

13 March 2015

TPG TELECOM LIMITED TO ACQUIRE iiNET LIMITED IN A RECOMMENDED TRANSACTION

TPG Telecom Limited (**TPG**) and iiNet Limited (**iiNet**) are pleased to announce a recommended transaction under which it is proposed that TPG will acquire 100% of the fully-diluted share capital in iiNet that it does not already own¹ by way of a Scheme of Arrangement (**Scheme**).

Under the proposed transaction, iiNet shareholders will receive cash consideration of \$8.60 per iiNet share. Those shareholders on the register as at 16 March 2015 will remain entitled to and will receive the fully franked FY15 interim dividend of \$0.105 per share².

Further, under the proposed transaction iiNet may pay a material fully-franked special dividend on or shortly before the implementation date of the Scheme, subject to obtaining a favourable ruling from the Australian Taxation Office. The proposed quantum of the special dividend will be advised to iiNet shareholders in due course. The cash consideration of \$8.60 cash per share will be reduced by the amount of any such special dividend.

The cash consideration of \$8.60 per share, values iiNet's fully diluted equity at approximately \$1.4 billion. The acquisition will be funded from new debt facilities. Post transaction, TPG's pro forma leverage is expected to be approximately 3.1x net debt/EBITDA³.

iiNet Directors' unanimously recommend the Scheme

The directors of iiNet unanimously recommend the Scheme and intend to vote shares in their control in favour of the proposed Scheme, in the absence of a superior proposal.

The iiNet Board of Directors and TPG Board of Directors agree that this is a compelling offer for iiNet shareholders for the following reasons:

- **Significant premium:** the scheme consideration together with the interim dividend for comparison purposes totals \$8.705 per share. This represents an attractive premium⁴ of:
 - 31% over the last closing price on a cum-dividend basis, of \$6.65 on 11 March 2015;

¹ TPG currently owns 6.25% of iiNet.

² FY15 interim dividend of \$0.105 fully franked and declared on 18 February 2015 with a record date of 16 March 2015 and expected to be paid on 30 March 2015.

³ Pro forma EBITDA based on iiNet's reported CY14 underlying EBITDA and mid-point of TPG's FY15 guidance, on a pre-synergies basis.

⁴ As the total cash value includes the value of the FY15 interim dividend, these premia are presented in respect of the period prior to iiNet shares trading 'ex' the interim dividend, from 12 March 2015.

- 33% over the five day cum-dividend volume-weighted average price to 11 March 2015; and
- 33% over the one month cum-dividend volume weighted average price to 11 March 2015.
- **Highest share price ever:** the total value of \$8.705 per share is a higher price than iiNet has ever traded in its history.
- **Attractive multiple:** the total value of \$8.705 per share represents a CY14 EV/ EBITDA⁵ multiple of 9.2x. This is a significant premium to the valuations paid in precedent consumer fixed line telecommunications acquisitions.
- **Certainty of value:** the 100% cash consideration provides iiNet shareholders with certainty of value and the opportunity to realise their investment in full for cash.
- **Limited conditionality:** the Scheme is subject to only limited conditionality, and is not subject to finance nor due diligence.

iiNet Chairman, Michael Smith, said “The Board views this as a significant reward for shareholders who have shown their faith in iiNet. The price of \$1.4 billion is a very tangible measure of the value that the extraordinary people of iiNet have created through their innovation, brilliant service and capacity to add value.”

David Teoh, Executive Chairman & CEO of TPG, said “iiNet and TPG are highly complementary businesses in terms of geographic presence, market segments and corporate customer base.”

“The combined businesses will provide broadband services to over 1.7 million subscribers and will be well positioned to deliver scale benefits in an NBN environment.”

The transaction is expected to be immediately EPS accretive for TPG shareholders⁶.

The Scheme Implementation Agreement (SIA)

The SIA contains customary terms and conditions on which TPG and iiNet will now implement the Scheme, and is subject to conditions precedent including regulatory approval, iiNet shareholder and court approval and no Material Adverse Change occurring. The SIA is attached.

Indicative timetable and next steps

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

iiNet shareholders will be given the opportunity to vote on the Scheme at a meeting expected to be held in June 2015. Subject to shareholder approval and the other

⁵ Includes iiNet net debt of \$383 million (including Indefeasible Right of Use liability) and pre-synergies, underlying CY14 EBITDA of \$197 million.

⁶ Excluding amortisation of intangibles on acquisition.

conditions of the Scheme being satisfied, the Scheme is expected to be implemented in July 2015.

A Scheme Booklet containing information relating to the proposed acquisition, reasons for the Directors' recommendation, an Independent Expert's Report and details of the Scheme meeting is expected to be sent to iiNet shareholders in mid May 2015 after its preparation and review by ASIC.

Set out below is an indicative timetable for the Scheme.

Event	Expected date
Lodge Scheme Booklet with ASIC for Review	Late April 2015
First Court Hearing Date	Early May 2015
Dispatch of Scheme Booklet	Mid May 2015
Scheme Meeting	Late June 2015
Second Court Hearing Date	Early July 2015
Effective Date	Early July 2015
Record Date	Early July 2015
Implementation Date	Mid July 2015

Note: this is an indicative timetable only and is subject to change, including following any regulatory consultation and as may be required by the Court.

Advisers

TPG is being advised by Macquarie Capital (Australia) Limited, as financial adviser, and Minter Ellison as legal counsel.

iiNet is being advised by Azure Capital Limited, as financial adviser, and K&L Gates as legal counsel.

Further announcement(s) will be made by TPG and iiNet, if and when appropriate, including when TPG releases its interim results on 24th March 2015.

- ENDS -

For further information please contact:

iiNet Limited

David Buckingham
Chief Executive Officer
E: davidb@staff.iinet.net.au
P: +61 8 9214 2207

TPG Telecom Limited

Stephen Banfield
Chief Financial Officer
E: Stephen.Banfield@tpg.com.au
P: +61 2 8220 6045

David Symons
Media relations
E: david@catocounsel.com.au
P: +61 2 8306 4244

Scheme implementation agreement

iiNet Limited (**iiNet**)

TPG Telecom Limited (**TPG**)

MinterEllison

L A W Y E R S

LEVEL 19 AURORA PLACE 88 PHILLIP STREET SYDNEY NSW 2000
AUSTRALIA DX 117 SYDNEY
T +61 2 9921 8888 F +61 2 9921 8123
www.minterellison.com

Scheme implementation agreement

Details	5
Agreed terms	6
1. Defined terms & interpretation	6
1.1 Defined terms	6
1.2 Interpretation	12
1.3 Headings	12
2. Agreement to propose Scheme	13
3. Conditions precedent and pre-implementation steps	13
3.1 Conditions to Scheme	13
3.2 Benefit and waiver of conditions precedent	14
3.3 Procuring satisfaction of the Conditions	14
3.4 Notifications	15
3.5 Certificate	16
3.6 Scheme voted down	16
3.7 Conditions not capable of being satisfied	16
3.8 Interpretation	17
4. Scheme structure	17
4.1 Scheme	17
4.2 Scheme Consideration	17
4.3 Deed Poll	17
4.4 iiNet Performance Rights	18
5. Scheme – parties' respective implementation obligations	18
5.1 iiNet's obligations	18
5.2 TPG's obligations	20
5.3 New information	20
5.4 Verification	21
5.5 Responsibility statements	21
5.6 Disagreement on content	21
5.7 Good faith co-operation	21
5.8 Payment of Discretionary Special Dividend and internal payments	21
5.9 Funding of Discretionary Special Dividend	22
6. Board recommendation	22
6.1 Recommendation	22
6.2 iiNet's Statement to contain recommendation	22
6.3 Withdrawal or modification of recommendation	23
7. Conduct of business before the Implementation Date	23
7.1 Conduct of iiNet business	23
7.2 Prohibited actions	23
7.3 iiNet permitted activities	25
7.4 Access	25
7.5 Change of control	25

8.	Reconstitution of the board of each member of the iiNet Group	25
9.	Representations and warranties	26
9.1	TPG representations and warranties	26
9.2	TPG's indemnity	26
9.3	iiNet representations and warranties	27
9.4	iiNet's indemnity	28
9.5	Notifications	28
9.6	Survival of representations	28
9.7	Survival of indemnities	28
9.8	Limitations on Claims against iiNet	28
9.9	Limitations on Claims against TPG	29
10.	Exclusivity	29
10.1	No existing discussions	29
10.2	No-shop	29
10.3	No-talk	29
10.4	No due diligence	29
10.5	Notification of approaches	30
10.6	iiNet's response to Rival Acquirer and TPG's right to respond	30
10.7	Fiduciary out	31
11.	Break Fee	32
11.1	TPG declaration	32
11.2	Acknowledgments	32
11.3	Agreement on Costs	32
11.4	Reimbursement of Costs	32
12.	Modification of Break Fee or exclusivity arrangements	33
12.1	Modifications following regulatory intervention	33
12.2	No requirement to act unless decision final	33
12.3	Appeals and review of regulatory decisions	34
12.4	Determination by Governmental Agency	34
13.	Standstill	34
14.	Confidentiality and Public Announcement	35
14.1	Confidentiality	35
14.2	Public Announcements on execution	35
14.3	Further public announcements	35
15.	Termination	35
15.1	Termination by notice	35
15.2	Automatic termination	37
15.3	Effect of termination	37
16.	Releases	37
16.1	Release of iiNet Indemnified Parties	37
16.2	Release of TPG Indemnified Parties	37
16.3	Deeds of indemnity, access and insurance	38
17.	Notices	38
18.	General	38
18.1	Further acts	38

18.2	Timetable	38
18.3	Payments	39
18.4	Consents or approvals	39
18.5	GST	39
18.6	Stamp duty	40
18.7	Expenses	40
18.8	Amendments	40
18.9	Assignment	40
18.10	Waiver	40
18.11	Counterparts	40
18.12	Entire agreement	40
18.13	No representation or reliance	41
18.14	No merger	41
18.15	Governing law	41
Schedule 1 - Indicative Timetable		42
Signing page		43

Details

Date 13 March 2015

Parties

Name **iiNet Limited**
ABN 48 068 628 937
Short form name **iiNet**
Notice details Facsimile: 08 9221 8473
Address: Level 1, 502 Hay Street, Subiaco, Western Australia 6008
Attention: Chief Executive Officer

Name **TPG Telecom Limited**
ABN 46 093 058 069
Short form name **TPG**
Notice details Facsimile: 02 9252 7855
Address: 63-65 Waterloo Road, Macquarie Park, New South Wales 2113
Attention: Company Secretary

Background

- A iiNet and TPG have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this agreement.
- B iiNet and TPG have agreed certain other matters in connection with the Proposed Transaction as set out in this agreement.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this agreement, unless the context otherwise requires, the following words and expressions have meanings as follows:

ACCC means the Australian Competition and Consumer Commission.

Accounting Standards means:

- (a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of that Act relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a);

Adviser means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to iiNet or TPG.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act.

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

Authorised Person means, in respect of a person:

- (a) a director, officer, partner, member or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales or Perth, Western Australia.

Change of Control Requirements has the meaning given to that term in clause 7.5.

Claim means a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

Competing Proposal means any proposal, offer or transaction by a third party (other than TPG or its Related Bodies Corporate) that, if completed, would mean:

- (a) a person would acquire a relevant interest or voting power in 15% or more of the iiNet Shares or of the securities of any of member of the iiNet Group;
- (b) a person would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 15% or more of the iiNet Shares or of the securities of any member of the iiNet Group;

- (c) a person would directly or indirectly acquire or obtain an interest (including an economic interest) in all or a substantial part or material part of the business conducted by, or assets or property of, iiNet or any member of the iiNet Group;
- (d) a person would acquire Control of iiNet or any member of the iiNet Group;
- (e) a person may otherwise acquire, or merge with, iiNet or any member of the iiNet Group (including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed company structure, joint venture or partnership); or
- (f) iiNet will issue, on a fully diluted basis, 15% or more of its capital as consideration for the assets or share capital or another person,

or any proposal by iiNet to implement any reorganisation of capital. Each successive material modification or variation of any proposal, offer or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

Competition Act means the *Competition and Consumer Act 2010* (Cth).

Conditions means the conditions set out in clause 3.1 and **Condition** means any one of them.

Control has the meaning given under section 50AA of the Corporations Act. **Controlled** has the equivalent meaning.

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

Costs has the meaning given to that term in clause 11.2(a).

Counter Proposal has the meaning given to that term in clause 10.6(d).

Court means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Deed Poll means the deed poll to be executed by TPG prior to the First Court Date, in the form to be agreed by the parties acting in good faith, provided that where TPG nominates a TPG Nominee in accordance with clause 2(c), the Deed Poll must provide for the TPG Nominee to have the primary obligations under the Deed Poll.

Discretionary Special Dividend has the meaning given to that term in clause 5.8..

Effective means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to that Scheme.

Effective Date, with respect to the Scheme, means the date on which the Scheme becomes Effective.

End Date means the later of:

- (a) 30 September 2015; and
- (b) such other date and time agreed in writing between TPG and iiNet.

Excluded Shareholder means any iiNet Shareholder who is TPG or a wholly-owned subsidiary of TPG.

Exclusivity Period means the period commencing on the date of this agreement and ending on the earliest of:

- (a) the End Date;
- (b) the Effective Date; and

- (c) the date this agreement is terminated in accordance with its terms.

First Court Date means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act.

Governmental Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of iiNet Shareholders present and voting, either in person or by proxy.

iiNet Board means the board of directors of iiNet as constituted from time to time (or any committee of the board of directors of iiNet constituted from time to time to consider the Proposed Transaction on behalf of iiNet).

iiNet Group means iiNet and its Subsidiaries.

iiNet Indemnified Parties means each Authorised Person of a member of the iiNet Group.

iiNet Performance Rights means a right granted under iiNet's Long Term Incentive Plan to acquire by way of issue or transfer an iiNet Share subject to the terms and conditions of such plan.

iiNet Prescribed Occurrence means the occurrence of any of the following on or after the date of this agreement and before 8.00am on the Second Court Date:

- (a) iiNet converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the iiNet Group resolves to reduce its share capital in any way;
- (c) any member of the iiNet Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the iiNet Group issues shares, or grants a performance right, a phantom performance right, or an option over its shares, or agrees to make such an issue or grant such a performance right, phantom performance right or an option;
- (e) any member of the iiNet Group issues, or agrees to issue, convertible notes;
- (f) any member of the iiNet Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (g) any member of the iiNet Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than in the usual and ordinary course of business consistent with past practice;
- (h) any member of the iiNet Group becomes Insolvent,

provided that an iiNet Prescribed Occurrence will not include any matter:

- (i) required to be done or procured by iiNet pursuant to this agreement or the Scheme;
- (j) required by law or by an order of a court or Governmental Agency;
- (k) expressly permitted pursuant to this agreement; or

- (l) the undertaking of which TPG has previously approved in writing (which approval must not be unreasonably withheld or delayed).

iiNet Share means an issued fully paid ordinary share in the capital of iiNet.

iiNet Shareholder means each person who is registered in the register maintained by iiNet under section 168(1) of the Corporations Act as a holder of iiNet Shares.

iiNet Warranties means the representations and warranties of iiNet set out in clause 9.3.

Implementation Date means, with respect to the Scheme, the fifth Business Day, or such other Business Day as the parties agree, following the Record Date for the Scheme.

Independent Expert means an expert, independent of the parties, engaged by iiNet in good faith to opine on whether the Scheme is in the best interests of iiNet Shareholders.

Independent Expert's Report means the report from the Independent Expert commissioned by iiNet for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in its opinion, the Scheme is in the best interests of iiNet Shareholders, and includes any update of that report by the Independent Expert.

Insolvency Event means in relation to a person:

- (a) **insolvency official:** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **arrangements:** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **winding up:** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **suspends payments:** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **ceasing business:** the person ceases or threatens to cease to carry on business;
- (f) **insolvency:** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **deregistration:** the person being deregistered as a company or otherwise dissolved;
- (h) **deed of company arrangement:** the person executing a deed of company arrangement;
- (i) **person as trustee or partner:** the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
 - (i) a breach of trust or obligation as partner by the person;
 - (ii) the person acting outside the scope of its powers as trustee or partner;

- (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
- (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (j) **analogous events:** anything analogous to those set out in any of paragraphs (a) to (g) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person shall be **Insolvent** if any event specified in paragraphs (a) to (j) inclusive occurs in respect of that person.

Listing Rules means the official listing rules of ASX as amended from time to time.

Long Term Incentive Plan means the iiNet Limited Executive Long Term Incentive Plan as amended by the Board of iiNet Limited on 22 November 2011, on the terms disclosed to TPG prior to the date of this agreement.

Material Adverse Change means an event, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to TPG (whether it becomes public or not) after the date of this agreement, and which (individually or when aggregated with other events, occurrences or matters) has or could reasonably be expected to have:

- (a) the result that the business of iiNet is unable to be carried on substantially in the way it is carried on as at the date of this agreement; or
- (b) one or more of the following effects (in each case determined in accordance with Accounting Standards):
 - (i) for an event, occurrence or matter with a one-off impact – a diminution in the net assets of the iiNet Group by \$18 million or more; or
 - (ii) in all other cases – the incurring of any liabilities, costs or expenses (contingent or otherwise) where the quantum exceeds \$18 million (on a pre-tax basis),

other than events, occurrences or matters:

- (c) required to be done or procured by iiNet pursuant to this agreement or the Scheme;
- (d) resulting directly from changes in general economic and political conditions or changes that affect the telecommunications industry generally;
- (e) fairly disclosed to the ASX before the date of this agreement or which may arise from an event, occurrence or matter which was so disclosed; or
- (f) which TPG has previously approved in writing (which approval must not be unreasonably withheld or delayed).

Material Contract has the meaning given to that term in clause 7.2(k).

Proposed Transaction means the proposed acquisition by TPG, in accordance with the terms and conditions of this agreement, of all of the iiNet Shares (other than the iiNet Shares held by an Excluded Shareholder) through the implementation of the Scheme.

Record Date means, in respect of the Scheme, 5.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

Regulatory Approval means:

- (a) any approval, consent, authorisation, registration, filing, lodgment, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Governmental Agency; or

- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgment, filing, registration or notification, the expiry of that period without intervention or action.

Related Body Corporate of a person, means a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

Relevant Notice has the meaning given to that term in clause 10.6(b)(iv)(B).

Rival Acquirer has the meaning given to that term in clause 10.6(a).

RG 60 means Regulatory Guide 60 issued by ASIC.

Scheme means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between iiNet and Scheme Shareholders in respect of all Scheme Shares, to be agreed by the parties acting in good faith, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.

Scheme Booklet means the explanatory booklet to be prepared by iiNet in respect of the Proposed Transaction in accordance with the terms of this agreement and to be despatched to iiNet Shareholders.

Scheme Consideration means \$8.60 per Scheme Share, minus the amount of the Discretionary Special Dividend (if any), in cash.

Scheme Meeting means the meeting of iiNet Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Share means an iiNet Share on issue as at the Record Date other than any iiNet Share then held by an Excluded Shareholder (but including any such iiNet Share held on behalf of one or more third parties or otherwise in a fiduciary capacity).

Scheme Shareholder means a person who holds one or more Scheme Shares.

Second Court Date means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

Share Splitting means the splitting by a holder of iiNet Shares into two or more parcels of iiNet Shares whether or not it results in any change in beneficial ownership of the iiNet Shares.

Subsidiary has the meaning given to that term in section 46 of the Corporations Act.

Superior Proposal means a bona fide Competing Proposal which the iiNet Board determines, acting in good faith and in order to satisfy what the iiNet Board reasonably considers to be its fiduciary or statutory duties, would, if completed substantially in accordance with its terms, be likely to result in a transaction more favourable to iiNet Shareholders than the Proposed Transaction having regard to matters including consideration, conditionality, funding, certainty and timing.

Timetable means the indicative timetable in relation to the Proposed Transaction set out in Schedule 1 with such modifications as may be agreed in writing by the parties.

TPG Group means TPG and its Subsidiaries.

TPG Indemnified Parties means each Authorised Person of a member of the TPG Group.

TPG Information means such information regarding TPG that is provided by or on behalf of TPG to iiNet or the Independent Expert:

- (a) to enable the Scheme Booklet to be prepared and completed in compliance with all applicable laws;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with TPG's obligations under clause 5.2(a).

TPG Nominee has the meaning given to that term in clause 2(c).

TPG Warranties means the representations and warranties of TPG set out in clause 9.1.

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Perth, Western Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to 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;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Agreement to propose Scheme

- (a) iiNet agrees to propose and implement the Scheme on and subject to the terms and conditions of this agreement, and substantially in accordance with the Timetable.
- (b) Subject to clauses 2(c) and (d), TPG agrees to assist iiNet in proposing and implementing the Scheme on and subject to the terms and conditions of this agreement, and substantially in accordance with the Timetable.
- (c) TPG expects that the entity that acquires the Scheme Shares under the Scheme will be a wholly-owned Subsidiary of TPG incorporated in Australia, but may nominate any wholly-owned Subsidiary of TPG (**TPG Nominee**) to acquire the Scheme Shares under the Scheme by giving written notice to iiNet on before the date that is 5 Business Days before the First Court Date.
- (d) If TPG nominates the TPG Nominee to acquire the Scheme Shares under the Scheme, then:
 - (i) references in this agreement to TPG acquiring the Scheme Shares under the Scheme, or taking any other action under or in respect of the Scheme, are to be read as references to the TPG Nominee doing so;
 - (ii) TPG must procure that TPG Nominee complies with its obligations under the Scheme; and
 - (iii) any such nomination will not relieve TPG of its obligations under this agreement, including the obligation to pay (or procure the payment by TPG Nominee of) the Scheme Consideration in accordance with the terms of the Scheme.

3. Conditions precedent and pre-implementation steps

3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) (**ACCC**): TPG has received written notice from the ACCC to the effect that the ACCC does not propose to oppose, intervene or seek to prevent the implementation of the Scheme under or by reference to section 50 of the Competition Act, which notification is either unconditional or is on or requires conditions or undertakings acceptable to TPG;
- (b) (**Restraints**) no temporary restraining order, preliminary or permanent injunction or other order issued by any Court of competent jurisdiction or Governmental Agency or other legal restraint or prohibition preventing the Scheme is in effect at 8.00am on the Second Court Date;
- (c) (**Shareholder approval**) the Scheme is approved by iiNet Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (d) (**ASIC and ASX**) before 8.00am on the Second Court Date, ASIC and ASX issue or provide such consents or approvals as are necessary or which iiNet and TPG agree are necessary or desirable to implement the Scheme and such consent, approval or other act has not been withdrawn or revoked before 8.00am on the Second Court Date;
- (e) (**Court approval**) the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably);

- (f) **(iiNet Performance Rights)** before 8.00am on the Second Court Date, arrangements have been put in place and all necessary Regulatory Approvals have been obtained so that:
 - (i) all iiNet Performance Rights outstanding as at the date of this agreement; and
 - (ii) all iiNet Performance Rights that will be issued after the date of this agreement (including those issued where the vesting outcome for an award is more than 100% under the terms of an offer of iiNet Performance Rights),
 will either vest, have lapsed or have been cancelled before the Record Date;
- (g) **(No iiNet Prescribed Occurrence)** no iiNet Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Second Court Date;
- (h) **(No Material Adverse Change)** there is no Material Adverse Change between the date of this agreement and 8.00am on the Second Court Date;
- (i) **(iiNet Warranties)** the iiNet Warranties being true and correct in all material respects on the date of this agreement and at 8.00am on the Second Court Date;
- (j) **(TPG Warranties)** the TPG Warranties being true and correct in all material respects on the date of this agreement and at 8.00am on the Second Court Date; and
- (k) **(Decline in S&P/ASX 200 Index)** on no day in the period between the date of this agreement and the Business Day before the Second Court Date is the S&P/ASX 200 Index at the close of trading for the previous 5 trading days 15% or more below its level as at the close of trading on the date of this agreement.

3.2 Benefit and waiver of conditions precedent

- (a) The Conditions in clauses 3.1(c), 3.1(d) and 3.1(e) are for the benefit of each party and any breach or non-satisfaction of any of them cannot be waived.
- (b) The Conditions in clauses 3.1(a) and 3.1(b), and are for the benefit of each party and any breach or non-satisfaction of any of them may only be waived (if capable of waiver) with the written consent of both parties.
- (c) The Conditions in clauses 3.1(f), 3.1(g), 3.1(h), 3.1(i) and 3.1(k) are for the sole benefit of TPG and any breach or non-satisfaction of any of them may only be waived by TPG giving its written consent.
- (d) The Condition in clause 3.1(j) is for the sole benefit of iiNet and any breach or non-satisfaction of that Condition may only be waived by iiNet giving its written consent.
- (e) A party entitled to waive the breach or non-satisfaction of a Condition pursuant to this clause 3.2 (either individually or jointly) may do so in its absolute discretion.
- (f) Any waiver of the breach or non-satisfaction of a Condition by a party who is entitled to do so pursuant to this clause 3.2 is only effective if such waiver is given on or prior to 8.00am on the Second Court Date.
- (g) If a party waives the breach or non-satisfaction of any Condition, that waiver will not preclude it from suing the other party for any breach of this agreement including a breach that resulted in the non-satisfaction of the Condition that was waived.

3.3 Procuring satisfaction of the Conditions

- (a) iiNet and TPG will use their respective reasonable endeavours to procure that each of the Conditions is satisfied as soon as reasonably practicable after the date of this agreement or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require).

- (b) Each of iiNet and TPG must:
 - (i) promptly apply for all approvals necessary in order to satisfy the Condition in clause 3.1(a) and provide the other party with a copy of all such applications;
 - (ii) take all the steps for which it is responsible as part of the process to obtain the approvals necessary in order to satisfy the Condition in clause 3.1(a);
 - (iii) respond, at the earliest practicable time, to all requests for information in respect of the applications for approvals necessary in order to satisfy the Condition in clause 3.1(a);
 - (iv) subject to clause 3.3(c), provide the other with all information and assistance reasonably requested by the other and the ACCC in connection with the application necessary in order to satisfy the Condition in clause 3.1(a); and
 - (v) so far as it is able, allow the other and its Authorised Persons the opportunity to be present and make submissions at any meetings with the ACCC relating to the application necessary in order to satisfy the Condition in clause 3.1(a).
- (c) Before providing any document or other information to the other party (in this clause 3.3(c), the **Recipient**) pursuant to clause 3.3(b)(iv), a party (in this clause 3.3(c), the **Discloser**) may redact any part of that document, or not disclose any part of that information, which contains or is confidential, non-public information (**Sensitive Confidential Information**) if the Discloser reasonably believes that:
 - (i) the Sensitive Confidential Information is of a commercially sensitive nature; or
 - (ii) the disclosure of the Sensitive Confidential Information to the Recipient would be damaging to the commercial or legal interest of the Discloser or any of its Related Bodies Corporate,

and may provide the document or disclose the information to the Recipient with any Sensitive Confidential Information redacted or excluded, provided that, where Sensitive Confidential Information is so redacted or excluded, the Discloser must provide:

 - (iii) the Recipient with as much details about the relevant communication, submission or correspondence (and any other relevant circumstances) as is reasonably possible without disclosing Sensitive Confidential Information; and
 - (iv) a complete version of the document or other information, without any redaction or exclusion of information, to the Recipient's external lawyers on the basis that the Recipient's external lawyers will not disclose the Sensitive Confidential Information to the Recipient or any other third party including the ACCC without the Discloser's prior written consent and will only use the information for the purpose of satisfying the Condition in clause 3.1(a).

3.4 Notifications

Each of TPG and iiNet must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.3).

3.5 Certificate

On the Second Court Date, TPG and iiNet will provide a joint certificate to the Court confirming whether or not the Conditions (other than the Condition set out in clause 3.1(e)) have been satisfied or waived in accordance with the terms of this agreement.

3.6 Scheme voted down

If the Scheme is not approved by iiNet Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and iiNet or TPG considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then iiNet must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by iiNet to represent it in Court proceedings related to the Scheme, in consultation with TPG, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Act by making an order to disregard the Headcount Test.

3.7 Conditions not capable of being satisfied

- (a) If a Condition is not satisfied, or becomes incapable of being satisfied, before the End Date, then unless the relevant Condition (where capable of waiver) is waived:
 - (i) subject to clause 3.7(b), either party may give the other party written notice (**Consultation Notice**) within 5 Business Days after the relevant notice of that fact being given under clause 3.4(c);
 - (ii) upon delivery of the Consultation Notice, the parties must consult in good faith with a view to determining whether they can reach agreement with respect to:
 - (A) the terms (if any) on which the party with the benefit of the relevant Condition will waive that Condition;
 - (B) an extension of the time for satisfaction of the relevant Condition or an extension of the End Date (as the case may be); or
 - (C) the Proposed Transaction proceeding by way of alternative means or methods; and
 - (iii) if the parties are unable to reach such agreement within 5 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within the timeframe specified in clause 3.7(a)(i) then, subject to clause 3.7(b), either party may terminate this agreement by notice to the other without any liability to any party by reason of that termination alone.
- (b) A party will not be entitled to give a Consultation Notice or terminate this agreement pursuant to clause 3.7(a)(iii) if the relevant Condition has not been satisfied as a result of:
 - (i) a breach of this agreement by that party; or
 - (ii) a deliberate act or omission of that party which directly and materially contributed to that Condition not being satisfied.
- (c) The parties agree that their respective obligations to consult in good faith under clause 3.7(a)(ii) extends to considering, in good faith, the merits of an appeal to the Federal Court

of Australia or any other competent Australian court where TPG has received written notice from the ACCC to the effect that:

- (i) the ACCC proposes to oppose, intervene or seek to prevent the implementation of the Scheme under or by reference to section 50 of the Competition Act; or
- (ii) the ACCC does not propose to oppose, intervene or seek to prevent the implementation of the Scheme under or by reference to section 50 of the Competition Act subject to conditions or undertakings that are not acceptable to TPG,

and either of the parties considers that the implementation of the Scheme would not contravene the Competition Act notwithstanding the notice received from the ACCC.

3.8 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being satisfied if:

- (a) in the case of the Condition in clause 3.1(a) – ACCC notifies TPG in writing that it will not provide the notification in the terms referred to in clause 3.1(a) or will only provide that notification subject to conditions or undertakings that are not acceptable to TPG; and
- (b) in all other cases – there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this agreement).

4. Scheme structure

4.1 Scheme

The parties acknowledge and agree that, subject to the Scheme becoming Effective, on the Implementation Date the general effect of the Scheme will be that all of the Scheme Shares will be transferred to TPG and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Record Date, the Scheme Consideration.

4.2 Scheme Consideration

- (a) TPG covenants in favour of iiNet (in its own right and separately as trustee for each of the Scheme Shareholders) that, if the Scheme becomes Effective, in consideration for the transfer to TPG of the Scheme Shares held by each Scheme Shareholder under the terms of the Scheme, TPG will procure the payment to a trust account operated by iiNet of an amount in cleared funds equal to the aggregate amount of the Scheme Consideration for all Scheme Shares, by no later than the Business Day before the Implementation Date and otherwise in accordance with the Scheme.
- (b) Subject to the Scheme becoming Effective and TPG complying with its obligations under clause 4.2(a), at 10.00am on the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:
 - (i) all existing iiNet Shares at the Record Date will be transferred to TPG; and
 - (ii) in exchange, each Scheme Shareholder will receive the Scheme Consideration, which iiNet will procure is paid to each Scheme Shareholder from the trust account referred to in clause 4.2(a).

4.3 Deed Poll

TPG covenants in favour of iiNet (in its own right and separately as trustee for each of the Scheme Shareholders) to execute and deliver the Deed Poll prior to the First Court Date.

4.4 iiNet Performance Rights

- (a) iiNet covenants that:
 - (i) not more than 1,614,327 iiNet Performance Rights will vest on or before the Effective Date;
 - (ii) no iiNet Performance Rights will vest after the Record Date; and
 - (iii) on or before the Record Date, iiNet will issue not more than 1,614,327 iiNet Shares in satisfaction of those iiNet Performance Rights.
- (b) iiNet and TPG must use their respective reasonable endeavours to agree a proposed strategy to ensure that the Condition in clause 3.1(f) is satisfied, and then must each use their best endeavours to expeditiously implement the agreed strategy.
- (c) iiNet must not:
 - (i) waive or vary any unsatisfied conditions or hurdles to which any iiNet Performance Right is subject;
 - (ii) exercise any discretion enjoyed by iiNet or the iiNet Board under the Long Term Incentive Plan or any offer letter issued under that plan; or
 - (iii) make any determination under clause 16.1 of the Long Term Incentive Plan, unless TPG requests that it does so, in which case iiNet must promptly comply with such request (subject at all times to such action being in compliance with the Corporations Act and the Listing Rules).

5. Scheme – parties' respective implementation obligations

5.1 iiNet's obligations

iiNet must take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable after the date of this agreement and substantially in accordance with the Timetable, including taking each of the following steps:

- (a) **(promote merits of the Proposed Transaction)** participate in, and ensure the iiNet Board participates in, efforts reasonably requested by TPG to promote the merits of the Proposed Transaction, including meeting with key iiNet Shareholders at the reasonable request of TPG;
- (b) **(Scheme Booklet)** prepare the Scheme Booklet in compliance with all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules);
- (c) **(drafts of Scheme Booklet)** make available to TPG drafts of the Scheme Booklet (excluding any draft of the Independent Expert's Report), consult with TPG in relation to the content of those drafts (other than the TPG Information), and consider in good faith, for the purpose of amending those drafts, comments from TPG on those drafts;
- (d) **(commission Independent Expert's Report)** promptly appoint an Independent Expert to provide the Independent Expert's Report, and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (e) **(experts)** provide all assistance and information reasonably requested by any experts appointed by iiNet and/or TPG in connection with the preparation of the Scheme Booklet;
- (f) **(approval of TPG Information)** seek approval from TPG for the form and context in which the TPG Information appears in the Scheme Booklet, which approval TPG must not

unreasonably withhold or delay, and iiNet must not lodge the Scheme Booklet with ASIC until such approval is obtained from TPG;

- (g) **(liaison with ASIC)** as soon as reasonably practicable after the date of this agreement:
 - (i) provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
 - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep TPG reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with TPG, to resolve any such matters;
- (h) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the iiNet Board, or of a committee of the iiNet Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to the iiNet Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (i) **(section 411(17)(b) statements)** apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (j) **(first Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.1(h) has been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing iiNet to convene the Scheme Meeting;
- (k) **(registration of Scheme Booklet)** if the Court directs iiNet to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (l) **(convening Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the iiNet Shareholders and convening and holding the Scheme Meeting, provided that if this agreement is terminated under clause 15 iiNet will take all steps reasonably required to ensure the Scheme Meeting is not held;
- (m) **(Court approval application if parties agree that conditions are capable of being satisfied)** if the resolution submitted to the Scheme Meeting is passed by the majorities required under the Corporations Act and, if necessary, the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to 8.00am on the proposed Second Court Date, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- (n) **(implementation of Scheme)** if the Scheme is approved by the Court:
 - (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
 - (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
 - (iii) execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to TPG on the Implementation Date; and

- (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (o) **(documents)** consult with TPG in relation to the content of the documents required for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders); and
- (p) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations.

5.2 TPG's obligations

TPG must take all steps reasonably necessary to assist iiNet to implement the Scheme as soon as reasonably practicable after the date of this agreement and substantially in accordance with the Timetable including taking each of the following steps:

- (a) **(TPG Information)** provide to iiNet all information regarding TPG, the Scheme Consideration, and TPG's intentions with respect to the assets, business and employees of iiNet if the Scheme is approved and implemented that is required by all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules) for inclusion in the Scheme Booklet;
- (b) **(confirmation of TPG Information)** subject to clause 5.6, promptly after iiNet requests that it does so, confirm in writing to iiNet that it consents to the inclusion of the TPG Information in the Scheme Booklet, in the form and context in which the TPG Information appears;
- (c) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report for inclusion in the Scheme Booklet;
- (d) **(assistance with Scheme Booklet and Court documents)** promptly provide any assistance or information reasonably requested by iiNet or its Advisers in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to iiNet Shareholders) and any documents required to be filed with the Court in respect of the Scheme;
- (e) **(representation)** procure that TPG is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act; and
- (f) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this agreement are effected in accordance with all applicable laws and regulations.

5.3 New information

- (a) iiNet must provide to TPG all such further or new information of which iiNet becomes aware that arises after the Scheme Booklet has been despatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (b) TPG must provide to iiNet all such further or new information of which TPG becomes aware that arises after the Scheme Booklet has been despatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the TPG Information continues to comply with the Corporations Act, RG 60 and the Listing Rules.

5.4 Verification

- (a) iiNet must undertake reasonable verification processes in relation to the information included in the Scheme Booklet (other than the TPG Information) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to TPG of the completion such processes.
- (b) TPG must undertake reasonable verification processes in relation to the TPG Information so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to iiNet of the completion such processes.

5.5 Responsibility statements

The Scheme Booklet will include a responsibility statement, in a form to be agreed by the parties, that will contain words to the following effect:

- (a) that, to the maximum extent possible at law, iiNet will not be responsible for any TPG Information and will disclaim any liability for TPG Information appearing in the Scheme Booklet; and
- (b) that, to the maximum extent possible at law, TPG will not be responsible for any information appearing in the Scheme Booklet other than the TPG Information and will disclaim any liability for any information appearing in the Scheme Booklet other than the TPG Information.

5.6 Disagreement on content

If TPG and iiNet disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of any information appearing in the Scheme Booklet other than the TPG Information, the iiNet Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet; and
- (b) if the disagreement relates to the form or content of the TPG Information, iiNet will make such amendments to the form or content of the disputed part of the TPG Information as TPG reasonably requires.

5.7 Good faith co-operation

Each party must procure that its Authorised Persons work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to implement the Scheme, to prepare all documents required relating to the Scheme, and to agree and execute the strategy described in clause 7.5.

5.8 Payment of Discretionary Special Dividend and internal payments

- (a) Notwithstanding any other provision of this agreement, iiNet may in, its sole discretion, declare and pay a dividend (**Discretionary Special Dividend**) to iiNet Shareholders, provided that:
 - (i) the Discretionary Special Dividend is to be declared on or prior to the Effective Date, and in any event by no later than the last date permitted by the Listing Rules to declare that dividend such that the record date for that dividend is the Record Date;

- (ii) the payment date for the Discretionary Special Dividend will be determined by iiNet at its discretion, provided that the Discretionary Special Dividend is paid only after the Record Date and not later than the Implementation Date;
 - (iii) the Discretionary Special Dividend will be franked to the maximum extent possible, subject to the franking account of iiNet not being in deficit after the payment of the Discretionary Special Dividend;
 - (iv) the Discretionary Special Dividend is to be paid from accumulated profits of the iiNet Group existing immediately prior to the declaration of that dividend; and
 - (v) the Australian Taxation Office provides, prior to the declaration of the Discretionary Special Dividend, a tax ruling or draft tax ruling in respect of the declaration and payment of that dividend in a form acceptable to iiNet and TPG (both acting reasonably).
- (b) Notwithstanding any other provision of this agreement, iiNet may make any intra group distributions and payments between members of the iiNet Group, in order to be able to declare and pay the Discretionary Special Dividend in accordance with clause 5.8(a).
 - (c) The parties acknowledge and agree that if the Discretionary Special Dividend is declared in accordance with clause 5.8(a), the Scheme Consideration will be reduced by the amount of the Discretionary Special Dividend.

5.9 Funding of Discretionary Special Dividend

- (a) TPG agrees that, if iiNet declares a Discretionary Special Dividend in accordance with clause 5.8(a), TPG (or a member of the TPG Group) will provide an unsecured, interest free loan to iiNet in an amount equal to the aggregate cash amount of the Discretionary Special Dividend.
- (b) The loan provided pursuant to clause 5.9(a) must:
 - (i) be paid by TPG to iiNet at least one Business Day prior to the payment date for the Discretionary Special Dividend; and
 - (ii) not be repayable for at least 12 months following the payment date for the Discretionary Special Dividend.
- (c) TPG's obligation to make the payment referred to in paragraph clause 5.9(b)(i) will be satisfied by the payment of the relevant amount in immediately available funds to the account nominated by iiNet for the purposes of this clause.

6. Board recommendation

6.1 Recommendation

Subject to clause 6.3, iiNet represents and warrants to TPG, as at the date of this agreement, that it has been advised by each iiNet director that he or she will, and iiNet must procure that each iiNet director will, recommend that iiNet Shareholders vote in favour of the Scheme, qualified only by the words to the effect of 'in the absence of a superior proposal'.

6.2 iiNet's Statement to contain recommendation

Subject to clause 6.3, iiNet must ensure that the Scheme Booklet includes:

- (a) a unanimous recommendation by the iiNet Board that iiNet Shareholders vote in favour of the Scheme, qualified only by the words to the effect of 'in the absence of a superior proposal'; and

- (b) a statement by each iiNet director that he or she will vote in favour of the Scheme in respect of all iiNet Shares controlled or held by, or on behalf of, that iiNet director, qualified only by the words to the effect of 'in the absence of a superior proposal'.

6.3 Withdrawal or modification of recommendation

iiNet represents and warrants to TPG, as at the date of this agreement, that it has been advised by each iiNet director that he or she will not, and iiNet must procure that each iiNet director does not:

- (a) change, withdraw or modify his or her recommendation of the Scheme; and
- (b) make any public statement or take any other action that is inconsistent with his or her recommendation of the Scheme,

in each case except where iiNet receives a Competing Proposal and the iiNet Board determines, after all of TPG's rights under clause 10.6 have been exhausted, that the Competing Proposal constitutes a Superior Proposal.

7. Conduct of business before the Implementation Date

7.1 Conduct of iiNet business

Subject to clause 7.3, from the date of this agreement up to and including the Implementation Date, other than to the extent that the relevant matter has been fairly disclosed to the ASX before the date of this agreement, iiNet must conduct its business, and must cause each of its Subsidiaries to conduct their businesses, in the ordinary and usual course of business and:

- (a) operate those businesses consistent with past practice, in substantially the same manner as previously conducted;
- (b) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
- (c) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
- (d) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the iiNet Group is a party, and with laws, authorisations and licenses applicable to each member of the iiNet Group;
- (e) not take or fail to take any action that constitutes an iiNet Prescribed Occurrence or that could reasonably be expected to result in an iiNet Prescribed Occurrence; and
- (f) not take or fail to take any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied.

7.2 Prohibited actions

Subject to clause 7.3, from the date of this agreement up to and including the Implementation Date, other than to the extent that the relevant matter has been fairly disclosed to the ASX before the date of this agreement, iiNet must not, and must procure that the iiNet Group does not:

- (a) declare, pay or distribute any dividend, bonus or other share of its profits or assets by way of dividend, capital reduction or otherwise other than the Discretionary Special Dividend;
- (b) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds \$10 million in aggregate;

- (c) pay any Adviser any fee, cost or other form of compensation or remuneration that is directly or indirectly as a result of, contingent on, or in connection with:
 - (i) iiNet or TPG entering into this agreement;
 - (ii) TPG acquiring a Relevant Interest in the Scheme Shares; or
 - (iii) the Scheme or a transaction contemplated by this agreement,
 where all such amounts paid would exceed, in aggregate, \$17 million;
- (d) except as required by law or as provided in an existing contract in place at the date of this agreement, make any material change to the terms of employment of (including increasing the remuneration or compensation of or accelerating the rights to benefits of any kind), or grant or pay any bonus, incentive, retention, severance or termination payment to, any director, officer, executive or senior manager of the iiNet Group;
- (e) enter into a new employment contract with a potential employee of the iiNet Group under which contract the total remuneration payable to that potential employee would exceed \$130,000 in any 12 month period, other than to replace a role that becomes vacant after the date of this agreement as a result of the resignation of an existing employee or in respect of a new employee who is employed in order to fill a role that is vacant as at the date of this agreement;
- (f) enter into any enterprise bargaining agreement or any other form of collective agreement concerning the terms of employment of employees of the iiNet Group;
- (g) incur any additional financial indebtedness (except for draw-downs on existing banking facilities consistent with iiNet's current budget), or guarantee or indemnify the obligations of any person other than a member of the iiNet Group, other than in the usual and ordinary course of business and consistent with past practice;
- (h) enter into any new financing arrangement, agreement or otherwise provide financial accommodation (irrespective of what form that accommodation takes), or amend the term of any existing financing arrangement, agreement or instrument;
- (i) incur or enter into any new commitments involving the purchase of plant and equipment (as defined in iiNet's statement of cash flows) of more than \$20 million in aggregate;
- (j) give or agree to give a financial benefit to a related party of iiNet;
- (k) enter into a contract which is material to the conduct of the iiNet Group's business, involves aggregate expenditure greater than \$7.5 million, annual revenue greater than \$10 million, or has a committed term which is greater than 3 years (**Material Contract**), or terminate or amend the terms of a **Material Contract**;
- (l) modify the rules of any share based incentive plan or scheme, including the Long Term Incentive Plan;
- (m) amend its constitution;
- (n) alter in any material respect any accounting policy of any member of the iiNet Group;
- (o) enter into, renew, or permit to rollover for a term that exceeds 90 days, any contract arrangement or understanding for the acquisition of domestic or international transmission services, domestic or international IP transit or peering, or data centre space or services; or
- (p) agree to do any of the matters set out above.

7.3 iiNet permitted activities

The obligations of iiNet under clauses 7.1 and 7.2 do not apply in respect of any matter:

- (a) required to be done or procured by iiNet pursuant to this agreement or the Scheme;
- (b) required by law or by an order of a court or Governmental Agency; or
- (c) the undertaking of which TPG has previously approved in writing (which approval must not be unreasonably withheld or delayed).

7.4 Access

In the period from the date the last of the Conditions in clauses 3.1(a) and 3.1(c) have been satisfied to the Implementation Date, iiNet must provide TPG with all reasonable access during normal business hours and on reasonable notice to the management, offices, books, records and business operations of iiNet that TPG reasonably requires in order to implement the Proposed Transaction or for TPG to prepare for the transition of ownership of the iiNet Group.

7.5 Change of control

As soon as practicable after the date of this agreement, the parties must:

- (a) seek to identify any change of control or similar provisions in any material contract to which a member of the iiNet Group is party which may be triggered by the implementation of the Proposed Transaction (**Change of Control Requirements**); and
- (b) use all reasonable endeavours to agree a proposed strategy to obtain any consents required in accordance with the terms of any identified Change of Control Requirements, and to then expeditiously seek those consents in accordance with the agreed strategy.

8. Reconstitution of the board of each member of the iiNet Group

iiNet represents and warrants to TPG that it has been advised by each iiNet director that he or she will, and iiNet must procure that the iiNet Board will:

- (a) on the Effective Date, take all actions necessary (and in accordance with the constitution of the relevant iiNet Group member, the Corporations Act and the Listing Rules) to appoint the persons nominated by TPG, and who consent to act, as new directors of iiNet and new directors of each Subsidiary of iiNet, such that such nominees of TPG represent a majority of the iiNet Board and a majority of the board of each Subsidiary of iiNet; and
- (b) on the Implementation Date:
 - (i) procure that each iiNet director (other than the new iiNet directors appointed pursuant to clause 8(a) or any iiNet directors who agree with TPG to remain as iiNet directors) resigns from their office as an iiNet director by providing to the iiNet Board their resignation in writing (such resignation to include a statement to the effect that the outgoing director has no claim outstanding against any member of the iiNet Group); and
 - (ii) procure that each director of each Subsidiary of iiNet (other than the new iiNet directors appointed pursuant to clause 8(a) or any iiNet directors who agree with TPG to remain as directors of the relevant Subsidiary of iiNet) resigns from their office as a director of the relevant Subsidiary of iiNet by providing to the board of the relevant Subsidiary of iiNet their resignation in writing (such resignation to include a statement to the effect that the outgoing director has no claim outstanding against any member of the iiNet Group).

9. Representations and warranties

9.1 TPG representations and warranties

- (a) TPG represents and warrants to iiNet each of the matters set out in clause 9.1(b) as at the date of this agreement and at all subsequent times until 8.00am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) TPG represents and warrants that:
 - (i) TPG is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this agreement has been properly authorised by all necessary corporate action and TPG has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
 - (iii) this agreement constitutes legal, valid and binding obligations on it and this agreement does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which TPG is a party or is bound;
 - (iv) the TPG Information provided to iiNet in accordance with clause 5.2(a) for inclusion in the Scheme Booklet will:
 - (A) be provided in good faith;
 - (B) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
 - (C) be provided on the understanding that iiNet will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
 - (v) as at the date the Scheme Booklet is despatched to iiNet Shareholders, the TPG Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);
 - (vi) all information provided by or on behalf of TPG to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet to be prepared and completed will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet; and
 - (vii) TPG does not require the approval of its shareholders or the approval or consent of any other person to enter into or perform any of its obligations under this agreement.

9.2 TPG's indemnity

TPG agrees with iiNet to indemnify and keep indemnified iiNet against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and

other outgoings of whatever nature and however arising which iiNet may suffer or incur by reason of any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b).

9.3 iiNet representations and warranties

- (a) iiNet represents and warrants to TPG each of the matters set out in clause 9.3(b) as at the date of this agreement and at all subsequent times until 8.00am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) iiNet represents and warrants that:
 - (i) iiNet is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) the execution and delivery of this agreement by iiNet has been properly authorised by all necessary corporate action and iiNet has full corporate power and lawful authority to execute and deliver this agreement and to perform or cause to be performed its obligations under this agreement;
 - (iii) this agreement constitutes legal, valid and binding obligations on iiNet and the execution of this agreement of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which iiNet or any of its Subsidiaries is a party or to which they are bound;
 - (iv) the information contained in the Scheme Booklet (other than the TPG Information):
 - (A) will be prepared and included in the Scheme Booklet in good faith; and
 - (B) will comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60;
 - (v) as at the date the Scheme Booklet is despatched to iiNet Shareholders, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the TPG Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
 - (vi) as at the date of this agreement, iiNet is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Proposed Transaction or as disclosed in writing to TPG on or before the date of this agreement);
 - (vii) the issued capital of iiNet as of the date of this agreement is 162,950,896 iiNet Shares;
 - (viii) 1,076,220 iiNet Performance Rights are on issue as at the date of this agreement;
 - (ix) no more than 538,107 additional iiNet Performance Rights may be issued after the date of this agreement as a result of the vesting outcome for an award being more than 100% under the terms of an offer of iiNet Performance Rights;
 - (x) the maximum number of iiNet Shares that will be issued in satisfaction of all iiNet Performance Rights as at the Record Date will be 1,614,327 iiNet Shares;
 - (xi) there are no phantom performance rights on issue under any of iiNet's incentive plans or schemes, including the Long Term Incentive Plan; and

- (xii) no member of the iiNet Group has issued, or agreed to issue, any other securities or instruments which may convert into iiNet Shares or any other securities in iiNet.

9.4 iiNet's indemnity

iiNet agrees with TPG to indemnify and keep indemnified TPG from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which TPG may suffer or incur by reason of any breach of any of the representations and warranties in clauses 9.3(a) or 9.3(b).

9.5 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or is reasonably expected to constitute a breach of any of the representations or warranties given by it under this clause 9.

9.6 Survival of representations

Each representation and warranty in clauses 9.1 and 9.3:

- (a) is severable;
- (b) will survive the termination of this agreement; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this agreement.

9.7 Survival of indemnities

Each indemnity in this agreement (including those in clauses 9.2 and 9.4) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this agreement; and
- (d) survive the termination of this agreement.

9.8 Limitations on Claims against iiNet

- (a) iiNet's representations and warranties in clause 9.3 and the indemnity in clause 9.4 are each subject to, and no Claim can be made against iiNet in respect of, matters that have been fairly disclosed in iiNet's announcements to the ASX prior to the date of this agreement.
- (b) Notwithstanding any other provision of this agreement:
 - (i) the maximum aggregate amount which iiNet is required to pay in relation to a breach of this agreement (including in respect of a breach of representation and warranty) is an amount equal to the Break Fee and in no event will the aggregate liability of iiNet under or in connection with a breach of this agreement exceed an amount equal to the Break Fee; and
 - (ii) where the Break Fee becomes payable to TPG under this agreement (or would be payable if a demand was made), TPG cannot make any further Claim against iiNet in relation to any event or occurrence referred to in clause 11.4 or for any material breach referred to in clause 15.1 (but, for the avoidance of doubt, may exercise any right available to it to terminate this agreement under clause 15.1).

9.9 Limitations on Claims against TPG

The maximum aggregate amount which TPG is required to pay in relation to a breach of this agreement (including in respect of a breach of representation and warranty) is \$14 million and in no event will the aggregate liability of iiNet under or in connection with a breach of this agreement exceed an amount equal to \$14 million.

10. Exclusivity

10.1 No existing discussions

Other than in relation to the discussions with TPG in connection with the Proposed Transaction and this agreement, iiNet represents and warrants to TPG that, as at the date of this agreement:

- (a) neither itself, its Related Bodies Corporate nor any of their respective Authorised Persons is a party to any agreement with a third party entered into for the purpose of facilitating a Competing Proposal; and
- (b) neither itself, its Related Bodies Corporate nor any of their respective Authorised Persons is participating in any discussions or negotiations with a third party that concern, or that could reasonably be expected to lead to, a Competing Proposal.

10.2 No-shop

During the Exclusivity Period, iiNet must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly solicit, invite, initiate or encourage any Competing Proposal or any enquiries, proposals, discussions or negotiations with any third party in relation to (or that could reasonably be expected to lead to) a Competing Proposal, or communicate any intention to do any of these things.

10.3 No-talk

Subject to clause 10.7, during the Exclusivity Period, iiNet must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) negotiate or enter into or participate in negotiations or discussions with any person; or
- (b) communicate any intention to do any of these things,

in relation to (or which may reasonably be expected to lead to) a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, encouraged or initiated by iiNet or any of its Related Bodies Corporate, or that person has publicly announced the Competing Proposal.

10.4 No due diligence

During the Exclusivity Period, except with the prior written consent of TPG, iiNet must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) solicit, invite, initiate, or encourage, or (subject to clause 10.7) facilitate or permit, any person (other than TPG) to undertake due diligence investigations in respect of iiNet, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
- (b) subject to clause 10.7, make available to any person (other than TPG) or permit any such person to receive any non-public information relating to iiNet, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

10.5 Notification of approaches

- (a) During the Exclusivity Period, iiNet must promptly notify TPG in writing of:
 - (i) any approach, inquiry or proposal made by any person to iiNet, any of its Related Bodies Corporate or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Competing Proposal; and
 - (ii) any request made by any person to iiNet, any of its Related Bodies Corporate, or any of their respective Authorised Persons, for any information relating to iiNet, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) Subject to clause 10.7, a notice given under clause 10.5(a) must be accompanied by all material details of the relevant event, including (as the case may be):
 - (i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 10.5(a)(i), or who made the relevant request for information referred to in clause 10.5(a)(ii); and
 - (ii) the material terms and conditions (including price, conditions precedent, timetable and break free (if any)) of any Competing Proposal or any proposed Competing Proposal (to the extent known).
- (c) During the Exclusivity Period, iiNet must promptly provide TPG with:
 - (i) in the case of written materials, a copy of; or
 - (ii) in any other case, a written statement of,

any non-public information relating to iiNet, its Related Bodies Corporate, or any of their businesses and operations made available or received by any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which has not previously been provided to TPG.

10.6 iiNet's response to Rival Acquirer and TPG's right to respond

- (a) If iiNet is permitted by virtue of clause 10.7 to engage in activity that would otherwise breach any of clauses 10.3, 10.4(a), 10.4(b) and 10.5(b), iiNet must enter into a confidentiality agreement with the person who has made the applicable Competing Proposal (**Rival Acquirer**) on customary terms.
- (b) If iiNet receives a Competing Proposal and as a result, any iiNet director proposes to either:
 - (i) change, withdraw or modify his or her recommendation of the Scheme; or
 - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal (other than a confidentiality agreement contemplated by clause 10.6(a)),

iiNet must ensure that no iiNet director does so:

- (iii) unless the Competing Proposal is bona fide; and
- (iv) until each of the following has occurred:
 - (A) the iiNet directors have made the determination contemplated by clause 10.7(b) in respect of that Competing Proposal;

- (B) iiNet has given TPG written notice (**Relevant Notice**) of the iiNet director's proposal to take the action referred to in clauses 10.6(b)(i) or 10.6(b)(ii) (subject to TPG's rights under clause 10.6(d)), including details of the grounds on which the iiNet directors propose to take such action;
 - (C) subject to clause 10.6(c), iiNet has given TPG all information that would be required by clause 10.5(b) as if it was not subject in any way to clause 10.7;
 - (D) TPG's rights under clause 10.6(d) have been exhausted; and
 - (E) the iiNet directors have made the determination contemplated by clause 10.7(b) in respect of that Competing Proposal after TPG's rights under clause 10.6(d) have been exhausted and after evaluation of any Counter Proposal.
- (c) Prior to giving TPG the information under clause 10.6(b)(iv)(C), iiNet must advise the Rival Acquirer that the Rival Acquirer's name and other details which may identify the Rival Acquirer will be provided by iiNet to TPG on a confidential basis.
 - (d) If iiNet gives a Relevant Notice to TPG under clause 10.6(b)(iv)(B), TPG will have the right, but not the obligation, at any time during the period of 3 Business Days following the receipt of the Relevant Notice, to amend the terms of the Proposed Transaction including increasing the amount of consideration offered under the Proposed Transaction or proposing any other form of transaction (each a **Counter Proposal**), and if it does so then the iiNet directors must review the Counter Proposal in good faith. If the iiNet directors determine that the Counter Proposal would be more favourable, or at least no less favourable, to iiNet and the iiNet Shareholders than the Competing Proposal (having regard to the matters noted in clause 10.7(b)), then iiNet and TPG must use their best endeavours to agree the amendments to this agreement that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and iiNet must use its best endeavours to procure that the iiNet directors recommend the Counter Proposal to the Shareholders and not recommend the applicable Competing Proposal.
 - (e) For the purposes of this clause 10.6, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

10.7 Fiduciary out

The restrictions in clauses 10.3, 10.4(a) and 10.4(b) and the obligations in clause 10.5(b) do not apply to the extent they restrict iiNet or any iiNet director from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 10) provided that:

- (a) the Competing Proposal is bona fide and is made by or on behalf of a person that the iiNet Board considers is of reputable commercial standing; and
- (b) the iiNet Board has determined in good faith after:
 - (i) consultation with iiNet's financial advisers, that the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal; and
 - (ii) receiving written advice from iiNet's external Australian legal adviser practising in the area of corporate law,

that failing to take the action or refuse to take the action (as the case may be) with respect to the Competing Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of the iiNet Board.

11. Break Fee

11.1 TPG declaration

TPG represents and warrants to iiNet that it would not have entered into this agreement without the benefit of this clause 11 and it would not have entered into and continued the negotiations leading up to this agreement unless TPG had a reasonable expectation that iiNet would agree to enter into a clause of this kind.

11.2 Acknowledgments

- (a) iiNet acknowledges that TPG has incurred:
 - (i) significant external advisory costs;
 - (ii) some internal costs of a similar kind (including directors and management time costs, risk management costs and capital costs);
 - (iii) out-of-pocket expenses;
 - (iv) commitment fees and other financing costs; and
 - (v) reasonable opportunity costs incurred by TPG in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives,in relation to the Scheme and will incur further costs if the Scheme is announced but is not successful (**Costs**).
- (b) iiNet represents and warrants that:
 - (i) it has received legal advice on this agreement and the operation of this clause 11; and
 - (ii) it considers this clause 11 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 11 in order to secure the significant benefits to it (and the Shareholders) resulting from the Scheme.

11.3 Agreement on Costs

The parties acknowledge that the amount of the Costs is inherently unascertainable and that, even after termination of this agreement, the Costs will not be able to be accurately ascertained. As a genuine and reasonable pre-estimate of the Costs that TPG will suffer if the Scheme does not proceed, the parties agree that, for the purposes of this clause 11, the Costs will be the sum of \$14 million¹ (**Break Fee**).

11.4 Reimbursement of Costs

- (a) iiNet agrees to pay to TPG the Break Fee if at any time after the date of this agreement and before the End Date, any of the following events occur:
 - (i) any iiNet director fails to recommend the Scheme as described in clauses 6.1 and 6.2;
 - (ii) any iiNet director changes, withdraws or modifies his or her recommendation of the Scheme or makes any public statement, or takes any other action that is

¹ Note: 1% of equity value of the target

inconsistent with his or her recommendation of the Scheme (including where a Competing Proposal is announced and is recommended by any iiNet director);

- (iii) a Competing Proposal is announced before the End Date and, within 12 months of the Competing Proposal being announced, the Competing Proposal results in a person or persons (other than a member of the TPG Group) obtaining Control of iiNet, voting power in more than 50% of the iiNet Shares, merging or amalgamating with iiNet or acquiring (directly or indirectly) an interest in all or a substantial part of the business or assets of the iiNet Group;
 - (iv) a Condition (other than the Conditions in clause 3.1(h) and 3.1(j)) is not satisfied due to an action (or failure to act) of iiNet or any of its Related Bodies Corporate in breach of iiNet's obligations under clause 3.3, and TPG does not waive that Condition before the End Date; or
 - (v) TPG terminates this agreement under clause 15.1(a)(i).
- (b) The payment of the Break Fee by iiNet to TPG provided for in this clause 11.4 must be made within 5 Business Days of receipt of a written demand for payment by TPG. The demand may only be made after the occurrence of an event referred to in clause 11.4(a).

12. Modification of Break Fee or exclusivity arrangements

12.1 Modifications following regulatory intervention

If any of the following occurs:

- (a) a Governmental Agency finds that all or any part of the payment required to be made under clause 11 or an exclusivity arrangement under clause 10 is unacceptable or unenforceable; or
 - (b) as a result of an application to the Takeovers Panel, the Takeovers Panel indicates that, in the absence of a written undertaking under section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Break Fee or the circumstances in which it is to be paid or the circumstances in relation to an exclusivity arrangement under clause 10, it will make a declaration of unacceptable circumstances,
- then, subject to clause 12.2:
- (c) the parties must amend clause 10 and/or 11 to the extent required to give effect to the requirements of the Governmental Agency or the Takeovers Panel (as the case may be) and (in circumstances referred to in clause 12.1(b)) must give the required undertaking(s); and
 - (d) neither the occurrence of any of the events referred to in clauses 12.1(a) or 12.1(b) nor the amendment of clause 10 and/or 11 will be taken to be a breach of, or permit any party to terminate, this agreement.

12.2 No requirement to act unless decision final

The parties are only required to take steps under 12.1(c) in relation to any requirement of a Governmental Agency or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) TPG and iiNet agree in writing not to appeal or seek review of the decision to impose that requirement.

12.3 Appeals and review of regulatory decisions

Nothing in this agreement requires either party to appeal or seek review of any decision of a Governmental Agency or the Takeovers Panel referred to in clauses 12.1(a) or 12.1(b). If either TPG or iiNet wishes to appeal or seek review of any such decision then the other must make submissions in the course of those proceedings supporting the review made by the first party.

12.4 Determination by Governmental Agency

If a Governmental Agency determines that payment of all or any part of the Break Fee is unacceptable, unlawful or involves a breach of the fiduciary or statutory duties of the members of the iiNet Board (**Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without having an appeal having been lodged then:

- (a) the obligation of iiNet to pay the Break Fee does not apply to the extent of the Impugned Amount; and
- (b) if TPG has received any part of the Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging has expired, whichever is later.

13. Standstill

- (a) Subject to clause 13(b), during the Exclusivity Period, TPG must not, and must procure that its Related Bodies Corporate do not, other than pursuant to the Scheme, directly or indirectly or jointly or in concert with any other person:
 - (i) acquire, subscribe for, purchase or agree to acquire or purchase any iiNet Shares, or any direct or indirect rights, options or other securities convertible into iiNet Shares;
 - (ii) acquire any other economic interest equivalent or similar to ownership of iiNet Shares (whether by way of entering into any swap, derivative or otherwise);
 - (iii) solicit proxies from iiNet Shareholders other than for the purposes of the Proposed Transaction;
 - (iv) announce an intention to make a takeover bid (however structured, whether off-market, on-market or otherwise) or make such a takeover bid, for any or all iiNet Shares; or
 - (v) aid, abet, counsel or induce any other person to do any of the things mentioned in paragraphs (i) to (iv) above.
- (b) The restrictions in clause 13(a) immediately cease to apply upon the first to occur of:
 - (i) iiNet delivering a Relevant Notice to TPG;
 - (ii) a person other than TPG acquiring a relevant interest or voting power in 10% or more of the iiNet Shares; or
 - (iii) a person other than TPG or its Related Bodies Corporate publicly announces a proposal that would, if implemented, result in a person or persons (other than a member of the TPG Group) obtaining Control of iiNet, voting power in more than 50% of the iiNet Shares, merging or amalgamating with iiNet or acquiring (directly or indirectly) an interest in all or a substantial part of the business or assets of the iiNet Group.

14. Confidentiality and Public Announcement

14.1 Confidentiality

- (a) Each party acknowledges and agrees that:
 - (i) information provided by either party to the other, or obtained by either party from the other, in the course of proposing, negotiating or implementing the Proposed Transaction (including information provided before or after the date of this agreement); and
 - (ii) all copies of information, agreements and those parts of the notes and other records referred to above,is strictly confidential (**Confidential Information**) and may not be disclosed to any third party (except as permitted by this agreement).
- (b) For the avoidance of doubt, information that is known by a party before the date of this agreement and that was not obtained on a confidential basis from another other party in the course of proposing, negotiating or implementing the Proposed Transaction is not Confidential Information.
- (c) Confidential Information may only be used for the purposes of implementing the Proposed Transaction or disclosed by a party:
 - (i) to a Related Body Corporate or any Authorised Person of that party (or of any Related Body Corporate) for the purpose of implementing the Proposed Transaction, provided that the disclosing party ensures that the recipient only uses it for the purposes of implementing the Proposed Transaction and otherwise complies with these terms of confidentiality; and
 - (ii) if disclosure is required by law, the rules of a stock exchange, or any requirement of a court or Governmental Agency.

14.2 Public Announcements on execution

Immediately after the execution of this agreement, the parties must issue public announcements in a form previously agreed to in writing between them.

14.3 Further public announcements

- (a) Subject to clause 14.3(b), any further public announcements by iiNet or TPG in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this agreement or the Scheme may only be made in a form approved by each party in writing (acting reasonably) subject to where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this agreement or the Scheme.
- (b) Where iiNet is required by law and/or the Listing Rules to make any announcement or make any disclosure in relation to the Proposed Transaction, it may do so only after it has given as much notice as is reasonable in all the circumstances to, and has consulted (to the fullest extent reasonable in the circumstances) with, TPG or its Advisers.

15. Termination

15.1 Termination by notice

- (a) TPG or iiNet may, by notice in writing to the other, terminate this agreement at any time prior to 9.00am on the Second Court Date:

- (i) if the other is in material breach of any of its obligations under this agreement (other than a material breach of a representation or warranty), and, if capable of remedy, the other party has failed to remedy that breach within five Business Days (or 5.00 pm on the day before the Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach; or
 - (ii) in accordance with clause 3.7.
- (b) iiNet may, by notice in writing to TPG, terminate this agreement at any time prior to 9.00am on the Second Court Date if at any time before then:
 - (i) all iiNet directors publicly recommend a Superior Proposal and do not, within three Business Days, reinstate their recommendation of the Proposed Transaction; or
 - (ii) TPG materially breaches a representation or warranty contained in clause 9.1(b), and:
 - (A) TPG fails to remedy that breach within five Business Days of receipt by it of a notice in writing from iiNet setting out details of the relevant circumstance and requesting TPG to remedy the breach or the breach cannot be remedied to the reasonable satisfaction of iiNet by subsequent action on the part of TPG before 8.00am on the Second Court Date; and
 - (B) the breach was of a kind that, had it been disclosed to iiNet prior to its entry into this agreement, could reasonably be expected to have resulted in iiNet either not entering into this agreement or entering into it on materially different terms.
- (c) TPG may, by notice in writing to iiNet, terminate this agreement at any time prior to 8.00am on the Second Court Date if, at any time before then:
 - (i) iiNet materially breaches a representation or warranty contained in clause 9.3(b), and:
 - (A) iiNet fails to remedy that breach within five Business Days of receipt by it of a notice in writing from TPG setting out details of the relevant circumstance and requesting iiNet to remedy the breach or the breach cannot be remedied to the reasonable satisfaction of TPG by subsequent action on the part of iiNet before 8.00am on the Second Court Date; and
 - (B) either:
 - (I) the breach was of a kind that, had it been disclosed to TPG prior to its entry into this agreement, could reasonably be expected to have resulted in TPG either not entering into this agreement or entering into it on materially different terms; or
 - (II) the breach amounts to, results in, or discloses anything, that could reasonably be expected to amount to a Material Adverse Change; or
 - (ii) any iiNet director:
 - (A) fails to recommend the Scheme in the manner described in clauses 6.1 and 6.2; or

- (B) changes, withdraws or modifies his or her recommendation of the Scheme or makes any public statement, or takes any other action that is inconsistent with his or her recommendation of the Scheme (including where a Competing Proposal is announced and is recommended by any iiNet director).

15.2 Automatic termination

Without limiting any other term of this agreement, this agreement will terminate automatically if the Scheme is not approved by the necessary majorities at the Scheme Meeting.

15.3 Effect of termination

- (a) In the event of termination of this agreement under clause 3.7, 15.1 or 15.2, this agreement will become void and have no effect, except that the provisions of clauses 9.6, 9.7, 9.8, 14, 16 and 18.3 to 18.15 (inclusive) survive termination.
- (b) Termination of this agreement does not affect any accrued rights of a party in respect of a breach of this agreement prior to termination.

16. Releases

16.1 Release of iiNet Indemnified Parties

- (a) Subject to any restrictions imposed by law, TPG releases any and all rights that it may have as at the date of this agreement and from time to time, and agrees with iiNet that it will not make any Claim, against any iiNet Indemnified Party in connection with:
 - (i) any breach of any covenant, representation or warranty given by iiNet under this agreement;
 - (ii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
 - (iii) any failure to provide information,except where an iiNet Indemnified Party has not acted in good faith, has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 16.1(a) limits the rights of TPG to terminate this agreement under clause 15.
- (b) iiNet receives and holds the benefit of clause 16.1(a) as trustee for the iiNet Indemnified Parties.

16.2 Release of TPG Indemnified Parties

- (a) Subject to any restrictions imposed by law, iiNet releases any and all rights that it may have as at the date of this agreement and from time to time, and agrees with TPG that it will not make any Claim, against any TPG Indemnified Party in connection with:
 - (i) any breach of any covenant, representation or warranty given by TPG under this agreement;
 - (ii) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
 - (iii) any failure to provide information,except where a TPG Indemnified Party has not acted in good faith, has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 16.2(a) limits the rights of iiNet to terminate this agreement under clause 15.

- (b) TPG receives and holds the benefit of clause 16.2(a) as trustee for the TPG Indemnified Parties.

16.3 Deeds of indemnity, access and insurance

- (a) TPG acknowledges that, notwithstanding any other provision of this agreement, iiNet may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such 7 year period, and that any actions to facilitate that insurance or in connection therewith will not be iiNet Prescribed Occurrences or breach any provision of this agreement.
- (b) iiNet receives and holds the benefit of paragraph (a) as trustee for each director and officer of a member of the iiNet Group.

17. Notices

Any communication under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as shown on the Details page (or as otherwise notified by that party to the other party from time to time);
- (c) must be signed by the party making the communication or by a person duly authorised by that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 17(b); and
- (e) will be deemed to be received by the addressee:
 - (i) **(in the case of prepaid post)** on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) **(in the case of fax)** at the local time (in the place of receipt of that fax) which then equates to the time at which that fax is sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is not a Business Day, or is after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and
 - (iii) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in clause 17(b), unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.

18. General

18.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this agreement.

18.2 Timetable

The parties acknowledge the Timetable as an indicative timetable and will consult with each other regularly in relation to:

- (a) performing their respective obligations within the framework established by the Timetable; and
- (b) any need to modify the Timetable.

18.3 Payments

Unless otherwise expressly provided in this agreement, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this agreement, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

18.4 Consents or approvals

A party may:

- (a) give conditionally or unconditionally; or
- (b) withhold,

its approval or consent in its absolute discretion unless this agreement expressly provides otherwise.

18.5 GST

- (a) Any reference in this clause 18.5 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this agreement is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this agreement but for the application of this clause 18.5(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 18.5(c) does not apply to any taxable supply under or in connection with this agreement that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 18.5 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.
- (f) Unless expressly included, any monetary thresholds specified in this agreement are exclusive of GST.

18.6 Stamp duty

TPG must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this agreement or the Scheme or the steps to be taken under this agreement or the Scheme (including the acquisition or transfer of Scheme Shares pursuant to the Scheme).

18.7 Expenses

Except as otherwise provided in this agreement, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this agreement and the Scheme Booklet and the proposed, attempted or actual implementation of this agreement and the Scheme.

18.8 Amendments

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

18.9 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of each other party, which consent that other party may give or withhold in its absolute discretion.

18.10 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this agreement by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this agreement.
- (b) Any waiver or consent given by any party under this agreement will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this agreement will operate as a waiver of another breach of that term or of a breach of any other term of this agreement.
- (d) Nothing in this agreement obliges a party to exercise a right to waive any conditional term of this agreement that may be in its power.

18.11 Counterparts

- (a) This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This agreement is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by facsimile machine to the facsimile number or by email to the email address of the other party specified in clause 17, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

18.12 Entire agreement

This agreement:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

18.13 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.

18.14 No merger

The rights and obligations of the parties will not merge on completion of any transaction under this agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

18.15 Governing law

- (a) This agreement is governed by and will be construed according to the laws of Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts.

Schedule 1 - Indicative Timetable

Event	Date
Enter into Scheme Implementation Agreement	13 March 2015
Lodge Scheme Booklet with ASIC for review and comment	21 April 2015
First Court Date	8 May 2015
Scheme Booklet registered with ASIC	11 May 2015
Despatch Scheme Booklet to iiNet Shareholders	14 May 2015
Scheme Meeting	24 June 2015
Second Court Date	3 July 2015
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	6 July 2015
Record Date	9 July 2015
Implementation Date: Pay Scheme Considerations to participants in the Scheme. Reconstitute boards of each iiNet Group company	16 July 2015

Signing page

EXECUTED as an agreement.

Executed by iiNet Limited in accordance
with the provisions of section 127(1) of the
Corporations Act

Signature of director

Name of director (print)

← _____ ←
Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Executed by TPG Telecom Limited in
accordance with the provisions of section
127(1) of the *Corporations Act*

Signature of director

Name of director (print)

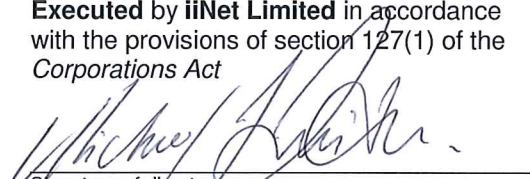
← _____ ←
Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Signing page

EXECUTED as an agreement.

Executed by iiNet Limited in accordance
with the provisions of section 127(1) of the
Corporations Act



Signature of director

MICHAEL SMITH

Name of director (print)

←



Signature of ~~director~~/company secretary
(Please delete as applicable)

BEN JENKINS

Name of ~~director~~/company secretary (print)

←

Executed by TPG Telecom Limited in
accordance with the provisions of section
127(1) of the *Corporations Act*

Signature of director

Name of director (print)

←

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

←