

ASX ANNOUNCEMENT

14 August 2020

3P LEARNING ENTERS INTO SCHEME IMPLEMENTATION AGREEMENT WITH IXL LEARNING, INC. AND IXL AUSTRALIA PTY LTD

- **3P Learning Limited (“3PL”) has entered into a Scheme Implementation Agreement (“SIA”) with IXL Learning, Inc. (“IXL”) and IXL Australia Pty Ltd (a wholly-owned subsidiary of IXL) (“IXL Australia”) under which IXL Australia will acquire 100% of the share capital of 3PL by way of a court-approved Scheme of Arrangement (the “Scheme”) in an all-cash offer**
- **Each 3PL shareholder will receive \$1.35 cash for every 3PL share held**
- **The Scheme Consideration represents a premium of 32.3% to the 1-month VWAP of \$1.02 and 45.0% to the 3-month VWAP of \$0.93 up to 13 August 2020 and implies a multiple of 11.4x EV / FY20 EBITDA¹**
- **The 3PL Board unanimously recommend that 3PL shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert concluding that the Scheme is in the best interests of 3PL shareholders**
- **The Scheme is subject to certain conditions which must be satisfied before the Scheme is implemented. 3PL shareholders do not need to take any action at this time**

Overview of the Scheme

3P Learning Limited (ASX:3PL) announces that it has entered into a Scheme Implementation Agreement dated 14 August 2020 with IXL and IXL Australia, under which it is proposed that IXL Australia will acquire 100% of the issued share capital of 3PL by way of a court-approved Scheme of Arrangement in an all-cash offer.

Under the terms of the Scheme, 3PL shareholders will be entitled to receive \$1.35 cash per share (“**Scheme Consideration**”).

The Scheme Consideration values 3PL’s equity at approximately \$189.0 million and an enterprise

¹ Based on FY20 EBITDA of \$14.6m

value (“**EV**”) of \$166.7 million², implying an EV / FY20 EBITDA multiple of 11.4x.

The Scheme Consideration of \$1.35 represents a:

- 23.3% premium to the closing price on 13 August 2020 of \$1.10 per share;
- 32.3% premium to the 1-month volume weighted average price (“**VWAP**”) up to 13 August 2020 of \$1.02 per share;
- 45.0% premium to the 3-month VWAP up to 13 August 2020 of \$0.93 per share; and
- 54.1% premium to the 6-month VWAP up to 13 August 2020 of \$0.88 per share

Unanimous Recommendation by the 3PL Board of Directors

The 3PL Board of Directors (“**3PL Board**”) has carefully considered the terms and conditions of the Scheme and unanimously recommend that 3PL shareholders vote in favour of the Scheme, in the absence of a superior proposal and subject to an Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of 3PL shareholders.

All of the 3PL Board members have also confirmed their intention to, subject to the above qualifications, vote in favour of the Scheme in respect of all 3PL shares that they own or control.

The 3PL Board highlights the following features of the Scheme:

- **Attractive and significant premium** – the Scheme Consideration represents an attractive and significant premium to recent trading levels of 3PL shares, including a premium of 32.3% to the 1-month VWAP of \$1.02 and 45.0% to the 3-month VWAP of \$0.93 up to 13 August 2020;
- **Attractive valuation multiple** – implied multiple of 11.4x EV / FY20 EBITDA;
- **Certain and immediate value to 3PL shareholders** – the 100% cash consideration provides 3PL shareholders with certainty of value and the opportunity to realise their investment for cash, in full; and
- **Limited conditionality** – the Scheme is subject to limited conditions

3PL Chairman Sam Weiss said, “The Board of 3P Learning Limited has reviewed over the past year a wide range of strategic alternatives with a view to achieve the maximum value for 3PL shareholders. After careful consideration the Board has come to the unanimous conclusion that the Scheme is in the best interests of our shareholders. The Scheme provides 3PL shareholders an opportunity to realise certain and immediate value for their shares, at a significant premium to recent trading and at an attractive valuation multiple. We are pleased that a leading industry player such as IXL has recognised the strategic value of our company.”

3PL Chief Executive Officer and Managing Director Rebekah O’Flaherty said, “IXL’s proposal recognises the successes and achievements of 3PL’s strategic initiatives over the last few years. The proposal is a strong endorsement of the qualities of the 3PL business and the commitment and professionalism of its management team.”

² Implied equity value of \$189.0m based on Scheme Consideration of \$1.35 per share multiplied by current shares on issue of 139,484,170 and dilutive options (accounted for using the treasury stock method) and unlisted performance rights of 489,079. Enterprise value includes reported net cash of \$22.2 million as at 30 June 2020.

IXL Founder and Chief Executive Officer Paul Mishkin said, "We are delighted to have the unanimous support of 3PL's Board on our proposal. We are committed to continuing the growth of 3PL under IXL's ownership, supporting its people and customers globally."

Details of the SIA

The implementation of the Scheme is subject to a number of conditions including the approval of 3PL shareholders and the Court, no prescribed occurrences, no material adverse change, the approval of the Foreign Investment Review Board, an Independent Expert's Report concluding that the Scheme is in the best interests of 3PL shareholders (and not changing or withdrawing that conclusion) and other customary conditions for a transaction of this nature. There is no financing condition.

In addition, the SIA contains certain customary exclusivity provisions, including no shop restrictions, no talk restrictions, a notification obligation and a matching right. The SIA also contains limited circumstances under which 3PL may be required to pay IXL Australia a break fee and limited circumstances under which IXL Australia may be required to pay 3PL a reverse break fee, both equivalent to approximately \$1.9 million.

A copy of the SIA signed by the parties, which includes full details of the conditions to the Scheme, is attached to this document.

Indicative Timing

3PL shareholders do not need to take any action at this time.

A Scheme Booklet containing information relating to the proposed transaction, reasons for the 3PL Board's recommendation, an Independent Expert's Report and details of the Scheme Meeting will be prepared and provided to shareholders in due course.

Shareholders will then have the opportunity to vote on the Scheme at the Scheme Meeting. Subject to shareholder approval being obtained and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented by early December 2020.

Advisors

Allier Capital is acting as financial advisor and Gadens is acting as legal advisor to 3PL. IXL's financial advisors are Evercore and Luminis Partners and its legal advisors are King & Wood Mallesons and Latham & Watkins.

-ENDS-

This announcement has been authorized for release to ASX by the Board of Directors of 3PL.

For further information, please contact:

3P Investor Relations
investors@3plearning.com

Sam Weiss
sam.weiss@3plearning.com

About 3P Learning

3PL is a publicly listed company on the ASX. 3PL is a leading provider of education software. The company develops, markets, and sells online educational programs to schools and parents of school-aged students.

3PL's core product offerings include Mathletics, Readwriter, Reading Eggs, Mathseeds, Word Flyers, and Stemsopes Science.

About IXL Learning

IXL Learning is an integrated digital learning platform that effectively supports personalized learning in math, English language arts, science, social studies and Spanish. Currently used by more than 10 million students and with more than 70 billion questions asked and answered around the world, IXL is helping schools successfully boost student achievement.

IXL Learning is privately held and was founded in 1998 by Paul Mishkin, with the mission to develop educational technologies that people cannot live without. Today the company's core product offerings include IXL, ABCya, Education.com, Vocabulary.com, Quia Web and Quia Books.

Scheme Implementation Agreement

Dated 14 August 2020

IXL Australia Pty Ltd (“**IXL**”)
IXL Learning, Inc. (“**IXL Guarantor**”)
3P Learning Limited (ACN 103 827 836) (“**3PL**”)

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
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DX 113 Sydney
www.kwm.com
Ref: DLF:PS:SA

Scheme Implementation Agreement

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Scheme Implementation Agreement

Details

Parties

IXL	Name	IXL Australia Pty Ltd
	ACN	643 275 209
	Address	777 Mariners Island Blvd., Suite 600, San Mateo, California 94404
	Email	pmishkin@ixl.com
	Attention	Paul Mishkin
IXL Guarantor	Name	IXL Learning, Inc.
	Address	777 Mariners Island Blvd., Suite 600, San Mateo, California 94404
	Email	pmishkin@ixl.com
	Attention	Paul Mishkin
3PL	Name	3P Learning Limited
	ACN	103 827 836
	Address	Level 18, 124 Walker St, North Sydney, NSW 2060
	Email	Elizabeth.Wang@3plearning.com
	Attention	Elizabeth Wang
Governing law	New South Wales, Australia	
Recitals	A	3PL and IXL have agreed that 3PL will propose a members' scheme of arrangement under Part 5.1 of the Corporations Act pursuant to which IXL will acquire all of the 3PL Shares.
	B	3PL and IXL have agreed to implement the Scheme on the terms and conditions of this document.
	C	The IXL Guarantor is a holding company of IXL and has agreed to guarantee the obligations and liabilities of IXL under this document.

Scheme Implementation Agreement

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

3PL Board means the board of directors of 3PL.

3PL Constitution means the constitution of 3PL.

3PL Data Room means the electronic data room operated by or on behalf of 3PL and hosted by Ansarada.

3PL Executives means Rebekah O'Flaherty, Tania Black, Simon Martin and Dimitri Aroney.

3PL Global Terms and Conditions means the Standard Purchase Terms and Conditions attached to the sample customer agreements made available to IXL prior to the date of this document and identified by 3PL as its "Global T&Cs".

3PL Group means 3PL and its Subsidiaries.

3PL Indemnified Parties means 3PL and its Representatives.

3PL Information means all information contained in the Scheme Booklet other than the IXL Information and the Independent Expert's Report.

3PL IP means all Intellectual Property Rights owned or purported to be owned by the 3PL Group.

3PL Prescribed Event means, except to the extent contemplated by this document or the Scheme or Disclosed (in the case of paragraphs (e), (f) and (l) below, only as Disclosed in Document 05.06.01 in the 3PL Data Room), any of the following events:

- (a) **(conversion)** 3PL converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** 3PL or another member of the 3PL Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;
- (c) **(buy-back)** 3PL or another member of the 3PL Group:
 - (ii) enters into a buy-back agreement; or
 - (iii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** 3PL makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);

- (e) **(issuing or granting shares or options)** any member of the 3PL Group:
- (i) issues shares;
 - (ii) grants an option over its shares; or
 - (iii) agrees to make an issue of or grant an option over shares,
- in each case to a person outside the 3PL Group, other than an issue of shares pursuant to the exercise of (or in satisfaction of) an Employee Option or Employee Share Right as permitted by clause 4.4;
- (f) **(securities or other instruments)** any member of the 3PL Group issues or agrees to issue securities or other instruments convertible into shares or debt securities (other than the type of securities described in paragraph (e) above) in each case to a person outside the 3PL Group;
- (g) **(constitution)** 3PL adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (h) **(disposals)** any member of the 3PL Group disposes, or agrees to dispose of the whole or a substantial part of its business or property;
- (i) **(acquisitions or disposals)** any member of the 3PL Group:
- (ii) acquires or disposes of; or
 - (iii) agrees to acquire or dispose of,
- any business, entity, undertaking or material assets;
- (j) **(tenders)** any member of the 3PL Group offers, proposes, announces a bid or tenders for any business, assets, entity or undertaking the value of which exceeds \$5,000,000.00;
- (k) **(Encumbrances)** any member of the 3PL Group creates, or agrees to create, any Encumbrance over or declares itself the trustee of the whole or a substantial part of its business or property, other than a lien which arises by operation of law or legislation or arises in the ordinary course of the 3PL Group's business, provided that no liability secured by such lien is overdue for payment (unless contested in good faith);
- (l) **(employment arrangements)** any member of the 3PL Group:
- (i) increases the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus (other than in accordance with existing arrangements and in the ordinary course) or issues any securities or options to, or otherwise materially varies the employment agreements with, any of its directors or employees;
 - (ii) accelerates the rights of any of its directors or employees to benefits of any kind;
 - (iii) pays a director, executive or employee a termination or retention payment, but excluding any redundancy payment in connection with any redundancies of employees with a base salary of below \$200,000 made in the ordinary course and consistent with historical practices of the 3PL Group over the 24 month period preceding the date of this document;

- (iv) hires or terminates (other than for cause) any employees with a base salary of \$200,000 or higher;
- (m) **(commitments and settlements)** other than in connection with the replacement of distributors in the ordinary course and consistent with historical practices of the 3PL Group over the 24 month period preceding the date of this document, any Member of the 3PL Group:
 - (i) enters into any contract or commitment involving revenue or expenditure of more than \$1,000,000.00 over the term of the contract or commitment;
 - (ii) (without limiting the above) enters into any contract or commitment relating to the same matter or project involving revenue or expenditure which exceeds \$1,000,000.00 in aggregate over the term of the contracts or commitments;
 - (iii) terminates or amends in a material manner any contract material to the conduct of the 3PL Group's business or which involves revenue or expenditure of more than \$1,000,000.00 over the term of the contract;
 - (iv) waiving any material third party default; or
 - (v) accepting as a settlement or compromise of a material matter (relating to an amount in excess of \$500,000.00) less than the full compensation due to 3PL or a Subsidiary of 3PL;
- (n) **(Insolvency)** 3PL or any of its Related Bodies Corporate becomes Insolvent,

provided that a 3PL Prescribed Event listed in items (a) to (m) will not occur where 3PL has first consulted with IXL in relation to the event and IXL has approved the proposed event in writing.

3PL Representations and Warranties means the representations and warranties of 3PL set out in clause 12.1.

3PL Share means an ordinary fully paid share in the capital of 3PL.

3PL Shareholder means each person registered in the Register as a holder of 3PL Shares.

ACCC means the Australian Competition and Consumer Commission.

Agreed Form means a document that has been agreed by 3PL and IXL before the date of this document and has been initialled or acknowledged as agreed form by or on behalf of 3PL and IXL.

ASIC means the Australian Securities & Investments Commission.

Associate has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

ASX means ASX Limited or the market operated by it, as the context requires.

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Break Fee means \$1,900,685.00.

Business Day means:

- (a) where that term is used in clause 9, a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales or San Francisco, USA; and
- (b) otherwise, a business day as defined in the Listing Rules.

Change of Control Requirements means the change of control or similar provisions in any Material Contract which may be triggered by the announcement or implementation of the Scheme.

Competing Proposal means any expression of interest, offer or proposal by any person or its associates (other than IXL or its Associates) to consider or enter into any proposal, transaction or arrangement (whether by way of a takeover bid, scheme of arrangement, capital reduction, buyback, sale, lease or assignment of assets, sale or issue of securities, joint venture, reverse takeover bid, dual listed company structure (or other synthetic merger), deed of company arrangement, debt for equity arrangement or otherwise) which is the same or similar in economic terms to the Scheme or any other proposed transaction within paragraphs (a) to (d) below, whether existing before, on or after the date of this document:

- (a) any person acquiring directly or indirectly an interest (including an economic interest by way of an equity swap, contract for difference or similar transaction or arrangement) or Relevant Interest in 20% or more of the 3PL Shares (other than as custodian, nominee or bare trustee);
- (b) any person acquiring directly or indirectly (including by way of joint venture, alliance, dual listed company structure or otherwise) any interest in all or a substantial part of the business conducted by, or assets of, 3PL or its Subsidiaries;
- (c) any person acquiring "control" (as defined in section 50AA of the Corporations Act) of, or merging or amalgamating with, 3PL or any of its Subsidiaries, including by way of takeover bid, scheme of arrangement, dual listed company structure, or capital reduction; or
- (d) 3PL implementing any reorganisation of capital, dissolution or any proposal which affects, prejudices or jeopardises, or might reasonably be expected to affect, prejudice or jeopardise, the completion of the Scheme (except as previously announced prior to the date of this document).

Conditions Precedent means the conditions precedent set out in clause 3.1.

Confidentiality Agreement means the Confidentiality Agreement between 3PL and IXL Learning, Inc. dated 18 May 2020.

Controller has the meaning it has in the Corporations Act.

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

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

Costs includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

Court means the Supreme Court of New South Wales, or another court of competent jurisdiction under the Corporations Act agreed by the parties.

Deed Poll means a deed poll substantially in the form of Annexure B to this document.

Details means the section of this document headed “Details”.

Disclosed means fairly disclosed:

- (a) in the 3PL Data Room, including all written answers given to written questions submitted by IXL or its Representatives via the 3PL Data Room, as at 5:00pm on the date prior to the date of this document;
- (b) by 3PL in writing to IXL prior to the date of this document that IXL has confirmed in writing has been fairly disclosed for the purposes of this definition; or
- (c) in any announcement made by 3PL on ASX in the 36 months prior to the date of this document.

EBITDA means earnings before interest, tax, depreciation and amortisation.

Effective, when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

Effective Date means the date on which the Scheme becomes Effective.

Employee Option means an option to receive a 3PL Share issued under the 3P Learning Equity Incentive Plan operated by the 3PL Group.

Employee Share Right means:

- (a) a right to a 3PL Share issued under the 3P Learning Equity Incentive Plan operated by the 3PL Group; or
- (b) a right to a 3PL Share issued under the New 3P Learning Equity Incentive Plan operated by the 3PL Group.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

End Date means the date which is 6 months after the date of this document or another date as is agreed by IXL and 3PL.

Exclusivity Agreement means the letter agreement dated 24 July 2020 between IXL Learning, Inc. and 3PL.

Exclusivity Period means the period from and including the date of this document to the earlier of:

- (a) the termination of this document in accordance with its terms; and
- (b) the End Date.

FIRB Act means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

First Court Date means the first day on which an application made to the Court, in accordance with clause 5.2(h), for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

Implementation Date means the 5th Business Day following the Record Date.

Incoming Directors means Paul Mishkin, Jennifer Gu and Tony Bancroft.

Independent Expert means the independent expert approved by IXL and appointed by 3PL under clause 5.2(c).

Independent Expert's Report means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether in the Independent Expert's opinion the Scheme is in the best interests of 3PL Shareholders.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in any of the above paragraphs;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

Intellectual Property Rights means all intellectual property rights, including all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions, discoveries, business names and domain names and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

IXL Board means the board of directors of IXL.

IXL Group means IXL and its Subsidiaries.

IXL Indemnified Parties means IXL and its Representatives.

IXL Information means the information regarding IXL as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60. IXL Information does not include information about the 3PL Group (except to the extent it relates to any statement of intention relating to the 3PL Group following the Effective Date).

IXL Knowledge Parties means Paul Mishkin, Rich Yang, Joseph Zhou.

IXL Representations and Warranties means the representations and warranties of IXL set out in clause 12.3.

Listing Rules means the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

Losses means all claims, demands, damages, losses, costs, expenses and liabilities.

Material Adverse Effect means a Specified Event which has, has had, or is reasonably expected to have, the effect of:

- (a) the value of the consolidated net assets of the 3PL Group (taken as a whole) being reduced by at least \$2,500,000.00 against what it would reasonably have been expected to have been but for such Specified Event; or
- (b) the value of the consolidated EBITDA of the 3PL Group being reduced by at least \$1,500,000 against what it would reasonably have been expected to have been but for such Specified Event,

but does not include:

- (c) any matter Disclosed;
- (d) any matter, event or circumstance arising from changes in general economic or political conditions, including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets, the securities market in general or law;
- (e) any change in taxation, foreign exchange rates or interest rates;
- (f) any change in generally accepted accounting principles or the interpretation of them;
- (g) any change occurring directly or indirectly as a result of any matter, event or circumstance required or permitted by this document, the Scheme or the transactions contemplated by them; or
- (h) any change occurring with the prior written consent of IXL,

but in the case of paragraphs (d) to (f) above, excluding any event, condition, occurrence, change, matter or circumstance which has a disproportionate effect on the 3PL Group, taken as a whole, compared to other participants in the industry in which the 3PL Group operates.

Material Contract means a contract or commitment (or any series of related contracts or commitments):

- (a) requiring total payments in excess of \$250,000;

- (b) evidencing indebtedness for money borrowed in excess of \$200,000.00 or any other loan or advance to any person, other than ordinary advances for travel expenses or resulting from the extension or renewal of facilities existing as at the date of this document;
- (c) under which the 3PL Group is a guarantor or indemnitor of indebtedness of any other person, but excluding another member of the 3PL Group;
- (d) (i) relating to the acquisition, issuance, registration, sale, or transfer of any securities, (ii) providing any person with any pre-emptive right, right of participation, right of maintenance, or any similar right with respect to any securities, or (iii) providing any member of the 3PL Group with any right of first refusal with respect to, or right to repurchase or redeem, any securities, except for contracts evidencing Employee Options or Employee Share Rights;
- (e) giving rise to exposure, in relation to foreign currency hedging arrangements of or in excess of \$1,000,000.00;
- (f) for the employment of any person whose base compensation (including superannuation benefits) is in excess of \$200,000.00;
- (g) concerning the use and/or sale of the 3PL Group's software or other intellectual property of the 3PL Group, including licenses of the 3PL Group's intellectual property to customers or other third parties and any reseller or distribution agreements, in each case where those contracts or commitments:
 - (i) are on terms other than the 3PL Global Terms and Conditions; and
 - (ii) are reasonably expected to contribute at least \$250,000 to the 3PL Group's revenue during any financial year;
- (h) under which any member of the 3PL Group receives a license or other right to use any intellectual property of any third party, other than "click-wrap" and "shrink-wrap" licenses and licenses of commercially available off-the-shelf software, in each case, for the internal use of the 3PL Group with one-time or annual fees of less than \$100,000.00;
- (i) the grant of rights to produce, license, market, or sell 3PL Group's products to any other person that limit 3PL Group's exclusive right to develop, distribute, market or sell any of its products;
- (j) containing a covenant not to compete granted by any member of the 3PL Group in favour of a third party that materially prohibits or restricts any member of the 3PL Group from engaging in business anywhere in the world; or
- (k) which is entered into other than in the ordinary course of business and which may otherwise be expected to be material to the operations of the 3PL Group.

New 3P Learning Equity Incentive Plan means the FY21 3P Equity Incentive Plan also known as the FY21 3PEP Plan.

Outgoing Directors means Samuel Weiss, Roger Amos, Claire Hatton and Mark Lamont.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPS Register means the register established under section 147 of the PPSA.

Record Date means 5.00pm on the 2nd Business Day following the Effective Date or such another date as 3PL and IXL agree.

Register means the share register of 3PL and **Registry** has a corresponding meaning.

Regulator's Draft means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

Regulatory Approval means any approval of a Regulatory Authority to the Scheme or any aspect of it which IXL, acting reasonably, determines is necessary or desirable to implement the Scheme.

Regulatory Authority includes:

- (a) ASX, ACCC, ASIC and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

Related Body Corporate has the meaning it has in the Corporations Act.

Relevant Interest has the meaning it has in sections 608 and 609 of the Corporations Act.

Representative means, in relation to a party:

- (a) a Related Body Corporate; and
- (b) an Authorised Officer, director, officer, employee, agent, auditor, financier, adviser, partner, consultant, joint venturer, contractor or sub-contractor of the party or of a Related Body Corporate of that party.

Reverse Break Fee means \$1,900,685.00.

Scheme means the scheme of arrangement under part 5.1 of the Corporations Act under which all the 3PL Shares will be transferred to IXL substantially in the form of Annexure A together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to 3PL Shareholders which includes the Scheme, an explanatory statement complying with the requirements of the Corporations Act and notices of meeting and proxy forms.

Scheme Consideration means the consideration payable by IXL for the transfer of 3PL Shares held by a Scheme Participant to IXL, being, in respect of each 3PL Share, \$1.35.

Scheme Meeting means the meeting to be convened by the Court at which 3PL Shareholders will vote on the Scheme.

Scheme Participants means each person who is a 3PL Shareholder at the Record Date.

Second Court Date means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

Specified Event means an event, condition, occurrence, change, matter or circumstances that:

- (a) occurs after the date of this document;
- (b) occurs before the date of this document but is only announced or publicly disclosed after the date of this document; or
- (c) will or is likely to occur after the date of this document and which has not been publicly announced prior to the date of this document.

Subsidiary of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; and
- (b) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares or would be, if the first entity was required to prepare consolidated financial statements.

A trust may be a subsidiary (and an entity may be a subsidiary of a trust) if it would have been a subsidiary under this definition if that trust were a body corporate. For these purposes, a unit or other beneficial interest in a trust is to be regarded as a share.

Superior Proposal means a publicly announced Competing Proposal which the 3PL Board, acting in good faith, and after taking advice from its legal and financial advisers, determines is:

- (a) reasonably capable of being completed in a timely manner taking into account all aspects of the Competing Proposal;
- (b) reasonably likely to be implemented within 6 months, having regard to the proponents and conditionality of the Competing Proposal; and
- (c) if implemented substantially in accordance with its terms, more favourable to 3PL Shareholders than the Scheme, taking into account all terms and conditions of the Competing Proposal.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them.

Timetable means the timetable set out in Schedule 1 subject to any amendments agreed by the parties in writing.

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

- (a) one or more representatives from each of 3PL and IXL;

- (b) one or more representatives from one or more legal and financial advisers of 3PL and IXL; and
- (c) anyone else the parties may agree from time to time.

Treasurer means the Treasurer of Australia.

Voting Eligibility Date means the time and date for determining eligibility to vote at the Scheme Meeting.

Voting Power has the meaning given in section 610 of the Corporations Act.

1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney, Australia time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (m) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document;
- (n) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document;

- (o) if an act under this document to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (p) if a day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day; and
- (q) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

2 Agreement to propose and implement Scheme

2.1 3PL to propose Scheme

3PL agrees to propose the Scheme on and subject to the terms and conditions of this document.

2.2 Agreement to implement Scheme

The parties agree to implement the Scheme on the terms and conditions of this document.

3 Conditions Precedent

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties to complete the implementation of the Scheme (including the obligations of IXL under clause 5.3 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	<p>(FIRB approval) before 5.00pm on the Business Day before the Second Court Date either:</p> <ul style="list-style-type: none"> (i) the Treasurer (or the Treasurer's delegate) has provided a written no objections notification to the Scheme either without conditions or with conditions acceptable to IXL (acting reasonably); or (ii) following notice of the proposed Scheme having been given by IXL to the Treasurer under the FIRB Act, the Treasurer has ceased to be empowered to make any order under Part 3 of the FIRB Act because the applicable time limit on making orders and decisions under the FIRB Act has expired. 	Cannot be waived	IXL
(b)	<p>(Independent Expert) the Independent Expert issues an Independent Expert's Report which concludes that the Scheme is in the best interests of 3PL Shareholders before the time when the</p>	3PL	Both

Condition Precedent	Party entitled to benefit	Party responsible
(c) (Shareholder approval) 3PL Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act.	Cannot be waived	3PL
(d) (Court approval) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	3PL
(e) (Regulatory intervention) no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme and none of those things is in effect as at 8.00am on the Second Court Date.	Both	Both
(f) (No 3PL Prescribed Event) no 3PL Prescribed Event occurs between the date of this document and 8.00am on the Second Court Date.	IXL	3PL
(g) (No Material Adverse Effect) no Material Adverse Effect occurs between the date of this document and 8.00am on the Second Court Date.	IXL	3PL
(h) (3PL Representations and Warranties) the 3PL Representations and Warranties are true and correct in all material respects at all times between the date of this document and as at 8.00am on the Second Court Date, except where expressed to be operative at another date.	IXL	3PL
(i) (IXL Representations and Warranties) the IXL Representations and Warranties are true and correct in all material respects at all times between the date of this document and as at 8.00am on the Second Court Date, except where expressed to be operative at another date.	3PL	IXL

3.2 Reasonable endeavours

Each of 3PL and IXL agree to use all reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1):
 - (i) is satisfied as soon as practicable after the date of this document; and
 - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being satisfied.

3.3 Regulatory matters

Without limiting clause 3.2:

- (a) **(applying for FIRB approval)** IXL must promptly apply for approval under the FIRB Act contemplated by the Condition Precedent in clause 3.1(a) and provide 3PL with a copy of that application (provided that any commercially sensitive information may be redacted from the copy provided);
- (b) **(Regulatory Approvals process)** each party must take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information at the earliest practicable time;
- (c) **(representation)** each party has the right to be represented and make submissions at any meeting with any Regulatory Authority relating to a Regulatory Approval;
- (d) **(consultation)** each party must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval and:
 - (i) provide the other party with drafts of any material written communications to be sent to a Regulatory Authority and make any amendments as the other party reasonably requires; and
 - (ii) provide copies of any material written communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so.

For the avoidance of doubt, neither party is required to disclose commercially sensitive information in relation to the application for a Regulatory Approval to the other party and the party applying for a Regulatory Approval may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant.

3.4 Conditional approvals

Any approvals required under the Conditions Precedent must be obtained either on an unconditional basis or subject to conditions that are acceptable to IXL (acting reasonably), provided that the parties acknowledge that the tax conditions published at the date of this document in Attachment B to Guidance Note 47 issued by FIRB are accepted if imposed on the no objections notifications.

3.5 Waiver of Conditions Precedent

- (a) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.5 may do so in its absolute discretion.
- (c) If either 3PL or IXL waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.5, then:
 - (i) subject to clause 3.5(c)(ii), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
 - (ii) if the waiver of the Condition Precedent is itself conditional and the other party:
 - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.5(c)(i); or
 - (B) does not accept the condition, the Condition Precedent has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
 - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
 - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

3.6 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other party informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent which it is responsible for satisfying;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent which it is responsible for satisfying, or of any event which will prevent the Condition Precedent being satisfied;
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.6(b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question; and
- (d) **(Second Court Date)** where it considers that a Condition Precedent (which the other party is responsible for satisfying) may not be satisfied

by the Second Court Date promptly give the other party notice of that view.

3.7 Deferral of Second Court Date

- (a) If a Condition Precedent (other than a Condition Precedent in clause 3.1(c)) is not satisfied by the time and date specified for that Condition Precedent (and has not been waived in accordance with this document), then unless there is no reasonable prospect that the Condition Precedent will be satisfied before the End Date, 3PL must make an application to defer the Second Court Date until a time (being no later than the Business Day before the End Date) reasonably required to enable the relevant Condition Precedent to be satisfied.
- (b) If the Condition Precedent in clause 3.1(c) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable.

3.8 Consultation on failure of Condition Precedent

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent;
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document); or
- (c) the Scheme has not become Effective by the End Date,

the parties must consult in good faith with a view to determine whether:

- (d) the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

3.9 Failure to agree

If the parties are unable to reach agreement under clause 3.8 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (a) subject to clause 3.9(b), either party may terminate this document (and that termination will be in accordance with clause 13.1(g)(i)); or
- (b) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause 13.1(g)(ii)),

in each case before 8.00am on the Second Court Date.

A party will not be entitled to terminate this document under this clause if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party.

4 Outline of Scheme

4.1 Scheme

3PL must propose a scheme of arrangement under which:

- (a) all the 3PL Shares held by Scheme Participants at the Record Date will be transferred to IXL; and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration.

4.2 Scheme Consideration

Subject to and in accordance with this document and the Scheme, each Scheme Participant is entitled to receive the Scheme Consideration in respect of each 3PL Share held by that Scheme Participant.

4.3 Payment of Scheme Consideration

Subject to this document and the Scheme, IXL undertakes to 3PL (in its own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to IXL of each 3PL Share held by a Scheme Participant, IXL will, on the Implementation Date:

- (a) accept that transfer; and
- (b) pay or procure the payment of the Scheme Consideration in accordance with the Scheme.

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

4.4 Employee incentives

- (a) 3PL must ensure that, by no later than the Effective Date, there are no outstanding Employee Options or Employee Share Rights.
- (b) In order to comply with its obligation under clause 4.4(a), 3PL must:
 - (i) cause some or all of the outstanding Employee Options and Employee Share Rights to vest in accordance with their terms and, following vesting, cause the relevant number of 3PL Shares to be transferred or issued (as applicable) to the relevant former holder in sufficient time to allow the relevant former holders of the relevant Employee Options and Employee Share Rights (as applicable) to participate in the Scheme; and
 - (ii) take any action as may be necessary to cancel any outstanding Employee Options and Employee Share Rights which it does not cause to vest in accordance with clause 4.4(b)(i) (if any).

4.5 No amendment to the Scheme without consent

3PL must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of IXL (not to be unreasonably withheld or delayed).

5 Implementation

5.1 General obligations

3PL and IXL must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

5.2 3PL's obligations

3PL must take all reasonable steps to implement the Scheme on a basis consistent with this document as soon as reasonably practicable and must:

- (a) **(announce directors' recommendation)** following execution of this document, announce, in a form agreed between 3PL and IXL (on the basis of statements made to 3PL by each member of the 3PL Board) that:
 - (i) the 3PL Board intends to unanimously recommend to Scheme Participants that the Scheme be approved; and
 - (ii) each 3PL Board member who has a Relevant Interest in 3PL Shares, intends to vote, or cause to be voted, those 3PL Shares in favour of the Scheme,subject to:
 - (iii) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of 3PL Shareholders; and
 - (iv) there being no Superior Proposal;
- (b) **(preparation of Scheme Booklet)** subject to clause 5.2(e)(i), as soon as practicable after the date of this document, prepare and despatch the Scheme Booklet:
 - (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules; and
 - (ii) which includes a statement by the 3PL Board:
 - (A) unanimously recommending that 3PL Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the

best interests of 3PL Shareholders and there being no Superior Proposal; and

- (B) that each 3PL Board member who has a Relevant Interest in 3PL Shares intends to vote, or cause to be voted, those 3PL Shares in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of 3PL Shareholders and there being no Superior Proposal;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable (and any update to the report);
- (d) **(section 411(17)(b) statement)** apply to ASIC for a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (e) **(consultation with IXL)** consult with IXL as to the content and presentation of:
 - (i) the Scheme Booklet, which includes:
 - (A) allowing IXL a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to IXL);
 - (B) taking any reasonable comments made by IXL into account in good faith when producing a revised draft of the Scheme Booklet;
 - (C) providing to IXL a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and
 - (D) obtaining IXL's consent to the inclusion of the IXL Information (including in respect of the form and context in which the IXL Information appears in the Scheme Booklet); and
 - (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from IXL prior to filing those documents with the Court;
- (f) **(lodgement of Regulator's Draft)**
 - (i) no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet ("**Regulator's Draft**") to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to IXL immediately thereafter; and

- (ii) keep IXL reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with IXL in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to IXL Information, 3PL must not take any steps to address them without IXL's prior written consent, not to be unreasonably withheld);
- (g) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, 3PL becomes aware:
 - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
 - (ii) of information that is required to be disclosed to 3PL Shareholders under any applicable law but was not included in the Scheme Booklet,

promptly consult with IXL in good faith as to the need for, and the form of, any supplementary disclosure to 3PL Shareholders, and make any disclosure that 3PL considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 12.1(g) if it applied as at the date that information arose;

- (h) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing 3PL to convene the Scheme Meeting;
- (i) **(send Scheme Booklet)** send the Scheme Booklet to 3PL Shareholders as soon as practicable after the Court orders 3PL to convene the Scheme Meeting;
- (j) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (k) **(director's voting)** use its reasonable endeavours to procure that each member of the 3PL Board votes, or causes to be voted, any 3PL Shares in which they have a Relevant Interest in favour of the Scheme, subject to the Independent Expert continuing to conclude that the relevant Scheme is in the best interests of the 3PL Shareholders and there being no Superior Proposal;
- (l) **(Register changes)** inform IXL as soon as practicable and in any event within 2 Business Days of any changes to the Register involving a 3PL Shareholder increasing its Voting Power in 3PL Shares by 1% or more;
- (m) **(Registry details)** subject to the terms of the Scheme, provide:
 - (i) all necessary information about the 3PL Shareholders which IXL requires in order to solicit votes at the Scheme Meeting; and
 - (ii) all necessary directions to the Registry promptly to provide any information that IXL requires in relation to the Register, including any sub-register, and where requested by IXL, 3PL must procure whatever information to be provided in the electronic form as is reasonably requested by IXL;
- (n) **(proxy solicitation)** if requested by IXL, retain a proxy solicitation services firm to assist 3PL with the solicitation of votes at the Scheme

Meeting and provide IXL with copies of or access to information regarding the Scheme Meeting generated by that firm, including promptly advising IXL, at times that IXL may reasonably request and at least on a daily basis on each of the last 5 Business Days prior to the date of the Scheme Meeting, as to the aggregate tally of the votes received by 3PL in respect of the Scheme;

- (o) **(Compliance with laws)** do everything reasonably within its power to ensure that the Scheme is effected in accordance with all applicable laws and regulations;
- (p) **(Court approval)** subject to all Conditions Precedent, other than paragraph (d) in clause 3.1 being satisfied or waived in accordance with this document, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (q) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
 - (i) a certificate signed by one of its directors and made in accordance with a resolution of its board confirming (in respect of matters within 3PL's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.1 (other than paragraph (d)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to IXL by 5.00pm on the Business Day prior to the Second Court Date; and
 - (ii) any certificate provided to it by IXL under clause 5.3(f);
- (r) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the 3PL Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act on the day after that office copy is received (or any later date agreed in writing by IXL);
- (s) **(Register)** close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;
- (t) **(instruments of transfer)** subject to IXL satisfying its obligations under clause 4.3, on the Implementation Date:
 - (i) execute proper instruments of transfer and effect the transfer of 3PL Shares to IXL in accordance with the Scheme; and
 - (ii) register all transfers of 3PL Shares held by Scheme Participants to IXL;
- (u) **(Suspension of trading)** apply to ASX to suspend trading in 3PL Shares with effect from the close of trading on the Effective Date;
- (v) **(listing)** take all reasonable steps to maintain 3PL's listing on ASX, notwithstanding any suspension of the quotation of 3PL Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC, and take any action as reasonably requested by IXL to obtain the approval of ASX to the de-listing of 3PL following implementation of the Scheme; and
- (w) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

5.3 IXL's obligations

IXL must take all reasonable steps to assist 3PL to implement the Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(IXL Information)**
 - (i) prepare and promptly provide to 3PL for inclusion in the Scheme Booklet the IXL Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet;
 - (ii) provide 3PL with drafts of the IXL Information in a timely manner and take into account in good faith all reasonable comments from 3PL and its Representatives on those drafts, provided that such comments are provided to IXL in a timely manner; and
 - (iii) as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, subject to clause 5.2(e)(i)(A) and (B), confirm in writing to 3PL that it consents to the inclusion of the IXL Information included in the Scheme Booklet as being in a form appropriate for despatch to 3PL Shareholders, subject to approval of the Court;
- (b) **(further IXL Information)** promptly:
 - (i) advise 3PL in writing if it becomes aware:
 - (A) of information which should have been but was not included in the IXL Information in the Scheme Booklet (including if known at the time), and promptly provide 3PL with the omitted information; or
 - (B) that the IXL Information in the Scheme Booklet is misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide IXL with any information required to correct the misleading or deceptive statements; and
 - (ii) provide to 3PL any further or new IXL Information as may arise after the Scheme Booklet has been sent to 3PL Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the IXL Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 12.4(g) if it applied as at the date on which the further or new IXL Information arose;
- (c) **(assistance with Scheme Booklet and Court documents)** provide any assistance or information reasonably requested by 3PL or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to 3PL Shareholders) or any Court documents, including reviewing the drafts of the Scheme Booklet prepared by 3PL and providing reasonable comments in a timely manner on those drafts;
- (d) **(Independent Expert information)** provide any assistance or information reasonably requested by 3PL or its Representatives, or by

the Independent Expert in connection with the preparation of the Independent Expert's Report;

- (e) **(Deed Poll)** prior to the Scheme Booklet being despatched to 3PL Shareholders, sign and deliver the Deed Poll;
- (f) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to 3PL for provision to the Court at the hearing on that date a certificate signed by one of its directors and made in accordance with a resolution of its board confirming (in respect of matters within IXL's knowledge) whether or not the Conditions Precedent for which IXL is responsible, as noted in clause 3.1 (other than paragraph (d)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to 3PL by 5.00pm on the Business Day prior to the Second Court Date;
- (g) **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the 3PL Shares as contemplated by clause 4.3(a);
- (h) **(Scheme Consideration)** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4.3(b) and the terms of the Scheme; and
- (i) **(promote the Scheme)** participate in efforts reasonably requested by 3PL to promote the merits of the Scheme and the Scheme Consideration, including, subject to applicable law and regulatory requirements, meeting with key 3PL Shareholders at the reasonable request of 3PL.

5.4 Scheme Booklet responsibility statement

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

- (a) 3PL has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the IXL Information, the Independent Expert's Report or any other report or letter issued to 3PL by a third party; and
- (b) IXL has prepared, and is responsible for, the IXL Information in the Scheme Booklet (and no other part of the Scheme Booklet) and that 3PL and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that IXL has prepared and has responsibility for.

5.5 Disagreement on content of Scheme Booklet

If IXL and 3PL 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 the IXL Information contained in the Scheme Booklet, 3PL will make any amendments as IXL reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the 3PL Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

5.6 Verification

Each party must undertake appropriate verification processes for the information supplied by that party in the Scheme Booklet.

5.7 Conduct of Court proceeding

3PL and IXL are entitled to separate representation at all Court proceedings relating to the Scheme. This document does not give 3PL or IXL any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent. 3PL and IXL must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this document.

5.8 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, IXL and 3PL must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise; or
- (b) an independent senior counsel of the New South Wales bar advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this document in accordance with clause 13.1(g)(iii).

5.9 Transaction Implementation Committee

- (a) The parties must establish a Transaction Implementation Committee as soon as reasonably practical after the date of this document. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to:
 - (i) facilitate satisfaction of the Conditions Precedent;
 - (ii) produce the Scheme Booklet;
 - (iii) implement the Scheme; and
 - (iv) subject to clause 5.10, ensure the smooth transition of the management of the business and affairs of the 3PL Group to IXL following the implementation of the Scheme.
- (b) The Transaction Implementation Committee will meet in person or by telephone as and when deemed necessary from the date of this document until the Scheme is fully implemented.
- (c) The Transaction Implementation Committee will consider all matters relevant to ensuring that the Scheme becomes Effective, including the following:
 - (i) the structure and timing for accomplishing the Scheme in accordance with the Timetable; and
 - (ii) communication strategies, including with any Regulatory Authority, 3PL employees, 3PL Shareholders and the media.
- (d) Notwithstanding the above:

- (i) each party may act in its own interests; and
- (ii) each member of the Transaction Implementation Committee may act in the interests of the party they represent in participating in the Transaction Implementation Committee.

5.10 No partnership or joint venture

Subject to this document, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

6 3PL Board recommendation

6.1 Best endeavours

3PL must use its best endeavours to procure that none of its directors withdraws, or changes their recommendation in favour of the Scheme, unless:

- (a) there is a Superior Proposal; or
- (b) the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of 3PL Shareholders.

6.2 Withdrawal or change of recommendation

Without limiting clause 9, if a member of the 3PL Board proposes to withdraw or change its recommendation:

- (a) 3PL must notify IXL in writing as soon as reasonably practicable and in any event within 1 Business Day; and
- (b) the parties must consult in good faith for 2 Business Days after the date on which the notification in sub clause (a) is given to consider and determine whether the recommendation in place at the time can be maintained. The recommendation cannot be withdrawn or changed until the end of the consultation period.

7 Personnel

7.1 Release of IXL and IXL directors and officers

- (a) Subject to the Corporations Act, 3PL releases its rights, and agrees with IXL that it will not make a claim, against any IXL Indemnified Party (other than IXL and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:
 - (i) any breach of any representations and warranties of IXL or any other member of the IXL Group in this document; or
 - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the IXL Indemnified Party has not acted in good faith or has engaged in wilful misconduct, gross negligence or fraud. Nothing in this clause 7.1 limits 3PL's rights to terminate this document under clause 13.1.

- (b) IXL receives and holds the benefit of this clause to the extent it relates to each IXL Indemnified Party on behalf of each of them.

7.2 Release of 3PL and 3PL directors and officers

- (a) Subject to the Corporations Act, IXL releases its rights, and agrees with 3PL that it will not make a claim, against any 3PL Indemnified Party (other than 3PL and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:
 - (i) any breach of any representations and warranties of 3PL or any other member of the 3PL Group in this document; or
 - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the 3PL Indemnified Party has not acted in good faith or has engaged in wilful misconduct, gross negligence or fraud. Nothing in this clause 7.2 limits IXL's rights to terminate this document under clause 13.1.

- (b) 3PL receives and holds the benefit of this clause to the extent it relates to each 3PL Indemnified Party on behalf of each of them.

7.3 Appointment/retirement of 3PL directors

On the Implementation Date, but subject to the Scheme Consideration having been paid to the Scheme Participants and receipt by 3PL of signed consents to act, 3PL must use its reasonable endeavours to:

- (a) cause the appointment of each Incoming Director to the 3PL Board; and
- (b) procure that each of the Outgoing Directors retire from the 3PL Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against 3PL,

in each case, in accordance with the 3PL Constitution, the Corporations Act and the Listing Rules.

7.4 Directors' and officers' insurance

Subject to the Scheme becoming Effective and subject to the Corporations Act and clause 7.5, IXL undertakes in favour of 3PL and each other person who is a 3PL Indemnified Party that it will:

- (a) for a period of 7 years from the Implementation Date, ensure that the constitutions of 3PL and each other member of the 3PL Group continue to contain the rules that are contained in those constitutions at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the IXL Group; and
- (b) procure that 3PL and each other member of the 3PL Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that the directors' and officers' run-off insurance cover for those directors and officers is maintained, subject to clause 7.5, for a period of 7 years from the retirement date of each director and officer.

7.5 Period of undertaking

The undertakings contained in clause 7.4 are given:

- (a) subject to any Corporations Act restriction or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly; and
- (b) until the earlier of the end of the relevant period specified in that clause or the relevant member of the 3PL Group ceasing to be part of the IXL Group.

7.6 Benefit of undertaking for 3PL Group

3PL acknowledges that it receives and holds the benefit of clause 7.4 to the extent it relates to each director and officer of a member of the 3PL Group on behalf of each of them.

7.7 IXL acknowledgement regarding insurance

IXL acknowledges that, notwithstanding any other provision of this document, 3PL may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to a period of 7 years, subject to such the terms of that run-off insurance being acceptable to IXL (acting reasonably), and that any actions to facilitate that insurance or in connection therewith will not be a 3PL Prescribed Event or breach any provision of this document.

8 Conduct of business

8.1 Overview

From the date of this document up to and including the Implementation Date, 3PL must, and must cause each member of the 3PL Group to, conduct its business:

- (a) in the usual and ordinary course;
- (b) in the manner as previously conducted in the 12 months prior to the date of this document and in accordance with strategy approved by the 3PL Board prior to the date of this document as Disclosed to IXL; and
- (c) in accordance with all applicable laws in all material respects,

and must reasonably consult with IXL on the manner of conduct of the business.

8.2 Specific obligations

Without limiting clause 8.1 and other than with the prior approval of IXL (which approval must not be unreasonably withheld or delayed) or as required by this document, 3PL must, during the period contemplated by clause 8.1, use all reasonable endeavours to ensure that 3PL and each member of the 3PL Group:

- (a) **(business and assets)** maintains the condition of its business and assets;
- (b) **(officers and employees)** keeps available the services of:
 - (i) its officers; and
 - (ii) employees with a base salary of \$200,000 or higher,

provided that nothing in this clause 8.2 restricts any member of the 3PL Group from implementing any redundancies of employees with a base salary of below \$200,000 in the ordinary course and in a manner consistent with historical practices of the 3PL Group over the 24 month period preceding the date of this document;

- (c) **(relationships)** preserves its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings; and
- (d) **(cash)** ensures there is no material decrease in the amount of cash in 3PL other than as:
 - (i) used in the ordinary course of business and consistent with forecast cash utilisation; or
 - (ii) a result of reasonable costs incurred directly in relation to the transactions contemplated by the Scheme.

8.3 Prohibited actions

Other than with the prior approval of IXL or as required by this document, 3PL must not, and must ensure that each member of the 3PL Group does not, during the period referred to in clause 8.1:

- (a) **(Material Contracts)** enter into, amend, modify, accelerate or terminate a Material Contract;
- (b) **(competition)** enter into any contract or commitment restraining any member of the 3PL Group from competing with any person or conducting activities in any market;
- (c) **(share capital)** issue, deliver, sell, pledge, or otherwise encumber any of its share capital, any other equity or voting interests or any securities convertible into, or exchangeable for, or any options, warrants, calls, or rights to acquire or receive, any such shares, interests, or securities or any share appreciation rights, phantom share awards, or other rights that are linked in any way to the price of 3PL Shares or the value of 3PL or any part thereof (other than the issuance of 3PL Shares as permitted by clause 4.4);
- (d) **(indebtedness)** repurchase, prepay, or incur any indebtedness or guarantee any indebtedness of another person, in each case, in excess of \$200,000.00 and excluding indebtedness resulting from the extension or renewal of facilities existing as at the date of this document, or issue or sell any debt securities or options, warrants, calls, or other rights to acquire any debt securities of any member of the 3PL Group, guarantee any debt securities of another person, enter into any “keep well” or other agreement to maintain the financial condition of another person, or enter into any arrangement having the economic effect of any of the foregoing;
- (e) **(loans)** make any loans, advances, or capital contributions to, or investments in, any other person, other than a member of the 3PL Group;
- (f) **(derivative instruments)** enter into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;

- (g) **(related party transactions)** enter into any transaction with any related party of 3PL as defined in section 228 of the Corporations Act which requires 3PL shareholder approval under section 208 of the Corporations Act;
- (h) **(acquisitions or disposals)** acquire or dispose of (or agree to acquire or dispose of) any business, entity, undertaking or material assets;
- (i) **(capital expenditures)** make any capital expenditures, or incur any obligations or liabilities in connection therewith, except pursuant to existing contracts or that, in the aggregate, would not exceed:
 - (i) in the case of property, plant and equipment, \$500,000.00 during any fiscal quarter and
 - (ii) in any other case, \$1,000,000.00 during any fiscal quarter;
- (j) **(leases)** enter into, amend, or terminate any lease of real property (excluding any sub-lease) (whether as a lessor or lessee) or fail to exercise any right to renew any lease of real property, except:
 - (i) in the ordinary course of business consistent with past practice;
 - (ii) if the financial commitment for any new lease is below \$500,000.00; or
 - (iii) if a terminated lease is replaced with an appropriate lease;
- (k) **(assets)** grant a license in, or otherwise subject to any Encumbrance or otherwise dispose of any of its material properties or assets, other than the granting of non-exclusive licenses in the ordinary course of business consistent with past practice;
- (l) **(accounting policies)** change any accounting policy applied by a member of the 3PL Group to report their financial position other than any change required by a change in accounting standards;
- (m) **(tax)** settle or compromise or make any concessions in relation to any Tax claims, liabilities or disputes or make any election in relation to Tax, or otherwise engage in any transaction, act or event which gives rise to any Tax liability which is outside the ordinary course of business as it was conducted prior to the date of this document;
- (n) **(legal proceedings)** (i) settle any legal proceedings, claim, investigation, arbitration or other like proceedings where the amount claimed exceeds \$500,000.00, (ii) waive, release, grant, or transfer any right of material value other than in the ordinary course of business consistent with past practice, or (iii) commence any legal proceeding, claim or arbitration;
- (o) **(employment agreements)** increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus (other than in accordance with existing arrangements and in the ordinary course) or issue any securities or options to, or otherwise materially vary the employment agreements with, any of its directors or employees;
- (p) **(accelerate rights)** accelerate the rights of any of its directors or employees to benefits of any kind;
- (q) **(termination payments)** pay a director, executive or employee a termination or retention payment, but excluding any redundancy

payment in connection with any redundancies of employees with a base salary of below \$200,000 made in the ordinary course and consistent with historical practices of the 3PL Group over the 24 month period preceding the date of this document;

- (r) **(employees)** hire or terminate (other than for cause) any director, executive or employee with a base salary of \$200,000 or higher;
- (s) **(adviser arrangements)** amend in any material respect any arrangement with its advisers in respect of the transactions contemplated by this document;
- (t) **(dividends)** (i) announce, declare, determine or pay any dividends, (ii) split, combine, or reclassify any of its share capital or other equity or voting interests, or issue or authorize the issuance of any other securities in respect of, in lieu of, or in substitution for shares of its share capital or other equity or voting interests, (iii) purchase, redeem, or otherwise acquire any share capital or any other securities of any member of the 3PL Group or any options, warrants, calls, or rights to acquire any such shares or other securities (including any Employee Options) or (iv) take any action that would result in any change of any term (including any conversion price thereof) of any debt security of any member of the 3PL Group;
- (u) **(intellectual property)** sell, license, transfer, assign, abandon, dedicate to the public, permit to lapse or otherwise dispose of any intellectual property assets that are material to the business of any member of the 3PL Group, except for non-exclusive licenses of the 3PL Group's commercial software offerings to customers in the ordinary course of business;
- (v) **(information technology)** take any action in respect of its information technology systems which would have a material impact on those systems; or
- (w) **(agree)** agree to do any of the matters set out above.

8.4 Exceptions to conduct of business provisions

Nothing in this clause 8 restricts the ability of 3PL to take any action which:

- (a) is expressly required or permitted by this document or the terms of the Scheme;
- (b) is required by law, the rules of a recognised stock exchange or Regulatory Authority;
- (c) has been Disclosed to IXL (in the case of clause 8.3(c) and 8.3(q), only as Disclosed in Document 05.06.01 in the 3PL Data Room);
- (d) has been agreed to in writing by IXL (acting reasonably, provided that any request for consent made by 3PL is in writing and includes reasonable details of the matter (including any material terms));
- (e) is undertaken in connection with the replacement of its distributors in the ordinary course and consistent with historical practices of the 3PL Group over the 24 month period preceding the date of this document; or
- (f) ensures that directors' and officers' run-off insurance cover for the directors and officers of 3PL and each member of the 3PL Group is maintained in accordance with clause 7.7.

8.5 Access to people and 3PL Information

Between the date of this document and the Implementation Date, 3PL must:

- (a) as soon as reasonably practicable, provide IXL and its officers and advisers with any documents, records, and other information reasonably requested by them for the purposes set out in clause 8.5(b) (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws, or where 3PL reasonably considers that the provision of such documents, records or other information would result in the loss of legal professional privilege); and
- (b) upon reasonable notice, provide IXL and its officers and advisers with reasonable access to 3PL's executive officers, key management personnel and advisers which IXL reasonably requires for the sole purposes of:
 - (i) understanding 3PL's financial position (including its cash flow and working capital position), trading performance and management control systems;
 - (ii) implementing the Scheme;
 - (iii) preparing for carrying on the business of 3PL following implementation of the Scheme; and
 - (iv) any other purpose which is agreed in writing between the parties,

provided it does not place an unreasonable burden on the ability of 3PL to run its business.

8.6 Change of Control

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

- (a) seek to identify any change of control or similar provisions in any Material Contract which may be triggered by the implementation of the Scheme (**Change of Control Requirements**); and
- (b) use all reasonable endeavours to obtain any consents required in accordance with the terms of any identified Change of Control Requirements, and, to promptly seek those consents as soon as practicable and in any event before the Second Court Date.

9 Exclusivity

9.1 No-shop

During the Exclusivity Period, 3PL must ensure that neither it nor any of its Representatives directly or indirectly, except with the prior written consent of IXL:

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of the foregoing,

with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Proposal.

9.2 No-talk

Subject to clause 9.4, during the Exclusivity Period, except with the prior written consent of IXL, 3PL must not, and must ensure that its Representatives do not, directly or indirectly:

- (a) negotiate or enter into, a Competing Proposal; or
- (b) participate in or resume (where discussions have ceased under clause 9.9) negotiations or discussions in relation to, or which may reasonably be expected to lead to, a Competing Proposal,

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by 3PL or any of its Representatives or the person has publicly announced the Competing Proposal or any offer, proposal or expression of interest from any person in relation to a Competing Proposal.

9.3 Due diligence information

- (a) Subject to clause 9.4, during the Exclusivity Period, except with the prior written consent of IXL, 3PL must not, and must ensure that its Representatives do not, directly or indirectly:
 - (i) solicit, invite, initiate, encourage, facilitate or permit any other person other than IXL to undertake due diligence investigations on 3PL or any of its Related Bodies Corporate or any of their respective businesses or operations, in connection with the person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal; or
 - (ii) make available to any other person, or permit any other person to receive, other than IXL (in the course of due diligence investigations or otherwise), any non-public information relating to 3PL or any of its Related Bodies Corporate or any of their respective businesses or operations, in connection with the person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) 3PL must not, during the Exclusivity Period, provide access to due diligence information to any person who has not agreed to a standstill on terms no more favourable to that person than those applicable to IXL under the Exclusivity Agreement.

9.4 Fiduciary exception

Clauses 9.2, 9.3 and 9.6 do not apply to the extent that they restrict 3PL or the 3PL Board from taking or refusing to take any action with respect to a genuine Competing Proposal (which was not solicited, invited, encouraged or initiated by 3PL in contravention of clause 9.1) provided that the 3PL Board has determined, in good faith and acting reasonably that:

- (a) after consultation with its financial advisors, that Competing Proposal is, or could reasonably be expected to become, a Superior Proposal; and
- (b) after receiving a written legal opinion from Gadens or another leading commercial law firm or senior counsel (who is a reputable adviser experienced in transactions of this nature) that compliance with clauses 9.2, 9.3 or 9.6 (as applicable) without relying on this clause 9.4 would be reasonably likely to constitute a breach of the 3PL Board's fiduciary or statutory obligations.

9.5 Further exceptions

Nothing in this document prevents 3PL from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to its business generally; or
- (b) taking any action in good faith to comply with its continuous disclosure obligations.

9.6 Notice of approaches

- (a) Subject to clause 9.4, during the Exclusivity Period, 3PL must promptly (and in any event, within 48 hours) inform IXL in writing if it or any of its Representatives:
 - (i) receives any unsolicited approach with respect to any Competing Proposal and must disclose to IXL all material details of the Competing Proposal, including details of the proposed bidder or acquirer;
 - (ii) receives any request for information relating to 3PL or any of its Related Bodies Corporate or any of their respective businesses or operations or any request for access to any non-public information of 3PL or any of its Related Bodies Corporate or any of their respective businesses or operations, which 3PL has reasonable grounds to suspect may relate to a current or future Competing Proposal; and
 - (iii) provides any information relating to 3PL or any of its Related Bodies Corporate or any of their respective businesses or operations to any person in connection with or for the purposes of a current or future Competing Proposal.
- (b) A notice given under clause 9.6(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 paragraph 9.6(a)(i), or who made the relevant request for information referred to in paragraph 9.6(a)(ii); and
 - (ii) the material terms and conditions (including price, conditions precedent, timetable and break or reimbursement fee (if any), or any other similar terms) of any Competing Proposal or any proposed Competing Proposal (to the extent known).
- (c) During the Exclusivity Period, 3PL must promptly provide IXL 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 3PL, its Related Bodies Corporate, or any of their respective businesses and operations made available or received by any person in connection with the person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which differs materially from, or is more extensive than, the information which may have been provided to IXL.

9.7 Matching right

(a) Without limiting clauses 9.1 and 9.2, during the Exclusivity Period, 3PL:

- (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party, 3PL or both proposes or propose to undertake or give effect to an actual, anticipated, proposed or potential Competing Proposal; and
- (ii) must use its best endeavours to procure that none of the members of the 3PL Board publicly recommend an actual, anticipated, proposed or potential Competing Proposal (or recommend against the Scheme),

unless:

- (iii) the 3PL Board acting in good faith and in order to satisfy what the 3PL Board considers to be its statutory or fiduciary duties (having received a written opinion from a leading commercial law firm or senior counsel who is a reputable adviser experienced in transactions of this nature), determines that the Competing Proposal would be or would be likely to be an actual, anticipated, proposed or potential Superior Proposal;
 - (iv) 3PL has provided IXL with the material terms and conditions of the actual, anticipated, proposed or potential Competing Proposal, including price and the identity of the third party making the actual, anticipated, proposed or potential Competing Proposal;
 - (v) 3PL has given IXL at least 3 Business Days after the date of the provision of the information referred to in clause 9.7(a)(iv) to provide a matching or superior proposal to the terms of the actual, anticipated, proposed or potential Competing Proposal; and
 - (vi) IXL has not provided 3PL with a matching or superior proposal to the terms of the actual, anticipated, proposed or potential Competing Proposal by the expiry of the 3 Business Day period referred to in clause 9.7(a)(v).
- (b) 3PL acknowledges and agrees that each successive modification of any actual, anticipated, proposed or potential Competing Proposal will constitute a new actual, anticipated, proposed or potential Competing Proposal for the purposes of the requirements under clause 9.6 and clause 9.7 and accordingly, during the Exclusivity Period, 3PL must comply with clause 9.6 and clauses 9.7(a)(i) and 9.7(a)(ii) in respect of any new actual, anticipated, proposed or potential Competing Proposal unless clauses 9.7(a)(iii) to 9.7(a)(vi) apply.

9.8 IXL counterproposal

If IXL proposes to 3PL a new proposal that constitutes a matching or superior proposal to the Competing Proposal (“**Counterproposal**”) by the expiry of the 3 Business Day period referred to in clause 9.7(a)(v), during the Exclusivity Period, 3PL must procure that the 3PL Board consider the Counterproposal and if the 3PL Board, acting reasonably and in good faith, determines that the Counterproposal would provide an equivalent or superior outcome for 3PL Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Counterproposal, then:

- (a) 3PL and IXL must use their best endeavours to agree the amendments to this document and, if applicable, the Scheme and Deed Poll that are reasonably necessary to reflect the Counterproposal and to implement the Counterproposal, in each case as soon as reasonably practicable; and
- (b) 3PL must use its best endeavours to procure that each of the directors of 3PL continues to recommend the Scheme (as modified by the Counterproposal) to 3PL Shareholders.

9.9 No existing discussions

- (a) During the Exclusivity Period, 3PL must, and must procure that each of its Representatives:
 - (i) cease any discussions or negotiations existing as at the date of this document relating to any actual, anticipated, proposed or potential Competing Proposal;
 - (ii) cease the provision of any due diligence access and the making available of any non-public information in relation to 3PL and its business to any third party, where the due diligence access and provision of non-public information was for the purposes of, or related to, a potential Competing Proposal; and
 - (iii) require any third party to whom non-public information has been provided or made available to immediately return or destroy that non-public information in accordance with, and subject to, any agreed terms of confidentiality, where the information was provided or made available for the purposes of, or related to, a potential Competing Proposal.
- (b) During the Exclusivity Period, 3PL agrees not to waive, and to enforce in full, any standstill obligations of any party, except in relation to a Competing Proposal where IXL has failed to provide a matching or superior proposal, which failure satisfies clause 9.7(a)(vi).

9.10 Legal advice

3PL acknowledges that it has received legal advice on this document, including the operation and effect of the exclusivity arrangements set out in this clause 9.

10 Break Fee

10.1 Background

This clause has been agreed in circumstances where:

- (a) IXL and 3PL believe that the Scheme will provide significant benefits to IXL, 3PL and their respective shareholders, and IXL and 3PL acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, IXL will incur significant costs, including those set out in clause 10.5;
- (b) IXL requested that provision be made for the Break Fee, without which IXL would not have entered into this document;
- (c) both the IXL Board and 3PL Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure IXL's participation in the Scheme; and

- (d) both parties have received legal advice on this document and the operation of this clause.

10.2 Payment by 3PL to IXL

3PL agrees to pay the Break Fee to IXL without withholding or set off if the Scheme does not proceed because:

- (a) **(Competing Proposal)** on or before the earlier to occur of the End Date and the date this document is validly terminated in accordance with its terms, a Competing Proposal is announced and within 12 months of the date of such announcement, the third party who announced or made the Competing Proposal (or any of its Associates):
 - (i) completes or otherwise implements a Competing Proposal of a kind referred to in paragraphs (b) or (c) of the definition of 'Competing Proposal'; or
 - (ii) otherwise acquires all or a majority of the 3PL Shares or control (as defined in section 50AA of the Corporations Act) of 3PL;
- (b) **(change of recommendation)** any member of the 3PL Board fails to recommend the Scheme or withdraws their recommendation, adversely changes or qualifies their recommendation or otherwise makes a public statement indicating that he or she no longer supports the Scheme, except where the change of recommendation or statement is made after the Independent Expert concludes that in the opinion of the Independent Expert the Scheme is not in the best interests of 3PL Shareholders (other than where a Competing Proposal has been proposed or announced before the report is issued which the Independent Expert may reasonably regard to be on more favourable terms than the transaction contemplated by this document); or
- (c) **(termination)** IXL validly terminates this document in accordance with clause 13.1(c).

10.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event in clause 10.2, if the Scheme becomes Effective:

- (a) no amount is payable by 3PL under clause 10.2; and
- (b) if any amount has already been paid under clause 10.2 it must be refunded by IXL.

10.4 Timing of payment

- (a) A demand by IXL for payment of the Break Fee under clause 10.2 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of IXL into which 3PL must pay the Break Fee.

- (b) 3PL must pay the Break Fee to IXL under clause 10.2 without withholding or set off within 10 Business Days of receipt by 3PL of a valid demand for payment from IXL under clause 10.4(a).

10.5 Nature of payment

The Break Fee is an amount to compensate IXL for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of IXL's management from conducting IXL's business as usual caused by pursuing the Scheme;
- (e) reasonable opportunity costs incurred by IXL in pursuing the Scheme or in not pursuing alternative acquisitions or strategic initiatives which IXL could have developed to further its business and objectives; and
- (f) damage to IXL's reputation associated with a failed transaction and the implications of that damage to IXL's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 10.2.

10.6 Reduction in amount payable

- (a) The Break Fee is reduced by an amount equal to the amount which is recovered by IXL as a result of a claim against 3PL pursuant to any other remedies available to IXL under this document including pursuant to clause 12.1.
- (b) Where the Break Fee has already been paid, IXL must, within 2 Business Days of the event contemplated by clause 10.6(a) which would have reduced the amount payable, refund an amount to 3PL which is equivalent to that calculated under clause 10.6(a).

10.7 3PL limitation of liability

Notwithstanding any other provision of this document but subject to clause 10.8:

- (a) the maximum liability of 3PL to IXL under or in connection with this document including in respect of any breach of this document will be the Break Fee; and
- (b) the payment by 3PL of the Break Fee represents the sole and absolute amount of liability of 3PL under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by 3PL in connection with this document.

10.8 Compliance with law

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 10.2:

- (a) is unlawful or would if performed be, unlawful;
- (b) involves a breach of the duties of the 3PL Board; or

- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then 3PL's obligation to pay the applicable amount or part of the amount payable under clause 10.2 does not apply and if IXL has received any part of the payment due under clause 10.2 it must refund it within 5 Business Days of final determination.

The parties must not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 10.7.

11 Reverse Break Fee

11.1 Background

This clause has been agreed in circumstances where:

- (a) IXL and 3PL believe that the Scheme will provide significant benefits to IXL, 3PL and their respective shareholders, and IXL and 3PL acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, 3PL and 3PL Shareholders will incur significant costs including those set out in clause 11.5;
- (b) 3PL requested that provision be made for the payment of the Reverse Break Fee, without which 3PL would not have entered into this document;
- (c) both the IXL Board and 3PL Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure 3PL's participation in the Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

11.2 Payment by IXL to 3PL

IXL agrees to pay the Reverse Break Fee to 3PL without withholding or set off if the Scheme does not proceed because:

- (a) **(material breach)** 3PL validly terminates this document in accordance with clause 13.1(c); or
- (b) **(failure to pay Scheme Consideration)** IXL does not pay the aggregate Scheme Consideration in accordance with the terms and conditions of this document, the Scheme and the Deed Poll.

11.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event in clause 11.2, if the Scheme becomes Effective:

- (a) no amount is payable by IXL under clause 11.2; and
- (b) if any amount has already been paid under clause 11.2 it must be refunded by 3PL.

11.4 Timing of payment

- (a) A demand by 3PL for payment of the Reverse Break Fee under clause 11.2 must:

- (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account in the name of 3PL into which IXL must pay the Reverse Break Fee.
- (b) IXL must pay the Reverse Break Fee to 3PL without withholding or set off within 10 Business Days of receipt by IXL of a valid demand for payment from 3PL under clause 11.4(a).

11.5 Nature of payment

The Reverse Break Fee is an amount to compensate 3PL for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of 3PL's management from conducting 3PL's business as usual caused by pursuing the Scheme;
- (e) reasonable opportunity costs incurred by 3PL in pursuing the Scheme or in not pursuing strategic initiatives which 3PL could have developed to further its business and objectives; and
- (f) damage to 3PL's reputation associated with a failed transaction and the implications of that damage to 3PL's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 11.2.

11.6 Reduction in amount payable

- (a) The Reverse Break Fee is reduced by an amount equal to the amount which is recovered by 3PL as a result of a claim against IXL pursuant to any other remedies available to 3PL under this document including pursuant to clause 12.3.
- (b) Where the Reverse Break Fee has already been paid, 3PL must, within 2 Business Days of the event contemplated by clause 11.6(a) which would have reduced the amount payable, refund an amount to IXL which is equivalent to that calculated under clause 11.6(a).

11.7 IXL's limitation of liability

Notwithstanding any other provision of this document:

- (a) the maximum liability of IXL to 3PL under or in connection with this document including in respect of any breach of this document will be the Reverse Break Fee; and
- (b) the payment by IXL of the Reverse Break Fee represents the sole and absolute liability of IXL under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will

12 Representations and warranties

12.1 3PL's representations and warranties

Subject to clause 12.3, 3PL represents and warrants to IXL (on its own behalf and separately as trustee or nominee for each of the IXL directors) that each of the following statements is true and correct as at the date of this document and as at 8.00am on the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation and remains in good standing thereunder;
- (b) **(power)** it has all power and authority necessary to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document does not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the 3PL Information contained in the Scheme Booklet will be included in good faith and on the understanding that IXL and its directors will rely on that information for the purposes of considering and approving the IXL Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (g) **(3PL Information)** the 3PL Information provided in accordance with this document and included in the Scheme Booklet as at the date of the Scheme Booklet will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(Disclosed information)** 3PL has acted in good faith and with reasonable skill and care in collating and preparing the information disclosed in the 3PL Data Room and responding to written requests for information submitted by IXL or its Representatives in connection with IXL's due diligence process;
- (i) **(disclosure)** 3PL has provided to IXL all information known to it (having made reasonable enquiries) as at the date of this document regarding matters affecting or relating to it:

- (i) which is not already in the public domain; and
 - (ii) the disclosure of which might reasonably be expected to have resulted in IXL not entering into this document at all or only entering into this document on materially different terms;
- (j) **(continuous disclosure)** 3PL is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this document);
- (k) **(complete and accurate)**: all the information provided to IXL by or on behalf of 3PL in connection with this document, whether in the 3PL Data Room or otherwise, is complete and accurate in all material respects and is not misleading in any material respect, whether by way of omission or otherwise;
- (l) **(Material Contracts)** for each Material Contract, either:
- (i) a true and complete copy of that Material Contract is contained in the 3PL Data Room; or
 - (ii) a summary of that Material Contract is contained in publicly available information and that summary is accurate in all material respects and is not misleading in any material respect, whether by way of omission or otherwise;
- (m) **(compliance)** the 3PL Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all licenses, permits and franchises necessary for it to conduct its respective businesses as presently being conducted;
- (n) **(opinions)** any statement of opinion or belief contained in the 3PL Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (o) **(provision of information to Independent Expert)** all information provided by or on behalf of 3PL to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (p) **(no default)** neither 3PL nor any of its Subsidiaries is in default under any Material Contract nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under a Material Contract;
- (q) **(securities)** 3PL's issued securities as at the date of this document are:
- (i) 139,484,170 3PL Shares;
 - (ii) 7,771,539 Employee Options; and
 - (iii) 1,168,769 Employee Share Rights,
- all material details of which (including employee allocations, vesting entitlements and corresponding loan balances) have been Disclosed to

IXL and other than as Disclosed it has not issued or granted or agreed to issue or grant any other securities, options, warrants, performance rights or other instruments which are still outstanding, and which may convert into 3PL Shares (whether or not subject to conditions) and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any 3PL Shares, options, warrants, performance rights or other securities or instruments in 3PL (whether or not subject to conditions);

- (r) **(New 3P Learning Equity Incentive Plan)** 3PL will only issue 527,009 Employee Share Rights under the New 3P Learning Equity Incentive Plan and will cash settle these Employee Share Rights prior to the Effective Date in accordance with the terms of the New 3P Learning Equity Incentive Plan;
- (s) **(no Encumbrances)** there are no Encumbrances over all or any of its assets or revenues;
- (t) **(litigation or regulatory investigation)** there is no material litigation or regulatory investigation commenced or threatened against any member of the 3PL Group of any nature;
- (u) **(regulatory approvals)** so far as the 3PL Board and 3PL Executives are aware after making due enquiries, no Regulatory Approval is required to be obtained by the 3PL Group in order for it to execute, deliver and perform this document, other than those approvals set out in clause 3.1, and so far as the 3PL Board and 3PL Executives are aware after making due enquiries, as at the date of this document, no regulatory action of any nature has been taken that would prevent or restrict its ability to fulfil its obligations under this document;
- (v) **(Insolvency event)** no member of the 3PL Group is Insolvent;
- (w) **(3PL Shares not indirect Australian real property interests)** the relevant 3PL Shares held by each Scheme Participant are not, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the Scheme Participant; and
- (x) **(intellectual property):**
 - (i) a member of the 3PL Group is the sole and exclusive owner of all right, title and interest in and to the 3PL IP free and clear of all Encumbrances;
 - (ii) a member of the 3PL Group is the sole and exclusive owner of, or has a valid and enforceable right to use, all Intellectual Property Rights necessary for the 3PL Group to conduct its business as currently conducted;
 - (iii) no member of the 3PL Group has received notice from any person alleging that the business of the 3PL Group infringes or otherwise violates any Intellectual Property Rights of a third party; and
 - (iv) so far as the 3PL Board and 3PL Executives are aware after making due enquiries, no person has infringed or otherwise violated the 3PL IP.

12.2 3PL's indemnity

Subject to clause 10.7 and clause 12.3, 3PL indemnifies the IXL Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.1 not being true and correct in all respects.

12.3 Qualifications on 3PL's representations and warranties

3PL representations and warranties in clause 12.1 and the indemnity in clause 12.2 are each subject to matters that:

- (a) other than in the case of the warranty in clause 12.1(r), have been Disclosed and, in the case of the warranty 12.1(q), only as Disclosed in Document 05.06.01 in the 3PL Data Room); or
- (b) would have been disclosed to IXL had IXL conducted searches 10 Business Days before the date of this document of the public records maintained by:
 - (i) ASIC;
 - (ii) the High Court of Australia, Federal Court of Australia and the Supreme Court of Victoria, New South Wales, South Australia, Western Australia and Queensland;
 - (iii) the PPS Register; or
 - (iv) IP Australia; or
- (c) as at the date of this document are within the actual knowledge of the IXL Knowledge Parties.

12.4 IXL's representations and warranties

Subject to clause 12.6, IXL represents and warrants to 3PL (on its own behalf and separately as trustee or nominee for each of the 3PL directors) that each of the following statements is true and correct as at the date of this document and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation and remains in good standing thereunder;
- (b) **(power)** it has all power and authority necessary to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document does not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;

- (f) **(reliance)** the IXL Information provided to 3PL for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that 3PL and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (g) **(IXL Information)** the IXL Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(compliance)** the IXL Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its businesses as presently being conducted;
- (i) **(opinions)** any statement of opinion or belief contained in the IXL Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (j) **(no dealing with 3PL Shareholders)** neither it nor any of its associates has any agreement, arrangement or understanding with any 3PL Shareholder under which that 3PL Shareholder (or an associate of that 3PL Shareholder) would be entitled to receive consideration for their 3PL Shares different from the Scheme Consideration or under which the 3PL Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal;
- (k) **(reasonable basis)** it has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy IXL's obligations to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;
- (l) **(provision of information to Independent Expert)** all information provided by or on behalf of IXL to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (m) **(regulatory approvals)** so far as the IXL Knowledge Parties are aware after making due enquiries, no Regulatory Approval is required to be obtained by IXL in order for it to execute, deliver and perform this document, other than those approvals set out in clause 3.1, and so far as the IXL Knowledge Parties are aware after making due enquiries, as at the date of this document, no regulatory action of any nature has been taken that would prevent or restrict its ability to fulfil its obligations under this document; and
- (n) **(Insolvency event)** no member of the IXL Group is Insolvent.

12.5 IXL's indemnity

Subject to clause 11.7 and clause 12.6, IXL indemnifies the 3PL Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the

representations and warranties in clause 12.3 not being true and correct in all respects.

12.6 Qualifications on IXL's representations and warranties

IXL's representations and warranties in clause 12.4 and the indemnity in clause 12.5 are each subject to matters that, as at the date of this document, are within the actual knowledge of 3PL or any of 3PL's Representatives who have been directly involved in the assessment and/or negotiation of the transactions contemplated by this document before the date of this document.

13 Termination

13.1 Termination events

This document may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date;
- (b) **(lack of support)** by IXL at any time prior to 8.00am on the Second Court Date if any member of the 3PL Board changes its recommendation to the Scheme Participants that they vote in favour of the resolution to approve the Scheme, including any adverse modification to its recommendation, or otherwise makes a public statement indicating that it no longer supports the Scheme;
- (c) **(material breach)** by either IXL or 3PL at any time prior to 8.00am on the Second Court Date, if the other is in material breach of a term of this document (including any representation and warranty not being true and correct), taken in the context of the Scheme as a whole, provided that IXL or 3PL (as the case may be) has, if practicable, given notice to the other setting out the relevant circumstances and the breach:
 - (i) is not capable of being remedied; or
 - (ii) is capable of being remedied, but has not been remedied to the satisfaction of IXL or 3PL (as the case may be) within 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time the notice is given;
- (d) **(Material Adverse Effect)** by IXL at any time prior to 8.00am on the Second Court Date, if a Material Adverse Effect occurs;
- (e) **(competing interest)** by IXL at any time prior to the Voting Eligibility Date, if a person (other than IXL or its Associates or any person that holds a Relevant Interest in more than 20% of the 3PL Shares on the date of this document) acquires a Relevant Interest in more than 20% of the 3PL Shares;
- (f) **(Competing Proposal)** by 3PL at any time prior to 8.00 am on the Second Court Date if the 3PL Board determines that a Competing Proposal that was not solicited, invited, encouraged or initiated in breach of clause 9.1 is a Superior Proposal;
- (g) **(consultation or appeal failure)** in accordance with and pursuant to:
 - (i) clause 3.9(a);
 - (ii) clause 3.9(b); or
 - (iii) clause 5.8; or

(h) **(agreement)** if agreed to in writing by IXL and 3PL.

13.2 Termination

Where a party has a right to terminate this document, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this document.

13.3 Effect of Termination

If this document is terminated by either party, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause and in clauses 7.1, 7.2 10.2, 11.2 and 14 to 21 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this document.

13.4 Damages

Subject to the limitations in clause 10 and clause 11, and in addition to the right of termination under clause 13.1, where there is no appropriate remedy for the breach in this document (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

14 IXL Guarantor

14.1 Guarantee

In consideration of 3PL entering into this document with IXL at the request of the IXL Guarantor, the IXL Guarantor irrevocably and unconditionally guarantees to 3PL the due and punctual performance of all present and future obligations and the payment of all present and future liabilities of IXL under this document and must on demand by 3PL perform such obligations or pay such liabilities in the manner specified in this document if IXL fails to do so on the due date.

14.2 Indemnity

As a separate and independent obligation from that contained in clause 14.1, the IXL Guarantor must pay to 3PL on demand the amount of any Losses suffered or incurred by 3PL arising out of or in connection with any failure of IXL or the IXL Guarantor to perform any obligation or pay any liability under this document on the due date.

14.3 Nature and preservation of liability

The IXL Guarantor acknowledges and agrees that each of its obligations under this clause 14:

- (a) is a principal and continuing obligation and will not be affected by any principle of law or equity which might otherwise reduce or limit in any way the liability of the IXL Guarantor under this clause 14; and
- (b) continues notwithstanding any amendment of this document or any waiver, consent or notice given under this document by any party to another.

14.4 Maximum liability

The IXL Guarantor's liability under this clause 14 in respect of any claim against IXL will not exceed IXL's liability in respect of that claim.

15 Public announcements

15.1 Public announcement of Scheme

Immediately after signing this document, 3PL and IXL must issue a joint public announcement of the proposed Scheme in the Agreed Form.

15.2 Required disclosure

Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Scheme, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.

15.3 Other announcements

Subject to clauses 15.1 and 15.2, no party may make any public announcement or disclosure in connection with the Scheme (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide that approval as soon as practicable.

16 Confidential Information

16.1 Confidentiality agreement

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this document.

16.2 Survival of obligations

The rights and obligations of the parties to the Confidentiality Agreement survive termination (for whatever reason) of this document.

17 Notices and other communications

17.1 Form

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

17.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details,

and in each case with a copy to:

- (d) for 3PL, Gadens in accordance with the following:

Address: Level 20, MLC Centre, 19 Martin Place, Sydney, NSW, Australia 2000

Email: Matt.Egerton-Warburton@gadens.com and Jol.Rogers@gadens.com

For the attention of: Matt Egerton-Warburton and Jol Rogers

- (e) for IXL, each of:

- (i) Latham & Watkins in accordance with the following:

Address: 200 Clarendon Street, Boston, MA 02116 USA

Email: evan.smith@lw.com

For the attention of: Evan G. Smith

- (ii) King & Wood Mallesons in accordance with the following:

Address: King & Wood Mallesons, Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney New South Wales

Email: David.Friedlander@au.kwm.com and Paul.Schroder@au.kwm.com

For the attention of: David Friedlander and Paul Schroder

If the intended recipient has notified the other party of any changes to its contact details, then communications must be sent to the changed contact details.

17.3 When effective

Communications take effect from the time they are received or taken to be received under clause 17.4 ("When taken to be received") (whichever happens first) unless a later time is specified in the communication.

17.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
- (i) when the sender receives an automated message confirming delivery; or
- (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

17.5 Receipt outside business hours

Despite anything else in this clause 17, if communications are received or taken to be received under clause 17.4 ("When taken to be received") after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at

9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

18 GST

18.1 Definitions and interpretation

For the purposes of this clause:

- (a) **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

18.2 GST exclusive

Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST.

18.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply ("**GST Amount**").
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

18.4 Adjustment events

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

18.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 18.3 will apply to the reduced payment.

19 Costs

19.1 Costs

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 19.2 (“Stamp duty and registration fees”).

19.2 Stamp duty and registration fees

IXL:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies 3PL against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 19.2(a).

IXL agrees to pay amounts due to 3PL under this clause within 3 Business Days of demand from 3PL.

However, IXL need not pay, reimburse or indemnify against any fees, fines, penalties or interest to the extent they have been imposed because of delay caused by 3PL or a 3PL Indemnified Party.

20 General

20.1 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

20.2 Consents, approvals or waivers

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

20.3 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

20.4 Partial exercising of rights

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

20.5 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

20.6 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

20.7 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this document.

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

20.8 Inconsistent law

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

20.9 Supervening law

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

20.10 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

20.11 Entire agreement

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

20.12 Further steps

Each party agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the other party asks and considers necessary to:

- (a) bind the party and any other person intended to be bound under this document; or
- (b) show whether the party is complying with this document.

20.13 No liability for loss

Unless this document expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

20.14 Severability

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that

provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

20.15 Rules of construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

20.16 Assignment

A party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other party.

20.17 Enforceability

For the purpose of this document:

- (a) 3PL is taken to be acting as agent and trustee on behalf of and for the benefit of all 3PL Indemnified Parties; and
- (b) IXL is taken to be acting as agent and trustee on behalf of and for the benefit of all IXL Indemnified Parties,

and all of those persons are to this extent taken to be parties to this document.

20.18 No representation or reliance

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document;
- (b) it does not enter into this document 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 document; and
- (c) clauses 20.18(a) and 20.18(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

21 Governing law

21.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

21.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 17.2 or with its process agent.

EXECUTED as an agreement

Scheme Implementation Agreement

Schedule 1 Timetable (clause 5.1)

Event	Date
Lodge Scheme Booklet with ASIC and ASX	28 September 2020
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC	29 September 2020
First Court Date	20 October 2020
Printing and despatch of Scheme Booklet	21 October 2020
Scheme Meeting held	20 November 2020
Second Court Date	23 November 2020
Lodge Court order with ASIC (Effective Date)	24 November 2020
Record Date	26 November 2020
Implementation Date	3 December 2020

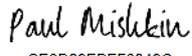
Scheme Implementation Agreement

Signing page

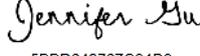
DATED: 14 August 2020

IXL

EXECUTED by IXL AUSTRALIA PTY LTD in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

DocuSigned by:

CE3D29EBFF3348C.....
Signature of director

PAUL MISHKIN
.....
Name of director (block letters)

DocuSigned by:

5BBD242727C24D3.....
Signature of director

JENNIFER GU
.....
Name of director (block letters)

IXL GUARANTOR

EXECUTED by IXL LEARNING, INC.

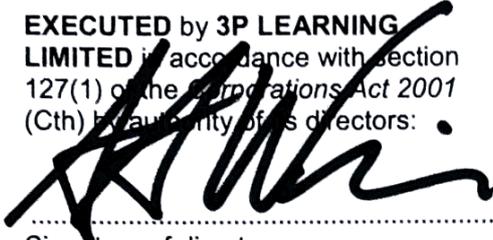
DocuSigned by:

CE3D29EBFF3348C.....
Name PAUL MISHKIN

.....
Title CHIEF EXECUTIVE OFFICER

3PL

EXECUTED by **3P LEARNING**
LIMITED in accordance with section
127(1) of the *Corporations Act 2001*
(Cth) by authority of its directors:



Signature of director

Sam Weiss

Name of director (block letters)



Signature of director/company
secretary*

*delete whichever is not applicable

REBEKAH O'FLAHERTY

Name of director/company secretary*
(block letters)

*delete whichever is not applicable

Scheme Implementation Agreement

Annexure A Scheme of Arrangement

Scheme of Arrangement

3P Learning Limited

Scheme Participants

gadens

Level 13, Collins Arch
447 Collins Street
Melbourne VIC 3000
Australia

T +61 3 9252 2555
F +61 3 9252 2500

Ref JDR:SOW:22007535

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Scheme of Arrangement

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth)

Parties

1. 3P Learning Limited ACN 103 827 836 of Level 18, 124 Walker Street, North Sydney, New South Wales 2060 (**3PL**)
2. Each holder of Scheme Shares as at the Record Date (**Scheme Participants**)

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Scheme, unless the context requires otherwise:

3PL Group means 3PL and its Subsidiaries;

3PL Share Register means the register of members of 3PL maintained by or on behalf of 3PL in accordance with the Corporations Act;

3PL Share Registry means Link Market Services Limited ABN 54 083 214 537;

3PL Share means a fully paid ordinary share in the capital of 3PL;

3PL Shareholders means each person who is registered in the 3PL Share Register as a holder of 3PL Shares;

Accrued Interest has the meaning given to that term in clause 5.2(a);

ASIC means the Australian Securities and Investments Commission;

ASX means ASX Limited ACN 008 624 691 or, where the context requires, the financial market operated by it;

Business Day means a business day as defined in the Listing Rules;

CHESS means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Ltd;

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

Court means the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed in writing by 3PL and IXL;

Cut-Off Time means 8.00am on the Second Court Date;

Deed Poll means the Deed Poll dated [insert] executed by IXL and IXL Learning, Inc. in favour of the Scheme Participants pursuant to which IXL covenants in favour of each Scheme Participant to perform the obligations attributable to IXL under this Scheme, including to provide the Scheme Consideration in accordance with this Scheme;

Effective means the time at which the Scheme Order take effect pursuant to section 411(10) of the Corporations Act;

Effective Date means the date on which the Scheme becomes Effective;

Employee Option means an option to receive a 3PL Share issued under the 3P Learning Equity Incentive Plan operated by the 3PL Group;

Employee Share Right means:

- (a) a right to a 3PL Share issued under the 3P Learning Equity Incentive Plan operated by the 3PL Group; or
- (b) a right to a 3PL Share issued under the New 3P Learning Equity Incentive Plan operated by the 3PL Group;

End Date means the date which is 6 months after the date of the Scheme Implementation Agreement or another date as IXL and 3PL agree in writing;

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, statutory or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC and the Takeovers Panel);

Implementation Date means the 5th Business Day after the Record Date or such other date after the Record Date agreed to in writing between 3PL and IXL;

IXL means IXL Australia Pty Ltd;

Listing Rules means the Listing Rules of the ASX;

New 3P Learning Equity Incentive Plan means the FY21 3P Equity Incentive Plan also known as the FY21 3PEP Plan;

Record Date means 5.00pm on the date that is 2 Business Days after the Effective Date, or such other date as may be agreed in writing between IXL and 3PL or as may be required by ASX;

Registered Address means, in relation to a 3PL Shareholder, the address shown in the 3PL Share Register as at the Record Date;

Scheme means this scheme of arrangement under Part 5.1 of the Corporations Act between 3PL and the Scheme Participants, subject to any alterations or conditions agreed to in writing by IXL and 3PL or any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by IXL and 3PL;

Scheme Consideration for each Scheme Share held by a Scheme Participant as at the Record Date, an amount of \$1.35, subject to the terms of this Scheme;

Scheme Implementation Agreement means the scheme implementation agreement between IXL, IXL Learning, Inc. and 3PL dated 14 August 2020 pursuant to which 3PL

agreed to propose the Scheme to 3PL Shareholders, and each of IXL and 3PL agreed to take certain steps to give effect to the Scheme;

Scheme Meeting means the meeting of 3PL Shareholders ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme;

Scheme Order means the order of the Court made for the purposes of section 411(4)(b) of the Corporations Act approving the Scheme;

Scheme Participant means a 3PL Shareholder as at the Record Date;

Scheme Shares means all of the 3PL Shares on issue as at the Record Date;

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

Second Court Date means the first day of the Second Court Hearing or, if the Second Court Hearing is adjourned for any reason, the first day on which the adjourned application is heard;

Second Court Hearing means the hearing of the application made to the court for the Scheme Order;

Separate Account has the meaning given to that term in clause 5.2(c);

Settlement Rules means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd;

Subsidiary of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; and
 - (b) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares or would be, if the first entity was required to prepare consolidated financial statements.
- A trust may be a subsidiary (and an entity may be a subsidiary of a trust) if it would have been a subsidiary under this definition if that trust were a body corporate. For these purposes, a unit or other beneficial interest in a trust is to be regarded as a share.

Trust Account means an Australian dollar denominated trust account operated by 3PL as trustee for the benefit of the Scheme Participants.

1.2 Interpretation

In this Scheme, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) a reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and performing any action from time to time;
- (j) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (k) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (l) a reference to a time of day is a reference to Sydney time;
- (m) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day; and
- (o) an agreement, representation or warranty by two or more persons binds them jointly and severally and is for the benefit of them jointly and severally.

2. Preliminary

2.1 3PL

- (a) 3PL is a public company limited by shares, incorporated in Australia and registered in New South Wales.
- (b) 3PL is admitted to the official list of ASX and 3PL Shares are quoted for trading on ASX.
- (c) As at [the date of the Scheme Booklet], 3PL's issued securities are:
 - (i) [] 3PL Shares;
 - (ii) [] Employee Options; and
 - (iii) [] Employee Share Rights.

2.2 IXL

IXL is:

- (a) a proprietary company limited by shares;
- (b) incorporated in Australia and registered in New South Wales.

2.3 General

- (a) 3PL and IXL have agreed by executing the Scheme Implementation Agreement to implement this Scheme.

- (b) This Scheme attributes actions to IXL but does not itself impose any obligations on it to perform those actions. IXL has executed the Deed Poll for the purposes of covenanting in favour of the Scheme Participants to perform (or procure the performance of) its obligations as contemplated by this Scheme, including to provide (or procure the provision of) the Scheme Consideration. IXL Learning, Inc. has executed the Deed Poll for the purpose of undertaking in favour of each Scheme Participant to procure that all obligations of IXL under the Deed Poll and this Scheme are met.

2.4 Summary of the Scheme

If the Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to IXL, 3PL will procure IXL to provide the Scheme Consideration to 3PL on behalf of each Scheme Participant in accordance with clause 5.2 of this Scheme;
- (b) all of the Scheme Shares, together with the rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to IXL; and
- (c) 3PL will enter the name of IXL in the 3PL Share Register in respect of all Scheme Shares transferred to IXL in accordance with this Scheme with the result that IXL will hold all 3PL Shares.

3. Conditions

3.1 Condition precedent

- (a) The Scheme is conditional on, and will not become Effective until, the satisfaction of each of the following conditions precedent:
 - (i) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement (other than the condition precedent in clause 3.1(d) of the Scheme Implementation Agreement relating to Court approval of the Scheme) having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by the Cut Off Time;
 - (ii) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms as at the Cut Off Time;
 - (iii) the Court having approved the Scheme pursuant to section 411(4)(b) of the Corporations Act, without modification or with modifications which are acceptable to both 3PL and IXL;
 - (iv) such other conditions made or required by the Court under section 411(6) of the Corporations Act as are acceptable to IXL and 3PL being satisfied; and
 - (v) the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) approving this Scheme coming into effect pursuant to section 411(10) of the Corporations Act on or before the End Date.
- (b) The satisfaction of the conditions referred to in clause 3.1(a) of this Scheme is a condition precedent to the operation of clauses 4 and 5.

3.2 Certificate

- (a) 3PL and IXL must each provide to the Court, on the Second Court Date, a certificate, or such other evidence as the Court may request, confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 3.1(a)(i) and 3.1(a)(ii) above have been satisfied or waived as at the Cut Off Time.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that the conditions precedent in clauses 3.1(a)(i) and 3.1(a)(ii) above were satisfied, waived or taken to be waived.

3.3 Effective Date

Subject to clause 3.4, this Scheme takes effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

3.4 Termination and End Date

Without limiting any rights under the Scheme Implementation Agreement, if:

- (a) the Scheme Implementation Agreement or the Deed Poll is terminated in accordance with its terms before the Scheme becomes Effective; or
- (b) the Effective Date has not occurred on or before the End Date,

then the Scheme will lapse and each of IXL and 3PL are released from any further obligation to take steps to implement the Scheme.

4. Implementation

4.1 Lodgement of Court order

Following the approval of the Scheme by the Court in accordance with section 411(4)(b) of the Corporations Act, 3PL will, as soon as possible and in any event by no later than 5.00pm on the first Business Day after the Court approves the Scheme, lodge with ASIC an office copy of the Scheme Order in accordance with section 411(10) of the Corporations Act.

4.2 Transfer of Scheme Shares held by Scheme Participants

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clause 5.2(a):

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, will be transferred to IXL without the need for any further act by any Scheme Participant (other than acts performed by 3PL or its officers as agent and attorney of the Scheme Participants under clause 8.6 or otherwise), by:
 - (i) 3PL delivering to IXL a duly completed and executed Scheme Transfer to transfer all the Scheme Shares to IXL executed on behalf of the Scheme Participants; and
 - (ii) IXL duly executing such Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to 3PL for registration; and

- (b) immediately after receipt of the Scheme Transfer in accordance with clause 4.2(a)(ii), 3PL must enter, or procure the entry of, the name of IXL in the 3PL Share Register in respect of the Scheme Shares transferred to IXL in accordance with this Scheme.

5. Scheme Consideration

5.1 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to IXL of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares.

5.2 Provision of Scheme Consideration

- (a) IXL must, by no later than one Business Day before the Implementation Date, deposit (or procure the deposit) in cleared funds into the Trust Account an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Participants, such amount to be held by 3PL on trust for Scheme Participants for the purposes of paying the Scheme Consideration to the Scheme Participants in accordance with clause 5.2(b) (except that any interest on the amount deposited (less bank fees and other charges) (**Accrued Interest**) will be for the account of IXL).
- (b) On the Implementation Date and subject to receipt of the Scheme Consideration from or on behalf of IXL in accordance with clause 5.2(a), 3PL must pay (or procure payment) to each Scheme Participant from the Trust Account an amount equal to the Scheme Consideration for each Scheme Share transferred to IXL on the Implementation Date by that Scheme Participant, which obligation will be satisfied by 3PL:
 - (i) where a Scheme Participant has, before the Record Date, made an election in accordance with the requirements of the 3PL Share Register to receive dividend payments from 3PL by electronic funds transfer to a bank account nominated by the Scheme Participant, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
 - (ii) paying, or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Participant by an appropriate authority from the Scheme Participant to 3PL; or
 - (iii) dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the 3PL Share Register is outside Australia, by pre-paid airmail post) to their Registered Address as at the Record Date, such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders, in accordance with clause 5.3).
- (c) In the event that:
 - (i) either:
 - (A) a Scheme Participant does not have a Registered Address; or

- (B) 3PL as trustee for the Scheme Participants believes that a Scheme Participant is not known at the Scheme Participant's Registered Address,

and no account has been notified in accordance with clause 5.2(b)(i) or clause 5.2(b)(ii) or a deposit into such account is rejected or refunded; or

- (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.5(a),

3PL as the trustee for the Scheme Participants may credit the amount payable to the relevant Scheme Participant to a separate bank account of 3PL (**Separate Account**) to be held until the Scheme Participant claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW). To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Participant claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW).

Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 1995* (NSW), 3PL must hold the amount on trust for the relevant Scheme Participant, but any interest or other benefit accruing from the amount will be to the benefit of IXL. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Participant when credited to the Separate Account or Trust Account (as applicable). 3PL must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (d) To the extent that there is a surplus in the amount held by 3PL as the trustee for the Scheme Participants in the Trust Account, that surplus may be paid by 3PL as the trustee for the Scheme Participants to IXL following the satisfaction of 3PL's obligations as the trustee for the Scheme Participants under this clause 5.2.
- (e) 3PL must pay any Accrued Interest to any account nominated by IXL following satisfaction of 3PL's obligations under clause 5.2(b).

5.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent at the sole discretion of 3PL, either to the holder whose name appears first in the 3PL Share Register as at the Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme will be forwarded, at the sole discretion of 3PL, either to the holder whose name first appears in the 3PL Share Register as at the Record Date or to the joint holders.

5.4 Fractional entitlements

Where the calculation of aggregate amount of the Scheme Consideration to be provided to a Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent, that fractional entitlement will be rounded down to the nearest whole cent.

5.5 Unclaimed monies

- (a) 3PL may cancel a cheque sent under this clause 5 if the cheque:
 - (i) is returned to 3PL; or

- (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, upon request in writing from a Scheme Participant to 3PL (or the 3PL Share Registry) (which request may not be made until the date which is 5 Business Days after the Implementation Date), 3PL must reissue a cheque that was previously cancelled under clause 5.5(a).
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes "unclaimed money" (as defined in section 7 of the *Unclaimed Money Act 1995* (NSW)).
- (d) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of IXL.

5.6 Order of a court or Government Agency

If:

- (a) written notice is given to 3PL (or the 3PL Share Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that requires payment to a third party of a sum in respect of such Scheme Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant by 3PL in accordance with this clause 5, then 3PL may procure that payment is made in accordance with that order or direction; or
- (b) written notice is given to 3PL (or the 3PL Share Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that prevents 3PL from making a payment to a particular Scheme Participant in accordance with clause 5.2(b), or such payment is otherwise prohibited by applicable law, 3PL may retain an amount equal to the number of Scheme Shares held by the Scheme Participant multiplied by the Scheme Consideration until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law,

and the payment or retention by 3PL (or the 3PL Share Registry) will constitute the full discharge of 3PL's obligations under clause 5.2(b) with respect to the amount so paid or retained until, in the case of clause 5.6(b), it is no longer required to be retained.

6. Dealings in Scheme Shares

6.1 Determination of Scheme Participants

To establish the identity of the Scheme Participants, dealings in Scheme Shares or other alterations to the 3PL Share Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the 3PL Share Register as the holder of the relevant Scheme Shares at or before the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received at or before the Record Date at the place where the 3PL Share Register is kept,

and 3PL will not accept for registration, nor recognise for any purpose (except a transfer to IXL under this Scheme and any subsequent transfer by IXL or its successors in title), any

transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

6.2 Register

- (a) **(Register of transfers):** 3PL must register registrable transmission applications or transfers of the kind referred to in clause 6.1(b) on or before the Record Date (provided that for the avoidance of doubt nothing in this clause 6.2 requires 3PL to register a transfer that would result in a 3PL Shareholder holding a parcel of 3PL Shares that is less than a 'marketable parcel' (as that term is defined in the Settlement Rules).
- (b) **(No registration after Record Date):** 3PL will not accept for registration or recognise for any purpose any transmission or transfer in respect of 3PL Shares received after the Record Date, other than to IXL in accordance with this Scheme and any subsequent transfer by IXL or its successors in title.
- (c) **(Maintenance of the 3PL Share Register):** For the purposes of determining entitlements to the Scheme Consideration, 3PL must maintain the 3PL Share Register in accordance with the provisions of this clause 6 until the Scheme Consideration has been delivered to the Scheme Participants and IXL has been entered in the 3PL Share Register as the holder of all the Scheme Shares. The 3PL Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) **(No disposal after Record Date):** From the Record Date until registration of IXL in respect of all Scheme Shares under clause 4, no Scheme Participant may dispose or otherwise deal with 3PL Shares (or purport to do so) in any way except as set out in this Scheme and any attempt to do so will have no effect and 3PL will be entitled to disregard any such disposal or dealing.
- (e) **(Statements of holding from Record Date):** All statements of holding for 3PL Shares (other than statements of holding in favour of IXL) will cease to have effect from the Record Date as documents of title in respect of those shares (other than statements of holding in favour of IXL and its successors in title). From the Record Date, each entry current at that date on the 3PL Share Register (other than entries in respect of IXL or its successors in title) will cease to have effect except as evidence of an entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.
- (f) **(Provision of Scheme Participant details):** As soon as practicable after the Record Date and in any event within 2 Business Days after the Record Date, 3PL will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant as shown in the 3PL Share Register on the Record Date are available to IXL in the form IXL reasonably requires.

7. Quotation of Shares

- (a) 3PL will apply to ASX to suspend trading on the ASX in 3PL Shares with effect from the close of trading on the Effective Date.
- (b) On the date after the Implementation Date to be determined by IXL, and only after the transfer of the Scheme Shares has been registered in accordance with clause 4.2(b), 3PL will apply:
 - (i) for termination of the official quotation of 3PL Shares on ASX; and
 - (ii) to have itself removed from the official list of ASX.

8. General Scheme provisions

8.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) 3PL may, by its counsel or solicitors, consent on behalf of all persons concerned to those alterations or conditions to which IXL has consented in writing; and
- (b) each Scheme Participant agrees to any such alterations or conditions to which counsel for 3PL has consented.

8.2 Binding effect of Scheme

This Scheme binds 3PL and all Scheme Participants (including those who did not attend the Scheme Meeting, those who did not vote at that meeting, or who voted against this Scheme at that meeting) and, to the extent of any inconsistency, overrides the constitution of 3PL.

8.3 Scheme Participants' agreements and acknowledgements

Each Scheme Participant:

- (a) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
- (b) agrees to any variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) agrees to, on the direction of IXL, destroy any holding statements or share certificates relating to their Scheme Shares; and
- (d) acknowledges and agrees that this Scheme binds 3PL and all Scheme Participants (including those who did not attend the Scheme Meeting or did not vote at that meeting or voted against this Scheme at that Scheme Meeting),

without the need for any further act by the Scheme Participant.

8.4 Warranties by Scheme Participants

- (a) Each Scheme Participant warrants to IXL and is deemed to have authorised 3PL as agent and attorney for the Scheme Participant by virtue of this clause 8.4(a) to warrant to IXL, that as at the Implementation Date:
 - (i) all of its Scheme Shares which are transferred to IXL under this Scheme, including any rights and entitlements attaching to those Scheme Shares, will, at the time of transfer, be free from all mortgages, charges, liens, assignments, encumbrances, title retentions, preferential rights or trust arrangements, claims, covenants, profit a prendre, easements, pledges, or any other security interests or arrangements (including any "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and any other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;
 - (ii) all of its Scheme Shares which are transferred to IXL under this Scheme will, on the date on which they are transferred to IXL, be fully paid;
 - (iii) it has full power and capacity to transfer its Scheme Shares to IXL together with any rights attaching to those Scheme Shares; and

- (iv) it has no existing right to be issued any 3PL Shares, options exercisable into 3PL Shares, convertible notes convertible into 3PL Shares or any other securities issued by 3PL.
- (b) 3PL undertakes that it will provide the warranties in clause 8.4(a) to IXL as agent and attorney of each Scheme Participant on the Implementation Date.

8.5 Title to and rights in Scheme Shares

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attached to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to IXL, vest in IXL free from all mortgages, charges, liens, assignments, encumbrances, title retentions, preferential rights or trust arrangements, claims, covenants, profit a prendre, easements, pledges, or any other security interests (including any "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration for the Scheme Shares in accordance with clause 5.2 of this Scheme, on and from the Implementation Date, IXL will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by 3PL of IXL in the 3PL Share Register as the holder of the Scheme Shares.

8.6 Authority given to 3PL

- (a) Each Scheme Participant, without the need for any further act, irrevocably appoints 3PL and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purposes of:
 - (i) enforcing the Deed Poll against IXL and IXL Learning, Inc., and 3PL undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against IXL and IXL Learning, Inc. on behalf of and as agent and attorney for each Scheme Participant; and
 - (ii) executing any document, or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including executing the Scheme Transfer,

and 3PL accepts such appointment. 3PL, as attorney and agent of each Scheme Participant, may sub-delegate its functions, authorities or powers under this clause 8.6 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

8.7 Appointment of IXL as sole proxy

On the provision of the Scheme Consideration for the Scheme Shares in accordance with clause 5.2 of this Scheme and until 3PL registers IXL as the holder of all Scheme Shares in the 3PL Share Register, each Scheme Participant:

- (a) irrevocably appoints IXL as its attorney and agent (and directs IXL in such capacity) to appoint an officer or agent nominated by IXL as its sole proxy and, where applicable, corporate representative to attend shareholders' meetings of 3PL, exercise the votes attaching to the Scheme Shares registered in its name and sign any shareholders' resolution;
- (b) undertakes not to attend shareholders' meetings, exercise the votes attaching to Scheme Shares registered in their names or sign or vote on any resolution

(whether in person, by proxy or by corporate representative) other than pursuant to clause 8.7(a);

- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as IXL reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in clause 8.7(a), IXL and an officer or agent nominated by IXL under clause 8.7(a) may act in the best interests of IXL as the intended registered holder of Scheme Shares.

9. General

9.1 Further assurances

- (a) 3PL must do (on its own behalf and on behalf of each Scheme Participant) anything necessary (including executing agreements and documents) or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (b) Each Scheme Participant consents to 3PL doing all things necessary or incidental to give full effect to this Scheme and the transactions contemplated by it.
- (c) Each Scheme Participant acknowledges and agrees that this Scheme binds 3PL and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of 3PL.

9.2 Notices

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to 3PL, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at 3PL's registered office or at the office of the 3PL Share Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Scheme Participant will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.3 Governing law and jurisdiction

- (a) This Scheme is governed by and construed under New South Wales law.
- (b) The parties irrevocably, generally and unconditionally submit to the non-exclusive jurisdiction of any court of the place specified in clause 9.3(a) in relation to both itself and its property and waive any claim or objection based on absence of jurisdiction or inconvenient forum.

9.4 Variations, alterations and conditions

3PL may, with the consent of IXL, consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.

9.5 No liability when acting in good faith

Neither 3PL nor IXL, nor any of their respective officers, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

9.6 Stamp duty

IXL will pay all stamp duty (including any related fines, penalties and interest) in respect of or in connection with this Scheme.

Scheme Implementation Agreement

Annexure B Deed Poll

Deed Poll

IXL Australia Pty Ltd

IXL Learning, Inc.

gadens

Level 13, Collins Arch
447 Collins Street
Melbourne VIC 3000
Australia

T +61 3 9252 2555
F +61 3 9252 2500

Ref JDR:SOW:22007535

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Deed Poll

Parties

1. IXL Australia Pty Ltd of c/- IXL Learning, Inc., 777 Mariners Island Blvd., Suite 600, San Mateo, CA 94404 (**IXL**)
2. IXL Learning, Inc. of 777 Mariners Island Blvd., Suite 600, San Mateo, CA 94404 (**IXL Guarantor**)

In favour of each person registered as a holder of 3PL Shares as at the Record Date (**Scheme Participants**)

Background

- A. 3PL, IXL and the IXL Guarantor entered into the Scheme Implementation Agreement under which 3PL agreed, subject to the satisfaction or waiver of certain conditions, to propose the Scheme to the Scheme Participants.
- B. Under the Scheme Implementation Agreement, IXL agreed to make this Deed Poll.
- C. IXL is making this Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform its obligations under the Scheme.
- D. The IXL Guarantor is a holding company of IXL and is entering into this deed poll to guarantee the obligations and liabilities of IXL under this deed poll and the Scheme.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Deed Poll, unless the context requires otherwise:

Deed Poll means this deed poll including any recitals, any schedules and any annexures;

First Court Date means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act directing 3PL to convene the Scheme Meeting is heard (or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard);

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between 3PL and the Scheme Participants, subject to any alterations or conditions agreed to in writing by IXL and 3PL or any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by IXL and 3PL;

Scheme Implementation Agreement means the scheme implementation agreement between IXL, the IXL Guarantor and 3PL dated 14 August 2020 pursuant to which 3PL agreed to propose the Scheme to 3PL Shareholders, and each of IXL and 3PL agreed to take certain steps to give effect to the Scheme; and

Terms defined in the Scheme have the same meanings in this Deed Poll.

1.2 Interpretation

Clause 1.2 of the Scheme applies to the interpretation of this Deed Poll, except that references to "this Scheme" are to be read as references to "this Deed Poll".

1.3 Nature of Deed Poll

The parties acknowledge and agree that:

- (a) this Deed Poll may be relied upon and enforced by any Scheme Participants in accordance with its terms even though the Scheme Participants are not party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints 3PL and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this Deed Poll against the parties.

2. Conditions precedent and termination

2.1 Conditions

The obligations of the parties under this Deed Poll are subject to the Scheme becoming Effective.

2.2 Termination

If:

- (a) the Scheme has not become Effective on or before the End Date or any later date as the Court, with the consent of IXL and 3PL, may order; or
- (b) the Scheme Implementation Agreement is terminated in accordance with its terms,

then this Deed Poll and the obligations of the parties under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect unless the parties and 3PL agree in writing.

2.3 Consequences of termination

If this Deed Poll is terminated under clause 2.2 then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) the parties are released from their obligations to further perform this Deed Poll, except those obligations contained in clause 6; and
- (b) each Scheme Participant retains any rights, powers or remedies it has against the parties in respect of any breach of this Deed Poll by the parties which occurred before termination of this Deed Poll.

3. Scheme Consideration

- (a) Subject to clause 2, IXL undertakes in favour of each Scheme Participant to:

- (i) deposit, or procure the deposit of, an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account in cleared funds on the date that is one Business Day before the Implementation Date;
- (ii) undertake or procure the undertaking of all other actions attributed to IXL under the Scheme, as if named as a party to the Scheme,

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

- (b) Subject to clause 2, the IXL Guarantor undertakes in favour of each Scheme Participant to procure that all obligations of IXL under this Deed Poll and the Scheme are met.

4. Representations and warranties

Each party represents and warrants in favour of each Scheme Participant that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transaction contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) it is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets (or any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in this paragraph);
- (e) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (f) this Deed Poll does not conflict with or result in the breach of, or any default under:
 - (i) any provision of its constituent documents; or
 - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

5. Continuing obligations

This Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) the parties have fully performed their obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.2.

6. Stamp duty

IXL must:

- (a) pay or procure the payment of all stamp duty and any related fines, penalties, interest in respect of or in connection with this Deed Poll, the performance of this Deed Poll, or any instruments entered into under this Deed Poll and in respect of a transaction effected by or made under the Scheme and this Deed Poll, including the transfer by the Scheme Participants of Scheme Shares to IXL under the Scheme; and
- (b) indemnify each Scheme Participant on demand against any liability arising from its failure to comply with clause 6(a).

7. Notices

- (a) Any notice or communication in respect of this Deed Poll (**Notice**) may be served by delivery in person, by post or by email to the address or email address of a party specified in this Deed Poll or most recently notified by a party to the sender.
- (b) Any Notice to a party must be in writing and signed by either:
 - (i) the sender or, if a corporate party, an authorised officer of the sender; or
 - (ii) the party's solicitor.
- (c) A Notice:
 - (i) if delivered in person, will be deemed served upon delivery;
 - (ii) if posted, will be deemed served 2 Business Days after posting; and
 - (iii) if sent by email, will be deemed served that day unless the sender receives an automated message generated by the recipient's mail server (**Failure Message**) that the email has not been delivered within two hours. For the avoidance of doubt any response generated by or at the instigation of the recipient (including an 'out of office' message) will not be a Failure Message,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time), it is deemed to have been served at 9.00am on the next Business Day.

- (d) The address for service for Notices of IXL is:
Attention: Paul Mishkin
Address: c/- IXL Learning, Inc., 777 Mariners Island Blvd., Suite 600
San Mateo, CA 94404
Email: pmishkin@ixl.com,

and the address for service for Notices of the IXL Guarantor is:

Attention: Paul Mishkin
Address: 777 Mariners Island Blvd., Suite 600, San Mateo, CA 94404
Email: pmishkin@ixl.com,

and, in each case, with a copy to each of:

- (i) Latham & Watkins in accordance with the following:

Address: 200 Clarendon Street, Boston, MA 02116 USA

Email: evan.smith@lw.com

For the attention of: Evan G. Smith

- (ii) King & Wood Mallesons in accordance with the following:

Address: King & Wood Mallesons, Level 61, Governor Phillip Tower, 1 Farrer Place, Sydney New South Wales

Email: David.Friedlander@au.kwm.com and Paul.Schroder@au.kwm.com

For the attention of: David Friedlander and Paul Schroder

8. General provisions

8.1 Variation

This Deed Poll cannot be varied, altered or amended unless:

- (a) if before the First Court Date, the variation, alteration or amendment is agreed to in writing by 3PL and IXL; and
- (b) if on or after the First Court Date, the variation, alteration or amendment is agreed to in writing by 3PL and IXL and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event the parties must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

8.2 Assignment

The rights and obligations of each Scheme Participant and the parties under this Deed Poll are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity and no person may attempt, or purport, to do so without the prior written consent of the parties and 3PL.

8.3 Further assurances

The parties must execute any document and perform any action necessary (on their own behalf and on behalf of each Scheme Participant) to give full effect to this Deed Poll and the transactions contemplated by it.

8.4 Governing law and jurisdiction

- (a) This Deed Poll is governed by and construed under the laws of New South Wales.
- (b) Any legal action in relation to this Deed Poll against a party or its property may be brought in any court of competent jurisdiction of New South Wales.
- (c) By execution of this Deed Poll, the parties irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

8.5 Waivers

- (a) A Scheme Participant waives a right under this Deed Poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) A failure, delay, relaxation or indulgence by a Scheme Participant in exercising any power or right conferred on that party by this Deed Poll does not operate as a waiver of the power or right.
- (c) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Deed Poll.
- (d) A waiver of a breach does not operate as a waiver of any other breach.

8.6 Remedies

The rights, powers and remedies of the parties and the Scheme Participants under this Deed Poll are cumulative and are in addition to, and do not exclude any other rights, powers and remedies provided by law.

8.7 Severability

Any clause of this Deed Poll which is invalid in any jurisdiction, is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this Deed Poll or the validity of that clause in any other jurisdiction.

Signing page

Executed as a deed poll.

Dated 2020

Executed by **IXL AUSTRALIA PTY LTD** ACN
643 275 209 under section 127 of the
Corporations Act by its duly authorised officers:

Signature of Director

Signature of Director

Name of Director
(Block Letters)

Name of Director
(Block Letters)

EXECUTED by **IXL LEARNING, INC.**

.....
Name

.....
Title