,

in each case exclusive of any other financial institution in accordance with the terms of the Engagement Letters.

### 3.2 **Compliance**

The Company must:

- (a) conduct the Offer in accordance with the Offering Materials, the Timetable, the Company's constitution, this Agreement, the NZX Listing Rules, the ASX Listing Rules, the Securities Act, the Securities Regulations, the Mutual Recognition Regulations, the Australian Mutual Recognition Regulations, the Fair Trading Act, the Financial Markets Conduct Act and any other applicable laws;
- (b) prepare the Prospectus and the Australian Information Document for lodgement, the Investment Statement for distribution and any other Offering Materials;
- (c) no later than the Prospectus Lodgement Date and in accordance with the Securities Act, deliver the Prospectus to the Registrar of Financial Service Providers for registration;
- (d) no later than the Prospectus Lodgement Date and in accordance with the Corporations Act, deliver the Prospectus, Australian Information Document and Investment Statement to ASIC, together with any additional documents required by the Australian Mutual Recognition Regulations to be lodged with ASIC;
- (e) no later than 7 days after the Prospectus and Investment Statement are lodged with ASIC, submit the listing application for the Company's admission to the official list of ASX; and
- (f) keep the Joint Lead Managers informed as to the progress of the Offer and the applications made to NZX and ASX for quotation of the Shares.

### 3.3 Quotation

The Company must use its best endeavours to:

- (a) procure that the Company is and remains listed with NZX and obtains admission to the official list of ASX; and
- (b) procure that the Shares are quoted on the NZX Main Board and ASX,

in each case by the Quotation Date and in accordance with the Offering Materials.

### 3.4 Amending Timetable

The Timetable may only be amended by the Company with the prior written consent of the Underwriter.

### 3.5 Support and access

The Company must provide, or use all reasonable endeavours to procure the provision of, all information and assistance as reasonably required by the Joint Lead Managers in making, promoting and marketing the Offer on the Company's behalf, including:

- (a) providing an electronic version and such number of the printed copies of the final Offering Materials to, or as directed by, the Joint Lead Managers as the Joint Lead Managers reasonably require from time to time, including for distribution to the Selling Syndicate; and
- (b) if requested, providing a marked copy of any final Offering Materials (including such Prospectus as lodged with the Registrar of Financial Service Providers on the Prospectus Lodgement Date) showing all changes from any draft of those documents previously provided to the Joint Lead Managers for the purposes of promoting and marketing the Offer.

### 3.6 Additional Company support and access

The Company must provide and procure access to the Group's Chairman, Chief Executive Officer, Chief Financial Officer, other members of its Board and other agreed senior executives for the promotion, advertising and marketing of the Offer, including attendance and participation of such persons at Roadshow Presentations and other investor briefings, in all cases in accordance with a schedule to be agreed between the Underwriter and the Company.

### 3.7 ASX pre-quotation conditions

The Company will provide a pre-quotation statement for release to the market containing the information required by ASX, and sign and deliver all documents as required by ASX, in the conditions to its listing approval.

### 3.8 Valid Applications

The Company shall accept all Valid Applications received prior to the relevant closing date for applications as specified in the Offering Materials (except where the Company and the Underwriter agree that a Valid Application should be refused).

### 3.9 Obligations in respect of applications

- (a) The Company must:
  - (i) provide, or direct the Share Registrar to provide, the Underwriter with details of all applications lodged in respect of the Offer, whether Valid Applications or not;
  - (ii) inform the Underwriter of the number of applications for Offer Shares which are not Valid Applications and the grounds on which the Company believes those applications are not Valid Applications; and
  - (iii) if so requested, allow the Underwriter to review the applications which are not Valid Applications.
- (b) In respect of any applications that are not Valid Applications only because payment has been made by cheque which has not yet cleared, the Company must use all reasonable efforts to clear those cheques up to the Settlement Date.

### 3.10 Allocation

To the extent that all Offer Shares are not allocated to Brokers or Institutional Investors (as applicable) before this Agreement is executed, the Underwriter will be entitled to allocate the remainder of the Offer Shares at its sole discretion, subject to compliance with the Offering Materials and all applicable laws. For the avoidance of doubt, it is acknowledged that each of the Joint Lead Managers and their Affiliates were permitted to bid into the bookbuild conducted in connection with the Offer and that Offer Shares may be allocated to the Joint Lead Managers, their Affiliates and clients of those entities.

## 4. Issue and Settlement

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### 4.1 Issue

- (a) Subject to clause 5.2, on the Settlement Date, the Company must issue the Offer Shares in respect of which Valid Applications have been received and accepted (including the Shortfall Shares to the Underwriter pursuant to clause 5.2(d) or to such persons identified in the duly completed confirmation(s) of allocation and registration form(s) referred to in clause 5.2(e)).
- (b) In order to facilitate settlement of the Institutional Offer on a delivery versus payment basis, the Company must lodge the Offer Shares to be issued under the Institutional Offer or allocation interests (as the case may be):
  - (i) for NZX investors, into a NZ Clear account nominated by the Underwriter by 9.00am on the Settlement Date free-of-payment; and
  - (ii) for ASX investors, into a CHESS account nominated by the Underwriter by 2.00pm on 2 December 2014 free-of-payment,

or, in each case, by such later time as the Underwriter may agree, acting reasonably.

The final number of allocation interests and Offer Shares and account details will be notified by the Underwriter by 5.00pm on 1 December 2014.

## 4.2 Settlement

- (a) The Company will, and where relevant will procure that the Share Registrar will, manage settlement of the issue of the Offer Shares under the Broker Firm Offer in accordance with this Agreement and the Offering Materials.
- (b) The Underwriter will act as a broker under the NZX Participant Rules or the CHES Rules, as the case may be, and manage settlement of the Institutional Offer on a delivery versus payment basis on behalf of the Company.
- (c) The Company will, and will procure that the Share Registrar will, carry out all actions in respect of the New Zealand and Australian share registers managed by the Share Registrar on behalf of the Company that are required to be carried out to facilitate Settlement on the Settlement Date.
- (d) The Company will allot the Offer Shares by 11.00am on the Settlement Date.

## 4.3 Remittance of settlement proceeds

Subject to clauses 2 and 10, the Underwriter will pay:

- (a) the gross amount received in respect of payment for the Offer Shares under the Institutional Offer; and
- (b) all amounts payable under clause 5.2(d); less
- (c) all fees and expenses payable to the Joint Lead Managers in relation to the Offer in accordance with clause 9,

(such amount, the **Settlement Amount**) in immediately available same-day cleared funds to the account nominated by the Company (by 5.00pm two Business Days prior to the Settlement Date) by no later than midday on the Settlement Date or such later time as the Company may direct. The Company acknowledges that the payment by the Underwriter of the Settlement Amount to the account nominated by the Company in accordance with this clause 4.3 is a full discharge of any payment obligation the Underwriter may have to the Company in respect of those amounts under this Agreement or otherwise.

## 4.4 Records

Up to and including the Settlement Date, the Company must maintain or procure the maintenance of (and use all reasonable endeavours to permit the Underwriter to inspect at any reasonable time) accurate records of all material matters in relation to the Offer Shares including:

- (a) the number and copies of all applications received;
- (b) details of application monies received and deposited;
- (c) the processing of applications; and
- (d) the despatch of securities transaction statements.

## 4.5 Despatch of securities transaction statements and refunds

The Company will procure that the Share Registrar despatches the requisite securities transaction statements in respect of the Offer Shares as soon as practicable after Settlement but no later than the Statement Despatch Date in accordance with the NZX Listing Rules,

ASX Listing Rules, the Securities Act, the Corporations Act, any other applicable law and the Offering Materials, and pays any refunds (if any) in accordance with the Offering Materials.

## 5. Underwriting and settlement support

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### 5.1 Underwriting and settlement underwriting obligations

- (a) The Underwriter agrees to underwrite the Broker Firm Offer and the Institutional Offer, subject to the terms and conditions of this Agreement, up to a maximum aggregate amount of \$132,317,278.
- (b) The Company confirms to the Underwriter that the Underwriter has authority, at any time, to appoint, or have appointed, sub-underwriters to sub-underwrite all or part of the Offer and nominate the allottees of all or any of the Shortfall Shares.

### 5.2 Underwriting and settlement underwriting process

Subject to clauses 2 and 10, if by 11.00am on the Settlement Date:

- (a) any:
  - (i) Institutional Investor who has been sent a Confirmation Letter; or
  - (ii) Broker who has been sent a Broker Confirm,

fails to lodge or cause to be lodged application monies with the Underwriter (in the case of the Institutional Investors) or the Company (in the case of Brokers) in respect of all the Offer Shares allocated to that persons (the aggregate shortfall of such Offer Shares, the **Settlement Shortfall Shares**); and/or
- (b) the aggregate number of Offer Shares allocated to Institutional Investors and Brokers under the Offer is less than the number of Offer Shares to be issued under the Offer (the aggregate shortfall of such Offer Shares, together with the Settlement Shortfall Shares, the **Shortfall Shares**),

then at or before midday on the Settlement Date:

- (c) the Company shall be entitled to give written notice to the Underwriter detailing the number of Shortfall Shares to be allocated to the Underwriter;
- (d) the Underwriter must ensure that, in respect of any Shortfall Shares that have been allocated to it under clause 5.2(c), the Underwriter has received, in immediately available same-day cleared funds, an amount equal to the Offer Price multiplied by the number of Shortfall Shares allocated to the Underwriter under that sub-clause;
- (e) if the Underwriter requires any Shortfall Shares that have been allocated to it under clause 5.2(c) to be issued to persons other than the original applicant (if any) or the Underwriter, the Underwriter must lodge with the Underwriter duly completed confirmation(s) of allocation and registration form(s) in respect of such Shortfall Shares from Institutional Investor(s) submitted in accordance with the requirements of the Underwriter; and
- (f) the Company must take all necessary and appropriate steps to procure the issue of the Offer Shares in accordance with clause 4.1.

### 5.3 Assignment of contractual rights

- (a) Subject to the Underwriter performing its obligations under clause 5.2, the Company hereby assigns to the Underwriter all corresponding contractual rights and recourse that it may have against a person allocated Offer Shares under the Institutional Offer or the Broker Firm Offer (including the rights to require the relevant applicant to pay the Offer Price for the relevant Offer Shares or, alternatively, to terminate the contract to issue the relevant Offer Shares to the relevant applicant and instead to issue them to the Underwriter or any person or persons nominated by the Underwriter), including contractual rights and recourse which may arise by reason of that person's cheque or bank draft under the Broker Firm Offer being dishonoured or reversed or by reason of that person's failure to settle on the Settlement Date in respect of the Offer Shares allocated to it under the Institutional Offer.
- (b) If the Company is unable to assign to the Underwriter all of the contractual rights and recourse referred to in clause 5.3(a), the Company undertakes that it will assign, and promptly do all that is required to assign, such rights to the Underwriter as soon as it is legally able to.

## 6. Due diligence

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### 6.1 Responsibilities of the Company

The Company will make reasonable inquiries and exercise due diligence in accordance with the Due Diligence Planning Memorandum (the **Due Diligence Investigations**) and at all times will remain responsible to ensure that:

- (a) the Offering Materials:
  - (i) do not contain a statement that is misleading:
    - (A) in the form and context in which it is included; or
    - (B) by reason of the omission of a particular which is material to the statement in the form and context in which it is included;
  - (ii) are not deceptive, misleading or confusing and are not likely to deceive, mislead, or confuse, with regard to any particular that is material to the Offer;
  - (iii) are not false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances; and
  - (iv) are not false or misleading (in terms of the Fair Trading Act or the Financial Markets Conduct Act); and
- (b) there has been no conduct in connection with the Offer which is misleading or deceptive or which is likely to mislead or deceive (in terms of the Fair Trading Act or the Financial Markets Conduct Act).

### 6.2 Due Diligence Committee Report

The Company must provide the Joint Lead Managers with full and free access to, and on request copies of, the Due Diligence Committee Report, any supporting documents and other work papers (whether or not forming part of a formal report), and all materials and documents used or created in connection with the Due Diligence Investigations. The Company must maintain those materials and documents until the date that is the later of the

seventh anniversary of the Settlement Date and the date which any Inquiry which has been commenced by that time, is concluded.

### 6.3 Access to premises, books and records

The Company agrees to permit the Joint Lead Managers and their respective officers and advisers reasonable access to the premises, books and records of the Group, and reasonable access to the Group's officers, directors, employees and professional advisers at all reasonable times:

- (a) before Settlement; or
- (b) during any Inquiry that could reasonably be expected to involve (directly or indirectly) the Joint Lead Managers or any of their respective Affiliates,

to enable the Joint Lead Managers to obtain any information about the Group and the Offer which the Joint Lead Managers reasonably require in relation to the Offer (including for due diligence purposes in relation to the Offer or any Inquiry involving or which could reasonably involve (directly or indirectly) the Joint Lead Managers). It is acknowledged that a greater level of access will be reasonably required by the Joint Lead Managers and their officers and advisers during an Inquiry in order for them to appropriately respond to such an Inquiry. The Company must provide any information and assistance which the Joint Lead Managers reasonably require for those purposes.

### 6.4 Amended Offering Materials

If the Company becomes aware:

- (a) that the Prospectus, Investment Statement, Australian Information Document or any Advertisement:
  - (i) contains a statement that is:
    - (A) misleading in the form and context in which it is included;
    - (B) misleading by reason of the omission of a particular which is material to the statement in the form and context in which it is included; or
    - (C) likely to deceive, mislead or confuse with regard to any particular which is material,

the effect of which is material to the Offer;
  - (ii) contains any information, sound, image or other matter that likely to deceive, mislead or confuse (including by omission) with regard to any particular that is material to the Offer; or
  - (iii) is false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (including as a result of a circumstances occurring after the date of the relevant document) the effect of which is material to the Offer;
- (b) of conduct concerning the Offer which is misleading or deceptive or which is likely to mislead or deceive; or
- (c) of any matter that would require the Company to register a Supplementary Disclosure Document with the Registrar of Financial Service Providers or ASIC (if required) in order that the Offer may continue in accordance with applicable law,

the Company must immediately notify the Joint Lead Managers and provide all information relating to the circumstance as and when it has such information accordingly, and the Company and the Underwriter must consult on the most appropriate course of action to be taken (including whether the Company prepare a Supplementary Disclosure Document), provided that:

- (d) without prejudice to the rights of termination of the Underwriter under clause 10, no action relating to the Offer or the Offering Materials may be taken without the prior written consent of the Underwriter; and
- (e) if any such action is taken, it must be taken immediately following the receipt of consent from the Underwriter and in accordance with any conditions of such consent as agreed with the Underwriter.

## 7. Representations and Warranties

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### 7.1 Representations and warranties of the Company

The Company represents and warrants to the Joint Lead Managers that:

- (a) **(incorporation)** it is a body corporate validly existing under the laws of its place of incorporation;
- (b) **(power)** it has full capacity and power to enter into and comply with all of the terms and conditions of this Agreement;
- (c) **(Authorisations)** all approvals and Authorisations that are necessary or customary to:
  - (i) permit it to enter into this Agreement and to perform this Agreement in accordance with its terms; and
  - (ii) ensure that this Agreement is legal, valid, binding and admissible in evidence,
 have been obtained and remain valid and subsisting, and it is complying with any conditions to which any of these approvals or Authorisations are subject;
- (d) **(validity of obligations)** this Agreement is a valid and binding obligation on it;
- (e) **(validity of Offer Shares)** the Offer Shares will be validly issued, will have the rights described in the Offering Materials and will be issued as fully paid;
- (f) **(good title to Shares)** each person to whom Offer Shares are issued pursuant to the Offer will receive good, valid and uncontested title, free from all Encumbrances (other than those provided for in the constitution of the Company or as described in the Offering Materials);
- (g) **(due diligence)** all components of the due diligence system and procedures have been, or will prior to the registration of the Prospectus with the Registrar of Financial Service Providers and for the period up to and including the Settlement Date be, implemented in accordance with the Due Diligence Planning Memorandum, and verification of the Prospectus and Investment Statement has been, or will prior to the registration of the Prospectus with the Registrar of Financial Service Providers be, carried out to the satisfaction of the Due Diligence Committee in accordance with the Due Diligence Planning Memorandum and by persons who are, to the best of its knowledge and belief, appropriately qualified, and the documents recording the verification process undertaken will be retained by the Company for the length of time specified in clause 6.2;



- (h) **(Offering Materials)**
  - (i) the Offering Materials:
    - (A) do not contain any statement that is misleading in the form and context in which it is included or by reason of the omission of a particular which is material to the statement in the form and context in which it is included; and
    - (B) do not, and are not likely to, deceive, mislead or confuse; and
    - (C) are not false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances;
  - (ii) the Offering Materials do not omit any information material to a prudent but non-expert investor in the Offer;
  - (iii) there are reasonable grounds for the making of all statements (including any forward-looking statements and any statements of opinion or belief) contained in the Offering Materials; and
  - (iv) the issue and distribution of the Offering Materials will not constitute conduct by it (or any person acting on behalf of it) which is misleading or deceptive or likely to mislead or deceive (including by omission);
- (i) **(compliance)** the Offer and the content and distribution of the Offering Materials will comply with all Key Documents, the Company's constitution, the Securities Act, the Securities Regulations, the Financial Markets Conduct Act, the Corporations Act, the NZX Listing Rules, the ASX Listing Rules, any legally binding requirement of FMA, ASIC, NZX and ASX, and all other applicable laws which are required to be complied with;
- (j) **(eligible for NZX and ASX listing)**: the Company is eligible under:
  - (i) the NZX Listing Rules (as modified by the NZX Waivers) and other requirements of NZX to be listed on the NZX Main Board; and
  - (ii) the ASX Listing Rules and other requirements of ASX to be listed on ASX;
- (k) **(Australian Mutual Recognition Regulations)**
  - (i) the Offer will qualify for the benefit of the Australian Mutual Recognition Regulations and the Offer will be a "recognised offer" within the meaning of those regulations;
  - (ii) the Prospectus and Investment Statement and the making of the Offer in Australia will comply with the applicable provisions of the Corporations Act, the Australian Securities and Investments Commission Act 2001 (Cth) and the ASX Listing Rules;
  - (iii) having regard to the Corporations Act and the Australian Securities and Investments Commission Act 2001 (Cth), the Prospectus, the Australian Information Document and the Investment Statement do not contain any statements that are misleading or deceptive or likely to mislead or deceive (including by omission); and
  - (iv) neither the issue of the Prospectus, the Australian Information Document and the Investment Statement, the Offer nor the sale of the Offer Shares under the

Offer will constitute misleading or deceptive conduct, or conduct that is likely to mislead or deceive having regard to both the Corporations Act and the Australian Securities and Investments Commission Act 2001 (Cth);

- (l) **(promoters)** there are no "promoters" (as such term is defined in the Securities Act) in relation to the Offer other than the Promoters;
- (m) **(offering restrictions)** the Company, their respective Affiliates and every person acting on behalf of any of them (other than the Joint Lead Managers, their respective Affiliates or any person acting on behalf of any of them) has complied and will comply with the offering restriction requirements of Regulation S;
- (n) **(no breach)** neither the Company nor any of the Subsidiaries is in breach of, and the entry into this Agreement by the Company will not cause any such entity to be in breach of, to the extent applicable to the Offer, any provision of its constitution, the Securities Act, the Securities Regulations, the Financial Markets Conduct Act, the Corporations Act, the NZX Listing Rules, the ASX Listing Rules, any other applicable laws, any legally binding requirement of the FMA, ASIC, NZX or ASX, or any Key Document; and no Material Subsidiary is in breach of any applicable law which could reasonably be expected to result in a Material Adverse Change, or would materially and adversely affect the consummation of the transactions contemplated in this Agreement or any of the Key Documents or the performance by it of its obligations under a Key Acquisition Agreement, or which is otherwise material in the context of the sale of the Offer Shares;
- (o) **(no actions)** no action has been taken and no proceeding or process has commenced or is pending, and no action, proceeding or process has been threatened against it in relation to the Offer, the Offering Materials or the performance of its obligations under this Agreement;
- (p) **(proceedings)** except as referred to in the Prospectus, there are no pending actions, suits, proceedings, inquiries or investigations before or brought by or in any court or Governmental Agency or body, domestic or foreign, against, involving or in relation to it or any member of the Group or any of their respective properties that, if determined adversely to it or the relevant Group member, could individually or in the aggregate reasonably be expected to result in a Material Adverse Change, or would materially and adversely affect the consummation of the transactions contemplated in this Agreement or by any of the Key Documents or the performance by it of its obligations under this Agreement, or which are otherwise material in the context of the sale of the Offer Shares; and no such actions, suits, proceedings, inquiries or investigations are, to the best of its knowledge, threatened or contemplated;
- (q) **(disclosure)** none of the information supplied in writing (including prior to the date of this Agreement) by it (including by its agents, employees or directors) or on its behalf (other than by an "expert" as defined in the Securities Act) to the Joint Lead Managers in relation to the Group or the Offer is misleading or deceptive or omits any required information or information potentially relevant to the Offer, in each case assessed as at the date that information was provided;
- (r) **(no directed selling efforts)** neither it, nor its Affiliates nor any person acting on behalf of any of them (other than the Joint Lead Managers, their respective Affiliates or any person acting on behalf of any of them) has engaged or will engage in any form of "directed selling efforts" as defined in Rule 902(c) under the US Securities Act;
- (s) **(stabilisation)** neither it, nor its Affiliates nor any person acting on behalf of any of them (other than the Joint Lead Managers, their respective Affiliates or any person acting on behalf of any of them), has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in the stabilisation or manipulation of the price of any of the Company's securities or the

Offer Shares to facilitate the sale or resale of the Offer Shares in violation of any applicable law;

- (t) **(no Insolvency Event)** neither it nor any of its Subsidiaries or any Material Subsidiary is subject to an Insolvency Event, and there is no act which has occurred or any omission made which could reasonably be expected to result in any such entity becoming subject to an Insolvency Event, and no member of the Group is subject to an Insolvency Event, and there is no act which has occurred or any omission made which could reasonably be expected to result in any such entity becoming subject to an Insolvency Event;
- (u) **(no Material Adverse Change)** neither the Company, a Material Subsidiary, the Additional Acquisition Businesses nor the Group as a whole, since the respective dates as of which information regarding the Company, the Material Subsidiary or the Group was given in any Offering Materials has:
  - (i) sustained a Material Adverse Change;
  - (ii) entered into any transaction material in the context of the Group (other than those transactions entered into in the ordinary course of business);
  - (iii) declared, paid or made any dividend or distribution of any kind on any class of its capital except as permitted under the terms of any Acquisition Agreement; or

in the case of clauses (ii) and (iii) only, except as disclosed in the Prospectus;
- (v) **(absence of further requirements)** except as disclosed in the Prospectus, no filing with, or Authorisation, approval, consent, licence, order, registration, qualification or decree of, any court or Governmental Agency is necessary or required for the offer and sale of the Offer Shares, due authorisation, execution, delivery and performance by it of this Agreement, or the performance by it of the transactions contemplated under the Key Documents, the Prospectus, the Investment Statement or this Agreement;
- (w) **(absence of conflict or violations)** the offer and sale of the Offer Shares, the execution, delivery and performance by it of this Agreement, compliance by it with all the provisions of this Agreement and the consummation of the transactions contemplated by this Agreement, will not, whether with or without the giving of notice or lapse of time or both:
  - (i) conflict with or constitute a breach or violation of any of the terms or provisions of or a default under:
    - (A) its constitution or other governing or organisational documents; or
    - (B) any contract, bond, indenture, mortgage, deed of trust, loan or credit agreement, note, lease, sublease, or other agreement or instrument to which it or any member of the Group is a party or by which it or any member of the Group may be bound or to which its or any member of the Group's assets, properties or operations is subject; or
  - (ii) violate or conflict with any applicable laws,

except, in respect of the matters under this clause 7.1(w) for such conflicts, breaches or violations that could not, individually or in aggregate, reasonably be expected to result in a Material Adverse Change;

- (x) **(OFAC)** neither it nor any member of the Group, any director or officer or, so far as it is aware any agent or employee, of it, any member of the Group or any Affiliate that it

controls is an individual or entity (**Person**) that is, or is owned or controlled by a person that is, targeted by or the subject of any sanctions administered by the Office of Foreign Assets Control of the US Department of the Treasury (**OFAC**), or by the U.S. Department of State, or any sanctions imposed by the European Union (including under Council Regulation (EC) No. 194/2008), the United Nations Security Council, Her Majesty's Treasury or any other relevant governmental entity and any activities sanctionable under the U.S. Comprehensive Iran Sanctions Accountability, and Divestment Act of 2010 or the Iran Sanctions Act (collectively, the **Sanctions**); and it covenants not to engage, directly or indirectly, in any other activities that would result in a violation of the Sanctions by any Person (including any Person participating in the Offer);

- (y) (**no bribery**) neither it nor any member of the Group, any director or officer or, so far as it is aware any agent or employee, of it, any member of the Group or any Affiliate that it controls or any such Affiliate's subsidiaries has taken any actions, directly or indirectly, that would result in a violation by such persons of the U.S. Foreign Corrupt Practices Act of 1977, the U.K. Bribery Act of 2010, and the rules and regulations thereunder, including using any corporate funds for any unlawful contribution, gift, entertainment or other unlawful payment to any foreign or domestic government official or employee from corporate funds, and making any bribe, rebate, payoff, influence payment, kickback or other unlawful payment;
- (z) (**taxation**) each member of the Group has filed all tax returns that are required to be filed or has requested extensions for the filing of those tax returns (except where any such failure to file could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change) and paid all taxes required to be paid by it and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except for any such assessment, fine or penalty that is currently being contested in good faith or as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change;
- (aa) (**Acquisition Agreements**)
  - (i) the companies and assets which are being acquired under the Acquisition Agreements have been the subject of an appropriate due diligence investigation process which encompassed operational, financial and accounting, tax and legal matters, conducted in each case by appropriately qualified personnel and professional advisers (the **Acquisition Due Diligence Process**);
  - (ii) the Acquisition Due Diligence Process included receipt by the Company, on a reliance basis, of due diligence reports prepared by appropriately qualified personnel and professional advisers in relation to such matters as would be reasonable and customary to report on in the context;
  - (iii) appropriate records of the Acquisition Due Diligence Process have been retained by the Company;
  - (iv) the Acquisition Due Diligence Process did not identify any material issue that:
    - (A) has not been resolved to the satisfaction of the Due Diligence Committee and the directors of the Company such that it is no longer considered by those parties to be a material issue in the context of the Offer;
    - (B) is not the subject of appropriate protections for the Company under the terms of the relevant Acquisition Agreement; or
    - (C) has not been disclosed in the Prospectus as a "risk factor";

- (v) each vendor or guarantor under each Acquisition Agreement has and will have appropriate financial capacity to pay any successful claim by the Company under any warranty, indemnity or other obligation in any Acquisition Agreement;
  - (vi) contractual arrangements have been entered into by the Company in relation to the transactions contemplated by the Acquisition Agreements, other than the Acquisition Agreements or other arrangements described in the Prospectus;
  - (vii) the descriptions of the Acquisition Agreements contained in the Offering Materials are accurate and not misleading (including by omission);
  - (viii) each Acquisition Agreement has been duly authorised, executed and delivered by the Company or its relevant Subsidiary that is a party to the relevant Acquisition Agreement and constitutes a valid and binding obligation of such entities or members, enforceable against it or them in accordance with the terms of the relevant Acquisition Agreement;
  - (ix) the Company or any of its Subsidiaries is not in breach of any terms of any Acquisition Agreement;
  - (x) it is not aware of any actual or potential default under any of the Acquisition Agreements, or of any matter, circumstances or reason which may, directly or indirectly, prevent or delay completion under any Acquisition Agreement (whether or not such matter, circumstance or reason is contemplated by any document, report, certificate, correspondence or other document that relates to the acquisition referred to in the relevant Acquisition Agreement);
  - (xi) there are no onerous or unusual terms or conditions contained within any Acquisition Agreement, and all Acquisition Agreements contain protections which are appropriate, in the circumstances and having regard to the prevailing market standard for share or asset acquisition agreements in the Australasian market, for the Company, in its capacity as the purchaser, including in relation to the terms of the warranties and indemnity protection; and
  - (xii) the Additional Acquisition Agreement List is true and accurate and not misleading (including by omission);
- (bb) **(material contracts)**
- (i) each member of the Group has all contracts or valid rights necessary to conduct its business as currently conducted, contemplated and described in the Offering Materials, except for such contracts or rights the failure to obtain or maintain which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change;
  - (ii) the descriptions of any Key Documents (other than the Acquisition Agreements) contained in the Offering Materials are accurate and not misleading (including by omission);
  - (iii) each Key Document (other than the Facility Agreement and the Facility Agreement Terms Sheet) has been duly authorised, executed and delivered by each member of the Group that is a party to the relevant Key Document and constitutes a valid and binding obligation of such entities or members, enforceable against it or them in accordance with the terms of the relevant Key Document;
  - (iv) as the Settlement Date, and prior to the issue of any Shortfall Shares, the Facility Agreement will have been duly authorised, executed and delivered by each member of the Group that is a party to the Facility Agreement and will

constitute a valid and binding obligation of such entities, enforceable against it or them in accordance with the terms of the relevant agreement;

- (v) as at the Settlement Date, and prior to the issue of any Shortfall Shares, subject to the satisfaction of certain conditions precedent in relation to the Facility Agreement, all of the Company's borrowing facilities (including those facilities described in section 7.9 of the Prospectus under the heading "Description of the Evolve Group's Financing Arrangements") are in full force and effect; and
- (vi) neither the Company nor its Subsidiaries has received notice of any cancellation, termination or failure to renew any Key Document;
- (cc) **(foreign private issuer and no substantial US market interest)** it is a "foreign private issuer" as defined in Rule 405 under the US Securities Act and there is no "substantial US market interest" (as defined in Rule 902(j) under the US Securities Act) in the Offer Shares or any securities of the same class or series as the Offer Shares;
- (dd) **(expert statements)** any statement by an expert that is included in any Offering Materials will:
  - (i) be made by an expert that the Company, having made reasonable enquiries, considers is competent to make the statement; and
  - (ii) be included in the Offering Materials with the prior written consent of the expert to the form and context in which the statement is included;
- (ee) **(historical financial information)** the historical financial information contained, or referred to, in the Offering Materials:
  - (i) will present a true and fair view of the financial position and performance of the relevant entity or entities to which it relates and for the periods ending on, and as at, the respective dates to which it is prepared;
  - (ii) if it is pro forma financial information, the assumptions and adjustments used in preparing such information are reasonable and appropriate and have been applied on a consistent basis throughout the periods involved; and
  - (iii) will be prepared in compliance with applicable legal and regulatory requirements and NZ IFRS;
- (ff) **(prospective financial information)** in respect of the prospective financial information contained, or referred to, in the Offering Materials, whether or not it is pro forma prospective financial information and including the assumptions and sensitivities:
  - (i) it does not believe that:
    - (A) the directors' best-estimate assumptions do not provide a reasonable basis for the preparation of the prospective financial information;
    - (B) the prospective financial information was not prepared on the basis of the best-estimate assumptions;
    - (C) the prospective financial information is not presented fairly in accordance with the recognition and measurement principles prescribed in New Zealand Financial Reporting Standards and other mandatory professional reporting requirements in New Zealand, and the

accounting policies adopted by the Group as disclosed in the Prospectus; and

- (D) the prospective financial information is unreasonable;
- (ii) so far as the accounting policies and calculations are concerned, the prospective financial information has been properly compiled on the footing of the assumptions made or adopted by the directors of the Company as set out in the Prospectus, and is presented on a basis consistent with the accounting policies adopted by the Company as disclosed in the Prospectus;
- (gg) **(financial position)**: since 31 December 2013:
  - (i) the business of each member of the Group has been carried on in the ordinary and usual course in all material respects;
  - (ii) there has been no occurrence which has or will (either itself or together with any other occurrence) materially and adversely affect the value of the Shares; and
  - (iii) none of the business, assets, liabilities, financial position or prospects of any member of the Group has been materially and adversely affected by any matter either financial or otherwise;
- (hh) **(internal accounting controls)**
  - (i) each of the Company, the Subsidiaries and the Material Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance:
    - (A) that transactions are executed in accordance with management's general or specific Authorisations;
    - (B) that transactions are recorded as necessary to permit preparation of financial statements in conformity with NZ IFRS and to maintain asset accountability;
    - (C) that access to assets is permitted only in accordance with management's general or specific Authorisations;
    - (D) that the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; and
    - (E) regarding the prevention or timely detection of unauthorised acquisition, use or disposition of the assets of the relevant entity that could have a material effect on the relevant entity's financial statements;
  - (ii) each of the Company, the Subsidiaries and the Material Subsidiaries has internal controls, processes and structures to safeguard the integrity of the relevant entity's financial reporting;
  - (iii) the internal accounting controls (or absence thereof) in respect of each member of the Group (other than the Company, the Subsidiaries and the Material Subsidiaries) do not, in aggregate, make the financial information relied on by the Company in connection with the Acquisition Due Diligence Process false or misleading (including by omission);

- (iv) the Company is not aware of any material weaknesses or significant deficiencies in the internal controls, processes and structures of the Company, the Subsidiaries or the Material Subsidiaries; and
  - (v) since 31 December 2013, there has been no change in the internal controls, processes and structures of a Material Subsidiary that has materially adversely affected, or is reasonably likely to materially adversely affect such Material Subsidiary's internal controls;
- (ii) **(insurance)** the Company, the Subsidiaries and the Material Subsidiaries are insured by, or are the beneficiaries of, insurance policies issued by insurers of recognised financial standing against such losses and risks and in such amounts as, in the reasonable judgement of the Company, are prudent. All policies of insurance insuring the Company, the Subsidiaries and the Material Subsidiaries or their respective businesses, assets, employees, officers and directors are in full force and effect; the Company, the Subsidiaries and the Material Subsidiaries are in compliance with the terms of such policies and instruments; there are no claims by the Company, the Subsidiaries or the Material Subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause that could reasonably be expected to result in a Material Adverse Change if such claims are not paid; and neither the Company, the Subsidiaries nor the Material Subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that on each case could not, singly or in the aggregate, reasonably be expected to have a Material Adverse Change;
- (jj) **(title to property)** all members of the Group lease or have the right to use all real and personal property necessary to conduct their business as currently conducted, contemplated and described in the Offering Materials, except for such real or personal property the failure to obtain or maintain which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change. All members of the Group have good and marketable title to all material assets owned by them, in each case, free and clear of all mortgages, pledges, liens, defects, security, interest, claims, restrictions or encumbrances of any kind, except as could not reasonably be expected to result in Material Adverse Change; and all members of the Group hold any leased real or personal property under valid and enforceable leases with no exceptions that would materially interfere with the use made or to be made thereof by them, other than exceptions as could not reasonably be expected to result in a Material Adverse Change;
- (kk) **(status of the Group and the Offer Shares)**
- (i) each of the Company, the Subsidiaries and the Material Subsidiaries has been duly incorporated and is validly existing as a corporation under the laws of its jurisdiction of organisation, with power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and Investment Statement;
  - (ii) other than the Subsidiaries, the Company has no, and will not on the Settlement Date have any, "principal subsidiaries" within the meaning of clause 4 of Schedule 1 of the Securities Regulations;
  - (iii) all of the issued and outstanding shares or capital stock (as applicable) of each of the Material Subsidiaries have been duly authorised, validly issued and fully paid;
  - (iv) none of the issued shares or capital stock of any Material Subsidiary is the subject of any agreement pursuant to which any person is or may be entitled or has the right to call for the transfer of the shares of such Material Subsidiary,



and there are no agreements in force pursuant to which any person is or may become entitled to or has the right to call for the issuance of any shares in a Material Subsidiary or securities convertible into or exchangeable for shares in a Material Subsidiary nor has any Material Subsidiary given or agreed to grant any option or right (whether contingent or not) in respect of its unissued shares;

- (v) the holders of outstanding shares or capital stock of the Company are not entitled to pre-emptive or other rights to acquire the Offer Shares; and
- (vi) there are no outstanding securities convertible into or exchangeable for, or warrants, rights or options to purchase from the Company, or obligations of the Company, to issue Shares or any other class of capital stock of the Company;

(II) **(absence of violations and defaults)**

- (i) neither the Company, the Subsidiaries nor Material Subsidiaries is in violation of its constitution or any other governing or organisational documents;
- (ii) neither the Company, the Subsidiaries nor the Material Subsidiaries is in default in the performance or observance of any:
  - (A) obligation, agreement, covenant or condition contained in any contract, bond, indenture, mortgage, deed of trust, loan or credit agreement, note, lease, sublease; or
  - (B) other agreement or instrument to which it is a party or by which it may be bound, or to which any of its assets, properties or operations is subject.

(mm) **(environmental laws)**

- (i) every member of the Group complies with all applicable Environmental Laws, does not own or operate any real property contaminated with any substance that is subject to any Environmental Laws, is not liable for any off-site disposal or contamination pursuant to any Environmental Laws and is not subject to, and the Company is not aware of any pending investigation which might lead to, any claims relating to any Environmental Laws, except where such non-compliance with Environmental Laws, contamination, liability or claims could not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Change;
- (ii) every member of the Group has received all permits, licences or other approvals required of them under applicable Environmental Laws to conduct their respective businesses (the **Environmental Approvals**), except where such failure to receive any required Environmental Approvals could not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Change;
- (iii) every member of the Group is in compliance with all terms and conditions of any Environmental Approvals, except where failure to comply with the terms and conditions of such Environmental Approvals could not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Change; and
- (iv) there are no actual or threatened Environmental Claims involving or in relation to any member of the Group, other than such actual or threatened Environmental Claims that could not, singly or in the aggregate, reasonably be expected to result in a Material Adverse Change;

- (nn) **(labour)** except as disclosed in the Prospectus, no labour dispute with employees, or unions representing employees, of the Group exists, or, to the best of its knowledge, is

pending, imminent or threatened, nor is it aware of any labour disturbance by the employees of any of the Group's principal suppliers, manufacturers, customers or contractors except for, in each case, such disputes or disturbances which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change;

(oo) **(legal compliance, possession of Governmental Licences)**

- (i) no member of the Group is in violation of any applicable law or ordinance, government rule or regulation or administrative or court order or decree to which such member is subject;
- (ii) each member of the Group possesses such Governmental Licences as are necessary to conduct the business as currently conducted and, if applicable, described in the Offering Materials and all such Government Licences are in full force and effect and are not liable to be revoked or not renewed;
- (iii) each Governmental Licence granted or held by any member of the Group is in full force and effect;
- (iv) no member of the Group has received any notice of proceedings, termination, modification, revocation or default with respect to any Governmental Licence, and none of the Company or its directors or officers are aware of any circumstance which could reasonably give rise to a loss or revocation of any Governmental Licence or the terms of any Governmental Licence being amended in a manner that is adverse to the holder of the Governmental Licence; and
- (v) no member of the Group is in default under any Governmental Licence and, to the best of its knowledge, no event has occurred that, with notice or lapse of time, would constitute a default in the observance of any term, condition or covenant in any Governmental Licence; and

- (pp) **(anti-money-laundering laws)** the operations of the Group are and have been conducted at all times in compliance in all material respects with all financial record-keeping and reporting requirements imposed by law or regulation and in compliance in all material respects with the money-laundering statutes of all jurisdictions, the rules and regulations in those jurisdictions and any related or similar rules, regulations or guidelines issued, administered or enforced by any Governmental Agency (together, the **Money-Laundering Laws**) and no action, suit or proceeding by or before any court, Governmental Agency or arbitrator involving any member of the Group with respect to the Money-Laundering Laws is pending or, to the best of its knowledge, threatened.

## 7.2 **Representations and warranties of the Joint Lead Managers**

Each Joint Lead Manager severally represents and warrants to the Company (in respect of itself only) that:

- (a) **(power)** it has full capacity and power to enter into and comply with all of the terms and conditions of this Agreement;
- (b) **(authorisations)** all approvals and Authorisations that are necessary or customary to:
  - (i) permit it to enter into this Agreement and to perform this Agreement in accordance with its terms; and
  - (ii) ensure that this Agreement is legal, valid and binding on it,

have been obtained and remain valid and subsisting, and it is complying with any conditions to which any of these approvals or Authorisations are subject;

- (c) **(validity of obligations)** this Agreement is a valid and binding obligation on it;
- (d) **(incorporation)** it is a body corporate validly existing under the laws of its place of incorporation;
- (e) **(US selling restrictions)** it acknowledges that the Offer Shares have not been and will not be registered under the US Securities Act and may only be offered or sold:
  - (i) outside the United States to certain persons in selected jurisdictions; and
  - (ii) within the United States to Eligible US Fund Managers,
 in each case in "offshore transactions" (as defined in Rule 902(h) under Regulation S) in reliance on Regulation S;
- (f) **(no directed selling efforts)** its Affiliates and each person acting on behalf of any of them has not engaged, and will not engage, in any "directed selling efforts" as defined in Rule 902(c) under the US Securities Act; and
- (g) **(stabilisation)** neither it nor its Affiliates nor any person acting on behalf of any of them, has taken or will take, directly or indirectly, any action designed to, or that could reasonably be expected to, cause or result in the stabilisation or manipulation of the price of any of the Company's securities or the Offer Shares to facilitate the sale or resale of the Offer Shares in violation of any applicable law.

### 7.3 True and correct

- (a) The Company further warrants to the Joint Lead Managers that each of the warranties set out in clause 7.1 is true and correct in every respect as at the date of this Agreement and will be so at all times before and at the Settlement Date.
- (b) Each of the Joint Lead Managers further severally warrants in respect of itself only that each of the warranties set out in clause 7.2 is true and correct in every respect as at the date of this Agreement and will be so at all times before and at the Settlement Date.

### 7.4 Disclosure of Warranties

The Company agrees that the Joint Lead Managers are authorised to advise applicants under the Institutional Offer that it has given these representations and warranties to Joint Lead Managers, including by setting out the text of the representations and warranties within Confirmation Letters and in any bookbuild procedures manual for the Institutional Offer, provided that it is specified that the representations and warranties are not given to, and may not be relied upon by any other person other than the Joint Lead Managers, and all relevant qualifications are also specified.

### 7.5 Knowledge

Where any of the representations, warranties and undertakings in this Agreement are qualified by reference to awareness and/or knowledge and/or information and/or belief of the Company, that reference shall be taken to:

- (a) be a reference to the actual knowledge or awareness of the Company, its directors and officers, the Company's representatives on the Due Diligence Committee as specified in the Due Diligence Planning Memorandum and each Promoter; and

- (b) include a statement to the effect that it has been given after making due and careful enquiries into the matter by such persons referred to in clause 7.5(a).

## 8. Additional undertakings

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### 8.1 Undertakings by the Company

The Company must:

- (a) **(notice of breach)** promptly notify, and provide full details to, the Joint Lead Managers of:
  - (i) any actual or potential breach of any representation, warranty or undertaking given by it under this Agreement;
  - (ii) the occurrence of any event which may result in any of the representations, warranties or undertakings given by it under this Agreement being untrue, misleading or inaccurate; or
  - (iii) the occurrence of any event which may result in any of the conditions in clause 2.1 being incapable of satisfaction or unlikely to be satisfied; or
  - (iv) the non-satisfaction of any of the conditions in clause 2.1,
 on the Company becoming aware of any of those matters;
- (b) **(breach)** not, before Settlement, commit or be involved in or acquiesce in any activity which materially breaches the Securities Act, the Fair Trading Act, the Financial Markets Conduct Act, the Companies Act, the Corporations Act, the securities laws of any other applicable jurisdiction, the NZX Listing Rules, the ASX Listing Rules, its constitution or any requirement of NZX, ASX, ASIC, the FMA or any other applicable regulator;
- (c) **(ordinary course)** until the expiration of 180 days after the Settlement Date, carry on its business and must procure that each member of the Group (other than any entity that does not become a subsidiary of the Company as a result of the relevant Acquisition Agreement terminating) carries on its business in the ordinary course and not dispose (or permit any member of the Group to dispose) of, or grant security over, all or any material part of its business or assets or acquire any material asset, except as disclosed in the Prospectus;
- (d) **(constitution)** not, before Settlement, vary, or allowed to be varied, the terms of its constitution without the prior written consent of the Underwriter to the variation;
- (e) **(keep informed)** prior to Settlement, keep the Joint Lead Managers promptly and fully informed of all strategies, developments and discussions relevant to the Offer, and all material strategies, developments and discussions relevant to the business of the Group, including any change or expected change in performance of the business of the Group;
- (f) **(marketing)** until the Broker Firm Offer Closing Date, use best endeavours to undertake an appropriate advertising and marketing campaign for the Offer (at its own expense and in a manner agreed with the Joint Lead Managers);
- (g) **(no Encumbrance)** not create or agree to create any Encumbrance over the Offer Shares;

- (h) **(selling restrictions)** must not distribute the Offering Materials or allocate Offer Shares to any person in the United States (other than to Eligible US Fund Managers) or that is, or is acting for the account or benefit of, a US Person;
- (i) **(capital restructure)** not reduce, reorganise, or otherwise alter or restructure its capital structure, or agree or announce an intention to do any of those things, without the prior written consent of the Underwriter at any time after the date of this Agreement and before the expiration of 180 days after the Settlement Date;
- (j) **(Key Documents)** not, before Settlement, vary, or agree to vary, any term of a Key Document in a material respect, terminate any Key Document, or enter into a new material contract, without the prior consent of the Underwriter to the terms of the variation or new contract or commitment;
- (k) **(Acquisition Agreements)**
  - (i) promptly notify the Joint Lead Managers upon becoming aware of any event or circumstance which could reasonably be expected to give rise to a claim under, or breach of, any of the warranties, representations, undertakings or other terms and conditions of any Acquisition Agreement or otherwise affect the value, earnings or profitability of the entity or assets being acquired under the relevant Acquisition Agreement;
  - (ii) consult with the Underwriter in relation to whether it will exercise or waive any of its rights under, or in respect of, any of the terms, conditions, warranties, indemnities or undertakings contained in any Acquisition Agreement;
  - (iii) not agree to any alteration, revision or amendment of the terms and conditions of any Acquisition Agreement, waive any condition thereof, grant time for performance or other indulgence thereunder or proceed to completion of any Acquisition Agreement without satisfaction of each of the material terms therein and the conditions set out in each Acquisition Agreement, without the consent of the Underwriter, such consent not to be unreasonably withheld;
  - (iv) consult with the Underwriter if it becomes entitled to rescind or terminate any Acquisition Agreement pursuant to the provisions thereof before exercising its right to proceed to completion under the relevant agreement;
  - (v) upon receipt of immediately available same-day cleared funds in respect of the consideration payable under the Key Acquisition Agreements, pay or procure the payment of such funds to the vendors of Lollipops Educare and PORSE in immediately available same-day cleared funds in accordance with the terms of the Key Acquisition Agreements on the Settlement Date;
  - (vi) obtain the prior written consent of the Underwriter (such consent not to be unreasonably withheld) to any amendments or changes to the Additional Acquisition Agreement List (including, for the avoidance of doubt, any removal, substitution or addition of an Additional Acquisition Agreement from or to the list or any change to any specified finance date or completion date);
  - (vii) use its best endeavours to complete the Acquisition Agreements listed on the Additional Acquisition Agreement List (as amended in accordance with the terms of this Agreement) by the specified date for completion; and
  - (viii) use its best endeavours to ensure that, if required and subject to clause 8.1(k)(vi), replacement or substitute Additional Acquisition Agreements are entered into so that the prospective financial information contained, or referred to, in the Prospectus remains reasonable and supportable (for the purposes of the New Zealand financial reporting standard known as FRS-42);

- (l) **(amendments to Offering Materials)** obtain the prior written consent of the Underwriter to the form and content of, and any amendments to, any Offering Material;
- (m) **(withdrawing consent)** notify the Joint Lead Managers as soon as practicable and, in any case, no later than one Business Day, after becoming aware of any person who has previously consented to the inclusion of their name or any statement in the Prospectus or Investment Statement (other than a Joint Lead Manager) withdrawing their consent;
- (n) **(correspondence)** provide the Joint Lead Managers with copies of all material correspondence from NZX, ASX, the FMA, ASIC, the Registrar of Financial Service Providers or any other Governmental Agency (or any of their respective advisers) to it (or any of its advisers), and give the Joint Lead Managers a reasonable opportunity to comment on any correspondence from the Company (or any of its advisers) to NZX, ASX, the FMA, ASIC, the Registrar or any Governmental Agency (or any of their respective advisers) in connection with the Offering Materials from the date of this Agreement until the Allotment Date;
- (o) **(Escrow Deeds)** procure that the parties to the Escrow Deeds comply with those deeds;
- (p) **(moratorium on issuing equity securities)** not, without the prior written consent of the Underwriter, during the period from the date of this Agreement to:
  - (i) the expiration of 180 days after the Settlement Date, directly or indirectly:
    - (A) allot or issue any Shares or other equity securities of the Company (whether preferential, redeemable, convertible or otherwise) or allow the issue of any securities by any member of the Group (other than to another member of the Group);
    - (B) issue or grant any right or option that entitles the holder to call for the issue of Shares by the Company or that is otherwise convertible into, exchangeable for or redeemable by the issue of, Shares or other equity securities issued by the Company;
    - (C) create any debt instrument or other obligation which may be convertible into, exchangeable for or redeemable by, the issue of Shares or other equity securities issued by the Company;
    - (D) otherwise enter into any agreement whereby any person may be entitled to the allotment and issue of any Shares or other equity securities issued by the Company;
    - (E) indicate in any way or make any announcement of an intention to do any of the foregoing or take any action having a similar effect to any of the foregoing,

other than pursuant to the Offer, this Agreement, any employee share or option plan described in the Prospectus, any Key Document, or as disclosed in the Prospectus, Investment Statement or any Supplementary Disclosure Document; and
  - (ii) 5.00pm on the Settlement Date:
    - (A) enter into any commitment or arrangement which is or may be material in the context of the Offer; or

- (B) undertake any action that results in the Offer not being able to be made in Australia under the Australian Mutual Recognition Regulations.

## 8.2 Public announcements

- (a) Subject to clause 8.2(b), prior to Settlement, the Company shall not make (or authorise the making of), and the Company shall use its best endeavours to procure that no member of the Group makes (or authorises the making of), any public releases or communications concerning the Offer or any material matters concerning the business of the Group or any of the Material Subsidiaries without the prior consent of the Underwriter.
- (b) In relation to any public releases required to be made by any member of the Group to comply with any applicable laws, the Company must (or must procure that the relevant member of the Group):
  - (i) use best endeavours to consult with the Underwriter with respect to such public releases to enable them, to comment thereon; and
  - (ii) take into account any reasonable requests of the Underwriter in relation to such public releases, including the timing, content and manner of their release.
- (c) The Company acknowledges that all such public releases made by it in relation to the Offer are subject to the warranty and representations given in clause 7.1(h).

## 8.3 Application amounts to be held on trust until allotment

The Company will, and will procure that any relevant third party (including the Share Registrar and any relevant bank) will, hold all application amounts in respect of Offer Shares (including all amounts payable by the Underwriter under clause 4.3) on trust for applicants and the Joint Lead Managers, as applicable, until allotment occurs or until such amounts are repaid to applicants or the Joint Lead Managers, as applicable, or as required by applicable law.

# 9. Fees and expenses

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## 9.1 Fees and expenses

All of the parties to this Agreement acknowledge that all provisions relating to fees and expenses in the Engagement Letters payable to the Joint Lead Managers in relation to the Offer (including any broker, institutional, retail and other commissions and fees payable by the Joint Lead Managers out of the Joint Lead Managers' fees) shall apply, save as provided in clause 4.3(c).

## 9.2 General

Nothing in this section in any way limits the operation of clause 11.

# 10. Termination by Underwriter

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## 10.1 Termination events

If any of the following events occur at any time before Settlement or such other time as specified below then, subject to this clause 10, the Underwriter may, in its sole and absolute discretion, by notice to the Company, immediately and without any cost or liability to GS or FB, terminate this Agreement on behalf of all parties:

- (a) **(conditions)** any of the conditions in clause 2.1 is not satisfied by its respective deadline (if any deadline is specified) or has not been waived under clause 2.2(c);
- (b) **(Escrow Deeds)** any party to an Escrow Deed breaches that deed;
- (c) **(Deed of Release)** any party to the Deed of Release (other than a Joint Lead Manager) breaches that deed, or the deed becomes ceases to have effect, is or becomes void, voidable, illegal, invalid or unenforceable or capable of being terminated, rescinded or avoided or of limited force and affect, or its performance is or becomes illegal;
- (d) **(disclosures in Offering Materials)**: any information or statement contained in the Offering Materials is or becomes untrue, inaccurate, misleading or deceptive or likely to mislead or deceive (including by omission) in any material respect, or a material matter is omitted from Offering Materials, or the Offering Materials otherwise fail to comply with the Securities Act, the Securities Regulations, the Financial Markets Conduct Act, the Corporations Act, the NZX Listing Rules, the ASX Listing Rules or other applicable laws;
- (e) **(disclosures)** the Due Diligence Committee Report is or becomes inaccurate, incomplete, misleading or deceptive (including by omission) or any other information supplied by or on behalf of the Company to the Joint Lead Managers in relation to the Group or the Offer is or becomes inaccurate, incomplete, misleading or deceptive (including by omission) in a material respect;
- (f) **(NZX listing approval)** approval (or conditional approval subject only to customary conditions) granted by NZX, for the Company to be listed with NZX or the Offer Shares to be quoted on the NZX Main Board is subsequently withdrawn or the NZX indicates to the Company or the Joint Lead Managers that approval is likely to be withdrawn;
- (g) **(ASX listing approval)** approval (or conditional approval subject only to customary conditions) granted by ASX, for the Company's admission to the official list of ASX or for the official quotation of the Offer Shares on ASX, is subsequently withdrawn by ASX or ASX indicates to the Company or the Joint Lead Managers that approval is likely to be withdrawn;
- (h) **(withdrawal of Offer)** the Company withdraws the Institutional Offer or the Broker Firm Offer;
- (i) **(Engagement Letters)** the Company terminates the GS Engagement Letter or the FB Engagement Letter;
- (j) **(insolvency)**
  - (i) the Company, any of its Subsidiaries, any Material Subsidiary or any party to an Acquisition Agreement:
    - (A) being subject to an Insolvency Event;
    - (B) going into receivership or having a receiver or manager, trustee, statutory manager, interim liquidator, liquidator or administrator appointed in respect to all or a substantial part of its assets; or
    - (C) making an assignment for the benefit of, or entering into or making any arrangement or composition with, its creditors;



- (ii) any resolution being passed for the liquidation or winding up of the Company or any of its Subsidiaries or any Material Subsidiary or any party to an Acquisition Agreement (whether on a voluntary or involuntary basis); or
- (iii) an act occurring or any omission being made which may result in the Company or any of its Subsidiaries, any Material Subsidiary or any party to an Acquisition Agreement becoming subject to an Insolvency Event;
- (k) **(regulatory action)** any regulatory or judicial challenge to the Offer or the issue of an order delaying, suspending or cancelling the issue or use of any Offering Materials, or preventing the Company from issuing any Offering Materials, by any Governmental Agency (including an order from the FMA under section 38B, section 43F, section 43G or section 43K of the Securities Act) or any Governmental Agency otherwise commencing an investigation into conduct or affairs relating to the Offer (including the exercise of any power under Part 3 of the Financial Markets Authority Act 2011);
- (l) **(Timetable)** an event specified in the Timetable is delayed without the prior written consent of the Underwriter;
- (m) **(Material Adverse Change)** a Material Adverse Change occurs (whether or not foreseeable as at the date of this Agreement);
- (n) **(withdrawal of documents)** the Company withdraws the Prospectus, Australian Information Document or Investment Statement or any invitations to apply for Offer Shares under the Offering Materials;
- (o) **(withdrawal of consent)** the withdrawal of the consent of any person who was required to give, and has given, consent under section 38A or section 40 (or any other section) of the Securities Act in relation to the Offer;
- (p) **(market change)**: between the date of this Agreement and 8.00am on the Settlement Date, the level of:
  - (i) the NZX 50 Index falling to a level equivalent to 12.5% or more below its level as at 5.00pm (NZT) on the Business Day prior to the date of this Agreement; or
  - (ii) the S&P/ASX 200 Index falling to a level equivalent to 12.5% or more below its level as at 5.00pm (Sydney time) on the Business Day prior to the date of this Agreement;
- (q) **(unable to issue Offer Shares)** the Company is prevented from issuing the Offer Shares pursuant to the Offer within the time required by the NZX Listing Rules, ASX Listing Rules or any other applicable laws, including as a result of the actions or orders of any of NZX, FMA, ASX, ASIC, any other Governmental Agency or an order of a court of competent jurisdiction;
- (r) **(mutual recognition)** the Company fails to comply with the requirements of the Australian Mutual Recognition Regulations to enable the Offer to proceed on the basis of the Prospectus and Investment Statement, under and in accordance with the Australian Mutual Recognition Regulations;
- (s) **(fraud)** the Company, any of its Subsidiaries or any Material Subsidiary, or any of their respective directors or officers (as that term is defined in the Securities Markets Act 1988), or proposed directors or officers, or any party to an Acquisition Agreement, engages in any fraudulent conduct or activity, whether or not in connection with the Offer;
- (t) **(changes in management)** a change in the board or executive management team of the Company as disclosed in the Prospectus occurs or is announced;

- (u) **(illegality)** an event or occurrence, including any official directive or request (whether or not having the force of law but, if not having the force of law, compliance with which is in accordance with the general practice of persons to whom the directive or request is addressed) of any Governmental Agency, which makes it illegal for a Joint Lead Manager to satisfy an obligation under this Agreement or to market, promote or settle the Offer;
- (v) **(Certificate)** any Certificate given under this Agreement is false, misleading or inaccurate;
- (w) **(Claim)** a matter has arisen which gives rise to a Claim under clause 11 which is material in the context of the Offer;
- (x) **(Key Document)**
  - (i) a condition to which any Key Acquisition Agreement is subject having, prior to Settlement, become incapable of satisfaction or waiver by the Settlement Date, or completion under any Key Acquisition Agreement otherwise being delayed;
  - (ii) a default by the Company in the performance of any of its obligations under any of the Key Acquisition Agreement occurs;
  - (iii) any due diligence report prepared by or on behalf of the Company in relation to the transactions contemplated by the Key Acquisition Agreements becomes false or misleading or deceptive or likely to mislead or deceive, including by way of omission, in any material respect;
  - (iv) any Governmental Agency notifying the Company that the relevant Governmental Licences for each of the Key Acquisition Agreements will not be transferred, or new Government Licences on substantially the same terms as the existing Governmental Licence will not be issued, to the relevant Material Subsidiary;
  - (v) any representations or warranties made by any parties to the Key Acquisition Agreements becoming untrue or incorrect;
  - (vi) if any of the obligations of the relevant parties under any of the Key Documents are not capable of being performed in accordance with their terms;
  - (vii) if all or any part of any of a Key Document:
    - (A) is amended or varied without the consent of the Underwriter;
    - (B) is terminated;
    - (C) ceases to have effect, otherwise than in accordance with its terms; or
    - (D) is or becomes void, voidable, illegal, invalid or unenforceable (other than by reason only of a party waiving any of its rights) or capable of being terminated, rescinded or avoided or of limited force and affect, or its performance is or becomes illegal; or
- (y) **(Governmental Licences)** a Governmental Agency withdraws, revokes or in any respect amends any Governmental Licence held by a Material Subsidiary other than in connection with the issue of a new Government Licence.

## 10.2 Termination events subject to materiality

If any of the following events occur at any time before Settlement or such other time as specified below then, subject to clause 10.3, the Underwriter may, in its sole and absolute discretion, by notice to the Company, immediately and without any cost or liability to GS or FB, terminate this Agreement on behalf of all parties:

- (a) **(representations and warranties)** a representation or warranty contained in this Agreement on the part of the Company is not, or has ceased to be, true or correct;
- (b) **(offences)** any of the following occurs:
  - (i) a director, officer, shareholder or member of the executive management team of any member of the Group, a Promoter or any party to any of the Acquisition Agreements (each a **Relevant Person**) is:
    - (A) charged with an indictable offence; or
    - (B) disqualified from managing a company under the Companies Act; or
  - (ii) any Governmental Agency commences any public proceedings against, or Inquiry into a Relevant Person;
- (c) **(breach)** the Company fails to perform or observe any of its obligations under this Agreement;
- (d) **(hostilities)** in respect of any one or more of New Zealand, the United States, Australia, any member state of the European Union, China (including Hong Kong) or Japan:
  - (i) hostilities not presently existing commence;
  - (ii) a major escalation in existing hostilities occurs (whether war is declared or not);
  - (iii) a declaration is made of a national emergency or war; or
  - (iv) a major terrorist act is perpetrated on any of those countries or a diplomatic, military, commercial or political establishment of any of those countries elsewhere in the world;
- (e) **(change in law)**: there is introduced into the Parliament of New Zealand or Australia, a law or prospective law, or any new regulation is made under any statute, or a Governmental Agency adopts a policy, or there is any announcement that such a law, prospective law or regulation may be introduced or policy may be adopted (except where such law is announced or generally known to the market prior to the date of this Agreement), any of which does or is likely to prohibit or regulate the Offer, capital issues or stock markets or adversely affect the taxation treatment of the Offer; or
- (f) **(Facility Agreement)**: a provider of debt or other financial accommodation to the Group pursuant to the Facility Agreement terminates or cancels its commitment to provide that financial accommodation, or declares an event of default or an acceleration of the obligation to repay that financial accommodation; the availability period of that financial accommodation expiring without it being provided; or a condition precedent to drawdown of any part of that financial accommodation is not satisfied or waived or becomes incapable of being satisfied, in each case on or prior to the Settlement Date.

- (g) **(disruption of securities trading or of commercial banking activities)**: either of the following occurs:
  - (i) a suspension or material limitation in trading of at least one Business Day in securities generally on the NZX Main Board, ASX, the New York Stock Exchange, Hong Kong Stock Exchange or the London Stock Exchange; or
  - (ii) a general moratorium on commercial banking activities in Australia, New Zealand, the United States, Hong Kong or any member state of the European Union is declared by the relevant central banking authority in any of those countries, or there is a material disruption in commercial banking or security settlement or clearance services in any of those countries;
- (h) **(changes in management)** a change in the board or executive management team of any member of the Group (other than the Company), occurs or is announced;
- (i) **(changes in childcare laws, regulation and funding)** there is introduced, or there is a public announcement of a proposal to introduce:
  - (i) into the Parliament of New Zealand, a change to any childcare laws or regulations, including in relation to minimum standards and licensing criteria applicable to service providers or the way childcare benefits or rebates are provided; or
  - (ii) a change to the manner, or extent of, funding and subsidies (including the 20 Hours ECE and ECE Funding Subsidy), provided by the New Zealand Government in relation to childcare;
- (j) **(Governmental Licences)** a Governmental Agency withdraws, revokes or in any respect amends any Governmental Licence held by a member of the Group (other than a Material Subsidiary) other than in connection with the issue of a new Government Licence; or
- (k) **(Additional Acquisition Agreements)**:
  - (i) a condition to which any Additional Acquisition Agreement is subject having, prior to Settlement, become incapable of satisfaction or waiver by the specified date, or completion under any Additional Acquisition Agreement otherwise being delayed without the consent of the Underwriter, such consent not to be unreasonably withheld;
  - (ii) a default by the Company or its Subsidiary in the performance of any of its obligations under any of the Additional Acquisition Agreements occurs;
  - (iii) any due diligence report prepared by or on behalf of the Company in relation to the transactions contemplated by the Additional Acquisition Agreements becomes false or misleading or deceptive or likely to mislead or deceive, including by way of omission;
  - (iv) an Additional Acquisition Agreement having been varied or terminated without the prior written consent of the Underwriter;
  - (v) any Governmental Agency notifying the Company that the relevant Governmental Licences for each of the Acquisition Agreements will not be transferred, or new Government Licences on substantially the same terms as the existing Governmental Licence will not be issued, to the relevant member of the Group; or

- (vi) any representations or warranties made by any parties to the Additional Acquisition Agreements becoming untrue or incorrect.

### 10.3 **Materiality**

If an event referred to in clause 10.2 occurs, the Underwriter may not terminate this Agreement unless, in the reasonable opinion of the Underwriter:

- (a) the event has, or could reasonably be expected to have, a material adverse effect on:
  - (i) the likely price that the Offer Shares will trade once quoted on the NZX Main Board;
  - (ii) the willingness or ability of Institutional Investors to comply with their settlement obligations under the Offer;
  - (iii) the settlement or outcome of the Offer; or
  - (iv) the ability of the Joint Lead Managers to market or settle the Offer;
- (b) the event has or could reasonably be expected to have a materially adverse impact on the Underwriter's ability to perform its obligations under clauses 4 or 5, or to enforce contracts to purchase the Offer Shares;
- (c) the event has given, or is likely to give, rise to a liability for a Joint Lead Manager under any applicable law; or
- (d) the event has or is likely to give rise to:
  - (i) a contravention by that Joint Lead Manager or any of its Affiliates; or
  - (ii) that Joint Lead Manager or any of its Affiliates being involved in a contravention, of any applicable law.

### 10.4 **Notice**

The Company must notify the Joint Lead Managers in writing immediately after becoming aware that any of the events or circumstances referred to in clause 10.1 or clause 10.2 has occurred, is about to or is likely to, occur. Such notice must specify the relevant termination event(s) in relation to which the notice is given and provide full details in relation to the same.

### 10.5 **Effect of Termination**

- (a) If the Underwriter terminates this Agreement under clause 10.1 or clause 10.2:
  - (i) each of GS and FB will immediately be relieved of all further obligations under this Agreement (including any obligations under clause 5);
  - (ii) any entitlements of GS or FB in any capacity (and their related Indemnified Persons) accrued or arising under this Agreement and the Engagement Letters up to (and including) the date of termination shall survive termination, including the right to be indemnified.
- (b) If the Company terminates this Agreement for any reason, the Company will also be deemed to have given notice of termination under the Engagement Agreements unless the Joint Lead Managers otherwise agree in writing.

**10.6 Claims**

Nothing in this clause 10 will prejudice or nullify any Claim for damages or any other right which a Joint Lead Manager or any other Indemnified Person may have against the Company, or which the Company may have against a Joint Lead Manager, for or arising out of any breach of covenant, warranty or representation, or other provision of this Agreement or failure to perform an obligation under this Agreement.

**10.7 Independent termination events**

Each paragraph of clause 10.1 and each paragraph of clause 10.2 is to be construed independently and no paragraph is limited by implications arising from any other paragraph.

**11. Indemnity**

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**11.1 Indemnity**

Subject to clause 11.2, to the maximum extent permitted by law, the Company agrees to indemnify and hold harmless each of the Indemnified Persons, on demand, from and against any and all Claims (whether or not the Indemnified Person is an actual or potential party to such Claim) and Loss (of whatever nature and in whichever jurisdiction) which may be instituted, made, threatened, asserted, established or alleged against or otherwise involve, or which may be suffered or incurred by, all or any Indemnified Person and which, directly or indirectly, relate to, or arise from, in connection with, or out of, the Offer or this Agreement, including Claims and/or Loss arising from:

- (a) any breach, or alleged breach, by the Company of, or any failure, or alleged failure, by the Company to perform or observe, any of its obligations under this Agreement;
- (b) any representation or warranty made or given by the Company under this Agreement being untrue or incorrect;
- (c) any unlawful, negligent, reckless or deliberately wrongful act or omission by the Company in relation to the Offer;
- (d) any failure or alleged failure by the Company or its directors to comply with any applicable laws;
- (e) the content of, or any omissions from, or the issue, publication or distribution of, any Offering Materials; and
- (f) undertaking the presentations to prospective Institutional Investors in connection with the Offer, promoting or marketing of the Offer or conducting the bookbuild process in connection with the Offer, in each case or whether before or after the date of this Agreement.

Each paragraph of this clause 11.1 is to be construed independently and no paragraph is limited by implications arising from any other paragraph. The indemnities given by the Company in this clause 11.1 constitute obligations of the Company and give rise to separate and independent causes of action.

**11.2 Extent of indemnity**

The Company will not be liable under clause 11.1 to any Indemnified Person if and to the extent that the relevant Claim or Loss is finally determined by a judgment of a court of competent jurisdiction to have resulted from the fraud, gross negligence or wilful misconduct of such Indemnified Person or:

- (a) if such Indemnified Person is a FB Person, any other FB Person; or
- (b) if such Indemnified Person is a GS Person, any other GS Person.

### 11.3 Release

The Company agrees that:

- (a) no Claim may be made by it against any Indemnified Person, and it unconditionally and irrevocably releases and discharges each Indemnified Person from any Claim that may be made by it, to recover from any Indemnified Person any Loss suffered or incurred by it arising directly or indirectly as a result of the participation of any Indemnified Person in relation to the Offer, except in relation to matters where the Loss is finally determined by a court of competent jurisdiction to have been caused by the fraud, gross negligence or wilful misconduct of such Indemnified Person or:
  - (i) if such Indemnified Person is a FB Person, any other FB Person; or
  - (ii) if such Indemnified Person is a GS Person, any other GS Person,
 other than to the extent caused, induced or contributed to by the Company or its Affiliates, or caused by an Indemnified Person's reliance on information contained in any Offering Materials or other information provided by or on behalf of the Company or its Affiliates;
- (b) the Indemnified Persons are not liable in any circumstance for any indirect or consequential loss or damage;
- (c) in any event, no proceedings may be taken against any director, officer, employee, agent or adviser of an Indemnified Person arising out of or in connection with the Offering Materials or the Offer except in relation to any fraud or wilful misconduct on the part of any such person; and
- (d) the net liability of any Indemnified Person shall not be increased as a result of a limitation or exclusion of liability arising under a contract between the Company and a third party who would otherwise be jointly, or jointly and severally, liable for any part of the losses, by operation of statute or because of such third party's death, bankruptcy or insolvency.

### 11.4 Notice

If an Indemnified Person receives notice of any act, matter or thing which in the opinion of the Indemnified Person could reasonably be expected to give rise to a Claim or Loss, it must notify the Company of the act, matter or thing as soon as reasonably practicable.

### 11.5 Failure to notify

The failure of an Indemnified Person to notify the Company under clause 11.4 will not release the Company from any obligation or liability which it may have to the relevant Indemnified Person under this Agreement, except that its liability in respect of that Indemnified Person is reduced to the extent to which the amount of the Claim which is the subject of the indemnity under clause 11.1 has materially increased (including as a result of any defence no longer being available) as a result of the failure to so notify.

### 11.6 Preservation of rights

Subject to the other provisions of this clause 11, the rights of an Indemnified Person under this clause 11 are not in any way prejudiced or affected by:

- (a) any approval given by that party in relation to any Offering Materials;
- (b) any consent to be named in any Offering Materials;
- (c) any knowledge (actual or constructive) acquired after the date of this Agreement of any failure by the Company to perform or observe any of its obligations under this Agreement, an Acquisition Agreement or a Key Document;
- (d) any termination of this Agreement by the Underwriter;
- (e) any inaccuracy in any representation or warranty made or deemed to have been made by the Company under this Agreement; or
- (f) any other fact, matter or thing which might otherwise constitute a waiver by, or in any way prejudice or affect any right of, the Indemnified Person.

#### **11.7 Obligations of Indemnified Persons**

Subject to clause 11.8, each Joint Lead Manager must (and must procure that its relevant Indemnified Persons must):

- (a) keep the Company informed on a timely basis of any developments in relation to any Claim in respect of which the indemnity in clause 11.1 will apply;
- (b) promptly take such reasonable action as the Company requests to avoid, dispute, resist, appeal, compromise or defend any Claim in respect of it;
- (c) not admit liability in respect of all or part of, or settle or compromise or consent to the entry of judgment in, any Claim without the prior written consent of the Company (not to be unreasonably delayed or withheld);
- (d) promptly give all reasonable assistance and co-operation to the Company in the conduct of any Claims, including providing any relevant documents in its possession (unless such provision could cause the relevant Indemnified Person to lose legal privilege in respect of such documents); and
- (e) promptly do anything reasonably necessary or desirable to ensure that the Company is subrogated to and enjoys the benefit of the rights of that Indemnified Person in relation to any cross-claims,

provided that a breach of any such requirement does not affect the other provisions of this clause 11.

#### **11.8 Conditions precedent to Indemnified Persons' obligations**

Subject to clauses 11.9 and 11.11, an Indemnified Person is under no obligation:

- (a) under clause 11.7 unless, at the time the Company requests that Indemnified Person to take any action, the Company irrevocably and unconditionally agrees to indemnify the Indemnified Person against all Loss incurred by it in taking the action required, as and when they fall due, including legal costs and disbursements of its lawyers on a full indemnity basis and the cost of any involvement of any senior officers of a Joint Lead Manager at normal commercial rates; or
- (b) to take or refrain from taking action under clause 11.7(a), (b), (d), (e) if to do so would, in the reasonable opinion of the relevant Joint Lead Manager, lead to a material risk of damage to its reputation, standing or business.



**11.9 Separate representation**

- (a) Without prejudice to its right of indemnity under clause 11.1, an Indemnified Person shall be entitled, at its election, to be separately represented, and to be indemnified in each case for the costs and expenses of such representation under clause 11.1, in relation to any proceedings against an Indemnified Person to which the indemnity in clause 11.1 applies, as and when they fall due, in any of the following circumstances:
  - (i) the Company not choosing legal counsel satisfactory to the Indemnified Person (acting reasonably);
  - (ii) a conflict arises for legal counsel chosen by the Company, or between the interests of the Company on the one hand and the interests of the Indemnified Person on the other hand, or between the interests of the Joint Lead Managers;
  - (iii) where there may be defences available to the Indemnified Person that are different from or additional to those available to the Company or another Indemnified Person represented by such legal counsel and the counsel appointed by the Company does not mount and pursue those defences on behalf of the Indemnified Person to the reasonable satisfaction of such Indemnified Person; or
  - (iv) the Indemnified Person reasonably believes it desirable to do so in order to protect the Indemnified Person's reputation, standing or business.
- (b) For the avoidance of doubt, each Indemnified Person shall be entitled at its election to have separate legal representation in relation to any proceedings arising under clause 11.1 in any other circumstance, with the costs of such separate representation at its own cost.

**11.10 Conduct of proceedings**

- (a) Subject to clause 11.9 and 11.10(b), the Company, at its own cost, may have sole conduct of the defence of any Claim referred to in clause 11.1 provided that:
  - (i) the Company acknowledges, and continues to acknowledge, that it is liable to indemnify the relevant Indemnified Person under clause 11.1 in respect of such Claim and satisfies the relevant Indemnified Person of its financial ability to indemnify the Indemnified Persons under clause 11.1;
  - (ii) each Joint Lead Manager has the right to information, consultation and its own independent legal representation concerning or with respect to the development and defence of any litigation or threatened litigation (where the circumstances in clause 11.9 exist, such representation will be paid for by the Company under the indemnity in clause 11.1, otherwise costs will be met by the relevant Indemnified Person);
  - (iii) the Company must have reasonable regard to preserving the reputation, standing and business of each Joint Lead Manager in conducting the defence of the Claim, and each Joint Lead Manager remains satisfied that its reputation, standing and business is not materially threatened by the Company's conduct of the defence; and
  - (iv) the Company must not, without the written consent of the Indemnified Person, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened Claim or action against the Indemnified Person and in respect of which indemnification may be sought under this Agreement (whether or not the Indemnified Person is an actual or potential party to such Claim or action) unless the Company first consults

reasonably with the Indemnified Person and such settlement, compromise or judgment:

- (A) includes an unconditional release of the Indemnified Person from all liability arising out of such Claim or action; and
  - (B) does not include a statement as to an admission of fault, culpability or a failure to act by or on behalf of the Indemnified Person.
- (b) Without affecting the indemnity in clause 11.1, (including, for the avoidance of doubt, in relation to Company's liability for costs associated with the Reassumed Claim (defined below)), an Indemnified Person has a right at any time at its discretion to re-assume the control of any Claim referred to in clause 11.1 which is defended or instituted by the Company (**Reassumed Claim**). If an Indemnified Person does this:
- (i) it will have the right to conduct the proceedings under its sole management and control and (subject to clause 11.10(b)(ii)) will have absolute discretion with regards to the conduct of those proceedings including having the ability to settle them at their discretion;
  - (ii) prior to any settlement, admission of liability, or consent to the entry of any judgment with respect to, any pending or threatened Claim which would entitle the Indemnified Person to recover under the indemnity in clause 11.1, the Indemnified Person must first consult reasonably with the Company and have regard (acting reasonably and in good faith) to any request made by the Company in relation thereto; and
  - (iii) the Company must:
    - (A) render all reasonable assistance and co-operation to the Indemnified Person in the conduct of any Reassumed Claim; and
    - (B) do anything reasonably necessary or desirable to ensure that the Indemnified Person is subrogated to and enjoys the benefits of the rights of the Company in relation to any cross-claims,

except where the taking of that action would, in the reasonable opinion of the Company, lead to a material risk of damage to the reputation or standing of the Company.

For the avoidance of doubt, in the event of a Reassumed Claim the indemnity in clause 11.1 continues to apply in relation to all Claims and Losses suffered or incurred by any Indemnified Person.

#### 11.11 Indemnity – third parties

Where Loss is suffered by the Company for which one or both of the Joint Lead Managers would otherwise be jointly, or jointly and severally, liable with any third party or third parties to the Company, the extent to which such Loss will be recoverable by the Company from the Joint Lead Manager(s) will:

- (a) be limited so as to be in proportion to the particular Joint Lead Manager's contribution to the overall fault for such Loss, as agreed between the Joint Lead Managers and the Company or, in the absence of agreement, as determined by a court of competent jurisdiction; and
- (b) be no more than it would have been had any arrangements which limit the extent to which the Company may claim against a third party or parties in connection with the Offer not existed.

**11.12 Contractual contribution**

If for any reason the indemnities given by the Company under this clause 11 are unavailable or insufficient to fully indemnify any Indemnified Person against any Loss against which the Indemnified Person is stated to be indemnified under this clause 11 (other than as a result of the operation of any exclusion, limitation or qualification in this clause 11), then the Company will contribute to the relevant Loss with the Indemnified Person, in all cases as is appropriate to reflect the relative fault of the Company on the one hand and of the Indemnified Person on the other hand by reference to, among other things:

- (a) whether any untrue statement or alleged untrue statement in the Offering Materials or any omission or alleged omission from the Offering Materials relates to information supplied by the Company on the one hand, or the Indemnified Person on the other hand;
- (b) the participation in, instigation of, or other involvement of the Company on the one hand, or the Indemnified Person on the other hand in the act complained of; and
- (c) the Company's and the Indemnified Person's relative intent, knowledge, access to information and opportunity to correct or prevent the publication of such untrue statement or alleged untrue statement or such omission or alleged omission.

**11.13 Determination of contribution**

The Company agrees that:

- (a) FB Persons will not be required to contribute under clause 11.12 to any Claim or Loss in an aggregate amount exceeding the aggregate commission and fees paid to FB; and
- (b) GS Persons will not be required to contribute under clause 11.12 to any Claim or Loss in an aggregate amount exceeding the aggregate commission and fees paid to GS.

**11.14 Right to payment**

- (a) If an Indemnified Person pays an amount in relation to a Loss where it is entitled to contribution or indemnification from the Company under this clause 11, the Company agrees to promptly reimburse the Indemnified Person for that amount.
- (b) If at any time an Indemnified Person shall have requested the Company to reimburse the Indemnified Person for fees and expenses of its legal advisers that are properly reimbursable pursuant to this clause 11, the Company agrees that it shall be liable for any settlement of any Claims effected without its consent if:
  - (i) such settlement is entered into more than 20 Business Days after receipt by the Company of such request for reimbursement and the Company has not previously consented to such request; or
  - (ii) the Company shall not have participated in the defence thereof or shall not have reimbursed such Indemnified Person's fees and expenses in accordance with such request prior to the date of such settlement of the Claim.

**11.15 Related provisions**

The indemnity and releases set out in clause 11 are:

- (a) in addition to any liability that the Company might otherwise have (including under the Engagement Letters);

- (b) in addition to any other rights which any Indemnified Person might otherwise have;
- (c) intended to confer a benefit on each Indemnified Person for the purposes of the Contracts (Privity) Act and each Indemnified Person may personally enforce the indemnity and releases set out in clause 11 for his, her or its own benefit;
- (d) fully enforceable in accordance with its terms notwithstanding any act, matter, omission or thing that, but for this clause, would or may give rise to a defence or counterclaim; and
- (e) for the benefit of each Indemnified Person, each of whom may enforce the indemnity and releases severally and without any need to join any or every other Indemnified Person in such proceeding.

#### 11.16 Indemnity to survive

This clause 11 will survive, and continue in full force and effect notwithstanding termination of this Agreement for any reason.

## 12. Goods and Services Tax

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### 12.1 Interpretation

- (a) Unless the context suggests otherwise, all words and phrases used in this clause 12 which are defined in the GST Act have the meaning given to them in the GST Act.
- (b) If any party to this Agreement is a member of a group registered for GST under the GST Act (**GST Group**), any reference in this Agreement to that party shall also, where appropriate, be read as a reference to the representative member of that GST Group.

### 12.2 GST-exclusive consideration

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are (with the exception of expense reimbursements) exclusive of any GST.

### 12.3 Payment of GST

The parties agree that where GST is chargeable on a supply made by one party (the **Supplier**) to another party (the **Recipient**) under or in accordance with this Agreement, the Supplier will issue a tax invoice to the Recipient and the Recipient will pay to the Supplier the GST chargeable on that supply (as shown in that tax invoice) in addition to, at the same time and in the same manner as the consideration otherwise payable or provided for that supply is payable or provided.

### 12.4 Net down

If an amount payable under or in connection with this Agreement is calculated or determined by reference to an expense, cost, loss or outgoing of a party (**Relevant Expense**), the amount of the Relevant Expense for the purpose of calculating the payment is to be reduced by an amount equal to any input tax credit or (if applicable) any deduction from output tax available to the person as a result of incurring the Relevant Expense.

## 13. Notices

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### 13.1 Form

Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing (including email) and marked for the attention of the person identified in Schedule 3, if the recipient has notified otherwise, then marked for attention in the way last notified.

### 13.2 Delivery

- (a) Each notice, certificate, consent, approval, waiver or other communication in connection with this Agreement must be:
  - (i) delivered by hand at the address set out in Schedule 3;
  - (ii) sent by prepaid ordinary post (airmail if appropriate) to the address set out in Schedule 3;
  - (iii) sent by fax to the fax number set out in Schedule 3; or
  - (iv) sent by email to the email address set out in Schedule 3.

13.3 However, if the intended recipient has notified a changed postal address, fax number or email address, then the communication must be to that postal address, fax number or email address.

### 13.4 When effective

No notice, certificate, consent, approval, waiver or other communication in connection with this Agreement is to be effective until received, except that a notice, certificate, consent, approval, waiver or other communication will, however, be deemed to be received by the addressee:

- (a) if hand delivered, upon delivery;
- (b) if sent by post, two Business Days after posting (or five Business Days after posting if sent to or from a place outside New Zealand);
- (c) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent, unless sent on a day which is not a Business Day or after 5.00pm on any Business Day, in which case the notice will be deemed to be given at 9.00am on the next Business Day; and
- (d) if sent by email, at the time at which it enters the addressee's email information system (as shown in the delivery report from the sender's information system), unless sent on a day which is not a Business Day or after 5.00pm on any Business Day, in which case the notice will be deemed to be given at 9.00am on the next Business Day.

## 14. General

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### 14.1 Time is of the essence

Time is of the essence in each party's performance of its obligations under this Agreement.

**14.2 Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Agreement expressly states otherwise.

**14.3 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

**14.4 No liability for Loss**

A party is not liable for Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy under this Agreement.

**14.5 Conflict of interest**

The parties' rights and remedies under this Agreement may be exercised even if this involves a conflict of duty or a party has a personal interest in their exercise.

**14.6 Remedies cumulative**

The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.

**14.7 Variation and waiver**

Except as provided in clause 14.11, a provision of this Agreement or a right created under it, may not be waived or varied except in writing, and in the case of a variation, signed by the party or parties to be bound.

**14.8 Further assurances**

Each party agrees, at its own expense, unless otherwise provided, to do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.

**14.9 Indemnities and benefits**

- (a) The indemnities in this Agreement are continuing obligations, independent from the other obligations of the Company under this Agreement and continue after this Agreement ends or the Offer is withdrawn. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.
- (b) If a provision of this document is expressed to:
  - (i) be a warranty in favour of;
  - (ii) indemnify;
  - (iii) exclude or limit any liability of; or
  - (iv) otherwise benefit,

an Indemnified Person who is not a party to this Agreement, the Company agrees that, for the purposes of the Contracts (Privity) Act, that warranty, indemnity,

exclusion, limitation or other benefit is intended to confer a benefit on that Indemnified Person and is only enforceable at the suit of that Indemnified Person on its behalf by the relevant Joint Lead Manager. Except as set out in clause 11.13 and this clause 14.9 (in relation to Indemnified Persons), this Agreement is not intended to confer a benefit on any person who is not a party to this Agreement.

#### 14.10 **Enforceability**

For the purpose of this Agreement, each Joint Lead Manager is taken to be acting as agent and trustee on behalf of and for the benefit of its relevant Indemnified Persons not party to this Agreement (and not any other Indemnified Person).

#### 14.11 **Amendment**

This Agreement may only be amended by written agreement between the Company and the Joint Lead Managers (including in a manner that adversely affects the interests of the Indemnified Persons), and such amendment shall not require the consent of the other Indemnified Persons.

#### 14.12 **Severability**

If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. The parties shall use reasonable endeavours to replace any invalid or unenforceable provision by a valid provision, the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision. This clause 14.12 has no effect if the severance would alter the basic nature of this Agreement or be contrary to public policy.

#### 14.13 **Assignment and subcontracting**

- (a) Subject to clause 14.13(b), the rights and obligations of each party under this Agreement cannot be assigned without the prior written consent of each of the other parties (which consent cannot be unreasonably withheld).
- (b) The Company consents to each Joint Lead Manager subcontracting that part of its obligations under this Agreement to appropriately licensed Affiliates to the extent necessary to permit the Joint Lead Manager to comply with applicable laws in the various jurisdictions in which it undertakes activities in relation to this Agreement or its Engagement Letter.

#### 14.14 **Counterparts**

This Agreement may consist of a number of copies, each signed by one or more parties to the agreement. If so, the signed copies are treated as making up the one document.

#### 14.15 **Governing law**

This Agreement and the transactions contemplated by this Agreement are governed by the law in force in New Zealand. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand.

#### 14.16 **Relationship of the Company with Joint Lead Managers**

The Company acknowledges and agrees that:

- (a) any advice, whether written or oral, given by a Joint Lead Manager to the Company or any communications between a Joint Lead Manager and the Company (or its directors

or senior management) can only be used or relied on by the Company and may not be used and relied on by any third party and may not be disclosed to any third party without the prior written approval of that Joint Lead Manager;

- (b) the Joint Lead Managers will use and rely primarily on the information provided to it by or on behalf of the Company and on information available from generally recognised public sources in relation to the Offer without having independently verified the same, and no Joint Lead Manager assumes responsibility for the accuracy or completeness of such information for which the Company will be responsible;
- (c) each Joint Lead Manager and its Affiliates may be providing, or may in the future provide, financial or other services to other parties with conflicting interests to the Company;
- (d) no Joint Lead Manager is obliged to disclose to it or to utilise for the benefit of it, any non-public information which that Joint Lead Manager obtains in the normal course of its business where such disclosure or use would result in a breach of any obligation of confidentiality or any internal information sharing policies of that Joint Lead Manager;
- (e) no Joint Lead Manager is required to give, and does not give, tax, legal, regulatory, accountancy or other specialist or technical advice in connection with the Offer, and will rely on the expertise of any specialist advisers the Company engages in relation to the Offer; and
- (f) each Joint Lead Manager is a full service securities firm and it, along with its Affiliates, are engaged in various activities, including securities trading, investment management, financing and brokerage activities and financial planning and benefits counselling for both companies and individuals. In the ordinary course of these activities, each Joint Lead Manager and their respective Affiliates may actively trade the debt and equity securities (or related derivative securities) of the Company (once listed) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities. These entities may trade such securities and hold such positions and effect such transactions without regard to the interests of the Company under this Agreement.

#### 14.17 **No fiduciary duty**

- (a) Without prejudice to their respective rights and obligations under this Agreement and the Engagement Letters, the parties to this Agreement agree that it is not their intention to create a fiduciary relationship between any of them.
- (b) Without prejudice to their respective rights and obligations under this Agreement and the Engagement Letters, and without limiting clause 14.16(a), each of the Company acknowledges and agrees that:
  - (i) it is contracting with each Joint Lead Manager on an arm's length basis and as an independent contractor and not in any other capacity;
  - (ii) the Company is solely responsible for making their own independent judgements in relation to the Offer and neither this Agreement nor the nature of the services that the Joint Lead Managers provide under it create any obligations (fiduciary or otherwise) other than those expressly set out in this Agreement;
  - (iii) each Joint Lead Manager is not acting and will not act in a fiduciary capacity with respect to the Company; and
  - (iv) no Joint Lead Manager has assumed any duties or obligations other than those expressly set out in this Agreement and in the respective Engagement Letters.



**14.18 Entire Agreement**

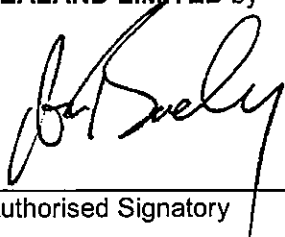
Without limiting clause 1.2, this Agreement and the Engagement Letters:

- (a) constitute the entire agreement of the parties with respect to its subject matter; and
- (b) set out the only conduct relied on by the parties and supersedes all earlier conduct and prior agreements and understandings between the parties with respect to the performance of their obligations as expressed herein.

## Execution

Executed as an underwriting agreement.

**GOLDMAN SACHS NEW  
ZEALAND LIMITED** by



\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
ANDREW BARCLAY  
Print Name



\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Duncan Rutherford  
Print Name

**FORSYTH BARR LIMITED** by

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

**EVOLVE EDUCATION GROUP  
LIMITED** by

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

Execution

Executed as an underwriting agreement.

GOLDMAN SACHS NEW  
ZEALAND LIMITED by

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

FORSYTH BARR LIMITED by

  
\_\_\_\_\_  
Authorised Signatory

NEIL PAVEUR-SMITH  
\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

EVOLVE EDUCATION GROUP  
LIMITED by

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

## Execution

**Executed** as an underwriting agreement.

**GOLDMAN SACHS NEW  
ZEALAND LIMITED** by

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name


\_\_\_\_\_  
Authorised Signatory


\_\_\_\_\_  
Print Name

**FORSYTH BARR LIMITED** by

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Authorised Signatory

  
\_\_\_\_\_  
Print Name

**EVOLVE EDUCATION GROUP  
LIMITED** by

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

Execution

Executed as an underwriting agreement.

GOLDMAN SACHS NEW  
ZEALAND LIMITED by

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

FORSYTH BARR LIMITED by

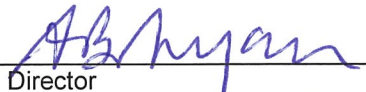
\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Print Name

EVOLVE EDUCATION GROUP  
LIMITED by

  
\_\_\_\_\_  
Director

ALISTAIR RYAN  
\_\_\_\_\_  
Print Name

  
\_\_\_\_\_  
Director

GREG KERN.  
\_\_\_\_\_  
Print Name

## Schedule 1: Timetable

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Event	Date (and time)
<b>Prospectus Lodgement Date</b> - last day for lodgement of the Prospectus.	14 November 2014
<b>Broker Firm Offer Opening Date</b> - last time for Broker Firm Offer to commence.	9:00am on 24 November 2014
<b>Broker Firm Offer Closing Date</b> - date and time on which the Broker Firm Offer closes.	12:00pm on 3 December 2014
<b>Settlement Date</b> - last day for payment of application monies under the Institutional Offer.	4 December 2014
<b>Allotment of Offer Shares.</b>	4 December 2014
<b>Quotation Date</b> - Offer Shares expected to begin trading on the NZX Main Board and ASX.	5 December 2014
<b>Statement Despatch Date</b> - expected despatch of allotment notices.	5 December 2014

Note: The dates referred to above can be varied in accordance with clause 3.4.

## Schedule 2: Certificate

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To: **Goldman Sachs New Zealand Limited**  
 Attention: **Justin Queale**

To: **Forsyth Barr Limited**  
 Attention: **Blair Sutherland**

We hereby certify, pursuant to clause 2.1(b)(iv) of the Underwriting Agreement, on behalf of Evolve Education Group Limited (the **Company**), that:

- (a) each condition referred to in clause 2.1 has been satisfied or waived (if capable of waiver, in accordance with the terms of the Underwriting Agreement) and, where applicable, by the deadline set out in the relevant clause;
- (b) so far as it is aware, each of the Acquisition Agreements will settle and complete in accordance with the terms and date specified in the relevant Acquisition Agreement;
- (c) the Company has complied with its obligations under the Underwriting Agreement;
- (d) the representations and warranties given by the Company in the Underwriting Agreement are true and correct as at the date of this certificate by reference to the facts and circumstances now existing, and the Company has breached any of those representations and warranties;
- (e) without limiting subparagraph (c) above, as at the date of this Certificate no Material Adverse Change has occurred since the date of the Underwriting Agreement;
- (f) none of the events which may give rise to termination of the Underwriting Agreement pursuant to clause 10 of that Agreement have occurred as at the date of this Certificate; and
- (g) upon receipt of immediately available same-day cleared funds in respect of the consideration payable under the Key Acquisition Agreements, such funds will be paid to the vendors of Lollipops Educare and PORSE in immediately available same-day cleared funds in accordance with the terms of the Key Acquisition Agreements on the Settlement Date.

For the purposes of this Certificate:

- (a) **Underwriting Agreement** means the underwriting agreement dated 14 November 2014 between the Company, Goldman Sachs New Zealand Limited and Forsyth Barr Limited; and
- (b) capitalised terms used, but not defined in this certificate, have the meanings given to them in the Underwriting Agreement.

Time: \_\_\_\_\_ am

Dated: 4 December 2014

**EVOLVE EDUCATION GROUP  
 LIMITED** by

\_\_\_\_\_  
 Director

\_\_\_\_\_  
 Director

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Print Name

## Schedule 3: Details

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### Evolve Education Group Limited

Address: Level 2, 54 Fort Street  
Auckland 1010

Attention: Vivek Singh

Facsimile: +64 9 377 8712

Email: [vivek.singh@evolveeducation.co.nz](mailto:vivek.singh@evolveeducation.co.nz)

### Forsyth Barr Limited

Address: Level 13  
Forsyth Barr Tower  
55 Shortland Street  
Auckland  
New Zealand

Attention: Blair Sutherland and Nick Hegan

Facsimile: +64 9 368 0080

Email: [blair.sutherland@forsythbarr.co.nz](mailto:blair.sutherland@forsythbarr.co.nz) / [nick.hegan@forsythbarr.co.nz](mailto:nick.hegan@forsythbarr.co.nz)

### Goldman Sachs New Zealand Limited

Address: Level 38  
Vero Centre  
48 Shortland Street  
Auckland 1010  
New Zealand

Attention: Justin Queale and Jennifer Page

Facsimile: +64 9 362 7322

Email: [justin.queale@gs.com](mailto:justin.queale@gs.com) / [jennifer.page@gs.com](mailto:jennifer.page@gs.com)



## Schedule 4: Key Documents

Document		Parties
1.	Facility Agreement	Company and ASB Bank Limited
2.	Facility Agreement Term Sheet	Company and ASB Bank Limited
3.	Amended and restated Lollipops Acquisition Agreement dated on or about 13 November 2014	Company (or its nominee) and Mark Finlay and Geoffrey Hosking as trustees of the Mark Finlay Investment No.2 Trust, Russell Thompson and Geoffrey Hosking as trustees of the 111 Investment Trust, ScottFin ECE Limited, and Mark Finlay and Mark Dobson Trustee Company Limited as trustees of the HR Finlay Family Trust
4.	Porse Acquisition Agreement dated 22 September 2014	Evolve Home Day Care Limited, Jenny Yule, David Yule and Andrew Wares

## Schedule 5: Material Subsidiaries

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Part A - Subsidiaries	
1.	Evolve Home Day Care Limited
2.	Evolve Group 1 Limited
3.	Evolve Group 2 Limited
4.	Evolve Group 3 Limited
5.	Evolve Group 4 Limited
6.	Evolve Group 5 Limited
7.	Evolve Management Group Limited
Part B – Material Subsidiaries	
8.	Lollipops Educare Holdings Limited
9.	Lollipops Educare Limited
10.	Lollipops Educare Centres Limited
11.	PORSE In-Home Childcare (NZ) Limited
12.	PORSE Franchising (NZ) Limited
13.	PORSE Education & Training (NZ) Limited
14.	FOR Life Education & Training (NZ) Limited

# EVOLVE EDUCATION GROUP LIMITED

## COMMITTED TERMS SHEET

13 November 2014

<b>Credit Approved</b>	ASB Bank Limited (the “Bank”) is pleased to offer the Facilities on the Terms and Conditions contained in this Terms Sheet. This Term Sheet contains a summary of the key terms and conditions on which this offer is made. The Bank will not be bound to provide the Facilities unless and until final terms are agreed and formal documentation has been agreed and executed.
<b>Borrower</b>	Evolve Education Group Limited (“Evolve”) a corporate dual listed on the ASX and NZX (the “Borrower”) and any other wholly owned subsidiary as requested by Evolve and agreed by the Bank.
<b>Lender</b>	ASB Bank Limited (the “Bank”)
<b>Guaranteeing/Charging Group</b>	<ul style="list-style-type: none"><li>• Evolve; and</li><li>• Any other subsidiaries.</li></ul> <p>The Bank will require any new legal entities that may be established to hold acquired assets or businesses to provide guarantees (subject to the guarantor coverage test).</p>
<b>Obligors</b>	The Borrower and each Guarantor.
<b>Facilities</b>	Specified below and together, the Facilities.
<b>Commencement Date</b>	The date the Lender confirms all Conditions Precedent are met or waived.
<b>Core Business</b>	Early Childhood Education Centres and In Home Child Care Businesses.

## Part A – Debt Facilities

*All figures denominated in New Zealand Dollars*

### Revolving Cash Advances Facility

<b>Borrower(s) / Borrowing Group</b>	Evolve
<b>Facility Type</b>	Senior Revolving Cash Advances Facility
<b>Facility Limit</b>	\$30,000,000 (thirty million dollars)
<b>Expiry Date</b>	30 April 2018, subject to any provisions to extend the Facility.
<b>Provision to Extend Expiry Date</b>	Subject to the other terms and conditions of the Facility Agreement, the Borrower may on or before each anniversary of the date of the Facility Agreement (or at such other annual date as the Bank and the Borrower may agree), request the Bank to extend the Expiry Date for one year. The Bank may in its discretion, agree to such an extension on such terms and conditions as the Bank requires.
<b>Purpose of Facility</b>	General Corporate and Working Capital purposes.
<b>Interest rate</b>	The aggregate of the Base Rate and the Margin (or such other rate as determined by the Bank for advances with non-standard interest periods).
<b>Base Rate</b>	The bid settlement rate quoted on the Reuters monitor system page BKBM (or any replacement page) at 10.45am on the direct day of the relevant Interest Period and in relation to a tenor equal or close to the Interest Period (or such other rate as determined by the Bank for advances with non-standard interest periods).
<b>Margin</b>	As agreed in a Pricing Letter.
<b>Interest Payment Date</b>	Interest is payable in arrears on the last day of each Interest Period, but not less frequently than quarterly.
<b>Interest Period</b>	30, 60, 90 days (or such other period as the Bank may agree), provided no Interest Period shall extend beyond the Expiry Date.
<b>Line Fees</b>	As agreed in a Pricing Letter.
<b>Drawing</b>	Drawings may only be made if the conditions precedent to Drawings (as set out in the Facility Agreement) have been met and are consistent with the Purpose of the Facility. Each Drawing under the Facility shall be a minimum of \$100,000 and an integral multiple of \$50,000 (unless the Bank agrees otherwise).

<b>Repayments</b>	Each Drawing shall be repaid on the Interest Payment Date relating to it. Except as otherwise expressly provided in the Facility Agreement, any amount repaid under the CAF may be re-borrowed. All Drawings and any other amounts outstanding under the Facility shall be repaid in full on or before the Expiry Date.
<b>Early Repayment</b>	The Borrower shall be entitled at any time and from time to time, to repay early all or part (and if in part, in an integral multiple of \$100,000 greater than or equal to \$500,000) of any Drawing on giving the Bank at least 5 Business Days' notice in writing of the date and amount of the repayment. Any such early repayment may lead to the Borrower being required to indemnify the Bank in relation to costs sustained or incurred by the Bank.
<b>Cancellation</b>	The Borrower may cancel the Facility up to an amount not exceeding the amount of the undrawn portion of the Facility Limit at the time of cancellation in whole or in part (and if in part, in an integral multiple of \$100,000) on giving 5 Business Days' irrevocable notice in writing to the Bank. Any amount so cancelled shall not be capable of being reinstated.
<b>Ancillary Business</b>	Evolve to have a hedging policy acceptable to the Lender.

### Acquisition Facility

<b>Borrower(s) / Borrowing Group</b>	Evolve
<b>Facility Type</b>	Senior Cash Advances Facility
<b>Facility Limit</b>	\$60,000,000 (sixty million dollars)
<b>Expiry Date</b>	30 April 2018, subject to any provisions to extend the Facility.
<b>Provision to Extend Expiry Date</b>	Subject to the other terms and conditions of the Facility Agreement, the Borrower may on or before each anniversary of the date of the Facility Agreement (or at such other annual date as the Bank and the Borrower may agree), request the Bank to extend the Expiry Date for one year. The Bank may in its discretion, agree to such an extension on such terms and conditions as the Bank requires.
<b>Purpose of Facility</b>	Funding Permitted Acquisitions.
<b>Permitted Acquisitions</b>	An acquisition of an asset or shares in a business consistent with the Core Business which is:  A) An acquisition by a Guarantor from another Guarantor; or  B) The acquisition of the assets or issued share capital of a limited liability business or undertaking.
<b>Interest rate</b>	The aggregate of the Base Rate and the Margin (or such other rate as determined by the Bank for advances with non-standard interest periods).

<b>Base Rate</b>	The bid settlement rate quoted on the Reuters monitor system page BKBM (or any replacement page) at 10.45am on the direct day of the relevant Interest Period and in relation to a tenor equal or close to the Interest Period (or such other rate as determined by the Bank for advances with non-standard interest periods).
<b>Margin</b>	As agreed in a Pricing Letter.
<b>Interest Payment Date</b>	Interest is payable in arrears on the last day of each Interest Period, but not less frequently than quarterly.
<b>Interest Period</b>	30, 60, 90 days (or such other period as the Bank may agree), provided no Interest Period shall extend beyond the Expiry Date.
<b>Line Fees</b>	As agreed in the Pricing Letter.
<b>Drawing</b>	Drawings may only be made if the conditions precedent to Drawings (as set out in the Facility Agreement) have been met. Each Drawing under the Facility shall be a minimum of \$100,000 and an integral multiple of \$50,000 (unless the Bank agrees otherwise).
<b>Repayments</b>	Each Drawing shall be repaid on the Interest Payment Date relating to it. All Drawings and any other amounts outstanding under the Facility shall be repaid in full on or before the Expiry Date.
<b>Early Repayment</b>	The Borrower shall be entitled at any time and from time to time, to repay early all or part (and if in part, in an integral multiple of \$100,000 greater than or equal to \$500,000) of any Drawing on giving the Bank at least 5 Business Days' notice in writing of the date and amount of the repayment. Any such early repayment may lead to the Borrower being required to indemnify the Bank in relation to costs sustained or incurred by the Bank.
<b>Cancellation</b>	The Borrower may cancel the Facility up to an amount not exceeding the amount of the undrawn portion of the Facility Limit at the time of cancellation in whole or in part (and if in part, in an integral multiple of \$100,000) on giving 5 Business Days' irrevocable notice in writing to the Bank. Any amount so cancelled shall not be capable of being reinstated.

## Part B – Other Products

The Bank agrees to provide you with the following products:

- NZ\$3,000,000 Bank Guarantee facility for lease premises guarantees. These instruments to be priced as per a Pricing Letter.
- Interest Rate derivative facility.
- NZ\$1,000,000 business credit card facility.

All derivatives products shall be subject to an ISDA Master Agreement.



## Part C - Features common to all Facilities

<b>Security</b>	<p>The Facility will be secured by a first ranking General Security Agreements (“GSA”) over all the present and future shares and assets and undertakings of the Charging Group. In addition, an all obligations cross guarantee and indemnity will be provided from the Guarantors and any future Guarantors.</p>
<b>Finance Documents</b>	<p>The Facilities will be evidenced by the following Finance Documents:</p> <ul style="list-style-type: none"><li>• Facility Agreement (the “Facility Agreement”);</li><li>• ISDA; and</li><li>• any other relevant document between the Borrower, and the Bank.</li></ul> <p>The Facility Agreement will contain standard provisions relating to, <i>inter alia</i>, increased costs, tax gross up and indemnities, break costs, loan administration and set off.</p>
<b>Pricing Letter</b>	<p>Any letter between the Lender and the Borrower setting out any pricing matters agreed by the parties in connection with the Facilities.</p>
<b>Additional Terms and Conditions</b>	<p>The Facility Agreement documenting the Facilities shall include representations, warranties, undertakings, events of default, indemnities and provisions relating to payments and set-off and other provisions customary for Facilities of this type. Other terms and conditions not specified below may be included in the Finance Documents.</p>
<b>Special Condition</b>	<p>Please note that the pricing negotiated has been determined on the basis that the Borrower migrates transactional banking and financial markets products to the Bank as part of this process as far as practically and operationally possible and allowing for existing arrangements to expire to the extent that they cannot be exited without incurring an early break fee, such facilities to be fully migrated upon expiry or as soon as is practicable. The Bank would intend to present a detailed proposal in this regard subject to receipt of further information to be provided by the Borrower. Our proposal would be on commercial terms and include recommended efficiencies that might be implemented as part of a review of current arrangements in place. If this offer is not accepted, we reserve the right to revise our pricing in consultation with you.</p>
<b>Costs and Expenses</b>	<p>All legal costs and out-of-pocket expenses incurred by the Bank in the preparation, negotiation, documentation, settlement and management of the Facility and any taxes, stamp duties or other duties or statutory fees incurred by the Bank in relation to the Facility will be for the account of the Borrower. Such costs and expenses remain payable whether or not the Borrower proceeds with the Facility. For GST purposes, all invoices for such costs are required to be issued and addressed to the Bank. Any GST charged in respect of these expenses is therefore not able to be claimed by the Borrower.</p>



<b>Material Adverse Change prior to Drawdown</b>	<p>Material Adverse Change means any event or circumstance or series of events or circumstances arise, whether related or not, which have a Material Adverse Effect. "Material Adverse Effect" means a material adverse effect on:</p> <ul style="list-style-type: none"> <li>a) the business, operation, property, condition (financial or otherwise) or prospects of the Group taken as a whole;</li> <li>b) the ability of the Group (taken as a whole) to perform its obligations under the Finance Documents; or</li> <li>c) the validity or enforceability of the whole or any material part of any Finance Document or any material rights or remedies of any Finance Party under the Finance Documents.</li> </ul>
<b>Governing Law</b>	New Zealand
<b>Confidentiality</b>	<p>Details of this terms sheet are confidential to the Bank and the Borrower and their respective professional advisors. Subject to any applicable law, no information relating to this terms sheet or the Facilities may be disclosed by either the Bank or the Borrower to any third party (other than their respective professional advisors) without the prior consent of the Bank or the Borrower (as the case may be).</p>
<b>Acceptance</b>	<p>This offer of funding set out in this terms sheet is valid until 13 December 2014 or as otherwise extended by the Lender. If you wish to accept this offer, please complete and sign the attached form of acceptance letter and return it to the Bank on or before this date. If the Bank does not receive such written acceptance before this date, it reserves the right to withdraw this offer of funding set out in this terms sheet.</p>

## Part D – Conditions Precedent

<b>Conditions Precedent to Initial Drawdown of the Facility</b>	<p>Usual Conditions Precedent for facilities of this nature, all in a form and substance satisfactory to the Bank, including but not limited to:</p> <ol style="list-style-type: none"><li>1. delivery to the Bank of all Finance Documents and other documents relating to the Facilities duly executed by all parties to them (other than the Bank);</li><li>2. all documents and information necessary to register the GSA on the PPSR;</li><li>3. all such releases of security over the assets of the Obligors as requested by the Bank (other than Permitted Security Interests);</li><li>4. a Director's Certificate in the form agreed between the Borrower and the Bank (including confirmation that all material authorisations, licences and permits required to be held by each Obligor for the operation of its business are in place);</li><li>5. evidence the Bank's insurance requirements have been met;</li><li>6. a legal opinion in customary form from the solicitors to the Bank;</li><li>7. repayment and cancellation of all existing debt facilities (including cancellation of existing bank guarantees) of the Consolidated Group;</li><li>8. a legal due diligence report from Minter Ellison Rudd Watts and operational due diligence reports from ECE Astute, each in a form satisfactory to, and addressed to, or capable of being relied upon by, the Bank;</li><li>9. a copy of the independent accountant's report prepared by PricewaterhouseCoopers;</li><li>10. completion of initial public offering in an amount of not less than \$125M and otherwise on the terms contained in the Prospectus dated 14 November 2014;</li><li>11. group structure chart (together with evidence that the Lollipops Educare vendors will hold not less than 15% of the issued ordinary share capital of the Borrower) immediately following allotment under the initial public offering;</li><li>12. completion of the Bank's "Know Your Clients" requirements;</li><li>13. payment of all fees and expenses then due and payable in connection with the Facilities and the Finance Documents; and</li><li>14. no Material Adverse Change, Event of Default or Potential Event of Default occurring prior to the initial draw down.</li></ol>
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<b>Conditions Precedent to Drawdown</b>	<p>Conditions Precedent to each drawdown under the Facility (unless otherwise noted below) will include, but not be limited to, the following:</p> <ol style="list-style-type: none"> <li>1. a funding notice in appropriate form being delivered to the Bank no later than 10.00am on the day of draw down;</li> <li>2. the funding date being a Business Day during the term of the Facility;</li> <li>3. the Facility Limit not being exceeded;</li> <li>4. Representations and Warranties to be made as at the funding date are true and correct; and</li> <li>5. no Event of Default, Potential Event of Default or (unless the drawdown is a rollover of an existing drawing without increasing the amount) Event of Review subsisting or will occur as a result of the advance being provided.</li> </ol>
<b>Condition Subsequent to Drawdown</b>	<p>Each of Porse In-Home Childcare (NZ) Limited, Porse Franchising (NZ) Limited, Porse Education &amp; Training (NZ) Limited, For Life Education &amp; Training Limited and Lollipops Educare Holdings Limited to accede as Guarantors and security providers on the date of the initial drawdown under the Facility.</p>
<b>Condition Precedent to Acquisition Facility Drawdown</b>	<ol style="list-style-type: none"> <li>1. PWC has provided a letter to the Lender confirming satisfactory Integration of Evolve's Childcare Centres</li> </ol>
<b>Conditions Precedent to Subsequent Acquisition Facility Drawdowns</b>	<ol style="list-style-type: none"> <li>1. No Event of Default or Potential Event of Default subsisting;</li> <li>2. Forecast cashflow and EBITDA accretive in the first 12 months (taking into account cost savings, synergies and transaction costs);</li> <li>3. Forecast compliance with financial covenants after utilisation for the next four calculation dates;</li> <li>4. With effect from 1 October 2015, no Drawings permitted to the extent the Fixed Cover Charges Ratio is below 1.75:1; and</li> <li>5. Provision of relevant Due Diligence reports undertaken by the Borrowers</li> </ol>

## Part E – Conditions Subsequent

<b>Condition Subsequent to Acquisition Facility Drawdowns</b>	<p>Within 90 days of settlement either:</p> <ul style="list-style-type: none"><li>(a) on a cumulative basis, following the 9<sup>th</sup> Permitted Acquisition (by number of childcare centres) ; or</li><li>(b) a Permitted Acquisition which includes 10 or more centres.</li></ul> <p>A letter from PWC or an independent party satisfactory to the Bank to the Lender confirming satisfactory integration of the Permitted Acquisitions which were the subject of the Drawdowns.</p>
<b>Condition Subsequent to Initial Acquisition Facility Drawdown</b>	<p>When cumulative drawdowns produce Gearing Ratio (Debt / LTM EBITDA) of greater than 3.0x, the Borrower to use best endeavours to raise equity, where these proceeds are used to repay debt to achieve Gearing Ratio of 1.5x or less within six months. LTM EBITDA to include LTM EBITDA of Acquisitions.</p>

## Part F – Undertakings and Covenants

<b>Additional Representations and Warranties</b>	<p>The Borrower to make certain undertakings/representations and warranties customary for credit facilities of this type. These will be subject, where appropriate, to customary exceptions and materiality thresholds.</p> <p>Representations and warranties will include, but not be limited to, the following:</p> <ul style="list-style-type: none"><li>• Status, that it is duly incorporated and validly existing under the laws of its place of incorporation with power to own assets and conduct business;</li><li>• Powers, including that it has the power and authority to enter into, exercise its rights and perform its obligations under the Finance Documents and any other relevant documents and to carry out the transactions contemplated by those documents and to carry on its business as conducted or contemplated;</li><li>• Authorisations and consents;</li><li>• Non-contravention, including that its entry into a Finance Document does not and will not contravene any law or regulation applicable to it or any directive of any governmental agency applicable to it in any material respect; or contravene any of its constitutional documents or cause any limitation on any of its powers, or on the right or ability of its directors to exercise those powers;</li><li>• Obligations binding;</li><li>• No material litigation;</li><li>• Information true and correct;</li><li>• No security interests or caveats;</li><li>• No existing or potential default.</li></ul> <p>Representations and warranties will be repeated upon each drawdown and shall apply except as otherwise notified to, and accepted by, the Bank.</p>
<b>Additional Undertakings</b>	<p>The undertakings will include, but not be limited to, the following with customary exceptions and carve-outs to be agreed:</p> <ul style="list-style-type: none"><li>• Notification of a default or potential event of default;</li><li>• Maintain material consents;</li><li>• Maintain interest rate and other risk management and protection such as may be discussed and agreed between the Bank and the Borrower;</li><li>• Adhere to reporting requirements;</li><li>• Maintain insurance coverage in accordance with prudent industry practice;</li><li>• No distributions if any Event of Default, Potential Event of Default, or Event of Review has occurred or will occur as a result, or the Fixed Cover Charges Ratio is below 1.50:1 during the period from the Commencement Date to 30 September 2015;</li><li>• No change in core business.</li></ul>

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**Financial Undertakings**

With effect from the first Calculation Date, being 30 June 2015, the Borrower will furnish a compliance certificate in the Bank's required form confirming compliance with the Borrower's and Guarantors' financial position to accompany each set of financial statements delivered to the Bank.

- **Gearing Ratio:** Net Debt to EBITDA to be less than 3.5x.
- Where an Acquisition has been made under the Acquisition Facility, this ratio to be calculated including the LTM EBITDA of the Acquired business.
- Net Debt will include any amount claimed under a Letter of Credit or Bank Guarantee.
- For the purposes of the Gearing Ratio, for the first 12 months of the Facilities, EBITDA will be calculated by annualising the actual results of the Group with effect from the period commencing 1 April 2015.
- **Fixed Cover Charges Ratio:** EBIT plus Lease Expenses to Lease Expenses plus Net Interest Expense to be greater than:
  - (a) 1.25:1 as at the 30 June 2015 Calculation Date; and
  - (b) as at any Calculation Date on or after 30 September 2015, 1.50:1.
- For the purposes of the Fixed Cover Charges Ratio, for the first 12 months of the Facilities, EBIT will be calculated on actual YTD results of the Group with effect from the period commencing 1 April 2015.
- Where an Acquisition has been made under the Acquisition Facility, this ratio to be calculated including the LTM EBITDA of the Acquired business.
- **Total Assets / EBITDA Ratio:** The Total Assets / EBITDA of Charging Group will not at any time be less than 95% of the Total Assets/ EBITDA of the Group.

For the purposes of covenant calculations EBITDA and EBIT to be tested after adding back (to the extent otherwise deducted) Acquisition and Transaction Costs paid in the last twelve months and adding or subtracting, as the case may be, any cash items (positive or negative) of a one off, non-recurring or extraordinary nature.

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<b>Reporting Undertakings</b>	<p>The Borrower will supply to the Bank the following financial information:</p> <ul style="list-style-type: none"> <li>• Consolidated annual accounts within 120 days of financial year-end with auditor's report;</li> <li>• Quarterly management accounts within 45 days of the end of the relevant quarter;</li> <li>• Accompanying each set of accounts referred to above, a compliance certificate signed by an authorised signatory of the Borrower, confirming compliance or otherwise with, amongst other things, the financial undertakings, showing all calculations;</li> <li>• Prior to the commencement of each financial year, Summary financial forecasts comprising of profit and loss, cash flow forecast and balance sheet, phased monthly, and capital expenditure projections and forecast covenant compliance in a form to be agreed.</li> </ul> <p>The Bank would also expect the Borrower to supply the Bank promptly upon request such other information as we may reasonably request.</p>
<b>Events of Default</b>	<p>Usual and customary for a facility of this nature, with customary exceptions and materiality thresholds, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Non-payment;</li> <li>• Breach of any representation or undertaking;</li> <li>• Cross default (materiality threshold to be negotiated);</li> <li>• Material Adverse Change.</li> </ul>
<b>Events of Review</b>	<p>It will be an Event of Review under the Facilities if there is a:</p> <ul style="list-style-type: none"> <li>• Change in Control.</li> </ul>

This terms sheet will be superseded by the Finance Documents when such documents have been agreed between the Bank and the Borrower. In the event of any inconsistency or conflict between this terms sheet and the Finance Documents, the Finance Documents will prevail.

If there is any part of this terms sheet that requires clarification, please do not hesitate to contact me.

Yours faithfully



*Sarah Murray*

Client Director

Corporate Banking

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Phone: 09 414 8299

Fax: 09 374 8271

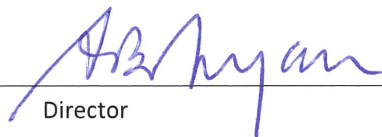
## ACKNOWLEDGMENT AND ACCEPTANCE

1. We refer to the proposal for funding dated 13 November 2014 from ASB Bank Limited (the "**Bank**") (the "**Terms Sheet**"). We accept the offer of funding set out in the Terms Sheet on the terms set out therein and, subject to formal documentation being agreed, request that the facilities set out in the Terms Sheet be made available to us (the "**Facilities**").
2. We acknowledge our liability for all costs and expenses that may arise in connection with the Facilities, as detailed in the Terms Sheet.
3. We confirm that all information provided to the Bank in connection with the Terms Sheet and the Facilities was complete, true and accurate when provided to the Bank. No information has been omitted or withheld which would cause any such information to be misleading or incomplete in any material respect.
4. We authorise the Bank to release all relevant information relating to this Terms Sheet and the Facilities to its and our solicitor, accountant and any other person authorised by us.
5. We confirm that our solicitor for the purposes of this transaction is:

Firm:	Minter Ellison Rudd Watts
Solicitor Acting:	Kate Lane / Steve Gallagher
Phone Number:	+64 9 353 9992 / +64 9 353 9949
Fax:	+64 9 353 9701
Postal Address:	Lumley Centre, 88 Shortland Street, Auckland 1010

Yours faithfully

  
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Director

  
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Director

Date: 13 November 2014