

## Disclosure of beginning to have substantial holding

*Section 276, Financial Markets Conduct Act 2013*

**To** NZX Limited  
and  
**To** Pushpay Holdings Limited (NZSX: PPH)

Date this disclosure made: 18 June 2018

Date on which substantial holding began: 18 June 2018

### **Substantial product holder giving disclosure**

Full name: Pushpay Holdings Limited ("**PPH**")

### **Summary of substantial holding**

Class of quoted voting products: Ordinary Shares in PPH  
(ISIN: NZPAYE0003S9)

Summary for PPH

For this disclosure,—

- |     |                                 |                         |
|-----|---------------------------------|-------------------------|
| (a) | total number held in class:     | 25,734,128 <sup>1</sup> |
| (b) | total in class:                 | 274,549,033             |
| (c) | total percentage held in class: | 9.373%                  |

### **Details of relevant interests**

Details for PPH

Nature of relevant interest: Power to control the disposition of ordinary shares in PPH held by the persons listed in Appendix 1 of this notice.

As described in Appendix 1, PPH's relevant interest arises under the following arrangements:

- The trust deed for, and rules of, Pushpay's Share Incentive Scheme ("**SIS**") under which PPH issues shares to Pushpay Trustees Limited (as trustee for the SIS) for the benefit of certain employees. Copies of the rules of the SIS and the trust deed for the SIS were attached to PPH's substantial product holder notice dated 27 September 2016.
- The Participant Undertakings ("**RSU Participant Undertakings**") with employees who received PPH shares under Pushpay's share incentive plan for US-based employees ("**RSU Plan**") and their respective Restricted Share Unit Agreements with PPH ("**RSU Agreements**"). The form of the RSU Participant Undertaking was attached to PPH's substantial product holder notice dated 22 May 2017.

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<sup>1</sup> The total number represents the PPH shares subject to trading restrictions, as set out in Appendix 1, plus the unallocated PPH shares held by Pushpay Trustees Limited under the Share Incentive Scheme.

- The Participant Undertakings with certain employees who are participants in the SIS ("**SIS Participant Undertakings**"). The form of the SIS Participant Undertaking was attached to PPH's substantial product holder notice dated 22 May 2017.

Under those arrangements, certain persons have agreed to the imposition of certain restrictions on their ability to sell, transfer or otherwise dispose of their PPH shares. Appendix 1 sets out the number and percentage of PPH shares that are subject to such restrictions, as well as the expiry dates of those restrictions.

For that relevant interest,—

- (a) number held in class: 940,330
- (b) percentage held in class: 0.343%
- (c) current registered holders: Refer to the table in Appendix 1
- (d) registered holder(s) once transfers are registered: Not applicable.

Nature of relevant interest: Power to control the disposition of ordinary shares in PPH (the relevant agreement under which this relevant interest arises is Appendix 2 to this notice (61 pages))

- (a) number held in class: 24,793,798
- (b) percentage held in class: 9.031%
- (c) current registered holders: Eliot Barry Crowther and Crowther Trustee Limited as trustees of the Crowther Family Trust (as to 19,694,313 shares), MSix20 Foundation (as to 3,714,282 shares) and Seattle Foundation (as to 1,385,203 shares)
- (d) registered holder(s) once transfers are registered: Unknown

Nature of relevant interest: Power to control the acquisition of beneficial title to ordinary shares in PPH held by Pushpay Trustees Limited for the participant's benefit (as beneficial owner) under the SIS.<sup>2</sup>

Under the SIS rules (including clauses 9, 10 and 11), if certain events occur, PPH may require an employee who is the beneficial owner of PPH shares under the SIS to sell the beneficial ownership of those shares back to Pushpay Trustees Limited.

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<sup>2</sup> The full terms of the SIS rules and trust deed were disclosed in the substantial product holder notice dated 27 September 2016. The relevant interest has been separately included in this substantial product holder notice to ensure full disclosure and transparency.

For that relevant interest,—

- (a) number held in class: 398,197
- (b) percentage held in class: 0.145%
- (c) current registered holders: Pushpay Trustees Limited
- (d) registered holder(s) once transfers are registered: Not applicable

Nature of relevant interest: Deemed relevant interest in ordinary shares in PPH held by Pushpay Trustees Limited.

PPH holds all of the shares in Pushpay Trustees Limited and, therefore, is deemed to have a relevant interest in all of the PPH shares held by Pushpay Trustees Limited.

For that relevant interest,—

- (a) number held in class: 463,334
- (b) percentage held in class: 0.169%
- (c) current registered holders: Pushpay Trustees Limited
- (d) registered holder(s) once transfers are registered: Not applicable

### **Details of transactions and events giving rise to substantial holding**

Details of the transactions or other events requiring disclosure:

#### *1. Share Incentive Scheme – Share transfer restrictions*

The SIS is an employee share scheme operated by PPH to incentivise employees. Participants in the SIS must comply with the rules of the SIS and the trust deed for the SIS. Legal ownership of the shares issued under the SIS is held by Pushpay Trustees Limited (a wholly-owned subsidiary of Pushpay) as the trustee of the SIS pending the transfer of legal title to an employee on satisfaction of vesting criteria.

Clause 7.1 of the SIS rules restricts an SIS participant's ability to sell, transfer or otherwise dispose of the shares held by the trustee for the participant's benefit (as beneficial owner) under the SIS, until legal ownership in their shares are transferred to the participant.

In the period since 18 February 2018 (being the date that is four months before the date on which PPH began to have the substantial holding as described in this notice):

- Legal title to 284,892 shares was transferred to certain employees of PPH under PPH's SIS. PPH has a relevant interest in respect of 21,627 of those shares (as

those shares remain subject to SIS Participant Undertakings). No additional consideration was paid for the transfer of legal title.

- Pushpay Trustees Limited acquired the beneficial ownership of 12,707 shares from SIS participants who ceased to be employees of the PPH group prior to those persons becoming entitled to legal ownership of those shares under the SIS. The aggregate amount paid to acquire beneficial ownership of those shares was \$26,796.41.
- A total of 17,757 shares were allotted to Pushpay Trustees Limited for an aggregate purchase price of \$70,339.03.
- 117,757 shares were allocated to employees under the SIS. Those shares are beneficially owned by the employees, and are held by Pushpay Trustees Limited on trust, subject to the SIS trust deed and rules, including clause 7.1 of the SIS rules (as summarised above). The aggregate purchase price for those shares was \$225,717.98.
- Certain employees who are participants in the SIS have entered into SIS Participant Undertakings under which they have agreed, subject to certain exceptions, not to sell, transfer or otherwise dispose of those shares for a minimum of 12 months after the shares were allocated to them. No additional consideration was provided for the SIS Participant Undertakings.

Appendix 1 to this notice sets out:

- the number of shares subject to clause 7.1 of the SIS rules and, where applicable, SIS Participant Undertakings; and
- the dates on which legal ownership of SIS shares is due to be transferred to their beneficial owners and, where a beneficial owner has agreed to an SIS Participant Undertaking, the end-date of that SIS Participant Undertaking.

## *2. Restricted Share Unit – Participant Undertaking*

Separate to the SIS, PPH has established the RSU Plan for US-based employees, under which selected employees of the PPH group are granted RSUs as part of their remuneration package. An RSU is a conditional agreement by PPH to issue shares to an employee, subject to the satisfaction of certain vesting criteria. The vesting criteria and other terms of an employee's RSU are set out in the RSU Plan and in a RSU Agreement entered into between PPH and the employee.

On 29 December 2017, a total of 520,506 PPH shares were issued on vesting of RSUs granted to employees under their respective RSU Agreements. Those shares are subject to a RSU Participant Undertaking with each employee, under which the employee has agreed to certain restrictions, including:

- An undertaking, subject to certain exceptions, not to sell, transfer or otherwise dispose of those shares for 12 months after the issue of the shares.
- A separate undertaking not to sell, transfer or otherwise dispose of those shares for a period of up to 180 days following the effective date of any registration

statement filed by PPH under the US Securities Act (or such other period to accommodate certain regulatory restrictions).<sup>3</sup>

It is a requirement of the RSU Plan for employees to provide RSU Participant Undertakings. No additional consideration was provided for the RSU Participant Undertakings.

Appendix 1 to this notice sets out the number of shares subject to RSU Participant Undertakings.

### *3. Entry into underwriting agreement*

On 18 June 2018, PPH and others entered into an underwriting agreement ("**Underwriting Agreement**") relating to an underwritten bookbuild process to facilitate a sell down of all ordinary shares in PPH held by interests associated with Eliot Crowther ("**Block Trade Shares**"). The interests associated with Mr Crowther hold 24,793,798 ordinary shares in PPH in aggregate, representing 9.031% of all ordinary shares in PPH. A copy of the Underwriting Agreement is attached to this notice.

Clause 4.1(f) of the Underwriting Agreement provides PPH with a contractual right to determine allocation of the Block Trade Shares in consultation with the Underwriter (as defined in the Underwriting Agreement) in accordance with any relevant statements in the Investor Presentation. Clause 4.1(g) of the Underwriting Agreement provides PPH and the Underwriter (as defined in the Underwriting Agreement) with a contractual right to determine any necessary scaling of applications for the Block Trade Shares. The operation of these clauses, together with other provisions of the Underwriting Agreement, gives PPH the power to control the disposition of the Block Trade Shares (and therefore, a relevant interest in the Block Trade Shares in terms of the Financial Markets Conduct Act 2013).

### **Additional information**

Address of substantial product holder: Level 6, Building D, 167 Victoria Street West, Auckland

Contact details: Sarah Elder | +64 21 637 449 | [investors@pushpay.com](mailto:investors@pushpay.com)

Name of any other person believed to have given, or believed to be required to give, a disclosure under the Financial Markets Conduct Act 2013 in relation to the financial products to which this disclosure relates: Eliot Barry Crowther

### **Certification**

I, Shane Sampson, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorised to make this disclosure by all persons for whom it is made.

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<sup>3</sup> PPH has been advised that this is a standard restriction contained in RSU arrangements of this nature. PPH is not currently seeking the registration of shares or other securities under the US Securities Act.

## Appendix 1

### Details of PPH ordinary shares subject to trading restrictions

Name(s) of Shareholder(s)	Number of shares that are subject to trading restrictions <sup>4</sup>	Percentage held in class	Relevant agreement	Expiry date of restriction	Comments
Pushpay Trustees Limited (as trustee of the SIS for the benefit of certain employee participants)	4,228	0.002%	Clause 7.1 of the SIS Rules <sup>5</sup>	31-Mar-21	Under the rules of the SIS, legal title to the shares specified in the "Number of shares that are subject to trading restrictions" column is transferrable to certain employee participants around the date specified in the "Expiry date of restriction" column
Pushpay Trustees Limited (as trustee of the SIS for the benefit of certain employee participants)	17,697	0.006%	Clause 7.1 of the SIS Rules	30-Sep-20	Under the rules of the SIS, legal title to the shares specified in the "Number of shares that are subject to trading restrictions" column is transferrable to certain employee participants around the date specified in the "Expiry date of restriction" column
Pushpay Trustees Limited (as trustee of the SIS for the benefit of certain employee participants)	33,095	0.012%	Clause 7.1 of the SIS Rules	31-Mar-20	Under the rules of the SIS, legal title to the shares specified in the "Number of shares that are subject to trading restrictions" column is transferrable to certain employee participants around the date specified in the "Expiry date of restriction" column
Pushpay Trustees Limited (as trustee of the SIS for the benefit of certain employee participants)	133,856	0.049%	Clause 7.1 of the SIS Rules	30-Sep-19	Under the rules of the SIS, legal title to the shares specified in the "Number of shares that are subject to trading restrictions" column is transferrable to certain employee participants around the date specified in the "Expiry date of restriction" column

<sup>4</sup> The number of shares set out in this table reflects the number of shares that are subject to trading restrictions. The actual number of shares held or controlled by the shareholders named in this table may differ.

<sup>5</sup> Copies of the rules of the SIS and the trust deed for the SIS were attached to PPH's substantial product holder notice dated 27 September 2016.

Pushpay Trustees Limited (as trustee of the SIS for the benefit of certain employee participants)	36,689	0.013%	Clause 7.1 of the SIS Rules / SIS Participant Undertakings (in respect of 21,720 shares)	31-Mar-19	Under the rules of the SIS, legal title to the shares specified in the "Number of shares that are subject to trading restrictions" column is transferrable to certain employee participants around the date specified in the "Expiry date of restriction" column.  Of the shares which are transferable on 31 March 2018, 21,720 shares are subject to restrictions on sale until 31 March 2019 under SIS Participant Undertakings. <sup>6</sup>
Pushpay Trustees Limited (as trustee of the SIS for the benefit of certain employee participants)	172,632	0.063%	Clause 7.1 of the SIS Rules / SIS Participant Undertakings (in respect of 1,691 shares)	30-Sep-18	Under the rules of the SIS, legal title to the shares specified in the "Number of shares that are subject to trading restrictions" column is transferrable to certain employee participants around the date specified in the "Expiry date of restriction" column.  Of the shares which are transferable on 30 September 2018, 1,691 shares are subject to restrictions on sale until 31 March 2019 under SIS Participant Undertakings.
67 Employees holding 520,506 shares in aggregate	520,506	0.190%	RSU Participant Undertakings	31-Dec-18	The form of the RSU Participant Undertaking was attached to PPH's substantial product holder notice dated 22 May 2017.
6 Employees holding 18,100 shares in aggregate	18,100	0.007%	SIS Participant Undertakings	31-Mar-19	The form of the SIS Participant Undertaking was attached to PPH's substantial product holder notice dated 22 May 2017.
1 Employee holding 3,527 shares in aggregate	3,527	0.001%	SIS Participant Undertakings	9-Aug-18	The form of the SIS Participant Undertaking was attached to PPH's substantial product holder notice dated 22 May 2017.
<b>Total number of PPH shares subject to trading restrictions</b>	<b>940,330</b>	<b>0.343%</b>			

<sup>6</sup> The form of the SIS Participant Undertaking was attached to PPH's substantial product holder notice dated 22 May 2017.

## **Appendix 2**

### **Underwriting Agreement**

*See attached.*



# Underwriting agreement relating to a block trade of ordinary shares

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## **PARTIES**

Crowther Trustee Limited and Eliot Barry Crowther as trustees of  
the Crowther Family Trust

**Trustee**

MSix20 Foundation

**MSix20**

Seattle Foundation

**SF**

**together with the Trustee and MSix20, the Vendor**

Deutsche Craigs Limited and Craigs Investment Partners Limited  
**together DCL**

Pushpay Holdings Limited

**Company**

Eliot Barry Crowther

**Guarantor**

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AGREEMENT dated

2018

## PARTIES

Crowther Trustee Limited and Eliot Barry Crowther as trustees of the Crowther Family Trust

("Trustee")

MSix20 Foundation

("MSix20")

Seattle Foundation

("SF")

(together with the Trustee and MSix20, the "**Vendor**")

Deutsche Craigs Limited and Craigs Investment Partners Limited

(together "**DCL**")

Pushpay Holdings Limited

("Company")

Eliot Barry Crowther

("Guarantor")

## BACKGROUND

- A. The Vendor has requested that the Underwriter underwrite, and arrange, the Block Trade, and the Underwriter has agreed to do so, on the terms and subject to the conditions set out in this Agreement.

## AGREEMENT

### 1. INTERPRETATION

- 1.1 **Definitions:** In this Agreement, including the Background, unless the context requires otherwise:

"**Accounts**" means the consolidated financial statements of the Group (including the statement of financial position, the statement of financial performance, and the statement of cashflows) for the 12 months ended 31 March 2018;

"**Actions**" has the meaning given in clause 32.2(a);

**"Affiliate"** has the meaning given to that term in Rule 501(b) under the US Securities Act and also includes, in respect of any person, any other person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such person; and "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of securities, by contract or agency or otherwise;

**"Agreement"** means this Underwriting Agreement;

**"Approved US Investor"** means a person in the United States who is a "qualified institutional buyer" as defined in Rule 144A under the US Securities Act and who is otherwise able to give the warranties and representations listed in clause 1 of Section 3 of Schedule 4 of the Master ECM Terms;

**"ASX"** means (as applicable) ASX Limited (ABN 98 008 624 691) or the equity securities market operated by that entity;

**"ASX Listing Rules"** means the listing rules from time to time of ASX as they apply to the Company as a foreign exempt listed entity on ASX and as amended or waived from time to time;

**"Block Trade"** means the sale of the Block Trade Shares at the Bookbuild Price, to Eligible Bookbuild Investors;

**"Block Trade Shares"** means 24,793,798 Shares, to be offered by the Vendor for sale pursuant to the Block Trade;

**"Block Trade Shortfall Shares"** means the number of Shares equal to:

$$BTSS = \frac{BTUA - ABTS}{UP} + DBIS$$

where:

BTSS = the number of Block Trade Shortfall Shares

BTUA = the Block Trade Underwritten Amount;

ABTS = an amount equal to the number of Block Trade Shares allocated to Bookbuild Investors in accordance with clause 4.1 multiplied by the Bookbuild Price;

UP = the Bookbuild Price; and

DBIS = any Shares in respect of which a Defaulting Bookbuild Investor has not paid in full and in cleared funds the Bookbuild Price by 12 noon on the Trading Date but excluding any Excluded Shares;

**"Block Trade Underwritten Amount"** means \$99,175,192;

**"Bookbuild"** means the bookbuild process conducted by the Underwriter on the Bookbuild Date in accordance with clause 4.1 to determine the Bookbuild Price and the allocation of the Block Trade Shares;

**"Bookbuild Price"** means the amount payable by Eligible Bookbuild Investors under the Block Trade in respect of Block Trade Shares, being the amount determined in accordance with clause 4.1;

**"Business Day"** means any day on which registered banks are open for business in Auckland and Wellington and Sydney, and on which each of the NZX Main Board and ASX is open for trading;

**"Certificate"** means a certificate in the form set out in Schedule 3 executed by one director of the Company;

**"Claims"** means any allegation, debt, cause of action, liability, claim, proceeding, judgment, award, suit or demand of any nature (and in each case whether or not successful, compromised or settled and whether joint or several), howsoever arising, and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise;

**"Companies Act"** means the Companies Act 1993;

**"Defaulting Bookbuild Investor"** means an Eligible Bookbuild Investor who, by 12 noon on the Trading Date, has not paid in full and in cleared funds the Bookbuild Price in respect of each of the Block Trade Shares allocated to that Eligible Bookbuild Investor under clause 4.1;

**"Dispose"** means to dispose or agree to dispose directly or through any other person by any means, including the following:

- (a) granting or exercising an option;
- (b) using an asset as collateral (other than for the purposes of providing a security interest to lenders, in accordance with past practice);
- (c) decreasing an economic interest; and
- (d) disposing of part of an asset;

**"Due Diligence Committee"** means the committee established by the Company to carry out the Due Diligence Investigations in accordance with the Due Diligence Process Memorandum;

**"Due Diligence Investigations"** means the due diligence activities described in the Due Diligence Process Memorandum;

**"Due Diligence Process Memorandum"** means the document setting out the due diligence investigations relating to the Block Trade in the form approved by the Underwriter (acting reasonably);

**"Due Diligence Report"** means the report of the Due Diligence Committee to be issued pursuant to the Due Diligence Process Memorandum;

**"Eligible Bookbuild Investor"** means any person:

- (a) who, if in New Zealand, applies to participate in the Bookbuild through a Primary Market Participant;

- (b) who, if in Australia, is a “wholesale investor” as defined in clause 1 of Section 5 of Schedule 4 of the Master ECM Terms; or
- (c) who, if in Hong Kong, is a person who is able to give the warranties and representations listed in clause 14 of Section 5 of Schedule 4 of the Master ECM Terms;
- (d) who, if in Singapore, is a person who is able to give the warranties and representations listed in clause 29 of Section 5 of Schedule 4 of the Master ECM Terms;
- (e) who, if in the United Kingdom, is a person who is able to give the warranties and representations listed in clause 36 of Section 5 of Schedule 4 of the Master ECM Terms;
- (f) who is an Approved US Investor;
- (g) to whom, if outside the jurisdictions set out in paragraphs (a) to (f) above, an offer of Block Trade Shares can be made under all applicable laws, without the need for any registration, lodgement, prescribed offer document or similar formality;

**"Engagement and Fee Letter"** means the letter between the Vendor, the Company and the Underwriter dated 4 June 2018 appointing the Underwriter to act as manager and underwriter in relation to the Block Trade, and setting out the fees payable in respect of this Agreement, as well as the costs and expenses payable by the Company and/or the Vendor in respect of the Block Trade;

**"Excluded Information"** means any information that is not generally available at the date of this Agreement which, if made generally available, would be likely to have a material effect upon the price or value of the Shares;

**"Excluded Shares"** has the meaning given to that term in clause 4.1(h);

**"First Party"** has the meaning given in clause 27;

**"FMA"** means the Financial Markets Authority;

**"FMCA"** means the Financial Markets Conduct Act 2013;

**"FMCR"** means the Financial Markets Conduct Regulations 2014;

**"Government Agency"** means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law;

**"Group"** means the Company and its Subsidiaries, and each of them is a Group Member;

**"GST"** includes tax imposed under the GST Act;

**"GST Act"** means the Goods and Services Tax Act 1985 (New Zealand) and the New Tax System (Goods and Services Tax) Act 1999 as the context requires;

**"GST Law"** has the same meaning as in the GST Act;

**"Indemnified Person"** means each of DCL, its related companies, Deutsche Bank AG and their respective directors, officers, partners, employees and advisers;

**"Insolvency Event"** means, in relation to an entity:

- (a) the suspension or cessation of the primary, or all of the, business activities of that entity for more than five consecutive Business Days; or
- (b) that entity:
  - (i) going into receivership or having a receiver, trustee, statutory manager, interim liquidator, liquidator or administrator appointed in respect of all or a substantial part of its assets;
  - (ii) being or becoming unable to pay its debts as they fall due, or being presumed to be unable to pay its debts as they fall due under sections 287(a) to 287(d) of the Companies Act;
  - (iii) stopping or suspending payment of any of its indebtedness or threatening to do so;
  - (iv) making or proposing to make an assignment for the benefit of, or entering into or making any arrangement or composition with, its creditors;
  - (v) any event, matter, proposal or circumstance occurring in relation to that entity that has a substantially similar effect to any of the events, matters or circumstances set out in (i) to (iv) above; or
  - (vi) any resolution being passed, or any proceeding being commenced, for the liquidation, dissolution, administration, winding up of that entity or any analogous procedure under the law of any jurisdiction in which that entity is incorporated, carries on business or has property (whether on a voluntary or involuntary basis);

**"Investor Presentation"** means the investor presentation prepared by the Company and/or the Vendor in the form annexed to this Agreement as Annexure "B";

**"Loss"** means all Claims, demands, losses, costs, charges or expenses (including legal expenses) and liabilities (including all such losses suffered or incurred in disputing, defending, investigating, preparing or providing evidence in connection with any Claims and/or in establishing a right to be indemnified under clause 14.1 or receive a contractual contribution under clause 14.12 and/or in seeking advice in relation to any Claims or in any way related to or in connection with the indemnity in clause 14.1 or the contractual contribution in clause 14.12) and whether joint or several;



**"Master ECM Terms"** means the New Zealand Master ECM Terms published by the New Zealand Financial Markets Association dated 3 October 2017;

**"Material Adverse Event"** means an event or events, or any matter or matters or information, individually or together, including any breach of a warranty or a covenant of the Vendor or the Company under this Agreement, which occurs, or which the Underwriter first become aware of, after the date of this Agreement and which in the reasonable opinion of an Underwriter:

- (a) has or is likely to have, or once disclosed will or will be likely to have, a material adverse effect on:
  - (i) the Group or its business or prospects;
  - (ii) the Block Trade;
  - (iii) the price at which the Shares are traded on the NZX Main Board and ASX;
  - (iv) the transfer and payment for the Block Trade Shares;
  - (v) the ability of the Vendor or the Company to transfer the Block Trade Shares at the Bookbuild Price
  - (vi) the Quotation of the Shares on the NZX Main Board or ASX; or
- (b) would, or would be likely to give rise to a material liability to the Underwriter in connection with the Block Trade in any capacity under any law or regulation; or
- (c) has given rise to or is likely to give rise to a contravention by the Underwriter of, or the Underwriter being involved in a contravention of, the FMCA, the NZX Listing Rules, ASX Listing Rules or any other applicable law or regulation,

except in the case of paragraph (b) or (c) above where the relevant event or matter results solely or predominantly from material non-compliance with this Agreement, fraud, wilful misconduct or negligence of the Underwriter, provided that a Material Adverse Event will not automatically be constituted by the Underwriter validly terminating its obligations under this Agreement under clause 2.5 or 17.2;

**"NZX"** means NZX Limited;

**"NZX Listing Rules"** means the listing rules from time to time of the NZX Main Board;

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

**"NZX Notice"** means the notices the Company will give to NZX which are similar to notices that would be required pursuant to clause 20(1)(a) of Schedule 8 of the FMCR if the Company were offering and issuing shares pursuant to the QFP Exclusion;

**"NZX Waiver"** means a waiver granted by NZX in respect of any NZX Listing Rule;

**"Primary Market Participant"** has the meaning given to it in Rule 1.1 of the NZX Participant Rules;

**"QFP Exclusion"** means the exclusion in clause 19 of Schedule 1 to the FMCA;

**"QFP Requirements"** has the meaning given in clause 5.1(a);

**"Quotation"** means official quotation of the Shares on the NZX Main Board and the ASX;

**"Registrar of Companies"** means the Registrar of Companies appointed in accordance with section 357(1) of the Companies Act;

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

**"Second Party"** has the meaning given in clause 27;

**"Security Interest"** includes any mortgage, pledge, lien, hypothecation, or other charge or encumbrance;

**"Shares"** means ordinary shares in the Company;

**"Shareholder"** means each holder of Shares recorded as such in the share register of the Company;

**"Specified Period"** has the meaning given in clause 7.1(c);

**"Subsidiary"** means a subsidiary as defined in sections 5 and 6 of the Companies Act and, where applicable, as if the company concerned were a company incorporated under the Companies Act;

**"Sub-Underwriter"** means any person appointed by the Underwriter as a sub-underwriter of the Underwriter's obligations under this Agreement;

**"Termination Date"** means the earlier of:

- (a) 5.00pm on the Trading Date;
- (b) for the Underwriter, the date upon which the Underwriter discharges its payment obligations under clause 4.2 in cleared funds available for immediate disbursement without set off, counterclaim or deduction (except as permitted by any agreement relating to fees and expenses) and/or procures application and payment for the Block Trade Shortfall Shares;
- (c) the date on which this Agreement is validly terminated pursuant to clause 2.5 or 17.2; and
- (d) the date upon which the parties agree in writing that the obligations of the Underwriter should terminate;

**"Third Party"** has the meaning given in clause 5.6(h);

**"Timetable"** means the timetable for the Block Trade set out in Schedule 4;

**"Underwriter"** means DCL;

**"Underwriter Group"** means Deutsche Craigs Limited and Craigs Investment Partners Limited, and each of their respective related companies;

**"Underwriter Fee"** has the meaning given to that expression by clause 10.1;

**"Underwriter Warranty"** means a representation and warranty made by the Underwriter to the Company pursuant to clause 13;

**"Underwritten Price"** means \$4.00 per Block Trade Share;

**"US Securities Act"** means the US Securities Act of 1933;

**"Vendor Warranty"** means a representation and warranty made by the Vendor to the Underwriter pursuant to clause 12.1, as set out in Schedule 2.

**"Verification Materials"** means the contents of the file maintained by the Company being the documents and information provided in relation to the verification of statements made in the Investor Presentation and verified as part of Due Diligence Investigations; and

**"Warranty"** means a representation and warranty made by the Company to the Underwriter pursuant to clause 11.1, as set out in Schedule 1.

1.2 **Construction of certain references:** In this Agreement, unless the context otherwise requires, any reference to:

- (a) an *act, statute or statutory provision, or order or regulation* made under it, includes that act, statute, provision, order or regulation as amended, modified, re-enacted or replaced from time to time (whether before or after the date of this Agreement) and to any previous act, statute, statutory provision, order or regulation amended, modified, re-enacted or replaced by that act, statute, provision, order or regulation;
- (b) an *agreement* includes a contract, deed, licence, franchise, undertaking (in each case whether oral or written) or other document recording legally binding obligations (whether mutual or otherwise) and includes that agreement as modified, supplemented, novated or substituted from time to time;
- (c) an *authorisation* includes any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Government Agency, including under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005, and, in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken;
- (d) a *consent* includes an approval, authorisation, exemption, waiver, filing, licence, order, permit, recording or registration (and references to obtaining consents is to be construed accordingly);
- (e) a *material adverse effect* in a person (or group of persons) is a reference to a material adverse change:
  - (i) in that person's (or group of persons') condition (financial, operational, legal or otherwise), earnings, business affairs, solvency, credit rating, management, prospects, operations or in the consolidated financial condition or operations of it or any of its related companies; or

- (ii) in that person's (or group of persons') ability or willingness to perform its material obligations under any material agreement to which it is a party,

whether or not arising in the ordinary course of business;

- (f) a *person* includes an individual, body corporate, an association of persons (whether corporate or not), a trust and a state and agency of a state (in each case, whether or not having separate legal personality and whether incorporated or existing in New Zealand or elsewhere);
- (g) *property* includes the whole and any part of the relevant person's business, assets, undertakings, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it;
- (h) *related companies* has the meaning given to it by section 2(3) of the Companies Act, read as if references in that section to a company included any body corporate;
- (i) a *related party* includes:
  - (i) any related company of the Company;
  - (ii) the directors of the Company; and
  - (iii) the directors of any related company of the Company;
- (j) any *party* to this Agreement includes, as far as is consistent with the provisions of this Agreement, that party's successors in title and assigns;
- (k) one *gender* includes each other gender;
- (l) a *clause, schedule or annexure* is a reference to a clause in, or Schedule or Annexure to, this Agreement;
- (m) *currency* and \$ are references to New Zealand currency, unless expressly stated otherwise;
- (n) *dates* and *times* are to dates and times in New Zealand and a *month* or *year* are references to a calendar month or year as the case may be;
- (o) *headings* and the *table of contents* are to be ignored in construing this Agreement;
- (p) *include* means include without limitation and *including* is to be construed accordingly; and
- (q) costs incurred by a person include all commissions, charges, losses, expenses (including legal fees on a solicitor and own client basis) and subject to clause 25.4, taxes incurred by that person.

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

#### 1.4 Relationship of the parties:

- (a) A right of a party under this Agreement is held by that party severally and each party exercises its rights, powers and benefits under this Agreement individually, provided that:
  - (i) Deutsche Craigs Limited and Craigs Investment Partners Limited will act jointly and severally with each other; and
  - (ii) the Trustee, MSix20 and SF will act jointly and severally with each other, and will, subject to clause 15, be jointly and severally liable under this Agreement.
- (b) Deutsche Craigs Limited is a wholly-owned subsidiary of Craigs Investment Partners Limited ("**CIP**"). The role of underwriter may be performed by Deutsche Craigs Limited or CIP (as the NZX Participant Firm), and those entities shall have the rights and benefits of underwriter.
- (c) Where the consent or approval of two or more parties is required under this Agreement, that consent or approval must be obtained from each of those parties.
- (d) Nothing in this Agreement will be construed so as to constitute an agency, a partnership or a fiduciary relationship between the Underwriter, the Vendor, the Company or any of them or so as to constitute any of them as the agent, partner, fiduciary or legal representative of any other of them.

## 2. CONDITIONS

2.1 **Conditional obligations of the Underwriter:** The obligations of the Underwriter under this Agreement (other than the confidentiality obligations set out in clause 31, which shall be binding from the date of this Agreement) do not become binding unless the following conditions are fulfilled (or waived under clause 2.3, if capable of waiver):

- (a) **United States legal opinion:** the Company and/or the Vendor procures that Allen & Overy delivers to the Underwriter by 8.00am on the Trading Date a legal opinion in form and substance reasonably satisfactory to the Underwriter to the effect that no registration is required under the US Securities Act for the initial offer, sale and delivery of the Block Trade Shares by the Vendor in the manner contemplated by this Agreement;
- (b) **Announcement:** an announcement being made by the Company to NZX and ASX before 9.30am on the date of this Agreement (or such later time as the parties agree, each acting reasonably), in the form annexed to this Agreement as Annexure "A";
- (c) **"Cleansing" Notice:** the Company releasing an NZX Notice in a form approved by the Underwriter (acting reasonably) to NZX and ASX before 9.30am on the Bookbuild Date;
- (d) **Certificate:** receipt by the Underwriter of a Certificate from the Company by 8.00am on the Trading Date; and

- (e) **Trading halt:** a trading halt is granted on the NZX Main Board and ASX in respect of the Company's Shares before 9.30am on the Bookbuild Date, such trading halt to be lifted once the Bookbuild outcome has been determined and the Underwriter confirm to the Vendor and the Company that allocations have been communicated to those Eligible Bookbuild Investors to whom Block Trade Shares have been allocated.
- 2.2 **Obligation to satisfy conditions:** The Company must use all reasonable endeavours to satisfy the conditions referred to in clause 2.1.
- 2.3 **Waiver:** The Underwriter may, acting in its absolute and unfettered discretion, waive any of the conditions referred to in clause 2.1 (if capable of waiver) by giving notice in writing to the Vendor and the Company to that effect.
- 2.4 **Notice:** The Company must promptly notify the Underwriter when a condition referred to in clauses 2.1 has been satisfied.
- 2.5 **Failure to fulfil conditions precedent:** If any condition precedent in clause 2.1 is not satisfied (or waived by the Underwriter) by the relevant date referred to in clause 2.1 for that condition, the Underwriter (in its absolute and unfettered discretion) may by written notice to the Vendor and the Company terminate its obligations under this Agreement at any time on or prior to the Trading Date.
- 3. **APPOINTMENT**
  - 3.1 **Appointment of Underwriter:**
    - (a) The Vendor appoints the Underwriter as underwriter for the purposes of underwriting the Block Trade, upon the terms and subject to the conditions set out in this Agreement, and the Underwriter confirms its acceptance of this appointment, subject to the terms of this Agreement.
    - (b) The appointments under clause 3.1(a) confer on the Underwriter all powers, authorities and discretions which are necessary for, or reasonably incidental to, the performance of its functions as underwriter (including the power to appoint Sub-Underwriters in accordance with clause 23.3) in accordance with the terms and conditions of this Agreement.
  - 3.2 **Agreement to underwrite:** The Underwriter agrees to underwrite the sale of the Block Trade Shares on the terms and conditions set out in this Agreement.
  - 3.3 **Assistance:** The Vendor and the Company undertake to the Underwriter that they will, at any time up to and including the Trading Date, use all reasonable endeavours to provide to the Underwriter all information and assistance reasonably requested by it, or that may be required by it, to perform its obligations as underwriter in accordance with the terms and conditions of this Agreement, including, in respect of the Company, sending and receiving contract notes, confirmation letters and other documentation to Eligible Bookbuild Investors on behalf of the Underwriter, and returning such documents to the Underwriter (where required).

- 3.4 **Sub-underwriting:** For the avoidance of doubt, the obligations of the Underwriter are primary obligations and, unless otherwise agreed, will not be affected, discharged or released by the appointment of Sub-Underwriters by the Underwriter.

#### 4. **BOOKBUILD**

##### 4.1 **Bookbuild:**

- (a) The Underwriter must, on the Bookbuild Date, invite Eligible Bookbuild Investors (other than Approved US Investors) to bid for Block Trade Shares at the Bookbuild Price in the Bookbuild in accordance with the Master ECM Terms (and this Agreement is the Lead Manager Agreement for the purposes of those terms).
- (b) The Company must, on the Bookbuild Date, invite Approved US Investors to bid for Block Trade Shares at the Bookbuild Price in the Bookbuild.
- (c) The Underwriter will not offer or sell Bookbuild Shares to any person in the United States.
- (d) The Underwriter (or any of its related bodies corporate) and any Sub-Underwriters may bid into the Bookbuild.
- (e) The Bookbuild Price will be determined by the Underwriter and the Company (each acting reasonably) having regard to:
  - (i) the requirement to maximise the price at which the book is covered and the outcome of the Bookbuild;
  - (ii) achieving an appropriate share register composition for the Company following the Block Trade; and
  - (iii) the expected after market performance of the Shares following completion of the Block Trade, provided that:
  - (iv) the Bookbuild Price is at least equal to the Underwritten Price; and
  - (v) the Bookbuild Price will not be set higher than the Underwritten Price unless the Underwriter has received binding and bona fide offers from Eligible Bookbuild Investors which, in the reasonable opinion of the Underwriter, are capable of acceptance and will, if accepted, result in the formation of binding agreements for the sale of all of the Block Trade Shares at the Bookbuild Price.
- (f) The Underwriter will provide the Company with a written recommendation as to the allocation of the Block Trade Shares. Allocation of the Block Trade Shares to Eligible Bookbuild Investors will be determined by the Company in consultation with the Underwriter (each acting reasonably) and in accordance with any relevant statements in the Investor Presentation.
- (g) Any necessary scaling of applications under the Block Trade will be determined by the Company and the Underwriter (each acting reasonably).

- (h) The Underwriter shall not, without the prior written approval of the Underwriter, be required to provide any settlement support under this Agreement to the extent the Vendor or the Company allocates Block Trade Shares to an Eligible Bookbuild Investor in respect of whom the Underwriter is not prepared to accept the credit risk (as determined by the Underwriter in its sole discretion), provided that the Underwriter has previously notified the Vendor and the Company to that effect prior to the allocation of Block Trade Shares, and any Block Trade Shares allocated to such Eligible Bookbuild Investors shall be "**Excluded Shares**".
- (i) Contract notes or confirmation letters (as applicable) must be sent by the Underwriter to the relevant Eligible Bookbuild Investors (other than Approved US Investors) on the Bookbuild Date.
- (j) US confirmation letters (as applicable) must be sent by the Company to the relevant Approved US Investors on the Bookbuild Date.
- (k) The Vendor must accept all bids for Block Trade Shares which it receives from Eligible Bookbuild Investors to whom Block Trade Shares are allocated under the Bookbuild.

4.2 **Bids and payment for Block Trade Shortfall Shares:** The Underwriter shall, not later than 4.00pm on the Trading Date, make or procure:

- (a) bid letters for the Block Trade Shortfall Shares; and
- (b) payment to the Vendor in full, without set-off, counterclaim or deduction (except as permitted in any agreement relating to fees and expenses), of an amount equal to the Bookbuild Price multiplied by the number of Block Trade Shortfall Shares in immediately available same day cleared funds.

4.3 **No requirement to take up shortfall if bid refused:** If any refusal by the Vendor or the Company to accept a bid for Block Trade Shares (other than a bid from an Eligible Bookbuild Investor in respect of whom the Underwriter has provided notice to the Company in accordance with clause 4.1(h)) results in there being Shortfall Block Trade Shares, the Underwriter will not be obliged to take up the amount of the Shortfall Block Trade Shares that is attributable to that refusal.

4.4 **Transfer of Block Trade Shares:** On the Trading Date, the Vendor and the Company must take all necessary and appropriate steps to transfer the Block Trade Shares to those Eligible Bookbuild Investors allocated Block Trade Shares in respect of which a bid letter has been received by the Underwriter in accordance with clause 4.2 (including for the avoidance of doubt, the Block Trade Shortfall Shares applied for by the Underwriter in accordance with this Agreement).

4.5 **Defaulting Bookbuild Investors:** On the Trading Date, the Vendor assigns to the Underwriter all contractual rights and recourse it may have (if any) against any Defaulting Bookbuild Investors other than in respect of any Excluded Shares. If the Vendor is unable to assign to the Underwriter all of the contractual rights and recourse referred to in this clause 4.5, the Vendor undertakes that it will assign such rights when and to the extent it is legally able to and in the interim will hold such rights on trust for the Underwriter.



## 5. DUE DILIGENCE OBLIGATIONS OF THE COMPANY

- 5.1 **Due diligence:** The Company must, until the Announcement Date, make, and continue to make, reasonable enquiries, take reasonable precautions, and exercise reasonable due diligence, to ensure that among other things specified in the Due Diligence Process Memorandum:
- (a) the requirements to be satisfied as if the Company was relying on the QFP Exclusion (as set out in clauses 20(2)(c), (d), (e) and (f) of Schedule 8 to the FMCR ("QFP Requirements")) are satisfied; and
  - (b) the Investor Presentation and any document or announcement distributed by or on behalf of the Company in connection with the Block Trade do not contain any statement that is:
    - (i) false, misleading, deceptive, or likely to mislead or deceive; or
    - (ii) unsubstantiated (being a statement for which the Company does not have reasonable grounds, other than a statement that a reasonable person would not expect to be substantiated).
- 5.2 **Due Diligence Committee:** The Company has established the Due Diligence Committee to assist the Company in complying with its obligations under clause 5.1. The Company shall procure that the Due Diligence Investigations are carried out in accordance with the Due Diligence Process Memorandum. The Underwriter shall be entitled to receive notice of and participate in meetings of the Due Diligence Committee in accordance with the terms of the Due Diligence Process Memorandum.
- 5.3 **Due Diligence Materials:** The Company will provide a final copy of the Due Diligence Report, and upon reasonable request, full and free access to the Verification Materials and all materials and documents used or created in connection with the preparation of the Due Diligence Report and the Verification Materials to the Underwriter and will procure that the legal opinion referred to in the Due Diligence Process Memorandum from Harmos Horton Lusk Limited is addressed to the Underwriter, and that the Underwriter is entitled to rely on the legal opinion provided to it (as contemplated by clause 17.1(b)), subject to the limitations set out in that opinion.
- 5.4 **Significant matters arising before Trading Date:** Without in any way limiting the provisions of clause 17, if at any time prior to the Trading Date the Company discovers or is notified that there has been a significant change affecting any information contained in the Investor Presentation or an NZX Notice, the Company must immediately notify the Underwriter of that change or matter and the parties will forthwith thereafter consult on the most appropriate course of action to be taken, provided that:
- (a) no action shall be taken without the prior consent of the Underwriter (such consent not to be unreasonably withheld or delayed and in any event to be provided where necessary for the Company to comply with the legal obligations of the Company, as set out in legal advice obtained from counsel experienced in the relevant area), any such consent to be without prejudice to clauses 8 and 15 except where such consent has been given in respect of a termination event referred to in clause 17.1; and

- (b) if any such action is taken, it shall be taken as soon as reasonably practicable following the receipt of consent from the Underwriter.

#### 5.5 **Access to information and services:**

- (a) At any time:
  - (i) prior to the Trading Date;
  - (ii) during any investigation or enquiry in relation to the Block Trade by NZX, ASX the FMA or any other Government Agency; or
  - (iii) during any litigation or similar proceedings in relation to the Block Trade,

each party must, upon receipt of reasonable notice from an another party (acting reasonably), provide that other party with full and free access during normal business hours to, and on reasonable request and to the extent possible and legally permissible, copies of all records, approvals, correspondence, materials and documents (in any medium) used in, created in connection with or in any other way connected with, the Due Diligence Investigations or the Block Trade. Each party must also procure that final versions of all such materials and documents are retained and stored for at least seven years from completion of the Block Trade for such purpose.
- (b) Without limiting the generality of clause 5.5(a), the Company must to the extent legally permissible, at the Underwriter's written request (acting reasonably) promptly give the Underwriter copies of notifications to and approvals of NZX, ASX the FMA or any other regulatory body relating to the Investor Presentation and any other similar material relating to the Block Trade.
- (c) Nothing in this clause 5.5 will require the parties to waive legal professional privilege.

#### 5.6 **Acknowledgements:** The Vendor and the Company each agrees and acknowledges (without acceptance that the following provisions are, of themselves, sufficient for the Underwriter to comply with law) that:

- (a) the Underwriter is not required to give legal, regulatory, accounting, taxation or public relations advice in connection with the Block Trade or any other advice that is not specified in this Agreement;
- (b) each of the Vendor and the Company will rely on its own expertise and on that of specialist legal, regulatory, accounting and tax advisers (and not that of the Underwriter) in respect of the Due Diligence Investigations;
- (c) any advice, whether written or oral, given by the Underwriter to the Vendor or the Company or any communications between the Underwriter and the Company can only be used and relied on by the Vendor or the Company and may not be used or relied on by any third party and may not be disclosed to any third party without the prior written approval of the Underwriter (other than the Vendor or the Company's professional advisers who may place no reliance on such advice);

- (d) the Underwriter is not obliged to disclose to the Vendor or the Company or utilise for the benefit of the Vendor or the Company, any non-public information which the Underwriter obtains in the normal course of its business where such disclosure or use could result in a breach of any obligation of confidentiality or any internal information barrier policies of the Underwriter;
- (e) it is contracting with the Underwriter on an arms-length basis to provide the services described in this Agreement and the Underwriter is not assuming any duties or obligations (fiduciary or otherwise) in respect of it other than those expressly set out in this Agreement;
- (f) without prejudice to any claim the Vendor or the Company may have against the Underwriter, no proceedings may be taken against any director, officer, employee or agent of any member of the Underwriter Group in respect of any claim the Vendor or the Company may have against the Underwriter;
- (g) the Underwriter and its related companies and members of its Underwriter Group (in their capacity as principal or agent) carry on a wide range of commercial banking and investment banking activities globally (including investment advisory, asset management, research, securities issuance, trading (customer and proprietary) and brokerage) from which conflicting interests or duties may arise and therefore, conflicts may arise between the duties of the Underwriter under this Agreement and other duties of the Underwriter or its respective related companies. Notwithstanding the foregoing, the Underwriter agrees at all times to use all reasonable endeavours to ensure that appropriate and effective internal information barriers are in place and operative;
- (h) the Underwriter and any of its related companies and members of its Underwriter Group may, at any time:
  - (i) provide services to any entity or person (a "**Third Party**") other than:
    - (aa) the Vendor or the Company; or
    - (bb) any member of the Group;
  - (ii) hold positions in securities or options on securities of, or hold positions in loans or options on loans of, the Company or a Third Party;
  - (iii) engage in any transaction (on its own account or otherwise) with respect to the Company or a Third Party; or
  - (iv) act in relation to any matter for itself, the Company, or any Third Party,

notwithstanding that such services, transactions or actions may be adverse to the Vendor or the Company or any member of the Group, and the Underwriter Group may retain for its own benefit any related remuneration or profit, and notwithstanding that a conflict of interest exists or may arise and/or any member of the Underwriter Group is in possession or has come or comes into possession (whether before, during or after the term of this commitment) of information confidential to the Vendor or the Company, provided that the directors, officers and employees of the Underwriter Group engaged in providing the services, implementing the transaction or acting for a Third Party are not aware of

information material to the transactions contemplated by this Agreement which is and which continues to be confidential to the Vendor or the Company;

- (i) permanent or ad hoc arrangements/information barriers may be used between and within divisions of the Underwriter or other members of the Underwriter Group for the purposes of compliance with clause 5.6(h) and that locating directors, officers or employees in separate workplaces is not necessary for such purpose;
- (j) information which is held elsewhere within the Underwriter or the Underwriter Group but of which none of the individual directors, officers or employees involved in the transactions contemplated by this Agreement actually has knowledge (or can properly obtain knowledge without breach of internal procedures), shall not for any purpose be taken into account in determining the Underwriter's responsibilities to the Vendor or the Company under this Agreement;
- (k) it is solely responsible for making its own independent judgments with respect to the Block Trade; and
- (l) it is not the intention to create a fiduciary relationship between the Underwriter and the Vendor or the Company and the Underwriter will not be acting in a fiduciary capacity with respect to the Vendor or the Company.

## 6. ANNOUNCEMENTS AND ADVERTISEMENTS

### 6.1 Consultation:

- (a) The Vendor and the Company undertake that they will not, and will procure that no related party or agent of them will, without the prior written approval of the Underwriter (such approval not to be unreasonably withheld or delayed), make or cause or permit any announcement to be made or any information to be disseminated which is or may be material to, or does or may materially affect, the Block Trade. However, if the Company is required by law to make an announcement to the NZX and ASX to comply with its legal obligations, the Company may make the announcement without the prior written approval of the Underwriter, provided that (where lawfully able) the Company has made reasonable efforts to obtain the Underwriter's consent to the relevant announcement in accordance with this clause 6.1(a) and the Company used commercially reasonable endeavours to ensure (to the extent reasonably practicable consistent with its other obligations), that the announcement is in a form which is not prejudicial to the Block Trade.
- (b) The Underwriter undertakes that it will not, without the prior written approval of the Company (such approval not to be unreasonably withheld or delayed), make or cause or permit any announcement to be made which is or may be material to, or does or may materially affect, the Block Trade.

### 6.2 Publicity: Each of the Vendor and the Company:

- (a) agrees that the Underwriter has the right, at the Underwriter's expense and following completion of the Block Trade, to place advertisements in major daily newspapers and business journals in New Zealand, or otherwise publicise their role with respect to the underwriting of the Block Trade on terms approved by the

Vendor and Company (such approval not to be unreasonably withheld or delayed); and

- (b) undertakes that it will not, without the prior written consent (such consent not to be unreasonably withheld or delayed) of the Underwriter, use the name or logo of the Underwriter in any public advertisement, statement, media release or document concerning the Block Trade.

## 7. UNDERTAKINGS

### 7.1 No competing offers:

- (a) During the Specified Period, the Company will not (and will not permit any Group Member to), without the prior written consent of the Underwriter (which may not be unreasonably withheld or delayed):
  - (i) offer for sale or subscription or accept offers to subscribe for, or sell, any Shares or other equity securities issued by the Company;
  - (ii) allot or issue any Shares or other equity securities of the Company (whether preferential, redeemable, convertible or otherwise);
  - (iii) issue or grant any right or option that entitles the holder to call for the issue of Shares by the Company or that is otherwise convertible into, exchangeable for or redeemable by the issue of, Shares or other equity securities by the Company;
  - (iv) create any debt instrument or other obligation which may be convertible into, exchangeable for or redeemable by, the issue of Shares or other equity securities by the Company;
  - (v) otherwise enter into any agreement whereby any person may be entitled to the allotment and issue of any Shares or other equity securities by the Company; or
  - (vi) make any announcement of an intention to do any of the foregoing, other than pursuant to:
    - (vii) an existing employee incentive scheme; or
    - (viii) as disclosed in the Investor Presentation.

For the purposes of this clause 7.1(a), "equity securities" has the meaning as given in section 8(2) of the FMCA.

- (b) During the Specified Period, the Company will not (and will not permit any Group Member to), without the prior written consent of the Underwriter (which shall not be unreasonably withheld or delayed):
  - (i) Dispose of or charge, or agree to Dispose of or charge, the whole or any substantial part of the Group's business; or

- (ii) enter into any commitment or arrangement which is or may be material in the context of the Block Trade, the underwriting of the Block Trade Shortfall Shares,

except, in each case, as has been publicly disclosed prior to the date of this Agreement (including by way of announcement on the NZX Main Board and ASX), as is expressly contemplated in the Investor Presentation, as announced on the NZX Main Board and ASX in any disclosure agreed with the Underwriter, or as disclosed in writing to the Underwriter prior to the date of this Agreement.

- (c) The "**Specified Period**" for the purposes of this clause 7.1 shall be the period from the date of this Agreement to and including:

- (i) in the case of clause 7.1(a), the later of:
  - (aa) the Trading Date; and
  - (bb) if the Underwriter subscribed for any Block Trade Shortfall Shares, the date 90 days after the Trading Date; and
- (ii) in the case of clause 7.1(b), the date 60 days after the Trading Date.

**7.2 Undertakings until the Trading Date:** The Company must in the period until the Trading Date:

- (a) not commit, be involved in or acquiesce in any activity which breaches or will lead to a breach, to a material extent, which is relevant to the Block Trade of:
  - (i) the FMCA, FMCR or any other applicable law in any relevant jurisdiction;
  - (ii) the NZX Listing Rules or ASX Listing Rules;
  - (iii) its constitution; or
  - (iv) any legally binding requirement of the FMA, NZX or ASX;
- (b) procure that neither it nor any of its material related companies:
  - (i) pass any resolution that it be wound up;
  - (ii) enter into any scheme or composition with or for the benefit of its creditors;
  - (iii) have a receiver or manager appointed to the whole or any part of its assets or undertakings;
  - (iv) permit any breach or default whereby it is liable to be wound up;
  - (v) have an administrator appointed to it; or
  - (vi) take any step towards any of the foregoing;

- (c) notify the Underwriter of:
  - (i) any breach of any undertaking given by the Company under this Agreement; or
  - (ii) the non-satisfaction of any of the conditions precedent in clause 2.1, or any such condition precedent becoming incapable of satisfaction,

promptly after it becomes aware of any such matter;
- (d) promptly provide the Underwriter with copies of any material communications to or from NZX, ASX, the Companies Office or the FMA relating to any of the transactions contemplated by this Agreement; and

7.3 **Conduct of business:** The Company undertakes that during the period commencing on the date of this Agreement and ending 60 days after the Trading Date it will, except with the prior written consent of the Underwriter (which shall not be unreasonably withheld or delayed), carry on its business in the ordinary course.

7.4 **Disposal of Block Trade Shares:** The Underwriter must inform the Company as soon as reasonably practicable after it has disposed of any Block Trade Shares transferred to it.

## 8. FINAL RESPONSIBILITY OF COMPANY

8.1 Notwithstanding that the Underwriter, its employees and advisers have assisted and will continue to assist in the compilation of material for, and the preparation of, the Investor Presentation (but without prejudice to clause 17.2), each of the Vendor and the Company acknowledges and agrees that the Company is and will remain solely and absolutely responsible for ensuring:

- (a) the accuracy, completeness, consistency and materiality of the contents of the Investor Presentation;
- (b) that all notices, reports, announcements, and advertising material (including the Investor Presentation) published, authorised or instigated by or on behalf of the Vendor or the Company in connection with the Block Trade are not:
  - (i) false, deceptive or misleading or likely to mislead or deceive; or
  - (ii) unsubstantiated (being a statement for which the Company does not have reasonable grounds, other than a statement that a reasonable person would not expect to be substantiated); and
  - (iii) comply with all applicable laws and regulations; and
- (c) that it conducts the Block Trade in accordance with all applicable laws and regulations.

## 9. DURATION OF UNDERWRITER'S OBLIGATIONS

9.1 The obligations of the Underwriter under this Agreement will commence on the date of this Agreement and continue until the Termination Date.

## 10. FEES, COSTS AND EXPENSES

- 10.1 **Payment of fees:** In consideration of performing its obligations under this Agreement, the Vendor must pay to the Underwriter on the Trading Date, upon the issue of a tax invoice (as applicable) by the Underwriter such fees as set out in the Engagement and Fee Letter ("**Underwriter Fee**").
- 10.2 **Costs and expenses:** The Vendor and/or the Company must pay, or reimburse the Underwriter for all costs, charges and expenses as set out in the Engagement and Fee Letter.

## 11. COMPANY WARRANTIES

- 11.1 **Company:** Subject to any matter that is disclosed in the Investor Presentation or that has been fully and fairly disclosed by way of an announcement by the Company to NZX and ASX or in writing to the Underwriter prior to the date of this Agreement (for the avoidance of doubt, including as may be fully and fairly disclosed through the Underwriter's participation in the Company's due diligence processes and the receipt of any information or reports as part of, or as a result of, those processes), the Company represents and warrants to and, where applicable, agrees with the Underwriter (with the intent that the Underwriter should rely on such representations, warranties and agreements in entering into this Agreement) in the terms set out in Schedule 1. Each of the paragraphs and sub-paragraphs in Schedule 1 will be construed independently and no paragraph or sub-paragraph will be limited by implications arising from any other paragraph or sub-paragraph.
- 11.2 **Warranties repeated:** Each of the Warranties are given as at the date of this Agreement and will be deemed to have been repeated and reaffirmed by the Company on each date from the date of this Agreement until the later of the Termination Date and the Trading Date, as if it had been made on and effective as at each of those dates.
- 11.3 **Company to notify:** The Company undertakes to the Underwriter to notify the Underwriter forthwith upon the happening of any event that either constitutes or is likely to constitute a breach of any Warranty and of any matter that may have the effect of making any Warranty incorrect or untrue or misleading by omission or otherwise.
- 11.4 **Truth of warranties:** The Company acknowledges that it has agreed for the benefit of the Underwriter that:
- (a) the truth of the statements contained in the Warranties;
  - (b) the fulfilment by the Company of all of its material obligations under this Agreement; and
  - (c) disclosure by the Company to the Underwriter prior to the Termination Date of any matter or event that does or is likely to constitute a breach of any Warranty and of any matter or event that has or is likely to have the effect of making any Warranty incorrect, untrue or misleading (were it not disclosed),
- are essential to the Underwriter.



## 12. VENDOR WARRANTIES

- 12.1 The Vendor Warranties contained in Schedule 2 are given by the Trustee, MSix20 and SF at the same time as the Warranties given by the Company under this Agreement, and clauses 11.1 to 11.4 of this Agreement shall apply, *mutatis mutandis*, in respect of the Trustee, MSix20 and SF, and the Vendor Warranties.

## 13. UNDERWRITER'S WARRANTIES

- 13.1 **Underwriter:** The Underwriter represents and warrants to the Vendor and the Company (with the intent that the Vendor and the Company should rely on such representations and warranties in entering into this Agreement in the following terms) that:
- (a) (*status*) it is a body corporate validly existing under the laws of its place of incorporation;
  - (b) (*power*) it has legal capacity and power to enter into and comply with all of the terms and conditions of this Agreement;
  - (c) (*authorisations*) all approvals and authorities that may be required to permit it to enter into this Agreement and to perform this Agreement in accordance with its terms have been obtained and remain valid and subsisting;
  - (d) (*validity of obligations*) this Agreement is a valid and binding obligation of it, enforceable in accordance with its terms;
  - (e) (*financial resources*) it has, and will have, on the date or dates that it is required to comply with clause 4.2, sufficient financial resources or commitments to meet its financial obligations under this Agreement in a timely manner;
  - (f) (*US selling restrictions*) it understands that the Block Trade Shares have not been, and will not be, registered under the US Securities Act, and may not be offered or sold in the United States except pursuant to an exemption from, or in a transaction subject to, the registration requirements of the US Securities Act and in compliance with clause 4.1(c) of this Agreement;
  - (g) (*no directed selling efforts*) none of it, any of its Affiliates, nor any person acting on behalf of any of them has engaged or will engage in any "directed selling efforts" (as that term is defined in Rule 902(c) under the US Securities Act);
  - (h) (*no general solicitation or general advertising*) none of the Underwriter any of its Affiliates or any person acting on behalf of any of them has solicited offers for or offered or sold, and none of them will solicit offers for, or offer to sell or sell, the Block Trade Shares in the United States in any form of "general solicitation" or "general advertising" within the meaning of Rule 502(c) under the US Securities Act; and
  - (i) (*no stabilisation or manipulation*) neither it, nor its Affiliates, nor any person acting on behalf of any of them, has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in the stabilisation or manipulation of the price of the Block Trade Shares in violation of any applicable law.

Each sub-clause of this clause 13.1 will be construed independently and no sub-clause will be limited by implications arising from any other sub-clause.

- 13.2 **Warranties repeated:** Each of the Underwriter Warranties are given as at the date of this Agreement and will be deemed to have been repeated and reaffirmed by the Underwriter on each date from the date of this Agreement until the later of the Termination Date and the Trading Date, as if it had been made on and effective as at each of those dates.
- 13.3 **Underwriter to notify:** The Underwriter undertakes to the Vendor and the Company to notify the Vendor and the Company forthwith upon the happening of any event that either constitutes or is likely to constitute a breach of any Underwriter Warranty given by it and of any matter that may have the effect of making any Underwriter Warranty given by it incorrect or untrue or misleading by omission or otherwise.
- 13.4 **Truth of warranties:** The Underwriter acknowledges that it has agreed for the benefit of the Vendor and the Company that:
- (a) the truth of the statements contained in the Underwriter Warranties given by it;
  - (b) the fulfilment by it of all of its material obligations under this Agreement; and
  - (c) full disclosure by it to the Vendor and the Company prior to the Termination Date of any matter or event that does or is likely to constitute a breach of any Underwriter Warranty given by it and of any matter or event that has or is likely to have the effect of making any Underwriter Warranty given by it incorrect, untrue, or misleading (were it not disclosed),
- are essential to the Company.

## 14. INDEMNITY

- 14.1 **Indemnity:** Subject to clause 14.2, the Vendor and the Company hereby irrevocably and jointly and severally agrees to indemnify and hold harmless each of the Indemnified Persons, on demand, at all times fully and effectively, from and against any and all Losses to the extent incurred by an Indemnified Person arising out of or in connection with the Block Trade, or the appointment of the Underwriter as underwriter pursuant to the Agreement, including:
- (a) Losses directly or indirectly incurred by an Indemnified Person arising out of any statement in information released publicly by the Vendor or the Company in connection with the Block Trade (whether in the Investor Presentation or otherwise); and
  - (b) Losses directly or indirectly incurred by an Indemnified Person arising out of:
    - (i) the Vendor or the Company failing to perform or observe any of its obligations under this Agreement;
    - (ii) non-compliance with, or involvement in investigations conducted by, any statutory or Governmental Agency requirement concerning the Block Trade;

- (iii) any representation or Warranty made or deemed have been made by the Vendor or the Company under this Agreement proving to have been untrue or incorrect or any undertaking given by the Company under this Agreement having been breached; or
- (iv) any Claim that an Indemnified Person has any liability under the FMCA or any other applicable law in relation to the Block Trade.

Each of the paragraphs in this clause 14.1 shall be construed independently and no paragraph is limited by implications arising from any other paragraph.

14.2 **Extent of Indemnity:** The Vendor and the Company will have no obligation to indemnify any Indemnified Person under clause 13.1 if and to the extent that:

- (a) the relevant Loss results from the fraud, gross negligence or wilful misconduct of that Indemnified Person;
- (b) the relevant Loss has resulted from any loss of Underwriter Fee or other fees and expenses which may have been (but had not yet become) payable under this Agreement, if this Agreement had not been terminated in accordance with its terms;
- (c) the relevant Loss is the direct cost of being transferred the Block Trade Shortfall Shares or is directly attributable to any Loss suffered by an Indemnified Person as a result of a change in the value of the Block Trade Shortfall Shares following transfer; or
- (d) the obligation to so indemnify is illegal, void or unenforceable under any applicable law,

provided that, in respect of any particular Claim or Loss, such limitation applies only to the Claim or Loss or portion of the Claim or Loss resulting from the matter set out in this clause 14.2, but not otherwise.

14.3 **Release:** The Vendor and the Company agrees that:

- (a) no Claim may be made by either of them against any Indemnified Person, and they unconditionally and irrevocably release and discharge each Indemnified Person from any Claim that may be made by them, to recover from any Indemnified Person any Loss suffered or incurred by it arising directly or indirectly as a result of the participation of any Indemnified Person in relation to the Block Trade, except in relation to matters where the Loss is caused by the fraud, gross negligence or wilful misconduct of such Indemnified Person, other than to the extent that Loss is caused, induced or contributed to by the Vendor or the Company or their Affiliates, or caused by an Indemnified Person's reliance on information contained in the Investor Presentation or other information provided by or on behalf of the Vendor or the Company or its Affiliates;
- (b) the Indemnified Persons are not liable in any circumstance for any indirect or consequential loss or damage;
- (c) in any event, no proceedings may be threatened or taken by or on behalf of the Vendor or the Company or their Affiliates against any individual who is an

Indemnified Person in connection with any Claim the Vendor or the Company may have against the Underwriter or any of its Affiliates arising out of or in connection with the Investor Presentation or the Block Trade; and

- (d) where the net liability of an Indemnified Person is increased as a result of a limitation or exclusion of liability arising under a contract between the Vendor or the Company and a third party who would otherwise be jointly and severally liable for any part of the losses, by operation of statute or because of a third party's death, bankruptcy or insolvency, the liability of that Indemnified Person shall be no more than it would have been in the absence of that limitation or exclusion of liability, statute, or death, bankruptcy or insolvency (as applicable).

**14.4 Notice:**

- (a) If an Indemnified Person receives notice of any act, matter or thing which in the opinion of the Indemnified Person could reasonably be expected to give rise to a Claim or Loss, it must notify the Vendor and the Company of the act, matter or thing as soon as reasonably practicable.
- (b) The Vendor and the Company agree that if they become aware of any Claim relevant for the purposes of this clause 14 or any matters which may give rise to a Claim (whether or not the Indemnified Person is an actual or potential party to such actual or potential Claim) they shall promptly notify the Underwriter and promptly provide the Underwriter with such information and copies of such documents relating to the Claim as the Underwriter may reasonably request.

**14.5 Failure to Notify:** The failure of an Indemnified Person to notify the Vendor or the Company under clause 14.4(a) will not release the Vendor or the Company from any obligation or liability which it may have to the relevant Indemnified Person under this Agreement, except that its liability in respect of that Indemnified Person is reduced to the extent to which the amount of the Claim which is the subject of the indemnity under clause 14.1 has increased (including as a result of any defence no longer being available) as a result of the failure to so notify.

**14.6 Preservation of Rights:** Subject to the other provisions of this clause 14, the rights of an Indemnified Person under this clause 14:

- (a) are not in any way be prejudiced or affected by:
  - (i) any approval given by that party in relation to the Investor Presentation;
  - (ii) any knowledge (actual or constructive) of any:
    - (aa) non-compliance by the Vendor or the Company or a subsidiary of the Company with any statutory, Governmental Agency, NZX or ASX requirement concerning the Block Trade or the Investor Presentation;
    - (bb) failure by the Vendor or the Company to perform or observe any of its obligations under this Agreement; or

- (cc) representation or Warranty made or deemed to have been made by the Vendor or the Company under this Agreement proving to have been untrue or incorrect;
  - (iii) any valid termination of this Agreement by the Underwriter;
  - (iv) any consent to be named in the Investor Presentation or document issued in connection with the Block Trade;
  - (v) the Vendor or the Company becoming entitled to institute or defend legal or other proceedings; or
  - (vi) any other fact, matter or thing which might otherwise constitute a waiver of, or in any way prejudice or affect, any right of an Indemnified Person other than a waiver in writing;
- (b) are in addition to any liability which the Vendor or the Company might otherwise have, or any other rights which any Indemnified Person might otherwise have; and
- (c) are fully enforceable in accordance with their terms notwithstanding any act, omission, matter or thing that, but for this provision, would or might give rise to a defence or counterclaim to such enforcement.

**14.7 Obligations of Indemnified Persons:** Subject to clause 14.8, the Underwriter must (and must procure that its Indemnified Persons must):

- (a) keep the Vendor and the Company informed on a timely basis of any developments in relation to any Claim in respect of which the indemnity in clause 14.1 will apply;
- (b) promptly take such reasonable action as the Vendor or the Company requests to avoid, dispute, resist, appeal, compromise or defend any Claim in respect of it;
- (c) not admit liability in respect of all or part of, or settle or compromise or consent to the entry of judgment in, any Claim without the prior written consent of the Vendor and the Company (not to be unreasonably delayed or withheld);
- (d) give all reasonable assistance and co-operation to the Vendor and the Company in the conduct of any Claims; and
- (e) do anything reasonably necessary or desirable to ensure that the Vendor and/or the Company (as appropriate) is subrogated to and able to enjoy the benefit of the rights of that Indemnified Person in relation to any cross-claims,

provided that a breach of any such requirement does not affect the other provisions of this clause 14.

**14.8 Conditions Precedent to Indemnified Persons' Obligations:** Subject to clauses 14.9 and 14.11, an Indemnified Person is under no obligation:

- (a) under clause 14.7(b) to (e) unless, at the time the Vendor or the Company requests that Indemnified Person to take any action, the Vendor or the Company (as appropriate) irrevocably and unconditionally agrees to indemnify the

Indemnified Person against all Loss incurred by it in taking the action required, as and when it falls due, including legal costs and disbursements of its lawyers on a full indemnity basis and the cost of any involvement of any senior officers of the Underwriter at normal commercial rates; or

- (b) to take or refrain from taking action under clause 14.7 if to do so would, in the reasonable opinion of the relevant Indemnified Person or the Underwriter:
  - (i) cause it to lose or breach legal privilege; or
  - (ii) breach any statutory or regulatory obligation which it owes to any third party other than the Underwriter; or
- (c) to take or refrain from taking any action under clause 14.7(d) or (e) if to do so would, in the reasonable opinion of the relevant Indemnified Person or the Underwriter, lead to a material risk of damage to the reputation, standing or business of the relevant Indemnified Person or the Underwriter.

#### 14.9 **Separate Representation:**

- (a) Without prejudice to its right of indemnity under clause 14.1, an Indemnified Person shall be entitled at its election, to be separately represented, and to be indemnified in each case for the costs and expenses of such representation under clause 14.1, in relation to any proceedings against an Indemnified Person in relation to which the indemnity in clause 14.1 applies, as and when they fall due, in any of the following circumstances:
  - (i) the Vendor or the Company (as appropriate) not choosing legal counsel satisfactory to the Indemnified Person (acting reasonably);
  - (ii) a conflict arises for legal counsel chosen by the Vendor or the Company, or between the interests of the Vendor or the Company on the one hand and the interests of the Indemnified Person on the other hand;
  - (iii) where there may be defences available to the Indemnified Person that are different from or additional to those available to the Vendor or the Company or another Indemnified Person represented by such legal counsel and the counsel appointed by the Vendor or the Company does not mount and pursue those defences on behalf of the Indemnified Person to the reasonable satisfaction of such Indemnified Person; or
  - (iv) the Indemnified Person reasonably believes it desirable to do so in order to protect the Indemnified Person's reputation, standing or business.
- (b) For the avoidance of doubt, each Indemnified Person shall be entitled at its election to have separate legal representation in relation to any proceedings arising under clause 14.1 in any other circumstance, with the costs of such separate representation at its own cost.

**14.10 Conduct of Proceedings:**

- (a) Subject to each of clauses 14.9 and 14.10(b), the Vendor or the Company, at its own cost, may have sole conduct of the defence of any Claim referred to in clause 14.1 provided that:
  - (i) the Vendor and the Company each:
    - (aa) acknowledges, and continues to acknowledge, that it is liable to indemnify the relevant Indemnified Person under clause 14.1 in respect of such Claim, but such acknowledgement shall not bind the Vendor or the Company if it subsequently discovers in the course of the proceeding that as a consequence of the actions or omissions of an Indemnified Person the indemnity is excluded by clause 14.2 (in which case the Vendor or the Company (as appropriate) shall immediately notify the Indemnified Person in writing of that fact);
    - (bb) pays (and continues to pay) for all legal and other costs in connection with the defence of the Claim as they arise;
    - (cc) satisfies (and continues to satisfy) the Indemnified Person of its financial ability to indemnify the Indemnified Person under clause 14.1;
    - (dd) obtains legal advice from a Queen's Counsel or other senior lawyer experienced in the relevant area that there is a reasonable prospect of successfully defending the Claim and the Queen's Counsel or other senior lawyer remains of that view;
  - (ii) the relevant Indemnified Person has the right to information from, and consultation with, the Vendor and the Company, and the right to its own independent legal representation, concerning or with respect to the development and defence of any litigation or threatened litigation (where the circumstances in clause 14.9 exist, such representation will be paid for by the Vendor or the Company (as appropriate) under the indemnity in clause 14.1, otherwise costs will be met by the relevant Indemnified Person);
  - (iii) the Vendor and the Company must have reasonable regard to preserving the reputation, standing and (as applicable) business of the relevant Indemnified Person in conducting the defence of the Claim; and
  - (iv) the Vendor and the Company must not:
    - (aa) without the written consent of the relevant Indemnified Person (not to be unreasonably withheld or delayed), effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened Claim or action in respect of which indemnification may be sought under this Agreement (whether or not the Indemnified Person is an actual or potential party to such Claim or action) unless the

Vendor or the Company (as appropriate) first consults reasonably with the relevant Indemnified Person and such settlement, compromise or judgment:

- (1) includes an unconditional release of each Indemnified Person from all liability arising out of such Claim or action; and
    - (2) does not include a statement as to an admission of fault, culpability or a failure to act by or on behalf of any Indemnified Person; or
  - (bb) otherwise make on behalf of such Indemnified Person or otherwise any admission of liability or compromise whatsoever in connection with the Claim or the proceedings without the prior written consent of each relevant Indemnified Person and the Underwriter (such consent not to be unreasonably withheld or delayed).
- (b) Without affecting the indemnity in clause 14.1 (including, for the avoidance of doubt, in relation to the Vendor's or the Company's liability for costs associated with any assumed or reassumed control or defence of any Claim under this clause 14.2(b)), an Indemnified Person has a right at any time at its discretion to assume or reassume the control or defence of any Claim referred to in clause 14.1 in the name of the relevant Indemnified Person. If an Indemnified Person does this:
- (i) it will have the right to conduct the proceedings under its management and control, provided it must consult reasonably and co-operate with the Vendor or the Company (as appropriate) in respect of the conduct of those proceedings;
  - (ii) prior to any settlement, admission of liability, or consent to the entry of any judgment with respect to, any pending or threatened Claim which would entitle the Indemnified Person to recover under the indemnity in clause 14.1, the Indemnified Person must first obtain the Vendor's or the Company's (as appropriate) prior written consent to that settlement, admission of liability or consent to entry of any judgement (not to be unreasonably withheld or delayed); and
  - (iii) the Vendor and the Company must:
    - (aa) render, upon request, all reasonable assistance and co-operation to the Indemnified Person in the conduct of any such Claim; and
    - (bb) do anything reasonably necessary or desirable to ensure that the Indemnified Person is subrogated to and enjoys the benefits of the rights of the Vendor or Company (as appropriate) in relation to any cross-claims,

except where the taking of that action would, in the reasonable opinion of the Vendor or the Company (as appropriate), lead to a material risk of



damage to the reputation, standing or business of the Vendor or the Company; and

- (iv) the Indemnified Person must:
  - (aa) keep the Vendor or the Company (as appropriate) fully informed of the relevant Indemnified Person's progress in defending the Claim and any proceedings; and
  - (bb) at the Vendor's or the Company's request, consult with, and take account of the reasonable views of, the Vendor or the Company (as appropriate) so far as reasonably possible in the relevant Indemnified Person's defence of the Claim and any proceedings.

For the avoidance of doubt, in the event of control or defence of a Claim being assumed or reassumed under this clause 14.10(b), the indemnity in clause 14.1 continues to apply in relation to all Claims and Losses suffered or incurred by any Indemnified Person.

**14.11 Indemnity – Third parties:** Where Loss is suffered by the Vendor or the Company for which an Indemnified Person would otherwise be jointly, or jointly and severally, liable with any third party or third parties to the Vendor or the Company, the extent to which such Loss will be recoverable by the Vendor or the Company (as appropriate) from the Indemnified Person will:

- (a) be limited so as to be in proportion to the Indemnified Person's contribution to the overall fault for such Loss, as agreed between the Indemnified Person and the Vendor or the Company (as appropriate) or, in the absence of agreement, as determined by a court of competent jurisdiction; and
- (b) be no more than it would have been had any arrangements which limit the extent to which the Vendor or the Company (as appropriate) may claim against a third party or parties in connection with the Block Trade not existed.

**14.12 Contractual contribution:** If for any reason the indemnities given by the Vendor or the Company under this clause 14 are unavailable or insufficient to fully indemnify and hold harmless any Indemnified Person against any Claim or Loss against which the Indemnified Person is stated to be indemnified under this clause 14 (other than as a result of the operation of any exclusion, limitation or qualification in this clause 14), then the Vendor, in lieu of indemnifying such Indemnified Person, will contribute to the aggregate amount of such Claim or Loss, as incurred, in all cases in such proportion as is appropriate to reflect:

- (a) the relative benefits received by the Vendor and the Company on the one hand and the Underwriter on the other hand from the Block Trade; or
- (b) if the allocation provided by clause 14.12(a) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause 14.12(a) above but also the relative fault of the Vendor and the Company on the one hand and of the Underwriter on the other hand in connection with the acts or statements or omissions which resulted in such Claims or Losses, as well as any other relevant equitable considerations.

**14.13 Determination of contribution:**

- (a) The relative benefit of the Vendor and the Company on the one hand and the Underwriter on the other hand shall be deemed to be in the same respective proportions as the total net proceeds from the offering of Block Trade Shares pursuant to this Agreement (before deducting fees, commissions or expenses) received by the Vendor and the total fees and commissions received by the Underwriter bear to the total gross proceeds from the Block Trade.
- (b) The relative fault of the Vendor and the Company on the one hand and the Underwriter on the other hand will be determined by reference to, among other things:
  - (i) whether any untrue statement or alleged untrue statement in the Investor Presentation or any omission or alleged omission from the Investor Presentation relates to information supplied by the Vendor or the Company on the one hand, or the Underwriter on the other hand;
  - (ii) the participation in, instigation of, or other involvement of the Vendor or the Company on the one hand, or the Underwriter on the other hand in the act complained of; and
  - (iii) the Vendor's and the Company's, and the Underwriter's, relative intent, knowledge, access to information and opportunity to correct or prevent the publication of such untrue statement or alleged untrue statement or such omission or alleged omission.
- (c) The Vendor, the Company and the Underwriter agree that it would not be just and equitable if contribution pursuant to clause 14.12 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in clauses 14.13(a) and (b).
- (d) Notwithstanding any other provisions of clause 14.12 or this clause 14.13, the Vendor and the Company agree that no Indemnified Person will be required to contribute under clause 14.12 to any Claim or Loss in an aggregate amount exceeding the aggregate commission and fees received by the Underwriter under this Agreement.

**14.14 Right to payment:** If an Indemnified Person pays an amount in relation to a Loss where it is entitled to contribution or indemnification from the Vendor or the Company under this clause 14, the Vendor or the Company agrees (as appropriate) to promptly reimburse the Indemnified Person for that amount.

**14.15 Related provisions:** The indemnity, releases and contractual contribution rights set out in clause 14.1 are:

- (a) in addition to any liability the Vendor or the Company might otherwise have (including under the Engagement and Fee Letter);
- (b) in addition to any other rights which any Indemnified Person might otherwise have;
- (c) intended to confer a benefit on each Indemnified Person for the purposes of the Contract and Commercial Law Act 2017 and each Indemnified Person may enforce

the indemnity, releases and contractual contribution set out in this clause 14 for his, her or its own benefit;

- (d) fully enforceable in accordance with their terms notwithstanding any act, matter, omission or thing that, but for this clause, would or may give rise to a defence or counterclaim; and
- (e) for the benefit of each Indemnified Person, each of whom may enforce the indemnity, releases and contractual contribution rights severally and without any need to join any or every other Indemnified Person in such proceeding.

14.16 **Indemnity to survive termination:** This clause 14 will survive and continue in full force and effect notwithstanding the termination of this Agreement for any reason.

14.17 **Sharing between Vendor and Company:** Without prejudice to the joint and several liability of the Vendor and the Company to the Underwriter, as between the Vendor and the Company liability under the indemnity in this clause 14 shall be shared between them in proportion to the extent that the Loss in question is attributable to the acts or omissions of each of them.

## 15. GUARANTEE

15.1 In consideration of the Underwriter entering into this Agreement, the Guarantor unconditionally and irrevocably guarantees to the Underwriter as principal obligor and not merely as a surety and by way of a continuing obligation, the due and punctual payment of any and all liabilities of the Vendor to the Underwriter under clause 14 and under the Engagement and Fee Letter. The liability of the Guarantor under this guarantee is not relieved or in any way affected in a manner prejudicial to the Underwriter by any variation of this Agreement, granting of time, waiver or forbearance to sue by the Underwriter or by any other act, omission, matter, circumstance or law whereby the Guarantor as a surety only would, but for the provisions of this clause, have been released from liability.

15.2 The Guarantor waives any right it may have to require the Underwriter (or any agent on its behalf) to proceed against or enforce any other right or claim for payment against any person before claiming from the Guarantor under this clause 15.

15.3 For the avoidance of doubt, any intermediate payment or partial discharge by the Guarantor of its obligations under this clause 15 shall not discharge or release the Guarantor's obligations that have not been satisfied by such intermediate payment or partial discharge.

## 16. TRUSTEE LIMITATION OF LIABILITY

16.1 To the extent the Vendor is liable for any amount under this Agreement that liability is joint and several as between the Trustee, MSix20 and SF provided that:

- (a) no person enforcing any liability entered into or incurred by the Trustee shall have recourse to any property of the Trustee which does not form part of the Crowther Family Trust; and

- (b) no person enforcing any liability entered into or incurred by SF shall have recourse to any property of SF which is not held for, or on behalf of, The Crowther Family Fund.

## 17. TERMINATION EVENTS

17.1 **Termination Events:** The obligations of the Underwriter to perform its obligations under this Agreement are conditional upon:

- (a) **Adverse events:** None of the following events or circumstances occurring or arising on or after the execution of this Agreement but prior to or on the Trading Date:
  - (i) *Material Adverse Event:* a Material Adverse Event; or
  - (ii) *financial, economic and political conditions:* any material or fundamental change in national or international, financial, economic or political conditions affecting capital markets or financial markets in New Zealand, Australia, Japan, any member state (or former member state of the European Union), Hong Kong, Singapore, the United States or the United Kingdom and this is a Material Adverse Event; or
  - (iii) *banking and settlement:* a general moratorium on commercial banking activities in New Zealand, Australia, Japan, any member state (or former member state of the European Union), Hong Kong, Singapore, the United States or the United Kingdom is declared by the relevant central banking authority in any of those countries, or there is a material disruption in commercial banking or security settlement or clearance services in any of those countries; or
  - (iv) *disclosures in NZX Notice and other advertising materials:* any information or statement contained in the Investor Presentation, the NZX Notice or any advertising or promotional materials or other documentation prepared or approved by the Company in accordance with clause 6 being false, deceptive or misleading or likely to mislead or deceive or unsubstantiated (being a statement for which the Company does not have reasonable grounds, other than a statement that a reasonable person would not expect to be substantiated) in any material adverse respect; or
  - (v) *disclosures:* any information supplied by or on behalf of the Company to the Underwriter in relation to the Group or the Block Trade being inaccurate, incomplete, misleading or deceptive (including by omission) and this is a Material Adverse Event; or
  - (vi) *compliance:* there being a failure by the Company or any of its Subsidiaries or any of their respective directors to comply, and continue to comply, with any provision of the Company's constitution, the Companies Act, the NZX Listing Rules, ASX Listing Rules, the FMCA, the FMCRA or any other statute, regulation or order required to be complied with by that person (including the requirements of any relevant foreign jurisdiction) and this is a Material Adverse Event; or

- (vii) *change in law*: there being announced, made, promulgated, or threatened any statute, regulation, order or enactment, or any direction or policy of any Government Agency, statutory or regulatory authority (including, without limitation, NZX, ASX, the Registrar of Companies, or the FMA) or similar body, in any jurisdiction, or of any Court, and this is a Material Adverse Event; or
- (viii) *listing*: the Company ceases to be admitted to the official list of NZX or ASX or its Shares are suspended from official quotation on the NZX Main Board or ASX (other than a voluntary suspension requested by the Company and consented to by the Underwriter to facilitate the Block Trade, such consent not to be unreasonably withheld or delayed), or the Company requests that trading in any Shares (including the Block Trade Shares) be halted by NZX or ASX without the prior written consent of the Underwriter, such consent not to be unreasonably withheld; or
- (ix) *notifications*: prior to the Trading Date the issue of an order preventing the Vendor or the Company from offering for sale or transferring the Shares (including the Block Trade Shares) by any regulatory body having jurisdiction in respect of the Block Trade (including under the FMCA), or any such regulatory body otherwise commencing an investigation into conduct or affairs relating to the Block Trade, or a third party applies to a court of competent jurisdiction seeking orders to prevent, or which will have the effect of preventing, the Vendor or the Company from offering for sale or transferring the Shares (including the Block Trade Shares) and that application to a court of competent jurisdiction is a Material Adverse Event; or
- (x) *default*: a breach by the Vendor or the Company in the performance of any of its obligations under this Agreement occurs and this is a Material Adverse Event; or
- (xi) *warranties*: a breach of any Warranty, or any Warranty is incorrect or untrue or misleading (by omission or otherwise) and this is a Material Adverse Event; or
- (xii) *certificate*: any Certificate given by the Company is false, misleading, deceptive or inaccurate as at the date the Certificate is given and this is a Material Adverse Event; or
- (xiii) *capital structure*: other than as contemplated in clause 7.1(a), the Company alters its capital structure without the consent of the Underwriter and this is a Material Adverse Event; or
- (xiv) *force majeure*: there is an event or occurrence, including any statute, order, rule, regulation, directive or request (including one compliance with which is in accordance with the general practice of persons to whom the directive or request is addressed) of any Government Agency which makes it illegal for the Underwriter to satisfy an obligation under this Agreement, or to market, promote or settle the Block Trade; or
- (xv) *unable to proceed*: the Vendor or the Company is or will be prevented from conducting or completing the Block Trade by or in accordance with

the NZX Listing Rules, ASX Listing Rules, the FMA, any applicable laws or an order of a court of competent jurisdiction, or otherwise are or will become unable or unwilling to do any of these things; or

- (xvi) *regulatory Action*: NZX, ASX, the Registrar of Companies, the FMA or any other regulatory body or authority taking any action in relation to the Block Trade or Investor Presentation and this is a Material Adverse Event.

(b) **Reports, opinions, letters etc:** The receipt by the Underwriter of:

- (i) a legal opinion from the Company's legal counsel in relation to compliance with law and the due diligence process (as described in the Due Diligence Process Memorandum); and
- (ii) a copy of the Due Diligence Report,

such opinions and report to be in a form agreed with the Company (and satisfactory to the Underwriter, acting reasonably) and such opinions addressed to, and expressed to be for the benefit of, the Underwriter in its capacity as underwriter;

(c) **Due Diligence Investigations:** Any Due Diligence Investigations of the Company or conducted by, in conjunction with or on behalf of, the Company or the Underwriter not revealing any matter of which the Underwriter was not previously aware and this is a Material Adverse Event; and

(d) **Certificate:** The receipt by the Underwriter of the Certificate required under this Agreement by the time required under this Agreement.

Each of the paragraphs and sub-paragraphs in clause 17.1 above will be construed independently and no paragraph or sub-paragraph will be limited by implications arising from any other paragraph or sub-paragraph.

17.2 **Termination on non-fulfilment:**

- (a) Any or all of the conditions set out in clause 17.1 may be waived by the Underwriter, acting in its absolute and unfettered discretion.
- (b) In determining whether an event of the nature referred to in clause 17.1 has arisen, the Underwriter shall consult, to the extent reasonably practicable, with the Vendor and the Company. Nothing in this clause 17.2(b) shall limit the discretions or rights of the Underwriter under this Agreement.
- (c) If:
  - (i) by or on the Trading Date, or by any earlier date specified in respect of any condition, all of the conditions set out in clause 17.1 have not been fulfilled or waived by the Underwriter; or
  - (ii) at any time after the date of this Agreement, circumstances arise as a result of which the Underwriter is reasonably satisfied that any of the

conditions set out in clause 17.1 have become incapable of fulfilment and have not been waived by the Underwriter,

then the Underwriter may, by notice to the Vendor and the Company terminate its obligations under this Agreement provided that, for the Underwriter to terminate pursuant to clause 17.1(a) with respect to a condition requiring a determination that the relevant event or matter is one that the Underwriter may reasonably consider to be a Material Adverse Event, the Underwriter must have made that determination and provided to the Vendor and the Company reasonable details in writing of its reasons for making that determination.

- 17.3 **Effect of termination:** In the event that the Underwriter validly terminates its obligations under this Agreement pursuant to clause 2.5 or 17.2, it shall be relieved of its obligations under this Agreement and shall be entitled to any fees and expenses, as set out in any agreement relating to fees and expenses.
- 17.4 **Survival:** Notwithstanding any other provision of this Agreement, if this Agreement is validly terminated:
- (a) this Agreement shall be of no effect, except to the extent that claims arose prior to termination;
  - (b) such termination shall be without prejudice to:
    - (i) any accrued rights or obligations of any party under this Agreement, and any claims arising out of the circumstances leading to termination; and
    - (ii) any obligation of the Company or the Underwriter in respect of any Block Trade Shares which have already been acquired and paid for or sold and paid for at the time of such termination; and
  - (c) the provisions of clauses 1, 5.5, 7.1, 7.3, 10.2, 14, 15, 17.3, this clause 17.4 and clauses 20, 22, 24, 25, 26, 27, 28, 30, 31 and 32 shall remain in full force and effect.

## 18. DELAY

- 18.1 No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by one party in respect of any breach of any other party's obligations under this Agreement is to:
- (a) operate as a waiver of or prevent the subsequent enforcement of that obligation; or
  - (b) be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence in respect of, or a waiver of, any subsequent or other breach.

## 19. POST COMPLETION

- 19.1 Each provision of this Agreement will, insofar as it has not been performed at the Termination Date or otherwise been extinguished under the terms of this Agreement, continue in full force and effect.

## 20. ENTIRE AGREEMENT

20.1 This Agreement and the Engagement and Fee Letter:

- (a) constitute the entire understanding and agreement of the parties relating to the underwriting of the Block Trade; and
- (b) supersede and extinguish all prior agreements, arrangements or understandings between the parties relating to the underwriting of the Block Trade.

20.2 The terms of this Agreement shall prevail over the terms of the Engagement and Fee Letter to the extent of any inconsistency.

## 21. AMENDMENTS

21.1 No amendment to this Agreement will be effective unless it is in writing and signed by each party.

## 22. NOTICES

22.1 **Form of notice:** Each notice or other communication under this Agreement is to be in writing, is to be made by personal delivery, post or email to the addressee at the address, and is to be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the addressee to the other party. The initial address, email address and relevant person or office holder of each party is set out below:

### **Vendor and Guarantor**

*Trustee, MSix20 and Guarantor*

Eliot Crowther  
11807 NE 73<sup>rd</sup> Street  
Kirkland, WA 98033  
United States of America

Email: eliot.crowther@pushpay.com  
Attention: Eliot Crowther

With a copy to:

Harmos Horton Lusk Limited  
Level 37, Vero Centre  
48 Shortland Street  
Auckland  
Email: nathanael.starrenburg@hhl.co.nz  
Attention: Nathanael Starrenburg

and

SF



Fidelma McGinn  
Seattle Foundation  
Westlake Tower  
1601 Fifth Avenue, Suite 1900  
Seattle, WA 98101-3615  
United States of America

**Company**

The Directors  
Pushpay Holdings Limited  
Level 6,  
167 Victoria Street West  
Auckland

Email: peter.huljich@pushpay.com  
Attention: Peter Huljich

With a copy to:

Harmos Horton Lusk Limited  
Level 37, Vero Centre  
48 Shortland Street  
Auckland  
Email: nathanael.starrenburg@hhl.co.nz  
Attention: Nathanael Starrenburg

**Underwriter**

Deutsche Craigs Limited  
Level 32  
Vero Centre  
48 Shortland Street  
Auckland

Email: jeremy.williamson@deutschecraigs.com  
Attention: Jeremy Williamson

With a copy to:

Russell McVeagh  
Level 30  
Vero Centre  
48 Shortland Street  
Auckland

Email: dan.jones@russellmcveagh.com  
Attention: Dan Jones

22.2 **Notice effective:** No communication is to be effective until received. A communication will, however, be deemed to be received by the addressee:

(a) in the case of personal delivery, when delivered;

- (b) in the case of a letter, on the third Business Day after posting; and
- (c) in the case of email, on the date and time at which it enters the addressee's email information system (as shown in the delivery report from the sender's information system).

## 23. ASSIGNMENT AND SUB-UNDERWRITING

- 23.1 **No assignment by Vendor or Company:** The Vendor and the Company are not entitled to assign this Agreement or any part of their benefits or obligations under this Agreement.
- 23.2 **Assignment by Underwriter:** The Underwriter may assign its rights or obligations under this Agreement to a related company or, with the prior written consent of the Vendor and the Company (acting reasonably), to any other person but without releasing it from any of its obligations to the Vendor and the Company.
- 23.3 **Appointment of Sub-Underwriters:** The Underwriter is entitled to appoint persons as Sub-Underwriters of its rights or obligations under this Agreement but without releasing it from any of its obligations to the Vendor or the Company.

## 24. SEVERABILITY

- 24.1 If at any time any provision (or any covenant contained in any provision) of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any relevant jurisdiction, such provision or covenant will be severed from this Agreement and will be ignored in construing this Agreement. Such illegality, invalidity or unenforceability will not affect the ability of any party to enforce the provisions (or, as the case may be, the remaining provisions or the remaining covenants contained in any provision) of this Agreement nor will the legality, validity or enforceability of such provisions under the law of any other jurisdiction in any way be affected or impaired thereby. However, the parties will, if so required by either of them, enter into good faith discussions in order to agree and (if agreed) implement such amendments to this Agreement as may achieve as nearly as possible its intent in a manner which is legal, valid and enforceable in all relevant jurisdictions.

## 25. GOODS AND SERVICES TAX

- 25.1 **Interpretation:**
  - (a) Unless the context suggests otherwise, all words and phrases used in this clause 25 which are defined in the GST Act have the meanings given to them in the GST Act.
  - (b) Any reference to GST paid or payable by the Underwriter or any of its Affiliates includes any GST paid or payable by the representative member of any GST group of which the Underwriter or the Affiliate is a member.
- 25.2 **GST exclusive consideration:** Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of any GST. The parties agree that for the purposes of GST, the supplies (or parts thereof) made by the Underwriter pursuant to or evidenced by this Agreement are not taxable (other than at a rate

of zero percent) being either not subject to GST, exempt, input taxed, zero rated or GST free and subject to clause 25.3 no amount shall be payable by the Vendor under or in accordance with this Agreement on account of GST.

- 25.3 **Payment of GST:** The parties agree that where the relevant tax authority has determined that GST is chargeable, other than at zero percent, on a supply made by one party (the "**Supplier**") to another party (the "**Recipient**") under or in accordance with this Agreement, the Supplier will issue a tax invoice to the Recipient and the Recipient will pay to the Supplier, in addition to the GST exclusive consideration for the supply, an amount equal to the sum of:
- (a) the GST charged on the supply (other than to the extent such GST relates to the Underwriter Fee) ("**GST Amount**"); plus
  - (b) any use of money interest (other than any use of money interest calculated by reference to a late payment penalty or shortfall penalty) imposed on the Supplier in relation to the GST Amount under the New Zealand Tax Administration Act 1994 (NZ), the GST Act or any replacement legislation as a result of the late payment or non-payment by the Supplier of the GST charged on the supply ("**Default GST**"). However the Recipient is not liable for any Default GST that relates to the period after the date that the GST Amount plus any Default GST in respect of the GST Amount is paid in full by the Recipient to the Supplier.

For the avoidance of doubt, no amount on account of GST (including Default GST) will be or become payable by the Recipient to the Supplier unless the Supplier has first issued a tax invoice, debit note or adjustment note.

- 25.4 **Net down:** If an amount payable under or in connection with this Agreement is calculated or determined by reference to an expense, cost, loss or outgoing of a party ("**Relevant Expense**"), the amount of the Relevant Expense for the purpose of calculating the payment is to be reduced by an amount equal to any input tax credit or (if applicable) any deduction from output tax the person is entitled to as a result of incurring the Relevant Expense, or where that person is a member of a GST group to the representative member of that group.

## 26. TIME OF THE ESSENCE

- 26.1 Time will be of the essence for the performance of all obligations in respect of which a time period or date, or both, is specified in this Agreement.

## 27. DEFAULT

- 27.1 If any moneys payable by any party ("**First Party**") to this Agreement to any other party ("**Second Party**") are not paid by the due date for payment, the First Party will pay to the Second Party interest at the rate equal to the aggregate of the overdraft interest rate charged to the Second Party by its bank as at the due date and 2% per annum calculated daily (but not cumulatively), and compounding quarterly, on the amount unpaid from and including the due date until payment is made in full. This provision is without prejudice to any party's rights, powers or remedies against any other party in respect of any delay or failure by the second mentioned party to make payment.

## 28. NO FIDUCIARY RELATIONSHIP

### 28.1 The Vendor and the Company acknowledge and agree that:

- (a) the Underwriter is acting solely pursuant to a contractual relationship with the Vendor and the Company on an arm's length basis with respect to the Block Trade (including in connection with determining the terms of the Block Trade) and on the terms, and with the obligations and duties, expressly stated in this Agreement, and not as a fiduciary to the Vendor or the Company or any other person;
- (b) except as provided in this Agreement, the Underwriter is not advising the Vendor or the Company or any other person as to any legal, tax, investment, financial and capital structure modelling, accounting or regulatory matters in any jurisdiction; and
- (c) the Underwriter shall not have any liability for any claims brought against any person (and the Vendor and the Company confirm they will not make any claim against the Underwriter) in respect of the timing, terms and structure of the Block Trade, or that the Bookbuild Price was set at a level that is too high or too low, or with respect to any sales of Block Trade Shares by investors following allocation to them by the Underwriter of such Block Trade Shares.

## 29. COUNTERPARTS

- 29.1 **Two or more counterparts:** This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.
- 29.2 **Any counterpart may be signed:** A party may enter into this Agreement by signing any counterpart (including any counterpart sent by way of facsimile or PDF email attachment).

## 30. SUCCESSION

- 30.1 The indemnity in clause 14 and all other terms of this Agreement shall be binding upon the parties and their respective successors and permitted assigns and any successor or permitted assign of any of their respective businesses and/or assets.

## 31. CONFIDENTIALITY

- 31.1 Each party shall at all times keep confidential, treat as privileged, and not directly or indirectly make or allow any disclosure or use to be made of:

- (a) the subject matter of this Agreement or any sub-underwriting agreement;
  - (b) any provision of this Agreement, of any sub-underwriting agreement, or of any information relating to any such provision; or
  - (c) any information directly or indirectly obtained from any other party under or in connection with this Agreement or any sub-underwriting agreement,
- except:
- (d) in the case of DCL, to Deutsche Bank AG;

- (e) to the extent required by the law of any jurisdiction in which the Block Trade is made;
- (f) to the extent necessary to satisfy the requirements of any recognised stock exchange;
- (g) to any person as part of a sub-underwriting offer;
- (h) as contained in the Investor Presentation; or
- (i) to the extent that the parties otherwise agree in writing.

## 32. GOVERNING LAW

32.1 **New Zealand law:** This Agreement is to be governed by and construed in accordance with the laws of New Zealand.


32.2 **Jurisdiction:** Each of the parties to this Agreement irrevocably:

- (a) agrees that any legal suit, action or proceeding ("**Actions**") arising out of or based on this Agreement may be instituted in any competent court in New Zealand;
- (b) waives, to the fullest extent it may effectively do so, any objection which it may now or later have to the laying of venue of those Actions in any such court; and
- (c) submits to the non-exclusive jurisdiction of those courts in those Actions.

## SIGNATURES

**CROWTHER TRUSTEE LIMITED** as  
trustee of the Crowther Family Trust by its  
sole director in the presence of:


  
G R Mason

  
\_\_\_\_\_  
Signature of witness  
**MEGAN FARMILOE**  
\_\_\_\_\_  
Name of witness  
**ACCOUNTANT**  
\_\_\_\_\_  
Occupation  
**AUCKLAND**  
\_\_\_\_\_  
City/town of residence

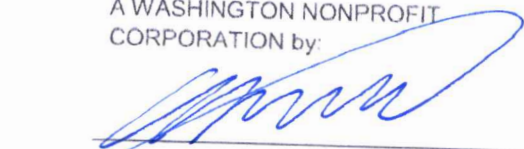
Russell  
Maugh

ELIOT BARRY CROWTHER as trustee of  
the Crowther Family Trust in the presence  
of:

  
E B Crowther

  
Signature of witness  
Richard Evan Lake  
Name of witness  
Sales Enablement  
Occupation  
Reelmond, WA  
City/town of residence

MSIX20 FOUNDATION  
A WASHINGTON NONPROFIT  
CORPORATION by:

  
Signature  
Eliot Crowther  
Name  
President.  
Title

SEATTLE FOUNDATION  
A WASHINGTON NONPROFIT  
CORPORATION by:

\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Name  
  
\_\_\_\_\_  
Title

**ELIOT BARRY CROWTHER** as trustee of  
the Crowther Family Trust in the presence  
of:

\_\_\_\_\_  
E B Crowther

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

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

\_\_\_\_\_  
Occupation

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

**MSIX20 FOUNDATION**  
A WASHINGTON NONPROFIT  
CORPORATION by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**SEATTLE FOUNDATION**  
A WASHINGTON NONPROFIT  
CORPORATION by:

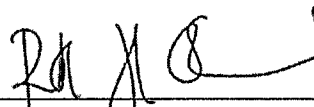
  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Title

DEUTSCHE CRAIGS LIMITED by:

and witnessed by:



Signature of authorised signatory

B. H. Shepherd

Name of authorised signatory



Signature of witness

Name of witness

**Wook Jin Lee**

**Solicitor**

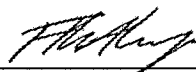
Occupation

**AUCKLAND**

City/town of residence

CRAIGS INVESTMENT PARTNERS  
LIMITED by:

and witnessed by:



Signature of authorised signatory

F. M. Aldridge

Name of authorised signatory



Signature of witness

Name of witness

**Wook Jin Lee**

**Solicitor**

Occupation

**AUCKLAND**

City/town of residence



PUSHPAY HOLDINGS LIMITED by



Signature of authorised signatory


Bruce Gordon

Name of authorised signatory

ELIOT BARRY CROWTHER in his  
personal capacity in the presence of:



E B Crowther



Signature of witness

Richard Euan Lake

Name of witness

Sales Enablement

Occupation

Redmond, WA

City/town of residence

## SCHEDULE 1

### Warranties by the Company

1. **Status:** It is a company limited by shares under the Companies Act.
2. **Capacity:** It has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates.
3. **Corporate authority:** It has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and its carrying out the transactions that this Agreement contemplates.
4. **Authorisation:** It holds each authorisation that is necessary to:
  - (a) execute this Agreement and to carry out the transactions that this Agreement contemplates;
  - (b) ensure that this Agreement is legal, valid, binding and admissible in evidence;
  - (c) enable it to properly carry on its business in all material respects,and it is complying with any conditions to which any of these authorisations is subject.
5. **Agreement effective:** This Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms.
6. **No contravention:** Neither its execution of this Agreement nor the carrying out by it of the transactions that this Agreement contemplates, does or will, in a material respect:
  - (a) contravene any law to which it, or any of its Subsidiaries, is subject or any order of any Government Agency that is binding on it;
  - (b) contravene any authorisation;
  - (c) contravene any agreement, undertaking or instrument binding on it or any of its Subsidiaries; or
  - (d) contravene the constitution of it or any of its Subsidiaries.
7. **Restraint on offering of the Block Trade Shares:** No action has been taken and no proceeding or process (excluding any frivolous or vexatious action, proceeding or process disclosed to the Underwriter in writing as being of that nature) has been commenced nor, to the best of the Company's knowledge (after due enquiry), is pending or has been threatened against the Company to restrain, contest or challenge the Company's right, power or ability to register the transfer of the Block Trade Shares, publish the Investor Presentation or any other document offering Shares or other securities in the Company or from entering into any agreement in relation to the offer or transfer of the Block Trade Shares by the Vendor or the entry into or performance of this Agreement.
8. **The Investor Presentation:** All announcements or disclosures (including the Investor Presentation and the NZX Notice) concerning the Block Trade, their publication and distribution,

and the offer and transfer of the Block Trade Shares, will comply where relevant in all respects with:

- (a) the NZX Listing Rules (including as modified by any applicable NZX Waiver) and ASX Listing Rules;
- (b) the Companies Act, the FMCA and the FMCR; and
- (c) all other applicable statutes, regulations or orders in New Zealand or elsewhere, which are required to be complied with by the Company,

subject in each case to any waivers, rulings or modifications granted in respect of the Block Trade or the Company.

9. **Conduct:** The Company has not engaged in, and will not engage in, conduct that is misleading or deceptive or which is likely to mislead or deceive (including by omission) in connection with the Investor Presentation or the Block Trade.
10. **Other material:** At the time of publication and at all times on or before transfer on the Trading Date, the Investor Presentation and any other announcements, and publicity, made or published by the Company or on its behalf or by a related company in relation to the Block Trade shall:
  - (a) comply in all material respects with the NZX Listing Rules (including as modified by any applicable NZX Waiver), ASX Listing Rules, Companies Act, FMCA, FMCR and all other applicable statutes, regulations or orders in New Zealand or elsewhere, which are required to be complied with by the Company; and
  - (b) not contain any statement that is false, misleading, deceptive, or likely to mislead or deceive or unsubstantiated (being a statement for which the Company does not have reasonable grounds, other than a statement that a reasonable person would not expect to be substantiated).
11. **Information and representations:** All material information and representations provided or to be provided to the Underwriter or its advisers in relation to the Block Trade (including, without limitation, information in relation to the Company's share register) by the Company or by its officers or sent on behalf of the Company by its solicitors was true, complete and accurate in all material respects (other than information which was not true, accurate or complete but, prior to the date of this Agreement, was corrected or completed by the Company in writing and provided to the Underwriter, including in the final Investor Presentation) and all information material to the making of an informed investment decision in relation to the Block Trade Shares has been disclosed to the Underwriter by the Company or is generally available to the market.
12. **No contravention:** Neither the Company nor any entity in the Group has contravened any material provision of its constitution, the FMCA or any other applicable law, the NZX Listing Rules (including as modified by any applicable NZX Waiver), the ASX Listing Rules or any material requirement of NZX, ASX or the FMA or any material agreement binding on it that is material in the context of the Block Trade and, except as disclosed in writing to the Underwriter prior to the date of this Agreement, the Company is not relying upon any exemption from its continuous disclosure obligations under the NZX Listing Rules.
13. **Litigation:** Except as disclosed in the Investor Presentation or by way of announcement to NZX and ASX prior to the date of this Agreement, neither the Company nor any entity in the Group is involved in any litigation, arbitration or administrative proceeding relating to claims or

amounts which are material in the context of the Block Trade nor is any such litigation, arbitration or administrative proceeding pending or threatened.

14. **Material Contracts:**

- (a) Each member of the Group has all contracts or valid rights necessary to conduct its business as currently conducted and no member of the Group has received notice of any cancellation, termination or failure to renew any such contracts, except for such contracts or rights the failure to maintain which, individually or in the aggregate could not reasonably be expected to result in a Material Adverse Event.
- (b) There has not been, and will not be before the Trading Date, a breach by the Company (or any entity in the Group) in a material respect of any provision of any contract which is material to the Company or the Group.

15. **Certificate:** The contents of each Certificate given under this Agreement will be true and correct in all material respects and not misleading or deceptive or likely to mislead or deceive in any material respect as at the date the Certificate is given.

16. **Licences:** Each member of the Group holds all licences, permits, authorisations and consents which are material to the conduct of its business and all such licences, permits, authorisations and consents are in full force and effect and as far as the Company is aware not liable to be revoked or not renewed.

17. **Block Trade Shares:** The Block Trade Shares are validly issued, fully paid, rank equally with the other Shares (including with respect to dividends declared on or after the Trading Date).

18. **Solvency:** Each Group Member is solvent and no circumstances exist or (assuming the Block Trade is successful) may reasonably be expected to arise as a result of which any member of the Group may cease to be solvent or able to pay its debts as and when they fall due.

19. **Financial position:** Since the date of the Accounts, except as otherwise expressly disclosed in the Investor Presentation or by way of announcement to NZX and ASX prior to the date of this Agreement:

- (a) the business of each member of the Group has been carried on in the ordinary and usual course in all material respects;
- (b) as far as the Company is aware, there has been no occurrence which has or will (either itself or together with any other occurrence) materially and adversely affect the value of the Block Trade Shares, the financial position, profitability or prospects of any member of the Group or any of the property or assets of the Group;
- (c) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital; and
- (d) as far as the Company is aware, none of the business, assets, liabilities, financial position or prospects of any member of the Group has been materially and adversely affected by any matter either financial or otherwise.

20. **Statements and opinions:** Any statement of opinion or belief of the Company or its directors contained in Investor Presentation or the NZX Notice is honestly held by the Company or its directors, as the case may be, and the Company or its directors, as the case may be, has

reasonable grounds for holding that belief or opinion and there are reasonable grounds for any estimate or expression of opinion, belief, expectation or intention, or statement relating to future matters (including any forecast or prospective financial statements, guidance statements, information or data or the assumptions or sensitivity in relation thereto) in the Investor Presentation or the NZX Notice.

21. **Other:** Other than as disclosed:

- (a) on the NZX Main Board or ASX prior to the date of this Agreement;
- (b) in the Investor Presentation or the NZX Notice; or
- (c) in writing to the Underwriter prior to the date of this Agreement,

since the date of this Agreement, the Company has and will not, without the prior written consent of the Underwriter (acting reasonably) or except where expressly provided in clauses 7.1(a)(vii) and 7.1(a)(viii):

- (d) changed its capital structure;
- (e) bought back any of its Shares or resolved to approve a share buyback;
- (f) issued Shares, or granted an option over Shares, or agreed to make such an issue or grant such an option;
- (g) issued, or agreed to issue convertible notes;
- (h) Disposed, or agreed to Dispose, of the whole, or a substantial part, of the business or property of the Group;
- (i) charged, or agreed to charge, the whole or a substantial part, of the business or property of the Group; or
- (j) resolved to be wound up.

22. **Other jurisdictions:** In relation to the Block Trade, the Company will comply in all material respects with all applicable laws in each jurisdiction in which Block Trade Shares are offered.

23. **Approvals:** Shareholder approval of the Company is not required for the Block Trade and any necessary NZX Waivers and approvals from NZX have been obtained to conduct the Block Trade.

24. **Quotation:** The Shares (including the Block Trade Shares) are quoted on the NZX Main Board and ASX, and, so far as the Company is aware, there is no reason why such Quotation will not be maintained and the Company will take all necessary steps to ensure such Quotation is maintained.

25. **No material liabilities:** Other than as disclosed in the Investor Presentation or the NZX Notice or disclosed prior to the date of this Agreement publically pursuant to the Group's disclosure obligations under the NZX Listing Rules, the Companies Act, the FMCA or the New Zealand Financial Reporting Act 2013, the Group has no material liabilities (whether present or future,

contingent or actual) or outstanding or anticipated obligations to contribute or pay any material sums, including by way of contribution to any pension scheme or arrangement.

26. **No Excluded Information:** Other than the Block Trade and its purpose and other information contained in the drafts of the Investor Presentation, an NZX Notice and any other announcement provided to the Underwriter immediately before execution of this Agreement, the Company is not aware of any Excluded Information at the date of this Agreement.
27. **Compliance with FMCA:** The Block Trade may be carried out without disclosure to investors under Part 3 of the FMCA and the Vendor will comply with the FMCA in all regards in relation to the Block Trade Shares, including subparts 2 and 3 of Part 5, up to and including the Trading Date.
28. **Anti-bribery:** None of the Company, any of its Affiliates or, to the knowledge of the Company, any director, officer, employee or other person acting on behalf of the Company or any of its Affiliates has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, or (iii) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, in each case, in violation of any applicable laws including the US Foreign Corrupt Practices Act of 1977 to the extent applicable.
29. **Money Laundering Laws:** The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance in all material respects with all applicable money laundering statutes of New Zealand and any other applicable jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Government Agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or Government Agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened.
30. **US securities laws:**
  - (a) (*foreign private issuer*) The Company is a "foreign private issuer" as defined in Rule 405 under the US Securities Act.
  - (b) (*no substantial US market interest*) The Company reasonably believes there is no "substantial US market interest" (as defined in Rule 902(j) under the US Securities Act) in the Block Trade Shares or any security of the same class or series as the Block Trade Shares.
  - (c) (*no integrated offers*) None of the Company, any of its Affiliates, nor any person acting on behalf of any of them (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Company makes no representation) has offered or sold, and they will not offer or sell, in the United States any security that could be integrated with the sale of the Block Trade Shares in a manner that would require the offer and sale of the Block Trade Shares to be registered under the US Securities Act.
  - (d) (*no directed selling efforts*) None of the Company, any of its Affiliates, nor any person acting on behalf of any of them (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Company makes no representation or warranty) has engaged or will engage in any "directed selling efforts" (as that term is defined in Rule 902(c) under the US Securities Act).

- (e) *(no general solicitation or general advertising)* none of the Company, any of its respective Affiliates or any person acting on behalf of any of them (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Company makes no representation) has offered or sold, or will offer or sell, any of the Block Trade Shares in the United States using any form of "general solicitation" or "general advertising" within the meaning of Rule 502(c) under the US Securities Act or in any manner involving a public offering of the Block Trade Shares in the United States within the meaning of Section 4(a)(2) of the US Securities Act.
- (f) *(no registration)* subject to the accuracy of the representations and warranties of the Underwriter in clauses 13.1(f), (g) and (h), and the compliance by the Underwriter with clause 4.1(c) of this Agreement, it is not necessary in connection with the offer, sale and delivery of the Block Trade Shares by the Vendor in the manner contemplated by this agreement, to register the Block Trade Shares under the US Securities Act, it being understood that the Company and the Vendor make no representation or warranty about any subsequent resale of Block Trade Shares.
- (g) *(Rule 144A eligibility)* to the best of the Company's knowledge, the Block Trade Shares are eligible for resale pursuant to Rule 144A under the US Securities Act and are not of the same class as shares listed on a national securities exchange registered under Section 6 of the US Securities Exchange Act of 1934 ("**Exchange Act**") or quoted in a United States automated interdealer quotation system.
- (h) *(not an Exchange Act reporting company)* to the best of its knowledge, the Company is exempt from reporting under Section 13 or 15(d) of the Exchange Act pursuant to Rule 12g3-2(b) thereunder.
- (i) *(ADR facility)* to the best of its knowledge, the Company does not have a sponsored American Depositary Program.
- (j) *(no stabilisation or manipulation)* None of the Company, any of its Affiliates nor any person acting on behalf of the Company (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Company makes no representation), has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in the stabilisation or manipulation of the price of the Block Trade Shares in violation of any applicable law.

## SCHEDULE 2

### Warranties by the Vendor

1. **Capacity:** It has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates.
2. **Authorisation:** It holds each authorisation and has taken all actions that are necessary to:
  - (a) execute this Agreement and to carry out the transactions that this Agreement contemplates;
  - (b) ensure that this Agreement is legal, valid, binding and admissible in evidence;
  - (c) enable it to properly carry on its business in all material respects,
 and it is complying with any conditions to which any of these authorisations or actions is subject.
3. **Agreement effective:** This Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms.
4. **Block Trade Shares:**
  - (a) The Block Trade Shares are validly issued, fully paid, rank equally with the other Shares (including with respect to dividends declared on or after the Trading Date).
  - (b) It is the registered holder and has legal ownership of the Block Trade Shares.
  - (c) The full legal and beneficial ownership of the Block Trade Shares will be transferred free and clear of any pledge, lien, charge, encumbrance or Security Interest.
5. **Brokers' fees and commissions:** Except as disclosed in the Investor Presentation or in writing to the Underwriter prior to the date of this Agreement, there are no contracts, agreements or understandings between the Company and/or the Vendor and any person that would give rise to a valid claim against the Company and/or the Vendor or the Underwriter for a brokerage commission, finder's fee or other like payment in connection with the Block Trade Shares.
6. **Compliance with FMCA:** The Block Trade may be carried out without disclosure to investors under Part 3 of the FMCA and the Vendor will comply with the FMCA in all regards in relation to the Block Trade Shares, including subparts 2 and 3 of Part 5, up to and including the Trading Date.
7. **US securities laws:**
  - (a) (*no integrated offers*) None of the Vendor, any of its Affiliates, nor any person acting on behalf of any of them (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Vendor makes no representation) has offered or sold, and they will not offer or sell, in the United States any security that could be integrated with the sale of the Block Trade Shares in a manner that would require the offer and sale of the Block Trade Shares to be registered under the US Securities Act.



- (b) *(no directed selling efforts)* None of the Vendor, any of its Affiliates, nor any person acting on behalf of any of them (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Vendor makes no representation or warranty) has engaged or will engage in any “directed selling efforts” (as that term is defined in Rule 902(c) under the US Securities Act).
- (c) *(no general solicitation or general advertising)* none of the Vendor, any of its respective Affiliates or any person acting on behalf of any of them (other than the Underwriter or its Affiliates or any person acting on behalf of any of them, as to whom the Vendor makes no representation) has offered or sold, or will offer or sell, any of the Block Trade Shares in the United States using any form of “general solicitation” or “general advertising” within the meaning of Rule 502(c) under the US Securities Act or in any manner involving a public offering of the Block Trade Shares in the United States within the meaning of Section 4(a)(2) of the US Securities Act.
- (d) *(no registration)* subject to the accuracy of the representations and warranties of the Underwriter in clauses 13.1(f), (g) and (h), and the compliance by the Underwriter with clause 4.1(c) of this Agreement, it is not necessary in connection with the offer, sale and delivery of the Block Trade Shares by the Vendor in the manner contemplated by this agreement, to register the Block Trade Shares under the US Securities Act, it being understood that the Company and the Vendor make no representation or warranty about any subsequent resale of Block Trade Shares.

### SCHEDULE 3

#### Certificate

To: Deutsche Craigs Limited and Craigs Investment Partners Limited

Attention: Jeremy Williamson

I hereby certify on behalf of Pushpay Holdings Limited (the "**Company**") that:

- (a) each condition required to be satisfied as at the date of this certificate referred to in clause 2.1 of the Underwriting Agreement has been satisfied and, where applicable, by the deadline set out in that clause, or otherwise waived by the Underwriter;
- (b) the Company has complied with its obligations under the Underwriting Agreement, whether arising under statute or otherwise;
- (c) the Warranties given by the Company in the Underwriting Agreement are true and correct in all material respects as at the date of this Certificate by reference to the facts and circumstances now existing, and the Company has not breached any of those Warranties in any material respect;
- (d) without limiting subparagraph (c) above, as at the date of this Certificate, no member of the Group has sustained a Material Adverse Event since the date of the Underwriting Agreement;
- (e) I am not aware, having made due and careful enquires, of any matters having arisen since the date of the Underwriting Agreement which required notification to the Underwriter under clause 7.2(c); and
- (f) to the best of my knowledge and belief, none of the events which may give rise to termination of the Underwriting Agreement pursuant to clause 17 of that agreement have occurred as at the date of this Certificate.

For the purposes of this Certificate:

- (a) "**Underwriting Agreement**" means the underwriting agreement relating to a block trade of ordinary shares dated on or about [●] June 2018 between Deutsche Craigs Limited, Craigs Investment Partners Limited and the Company (among others); and
- (b) words and expressions used shall have the meanings ascribed to them in the Underwriting Agreement.

**DATED:** 2018

[ ] by:

\_\_\_\_\_  
Director

## SCHEDULE 4

### Timetable

EVENT	DATE
Announcement Date	19 June 2018
Bookbuild Date	19 June 2018
Trading Date	22 June 2018

**ANNEXURE A**

**Announcement**

## Bookbuild launched to facilitate sell down as Pushpay farewells Eliot Crowther

Auckland, New Zealand – 18 June 2018

Pushpay Holdings Limited (NZSX:PPH, ASX:PPH, 'Pushpay' or 'the Company') announces a fully underwritten bookbuild to facilitate a sell down of all ordinary shares in Pushpay held by interests associated with Co-founder, Executive Director and Sales Executive, Eliot Crowther, ahead of his pending resignation.

### Eliot Crowther's resignation

Eliot Crowther, Co-founder, Executive Director and Sales Executive, will resign as an Executive Director on 21 June 2018 at the completion of the sell down transaction and will resign as an employee of Pushpay on 31 July 2018. Eliot is resigning for personal reasons, to focus on his family.

Bruce Gordon, Pushpay's Independent Chairman said, "The board and management of Pushpay would like to thank Eliot for his invaluable contribution to Pushpay, including his service as a Co-founder, Executive Director and Sales Executive. Pushpay wishes Eliot the best for his future endeavours. The board is actively searching for an additional US-based Director and is considering suitably qualified candidates of diverse backgrounds and experience."

Chris Heaslip, Pushpay's CEO and Co-founder said, "It has been a pleasure working alongside Eliot since co-founding Pushpay with him in 2011. I would like to thank Eliot for his contribution to the Company and for all the sacrifices he has made over the last seven years to serve Pushpay in his capacity as an Executive Director and Sales Executive, and I wish him all the best for the future."

### Fully underwritten sell down

The sell down will involve a bookbuild to facilitate the sale of 24,793,798 fully paid ordinary shares in Pushpay (9.03% of issued capital in Pushpay), representing all ordinary shares in Pushpay held by interests associated with Eliot Crowther. The sell down is fully underwritten. The bookbuild for the sell down will open today, Monday, 18 June 2018 and will close tomorrow, Tuesday, 19 June 2018. Pushpay has been granted a trading halt by the NZX and ASX in order for the bookbuild to be conducted. The trading halt will not be lifted as a result of this announcement. A further announcement will be made to the market when the trading halt is to be lifted. Pushpay expects to be in a position to make an announcement as to the outcome of the bookbuild prior to the markets opening on Wednesday, 20 June 2018, at which point trading in Pushpay's ordinary shares is expected to resume.

### *Indicative sell down timetable*

Trading halt: 18 June 2018

Conduct bookbuild for underwritten sell down: 18-19 June 2018

Resume trading and announce completion of bookbuild: 19 June 2018

Settlement for transfer of sell down shares on the NZX and ASX register: 21 June 2018

A presentation relating to this announcement has been released to the NZX and ASX today.

### US market listing update

On 10 January 2018, Pushpay announced its intention to complete a US market listing this calendar year, by 31 December 2018. The primary objectives behind the decision were to expand Pushpay's shareholder

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base, increase liquidity in the trading of Pushpay shares and enable the Company with better access to capital, thereby increasing funding alternatives to support the Company's growth strategy.

The board considers the primary objectives of the US market listing have been largely achieved and has decided to cease preparations for a US market listing for the time being. The board will reassess the need for a US market listing periodically. Pushpay has seen a substantial increase in liquidity and a wider range of institutional investors join its share register, including US-based institutions.

<i>Trading statistics</i>	<i>May 2018</i>	<i>December 2017</i>	<i>% Change</i>
<i>NZX annual turnover of shares</i>	NZ\$380.0m	NZ\$158.4m	139.9%
<i>NZX annual liquidity ratio</i>	32.1%	13.8%	18.3pp
<i>NZX total value traded for month</i>	NZ\$44.6m	NZ\$37.8m	18.0%
<i>Total holders</i>	5,647	4,735	19.3%

- Pushpay's annual turnover of shares on the NZX increased by 139.9% from December 2017 to May 2018, from NZ\$158.4 million to NZ\$380.0 million.
- Pushpay's annual liquidity ratio on the NZX increased by 18.3 percentage points from December 2017 to May 2018, from 13.8% to 32.1%.
- Pushpay was added to the S&P/NZX 50 Index in December 2017.

The sell down will provide further free float and liquidity to support Pushpay's indices weightings. Further, the sell down provides Pushpay the opportunity to further advance the desired objectives without the cost, complexity and compliance requirements associated with a US market listing.

Pushpay is confident that its existing capital is sufficient to reach cash flow breakeven prior to the end of calendar year 2018, with cash on hand. Pushpay does not currently have any requirement for additional capital, however it may consider acquisitions in the future which would serve to further strengthen its existing solutions.

Pushpay reiterates that its total revenue guidance of between US\$20.5 million and US\$22.0 million for the quarter ending 30 June 2018 remains unchanged.

## Contact

Sarah Elder | Investor Relations | Pushpay Holdings Limited

P: +64 21 637 449 | E: [investors@pushpay.com](mailto:investors@pushpay.com)

[www.pushpay.com](http://www.pushpay.com)

## About Pushpay

Pushpay provides a donor management system, including donor tools, finance tools and a custom community app, to the faith sector, non-profit organisations and education providers in the US, Canada, Australia and New Zealand. Our leading solutions simplify engagement, payments and administration, enabling our Customers to increase participation and build stronger relationships with their communities.

Pushpay receives funding from Callaghan Innovation to help cover the commercialisation of innovation.

Pushpay is an award-winning company, team and product. For more information visit [www.pushpay.com/investors/awards](http://www.pushpay.com/investors/awards).

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ENDS

**ANNEXURE B**  
**Investor Presentation**



# Investor Presentation

## June 2018



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# Disclaimer

This presentation has been prepared by Pushpay Holdings Limited ("Pushpay") solely to provide interested parties with further information about Pushpay and its activities as at the date of this presentation. The information in this presentation is of a general nature only and does not constitute a product disclosure statement, prospectus or other disclosure document for the purposes of the Financial Markets Conduct Act 2013 or other applicable law.

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This presentation is not a recommendation or offer of financial products for subscription, purchase or sale, or an invitation or solicitation for such offers, in the US or in any other jurisdiction. Any securities described in this announcement have not been, and will not be, registered under the US Securities Act of 1933 and may not be offered or sold in the US except in transactions exempt from, or not subject to, the registration of the US Securities Act of 1933 and applicable US state securities laws.

This presentation is not intended as investment, financial or other advice and must not be relied on by any prospective investor. It does not take into account any particular prospective investor's objectives, financial situation, circumstances or needs, and does not purport to contain all the information that a prospective investor may require. Any person who is considering an investment in Pushpay securities should obtain independent professional advice prior to making an investment decision, and should make any investment decision having regard to that person's own objectives, financial situation, circumstances and needs.

Past performance information contained in this presentation is given for illustrative purposes only and should not be relied upon (and is not) an indication of future performance. This presentation may also contain forward looking statements with respect to the financial condition, results of operations and business, and business strategy of Pushpay. Information about the future, by its nature, involves inherent risks and uncertainties. Pushpay gives no assurance that the assumptions upon which Pushpay based its forward looking statements on will be correct, or that its business and operations will not be affected in any substantial manner by other factors not currently foreseeable by Pushpay or beyond its control. Accordingly, no person should assume that any forward-looking statements will be realised. Nothing in this presentation is a promise or representation as to the future or a promise or representation that a transaction or outcome referred to in this presentation will proceed or occur on the basis described in this presentation. Statements or assumptions in this presentation as to future matters may prove to be incorrect.

A number of financial measures may be used in this presentation and should not be considered in isolation from, or as a substitute for, the information provided in the financial statements available at <https://pushpay.com/investors>.

Certain market and industry data used in connection with this presentation may have been obtained from research, surveys or studies conducted by third parties, including industry or general publications. Neither Pushpay nor any of its representatives or advisers have independently verified any such market or industry data provided by third parties or industry or general publications.

The financial data in this presentation includes certain measures that are not recognized or calculated under an applicable set of accounting principles. Such measures are commonly referred to as "non-IFRS financial information" or "non-GAAP financial measures". In this presentation, these measures include Average Revenue Per Customer (ARPC), Annualised Committed Monthly Revenue (ACMR), Customer Acquisition Cost (CAC), Months to Recover CAC and Lifetime Value (LTV). Pushpay believes this non-IFRS financial information provides, and these non-GAAP financial measures provide, useful information to users in measuring the financial performance and conditions of RWC. The non-IFRS financial information and these non-GAAP financial measures do not have a standardised meaning prescribed by International Financial Reporting Standards and, therefore, may not be comparable to similarly titled measures presented by other entities, nor should they be construed as an alternative to other financial measures determined in accordance with IFRS. Investors are cautioned, therefore, not to place undue reliance on any non-IFRS financial information or non-GAAP financial measures and ratios included in this presentation.

To the maximum extent permitted by law, none of Pushpay, the Underwriter, nor any of their respective related companies, shareholders, directors, officers, employees, partners, agents or advisers, or any other person, makes any representation or warranty, or provides any undertaking, in relation to any information provided in this presentation and they shall have no liability (including for negligence) for:

- any errors or omissions in this presentation; or
- any failure to correct or update this presentation, or any other written or oral communications provided in relation to this presentation; or
- any claim, loss or damage (whether foreseeable or not) arising from the use of any information in this presentation or otherwise arising in connection with this presentation or the information contained in it.

By receiving this presentation, you agree to the above terms and conditions.



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# Agenda

1. Pushpay overview
2. Sell down overview
3. US listing update
4. Appendix



# Pushpay overview

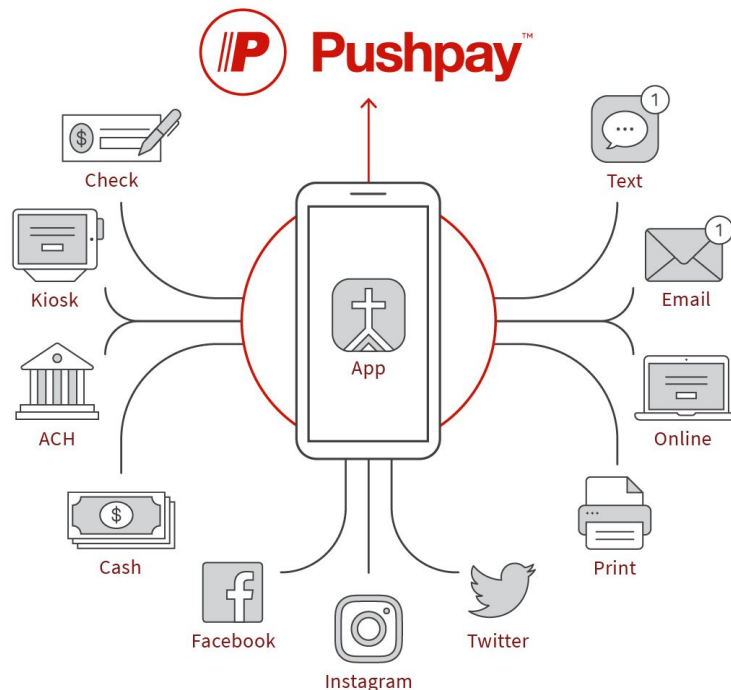


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# About Pushpay

Pushpay provides a donor management system, including donor tools, finance tools and a custom community app, to the faith sector, non-profit organisations and education providers in the US, Canada, Australia and New Zealand.

Our leading solutions simplify engagement, payments and administration, enabling our Customers to increase participation and build stronger relationships with their communities.



# A strong foundation of growth

## **Total Customers**

7,276 up from 6,737, an increase of 8.0% over the year to 31 March 2018

## **ARPC\***

\$989 per month up from \$727 per month, an increase of 36.0% over the year to 31 March 2018

## **ACMR \***

\$86.4 million up from \$58.8 million, an increase of 46.9% over the year to 31 March 2018

## **Total LTV of Customer base\***

\$1.9 billion up from \$1.3 billion, an increase of 44.6% over the year to 31 March 2018

## **Months to Recover CAC\***

<18 months remaining stable over the year to 31 March 2018

## **Annual Revenue Retention Rate\***

>100% remaining stable over the year to 31 March 2018

## **Staff Headcount**

350 down from 376, a decrease of 6.9% over the year to 31 March 2018

## **Cash**

\$17.9 million up from \$13.4 million, an increase of 33.6% over the year to 31 March 2018

# 12.3 million

*transactions processed over the year*

# US\$192

*average transaction value over the year*

# 19 countries

*with supported payments*

\* See page 25 for definitions of these non-GAAP financial measures.



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# Investment highlights

## Strong revenue growth

104.7% total revenue growth in FY2018 (US\$34.3m to US\$70.2m)

## Large Total Available Market (TAM)\*

US\$1.7b TAM in US faith sector\*\*

US\$123b in giving per annum to USA faith sector\*\*\*

## Mobile-first

Fundamental market shift to mobile-first solutions

## ARPC growth

36.0% Average Revenue Per Customer (ARPC) growth in FY2018 (US\$727 per month to US\$989 per month)

## Market-leader

Market leader in US faith sector with 2% estimated market share  
Under-resourced competitors lacking sophistication

## Strong leadership

Talented senior leaders from best-in-class SaaS companies  
350 employees across Redmond, WA, USA and Auckland, NZ through FY2018

\* Total Available Market (TAM) is a term that is typically used to reference the revenue opportunity available for a product or service.

\*\* Refer to page 26 in the Appendix for relevant workings and sources.

\*\*\* Giving USA (2017). Giving USA 2017 Annual Report



# Track record of success

☒ 31 December 2014 targets achieved

☒ 31 March 2015 target exceeded

☒ 30 September 2015 target exceeded

☒ 31 March 2016 target exceeded

☒ 31 December 2017 target exceeded

☒ 31 March 2018 target achieved

☒ Reiterating guidance of breakeven on a monthly cash flow basis by the end of calendar 2018

☒ Reiterating total revenue guidance of between US\$20.5 million and US\$22.0 million for the quarter ending 30 June 2018





# Sell down overview



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# Eliot Crowther

- Eliot Crowther, Co-founder, Executive Director and Sales Executive, will resign as a Director on 22 June at the completion of the sell down and will resign as an employee of Pushpay on 31 July. Eliot is resigning for personal reasons to focus on his family.
- The board and management of Pushpay would like to thank Eliot for his invaluable contribution to Pushpay including his service as a Co-founder, employee and Director. Pushpay wishes Eliot the best for his future endeavours.
- The board is actively searching for an additional US-based Director and is considering suitably qualified candidates of diverse backgrounds and experience.



# Sell down overview

Offer type	Secondary sale of fully paid ordinary Shares in PPH
Vendor	Interests associated with Eliot Crowther, Executive Director and Co-Founder (resigning from his position as an executive and Board member)*
Securities offered	24,793,798 Shares / 9.03% of fully paid ordinary Shares outstanding in PPH, representing 100% of the Vendor's stake
Offer size	NZ\$99.2m at the Underwritten Floor Price
Pricing structure	Bookbuild from the Underwritten Floor Price of NZ\$4.00 per Share, representing a: — 8.8% discount to the 5-day VWAP; and 8.5% discount to last traded price**
Underwriting	The offer is fully underwritten

\* Shares held through Eliot Barry Crowther & Crowther Trustee Limited, MSix20 Foundation and Seattle Foundation.

\*\* Last traded price on Monday, 18 June 2018.



# Indicative sell down timetable

Trading halt	18 June 2018
Conduct bookbuild for underwritten sell down	18-19 June 2018
Resume trading and announce completion of bookbuild	19 June 2018
Settlement for transfer of sell down shares on the NZX and ASX registers	21 June 2018

# US listing update



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# US listing update

- On 10 January 2018, Pushpay announced its intention to complete a US market listing this calendar year, by 31 December 2018.
  - The drivers behind the decision were to expand Pushpay's shareholder base, increase liquidity and enable the Company better access to capital, thereby increasing funding alternatives to support the Company's growth strategy.
- The board considers the primary objectives of the US market listing have been largely achieved and has decided to cease preparations for a US market listing for the time being. The board will reassess the need for a US market listing periodically.
  - We have seen a substantial increase in liquidity and a wider range of institutional investors join the register, including US-based institutions.
- The proposed sell down provides Pushpay the opportunity to further advance the desired outcomes without the cost, complexity and compliance associated with a US market listing.
- Pushpay is confident that its existing capital is sufficient to reach cash flow breakeven prior to the end of calendar year 2018, with cash on hand.
- Pushpay does not currently have any requirement for additional capital, however it may consider acquisitions in the future which would serve to further strengthen its existing solutions.



# Trading statistics

<i>Trading statistics</i>	<i>May 2018</i>	<i>December 2017</i>	<i>% Change</i>
<i>NZX annual turnover of shares</i>	NZ\$380.0m	NZ\$158.4m	139.9%
<i>NZX annual liquidity ratio</i>	32.1%	13.8%	18.3pp
<i>NZX total value traded for month</i>	NZ\$44.6m	NZ\$37.8m	18.0%
<i>Total holders</i>	5,647	4,735	19.3%

- Pushpay's annual turnover of shares on the NZX increased by 139.9% from December 2017 to May 2018, from NZ\$158.4 million to NZ\$380.0 million.
- Pushpay's annual liquidity ratio on the NZX increased by 18.3 percentage points from December 2017 to May 2018, from 13.8% to 32.1%. Additionally, Pushpay was added to the S&P/NZX 50 Index in December 2017.
- The proposed sell down will provide further free float and liquidity to support Pushpay's indices weightings.



# Appendix

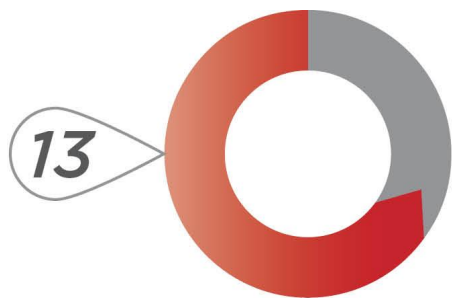


Not for release or distribution in the United States.



# Customers

7,276  
total customers

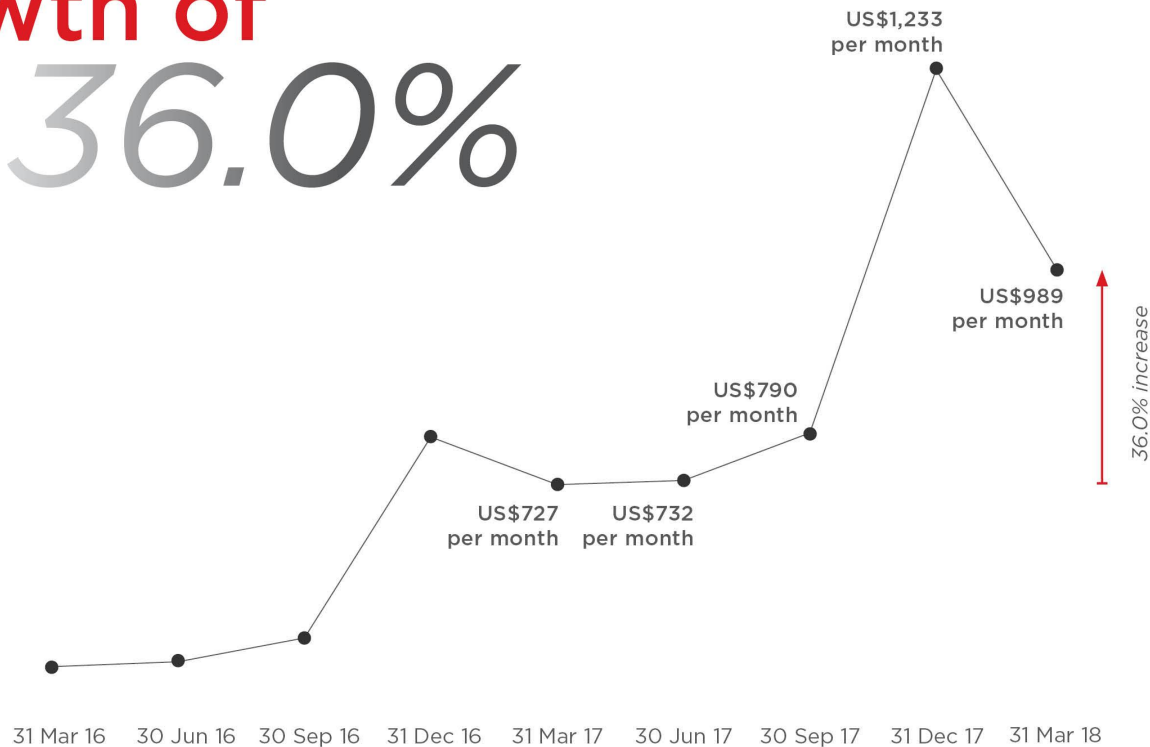


*top 20 largest  
churches in the US*

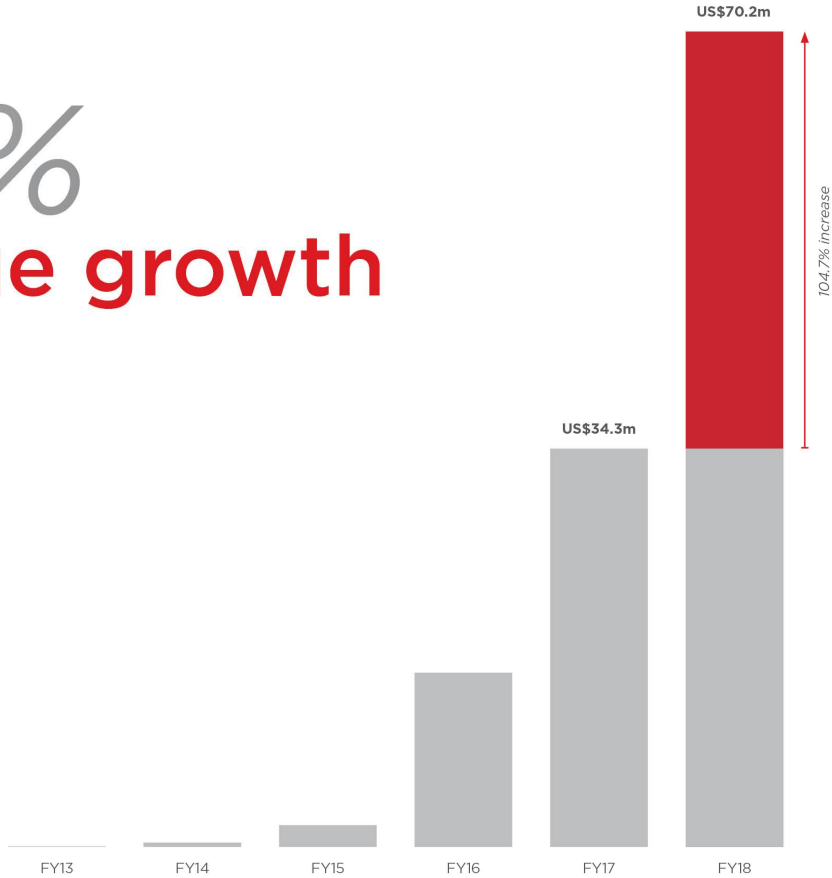


*top 100 largest  
churches in the US*

# ARPC growth of 36.0%

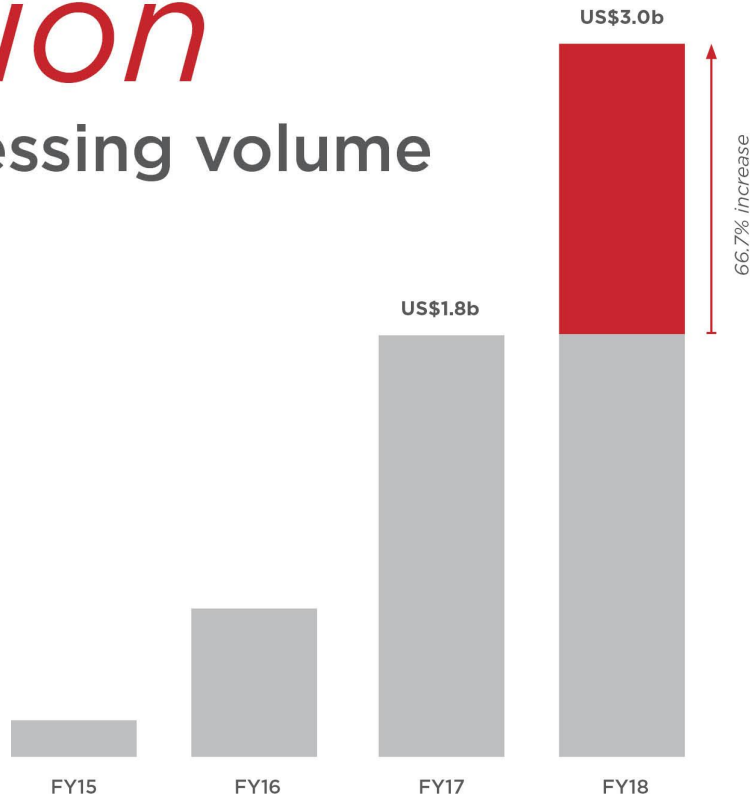


104.7%  
total revenue growth



# *US\$3.0 billion*

## Annualised processing volume



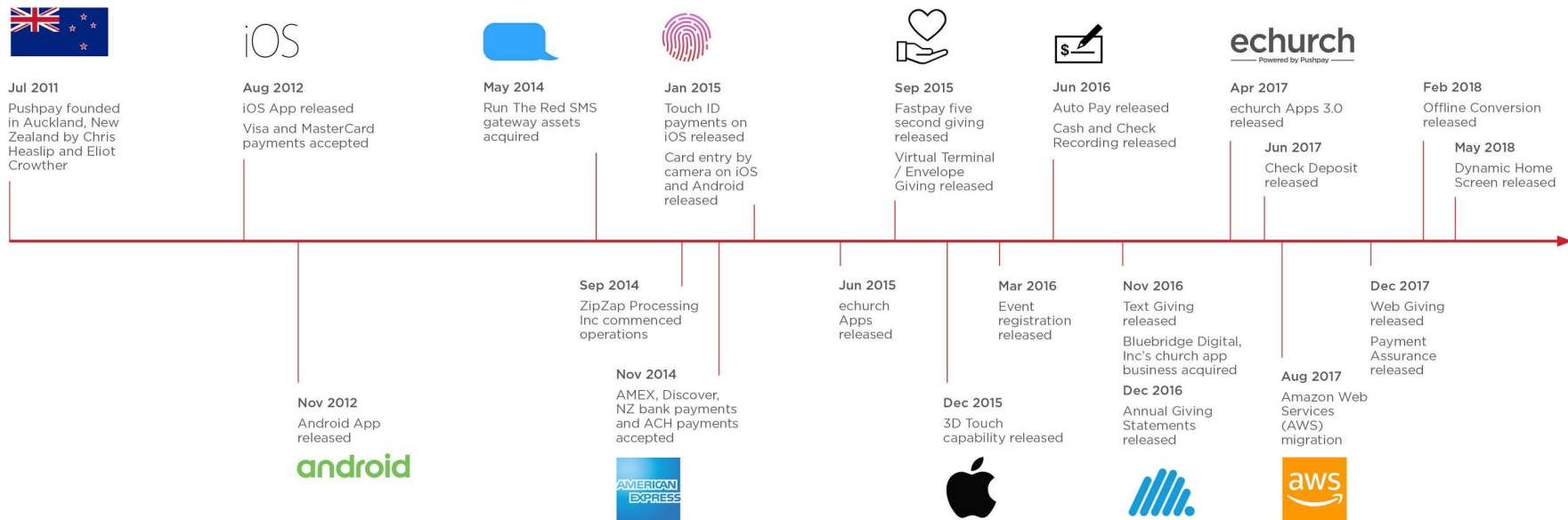


Pushpay is uniquely positioned to continue to drive social good and succeed in the next chapter of our growth journey.



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# Product



# Pushpay team



350 staff across Redmond, WA, USA  
and Auckland, New Zealand as at 31  
March 2018

#1

“People come first” - Company focus  
on growing our team’s culture and  
competency

Department	31-Mar-18
Business development	2
General & Administration	33
Product	89
Operations	32
Sales	111
Marketing	27
Customer success	56
Total	350



# Industry recognition





# Key metric definitions

**Annual Revenue Retention Rate** – is recurring revenue retained from Customers (for example, in the case of Customers in the faith sector, this is measured by the amount of recurring revenue at the end of the period excluding upsells into the existing Customer base, over the amount of recurring revenue from the end of the previous period).

**Annualised Committed Monthly Revenue (ACMR)** – is monthly Average Revenue Per Customer (ARPC) multiplied by total Customers and annualised. ACMR is a key metric to track how a SaaS business is acquiring revenue.

**Annualised Processing Volume** – is the annualised four week average payment transaction volume through the Pushpay payment platform.

**Average Revenue Per Customer (ARPC)** – is the combination of monthly Subscription Fees and Volume Fees divided by total Customers. Subscription Fees are based on the customer product holding which can vary based on the size of the Customer and Volume Fees are based on payment transaction volume. For Customers who use Pushpay's payment solution, Volume Fees are recognised on a gross basis and associated costs payable to issuing banks, processing partners and the card brands, such as Visa and MasterCard, are classified as expenses. The in-month average Volume Fee per Customer is used for the Volume Fee component of ARPC.

**Customer** – is an entity that utilises one or more Pushpay products. Pushpay reports Customers that have entered into an agreement and completed the paperwork necessary to set up their service. Pushpay views Customers with 0-199 average weekly attendees as small, 200-1,099 average weekly attendees as medium and 1,100 or more average weekly attendees as large.

**Customer Acquisition Cost (CAC)** – is sales, marketing and implementation costs divided by the number of new Customers added over a certain period of time.

**Lifetime Value (LTV)** – is the gross margin expected from a Customer over the lifetime of that Customer. This is calculated by taking the ARPC multiplied by 12, multiplied by the gross profit percentage, multiplied by the average Customer lifetime (the average Customer lifetime is 1 divided by churn, being one minus the Annual Revenue Retention Rate). A 97.5% Annual Revenue Retention Rate is used for the purposes of the calculation. Total LTV is calculated as LTV multiplied by total Customers.

**Months to Recover CAC** – CAC months or months of ARPC to recover CAC is the number of months of revenue required to recover the cost of acquiring each new Customer.

**Staff Headcount** – is total employees at a specific point in time.

**Subscription Fees** – is recurring fees based on Customer product holding, which can vary based on the size of the Customer (in the case of the faith sector, size is based on average weekly attendance).

**Volume Fees** – is variable fee income generated from payment transaction volume (in the case of the faith sector, this is usually a percentage of total donations).



# Relevant workings and sources

**Churches TAM Growing from 2016 to 2021:** US\$122.94 billion was given to religious organisations in the US in 2016. Using that figure, and assuming digital giving of 30%, Pushpay assesses the potential digital payment revenue opportunity in the US faith sector (i.e. in terms of subscription and transaction fees which could be earned from digital payments) to be US\$1.7 billion. If total religious giving in the US was to grow by 3.13% per annum and if total giving through digital payments was to increase by 6% per annum, the potential digital payment revenue opportunity in the US faith sector grows to US\$2.8 billion in 2021. Pushpay has calculated these revenue opportunity figures on an assumption that there are over 340,000 churches in the US faith sector (including Catholic Churches, Mormon Churches and Orthodox Churches) and on the basis of assumed church sizes (which Pushpay has estimated on the basis of demographic data). The TAM has been calculated on the basis of Pushpay's current subscription and transaction fee pricing.

## Sources:

- *Giving USA (2017). The Annual Report on Philanthropy for the year 2016*
- *Hartford Institute (2010). Religious Congregations Membership Study and other demographic data*



# FY18 results



Not for release or distribution in the United States.

# Condensed Income Statement

	<i>Year ended 31 March 2018 US\$000</i>	<i>Year ended 31 March 2017 US\$000</i>	<i>Movement US\$000</i>	<i>Change</i>
Total revenue	70,190	34,271	35,919	105%
Total expenses	(92,854)	(59,279)	(33,575)	57%
Net loss before tax	(22,664)	(25,008)	2,344	-9%
Total comprehensive loss for the year	(23,397)	(25,216)	1,819	-7%

# Business results and gross profit

	<i>Year ended 31 March 2018 US\$000</i>	<i>Year ended 31 March 2017 US\$000</i>	<i>Movement US\$000</i>	<i>Change</i>
Subscription revenue	19,749	10,789	8,960	83%
Processing revenue	47,948	23,167	24,781	107%
<b>Total operating revenue</b>	<b>67,697</b>	<b>33,956</b>	<b>33,741</b>	<b>99%</b>
Third party direct costs	30,232	14,869	15,363	103%
<b>Gross profit</b>	<b>37,465</b>	<b>19,087</b>	<b>18,378</b>	<b>96%</b>
<i>Percentage of operating revenue</i>	55%	56%		-1pp

# Operating expenses (ex third party direct)

	<i>Year ended 31 March 2018 US\$000</i>	<i>Year ended 31 March 2017 US\$000</i>	<i>Movement US\$000</i>	<i>Change</i>
Product design and development	(15,200)	(8,604)	(6,596)	77%
Sales and marketing	(29,056)	(22,024)	(7,032)	32%
Customer success	(6,237)	(4,123)	(2,114)	51%
General and administration	(12,137)	(9,598)	(2,539)	26%
<b>Total operating expenses</b>	<b>(62,630)</b>	<b>(44,349)</b>	<b>(18,281)</b>	<b>41%</b>
<i>Percentage of operating revenue</i>	93%	131%		38pp

# Condensed Statement of Cash Flows

	<i>Year ended 31 March 2018 US\$000</i>	<i>Year ended 31 March 2017 US\$000</i>	<i>Movement US\$000</i>	<i>Change</i>
Receipts from customers	38,781	20,572	18,209	89%
Other operating activities	(55,917)	(39,166)	(16,751)	43%
<b>Net cash flows from operating activities</b>	<b>(17,136)</b>	<b>(18,594)</b>	<b>1,458</b>	<b>-8%</b>
Net cash flows from investing activities	(2,532)	(5,577)	3,045	-55%
Net cash flows from financing activities	24,599	29,510	(4,911)	-17%
<b>Net increase in cash and cash equivalents</b>	<b>4,931</b>	<b>5,339</b>	<b>(408)</b>	<b>-8%</b>
<b>Cash &amp; cash equivalents at end of the year</b>	<b>17,886</b>	<b>13,406</b>	<b>4,480</b>	<b>33%</b>

# Condensed Statement of Financial Position

	<i>As at 31</i> <i>March 2018</i> <i>US\$000</i>	<i>As at 31</i> <i>March 2017</i> <i>US\$000</i>	<i>Movement</i> <i>US\$000</i>	<i>Change</i>
Cash and cash equivalents	17,886	13,406	4,480	33%
Other assets	16,754	16,696	58	0%
Unearned revenue	(6,946)	(5,621)	(1,325)	24%
Other current liabilities	(6,006)	(5,676)	(330)	6%
Net assets/total equity	21,688	18,805	2,883	15%