

SCHEME IMPLEMENTATION AGREEMENT FOR THE ACQUISITION OF PUSHPAY HOLDINGS LIMITED

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Dated

28 October 2022 [as amended on 7 and 13 March 2023 and as further amended and restated on 16 March 2023](#)

Parties

Pushpay Holdings Limited a company incorporated in New Zealand whose registered office is Level 6, 167 Victoria Street West, Auckland 1010, New Zealand (“**Pushpay**”)

Pegasus Bidco Limited a company incorporated in New Zealand whose registered office is Bell Gully, Level 22, Vero Centre, 48 Shortland Street, Auckland 1010, New Zealand (“**Bidder**”)

Introduction

- A. Pushpay and the Bidder have agreed that the Bidder will acquire all of the Scheme Shares by means of the Scheme.
 - B. The parties have agreed to implement the Scheme on the terms and subject to the conditions set out in this Agreement.
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Agreement

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context requires otherwise:

“**Adverse Circumstance**” has the meaning given to that term in clause 3.11.

“**Alternative Financing**” has the meaning given to that term in clause 10.5(d)(i).

“**Associate**” has the meaning given to that term in the Takeovers Code.

“**ASX**” means ASX Limited or Australian Securities Exchange, as the context requires.

“**Authorisation**” means any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency.

“**BGH**” means BGH Capital Pty Ltd.

“**BGH Shares**” means the 35,890,537 Shares held by Oceania Equity Investments Pty Ltd (in its capacity as trustee of the Oceania Trust) or any transferee of those Shares as contemplated by the Scheme Plan.

“**Bidder Group**” means the Bidder and its Related Companies (but excluding members of the Pushpay Group).

“**Bidder Indemnified Persons**” means each member of the Bidder Group and each of their respective directors, officers, employees and other Representatives.

“**Bidder Information**” means all information provided by the Bidder to Pushpay for inclusion in the Scheme Booklet [and the Scheme Booklet Supplement](#) concerning the Bidder, its Related Companies, financing, business and interests and dealings in the Shares.

“**Bidder Intentional Breach Damages**” has the meaning given to that term in clause 15.8(c).

“**Bidder Undertakings**” means the undertakings set out in Part 2 of Schedule Three.

“**Bidder Warranties**” means the warranties set out in Part 1 of Schedule Three.

“**Board**” means the board of Directors of Pushpay.

“**Break Fee**” means \$15.3 million (including GST, if any).

“**Break Fee Arrangements**” has the meaning given to that term in clause 15.9(a).

“**Business**” means the business carried on by the Pushpay Group as at the date of this Agreement.

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland, New Zealand and Melbourne, Australia and Los Angeles, California, United States of America and excluding any day between 24 December 2022 and 3 January 2023 (both dates inclusive).

“**Cancelled RSUs**” has the meaning given to that term in clause 6.3(b)(iii).

“**Change of Control Consent or Notification**” has the meaning given to that term in clause 9.6(a).

“**Claim**” means any action, claim, litigation, arbitration or prosecution.

“**Commitment Letters**” means, subject to clause 10.5(d)(iii), the ~~Equity Commitment Letters and the Debt Commitment Letter~~ [and the Equity Commitment Letters](#).

“**Companies Act**” means the Companies Act 1993.

“**Competing Proposal**” means any proposed:

- (a) full or partial takeover under the Takeovers Code in respect of Pushpay;
- (b) scheme of arrangement for the acquisition of all or a majority of the Shares;
- (c) transfer or issue of financial products of Pushpay to a Third Party:
 - (i) where Shareholder approval is required under the Takeovers Code; or
 - (ii) in respect of financial products which are convertible into, or exchangeable for, Shares, where Shareholder approval would be required under the Takeovers Code on conversion or exchange of those financial products;
- (d) sale of assets or financial products of any Pushpay Group member to any Third Party, where such sale constitutes a material part of the Business (and, for clarity will not include any sale, disposal of assets or winding up in relation to any business, division, subsidiary or other interest of the Pushpay Group having a value of less than \$150 million); or

- (e) reverse takeover, sale of securities, strategic alliance, joint venture, partnership, economic or synthetic merger or combination or other transaction or arrangement which, if completed, would result in a Third Party:
 - (i) directly or indirectly having or being entitled to have a Relevant Interest in, or any other direct or indirect legal, beneficial or economic interest in, or control over, more than 20% of the:
 - (A) Shares; or
 - (B) shares in any other member or members of the Pushpay Group that, individually or collectively, contribute 20% or more of the consolidated Underlying EBITDAF of the Pushpay Group;
 - (ii) directly or indirectly acquiring, or being entitled to acquire, the whole or substantially all of the business or assets of the Pushpay Group or any part of the business or assets of the Pushpay Group that, individually or collectively, contributes 20% or more of the consolidated Underlying EBITDAF of the Pushpay Group or that represents 20% or more of the total consolidated assets of the Pushpay Group; or
 - (iii) acquiring Control of Pushpay or merging or amalgamating with Pushpay or with any other member or members of the Pushpay Group that, individually or collectively, contribute 20% or more of the consolidated Underlying EBITDAF of the Pushpay Group or whose assets represent 20% or more of the total consolidated assets of the Pushpay Group,

or which would otherwise require Pushpay to abandon, or otherwise fail to proceed with, the implementation of the Scheme, and for the purposes of this definition of “Competing Proposal”:

- (f) any such proposal may be indicative, conditional or otherwise non-binding;
- (g) paragraphs (c), (d) and (e) above include any agreement (within the meaning of section 6 of the FMCA) whereby such a transaction is implemented through a series of linked or related transactions which if conducted as a single transaction would constitute a Competing Proposal within the meaning of paragraphs (c), (d) or (e);
- (h) Third Party shall mean a Third Party together with its Associates; and
- (i) each successive material modification to or variation of a Competing Proposal will constitute a new Competing Proposal.

“**Condition Satisfaction Date**” means the date that is 7 Business Days prior to the End Date or any other date agreed in writing by the parties.

“**Conditions**” mean the conditions precedent set out in the first column of the table in clause 3.1.

“**Confidentiality Agreements**” means:

- (a) the confidentiality agreement entered into between BGH and Pushpay dated 30 June 2022; and
- (b) the confidentiality agreement entered into between Sixth Street and Pushpay dated 29 June 2022.

“**Conflicted Director**” means the person listed in paragraph 13 of the Disclosure Letter.

“**Consideration**” means-:

- (a) \$1.34 in respect of each [Specified Share held by a Specified Shareholder; or](#)
- (b) [in respect of each other](#) Scheme Share held by a Scheme Shareholder, [\\$1.42 per Scheme Share](#).

“**Control**” means, in relation to a person (the “**Relevant Person**”) and one or more other persons, where those one or more persons, directly or indirectly, whether by the legal or beneficial ownership of shares, securities or other equity, the possession of voting power, by contract, trust, or otherwise:

- (a) has the power to appoint or remove the majority of the members of the governing body of the Relevant Person;
- (b) controls, or has the power to control, the affairs or policies of the Relevant Person; or
- (c) is in a position to derive more than 50% of the benefit of the existence or activities of the Relevant Person.

“**Counter Proposal**” has the meaning given to that term in clause 14.6(b).

“**Court**” means the High Court of New Zealand, Auckland Registry.

“**Court Guidance**” has the meaning given to that term in clause (a)(~~+~~).

“**D&O Run-off Policy**” has the meaning given to that term in clause 13.1(a).

“**Data Room Index**” means the index of Due Diligence Material disclosed in writing in the electronic data room established by Pushpay in relation to the Transaction, in a form agreed between the parties in writing on or prior to the date of this Agreement.

“**date of this Agreement**” means [28 October 2022](#).

“**Debt Commitment Letter**” means the debt commitment letter from the Debt Financing Sources, dated as of the date of this Agreement, addressed to the Bidder, as may be amended, restated, supplemented, modified, replaced or substituted from time to time, and all exhibits, schedules and attachments thereto.

“**Debt Fee Letter**” means the related fee letter referred to in the Debt Commitment Letter.

“**Debt Financing**” means the debt financing committed pursuant to the Debt Commitment Letter and the Debt Fee Letter.

“**Debt Financing Sources**” means the agents, arrangers, bookrunners, lenders and other entities that will commit to provide or provide or arrange the Debt Financing, including the agents, arrangers, bookrunners, lenders and other entities acting in similar roles that are party to the Debt Commitment Letter (together with their respective affiliates, funds and accounts or persons that become party thereto or which become party to other definitive documentation relating thereto).

“**Decision**” has the meaning given to that term in clause 7.4.

“**Deed Poll**” means the deed poll to be entered into by the Bidder in favour of the Scheme Shareholders in the form set out in Schedule Six or in such other form as the parties agree in writing.

“**Director**” means a director of Pushpay, from time to time.

“**Director Recommendation**” has the meaning given to that term in clause 8.1(a).

“**Disclaimer**” has the meaning given to that term in clause 11.5(b).

“**Disclosure Letter**” means a letter agreed between Pushpay and the Bidder prior to the entry into of this Agreement, together with the attachments to that letter, which:

- (a) discloses facts, matters and circumstances that may be inconsistent with the Pushpay Warranties; and
- (b) contains certain agreements between the Pushpay and the Bidder regarding certain disclosures.

“**DOJ**” means the U.S. Department of Justice.

“**Due Diligence Material**” means the:

- (a) written materials and information, including written answers provided by or on behalf of Pushpay to questions and requests for information made by or on behalf of the Bidder, made available on or before 10.15pm on 26 October 2022 to the Bidder or its Representatives in the electronic data room established by Pushpay, as listed in the Data Room Index; and
- (b) the Disclosure Letter.

“**Duty**” means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and any penalty, fine, interest or additional charge payable in relation to any such duty or charge.

“**Effective**” means, when used in relation to the Scheme, the coming into effect under section 236(3) of the Companies Act of the order of the Court made under section 236(1) of the Companies Act in relation to the Scheme and all of the Conditions having been satisfied or waived (where capable of being waived) in accordance with this Agreement and the Scheme.

“**Encumbrance**” means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind, and any agreement to create any of the foregoing.

“**End Date**” means:

- (a) the date that is seven months following the date of this Agreement, subject to extension under clause 7.4; or
- (b) any other date agreed in writing by the parties.

“**Equity Commitment Letters**” means:

- (a) the equity commitment letter from certain entities associated with BGH (being the Investors as defined therein) addressed to the Bidder and dated as of the date of this Agreement [and as amended and restated on the Restatement Date](#); and

- (b) the equity commitment letter from certain entities associated with Sixth Street (being the Investors as defined therein) addressed to the Bidder and dated as of the date of this Agreement [and as amended and restated on the Restatement Date](#).

“**Equity Financing**” means the equity financing committed under the Equity Commitment Letters.

“**Escrow Agent**” means LINK.

“**Escrow Agreement**” means the escrow agreement to be entered into between Pushpay, the Bidder and LINK in the form set out in Schedule Seven or in such other form as the parties agree in writing.

“**Excluded Shares**” means:

- (a) the BGH Shares and the Sixth Street Shares, unless the Bidder and Pushpay otherwise agree in writing following a written request from the Bidder not less than two Business Days prior to the Record Date (and provided that Pushpay must not unreasonably withhold its consent to such request); and
- (b) any other Shares nominated in writing by the Bidder to Pushpay not less than two Business Days prior to the Record Date which are held or controlled by the Bidder or any of its Associates at 7.00pm on the Record Date.

“**Exclusivity Period**” means the period starting on the date of this Agreement and ending on the first to occur of:

- (a) the end of the Exclusivity Period under clause 14.9(d);
- (b) the termination of this Agreement;
- (c) the Implementation Date; and
- (d) the End Date.

“**Final Orders**” means orders of the Court on application of Pushpay, that the Scheme shall be binding on Pushpay, the Bidder, Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act.

“**Final Orders Date**” means the day on which the Final Orders are granted by the Court.

“**Financing**” means the Equity Financing and the Debt Financing.

“**Financing Amounts**” has the meaning given to that term in clause 7(h) of Part 1 of Schedule Three.

“**First Court Date**” means the first date on which the application is made to the Court for the Initial Orders in accordance with section 236(2) of the Companies Act.

“**FMCA**” means the Financial Markets Conduct Act 2013.

“**Forfeited RSUs**” has the meaning given to that term in clause 6.3(b)(ii).

“Forward Looking Information” means:

- (a) any information about the future performance, future prospects, future financial condition, future results of operations, or future results of the strategy and plans of the Pushpay Group; and
- (b) any other information about the future, including any budget, forecast, outlook about the future, scenario about the future, projection, prediction, estimate, opinion or other forward-looking statement.

“Founder Restricted Shares” has the meaning given to that term in clause 6.4(a).

“FTC” means the U.S. Federal Trade Commission.

“Fundamental Warranties” means Pushpay Warranties set out in clauses 1 to 6 and clause 12 of Part 1 of Schedule Two.

“Government Agency” means any foreign or New Zealand government, any department, officer or minister of any government, and any governmental, semi-governmental, administrative, fiscal, court of competent jurisdiction, judicial or quasi-judicial agency, authority, board, commission, supervisor, tribunal or entity, and any court or any minister of the Crown in right of New Zealand or a foreign government.

“GST” means goods and services tax charged or levied under the GST Act, and includes any GST Default Amounts.

“GST Act” means the Goods and Services Tax Act 1985.

“GST Default Amounts” means any penalties, additional tax or interest payable in respect of goods and services tax.

“GST Exclusive Consideration” has the meaning given to that term in clause 19.2.

“HSR Condition” means the Condition set out in clause 3.1(b).

“HSR Act” means the U.S. Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“IAR Supplement” means [the supplementary report to the initial Independent Adviser’s Report to be prepared by the Independent Adviser in accordance with this Agreement in connection with the New Scheme Meeting and the New Resolution, the despatch of which is to be, or has been, approved by the Court and which is to be, or has been, sent to Shareholders in advance of the New Scheme Meeting \(as amended or updated from time to time and including any supplementary or replacement document\). For clarity, the IAR Supplement forms part of the Independent Adviser’s Report.](#)

“Implementation Date” means:

- (a) the day on which the Scheme is to be implemented, being (at the election of the Bidder) any date, subject to clause 3.14, during the period beginning on the date that is three Business Days after the Record Date and ending on (and including) the date that is 10 Business Days after the Record Date, provided that such election is made by the Bidder before 11.59 pm on the ~~day~~ **which is the later of:** [Final Orders Date; or](#)

~~(i) the Final Orders Date; and~~

~~(ii) the date on which the last of the OIO Condition and the HSR Condition to be satisfied is satisfied; or~~

(b) such other date agreed between the parties in writing.

“**Independent Adviser**” means the person appointed by Pushpay as independent adviser to prepare the Independent Adviser’s Report and approved by the Takeovers Panel.

“**Independent Adviser’s Report**” means the Independent Adviser’s report prepared by the Independent Adviser in relation to the Scheme as amended or updated from time to time and including any supplementary or replacement report, stating the Independent Adviser’s opinion on the merits of the Transaction, and including the IAR Supplement.

“**Initial Announcement**” means an announcement about the entry into of this Agreement agreed by the parties in writing.

“**Initial Orders**” means, on application by Pushpay, orders by the Court for the purposes of section 236(2) of the Companies Act.

“**Insolvency Event**” means, in relation to a person, the occurrence of any of the following:

- (a) the person ceases or threatens to cease to carry on all or substantially all of its business or operations;
- (b) an application or an order is made, or a resolution is passed, or any proceeding is commenced, for the person’s dissolution or liquidation;
- (c) the person is or becomes unable to pay its debts when due (as defined in, and in accordance with section 287 of, the Companies Act), or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;
- (d) the person goes into receivership or has a receiver, receiver and manager, official manager, trustee or other similar officer appointed in respect of a substantial portion of its property;
- (e) the person enters into a scheme of arrangement (other than the Scheme) or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (f) a distress, attachment or other execution is levied or enforced upon or commenced against any of its assets;
- (g) the person takes any action in furtherance of, or providing its consent to, approval of, or acquiescence in, any of the acts referred to in this definition; and
- (h) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any applicable foreign law.

“Intellectual Property” means any and all intellectual or industrial property rights, including:

- (a) patents, patent applications, continuations, continuations-in-part, divisionals, reissues, renewals, reexaminations and foreign counterparts;
- (b) trademarks, service marks, trade dress, logos, corporate names, trade names, social media handles and accounts and other source identifiers, together with the common law rights therein, goodwill associated therewith and all registrations and applications for registration thereof;
- (c) works of authorship and copyrights (including rights in IT Assets), including all registrations and applications for registration thereof;
- (d) trade secrets, know how, inventions, methods and processes; and
- (e) internet properties, including domain names and IP addresses.

“IP Transfer” means the intra-group transfer of certain Intellectual Property owned by the Pushpay Group, which is to be implemented in accordance with the IP Transfer Steps Paper and clause 6.6.

“IP Transfer Steps Paper” has the meaning given to that term in clause 6.6(a).

“IT Assets” means all hardware, software, databases, systems, networks, websites, applications and other information technology assets and equipment.

“Letter of Intention” means a letter from the Takeovers Panel stating that it:

- (a) intends to provide a No-objection Statement; and
- (b) does not intend to appear at the Court in respect of the application for Initial Orders [or for New Orders \(as applicable\)](#).

“LINK” means Link Market Services Limited.

“Loss” means all losses, damages, costs, expenses, charges and other liabilities provided however that the parties shall not be liable for any indirect loss, economic loss, loss of opportunity or loss of profit whatsoever and however arising, including:

- (a) consequential loss or damage; or
- (b) loss of use, production, revenue, income, profits, business and savings or business interruption (whether or not the indirect loss or damage was foreseeable).

“Matching Period” has the meaning given to that term in clause 14.6(a)(vi).

“MAC Assessment Periods” means the following periods:

- (a) the financial year ending 31 March 2023;
- (b) the financial year ending 31 March 2024; and
- (c) if a Specified Event occurs, is announced or is discovered after 31 March 2023 and before 8.00am on the Implementation Date, the 12-month period commencing on the date of the Specified Event.

“**Material Adverse Change**” means any matter, event, or change in circumstances, which occurs, is announced or is discovered on or after the date of this Agreement (each a “**Specified Event**”) and which individually, or when aggregated with all other Specified Events, reduces or is reasonably likely to reduce the Underlying EBITDAF of the Pushpay Group in any MAC Assessment Period by at least US\$9 million in that MAC Assessment Period against what the Underlying EBITDAF would have reasonably been expected to have been for that MAC Assessment Period but for the Specified Event or Specified Events, determined after excluding:

- (a) any out-of-pocket costs incurred in connection with:
 - (i) the Transaction (provided such costs have either been fairly disclosed in the Disclosure Letter or, in relation to costs incurred in relation to the HSR Condition or in relation to enforcing this Agreement or the Deed Poll, such costs have been incurred in good faith); or
 - (ii) without limiting paragraph (b)(ii), the Pushpay Group performing its obligations under this Agreement (including, for the avoidance of doubt, under clauses 6.1, 9.6 and 10.1 but excluding compliance with its obligations under clause 9.2 or actions taken by any member of the Pushpay Group under clause 9.3 (other than clause 9.3(a), 9.3(c) or 9.3(g)(i)); or
 - (iii) the D&O Run-off Policy;
- (b) matters, events and circumstances:
 - (i) to the extent fairly disclosed:
 - (A) in the Due Diligence Material (other than relating to the actual or anticipated change of control of Pushpay contemplated by this Agreement or the matter noted in paragraph 16 of the Disclosure Letter); or
 - (B) by Pushpay through the NZX and ASX market announcement platforms in the 12-month period ending two Business Days’ before the date of this Agreement;
 - (ii) done or not done at the written request or with the written approval of the Bidder, or resulting from compliance with the terms of, or the taking or omission of any action expressly required by, this Agreement (including, for the avoidance of doubt, the implementation of the IP Transfer under clause 6.6), and any reasonably foreseeable consequences arising as a result of the relevant action or omission;
 - (iii) resulting from legal or regulatory requirements generally affecting businesses in the industry in which any member of the Pushpay Group operates;
 - (iv) resulting from any change (including globally, in any country or group of countries or in any state in the United States or group of states):
 - (A) to generally accepted accounting principles or the interpretation or enforcement of them by a court of competent jurisdiction or Government Agency;
 - (B) to the accounting policies of any member of the Pushpay Group that is required by law;

- (C) in interest rates, exchange rates or general economic conditions (including inflation rates and unemployment rates) or general political conditions; or
- (D) in securities, equity, credit, financial or other capital markets conditions;
- (v) resulting from or relating to geopolitical conditions, the outbreak or escalation of hostilities (including any escalation or expansion of the conflict in Ukraine), any generalised or localised rioting or public unrest, civil disobedience, acts of war and military conditions or activity, sabotage or terrorism (excluding cyberattacks), or any escalation or worsening of any of the foregoing;
- (vi) resulting from any natural disaster (including an earthquake, fire, landslide, volcanic eruption or tidal wave) or weather developments (including a storm, flood, hurricane, tornado, cyclone or lightning) or other comparable natural events; and
- (vii) resulting from the COVID-19 virus and any restrictions on the Business or the Pushpay Group imposed or recommended by any Government Agency or other regulatory authority in connection with the COVID-19 virus, including any worsening or escalation of the COVID-19 virus,

provided that, in relation to the exclusions in paragraphs (iii), (iv) and (v) above (other than changes in exchange rates in paragraph (iv)(C)), the effects of such matter, event or circumstance are not materially disproportionately adverse to the Pushpay Group as compared to the effects of such matter, event or circumstance on entities in the industry in which the relevant member of the Pushpay Group operates.

“New Court Date” means the first date on which the application is made to the Court for the New Orders in accordance with section 236(2) of the Companies Act.

“New Meeting Materials” means:

- (a) the Scheme Booklet Supplement; and
- (b) the IAR Supplement.

“New Orders” means, on application by Pushpay, orders by the Court for the purposes of section 236(2) of the Companies Act in connection with the New Scheme Meeting.

“New Resolution” means the resolution to be put to Shareholders at the New Scheme Meeting to approve the Scheme.

“New Scheme Meeting” means the meeting of Shareholders which (as applicable) is to be, or has been, ordered by the Court to be convened pursuant to the New Orders in respect of the Scheme and includes any adjournment of that meeting.

“New Voting Deed Poll” means a deed poll in the form set out in the Schemes Guidance Notice in favour of Pushpay and the Takeovers Panel under which:

- (a) in respect of the BGH Shares, each holder of the BGH Shares and BGH in respect of paragraph (a)(ii):
 - (i) agrees that it will vote its respective BGH Shares; and

(ii) will procure that any other Shares acquired on or after the date of this Agreement by BGH or a person which is Controlled by or Associated with BGH (other than Sixth Street or any person Controlled by Sixth Street) are voted,

in favour of the New Resolution at the New Scheme Meeting (including any interest class approval of the Excluded Shares); and

(b) in respect of the Sixth Street Shares each holder of the Sixth Street Shares:

(i) agrees that it will vote its respective Sixth Street Shares; and

(ii) it will procure that any other Shares acquired on or after the date of this Agreement by Sixth Street or a person which is Controlled by or Associated with Sixth Street (other than BGH or any person Controlled by BGH) are voted,

in favour of the New Resolution at the New Scheme Meeting (including any interest class approval of the Excluded Shares).

“**No-objection Statement**” means a written statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting the Final Orders.

“**Non-Conflicted Directors**” means all Directors other than the Conflicted Director.

“**NZX**” means NZX Limited and, where the context requires, the main board financial market that it operates.

“**OIO**” means the New Zealand Overseas Investment Office.

“**OIO Application**” means Bidder’s application under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 for consent to implement the Scheme.

“**OIO Condition**” means the Condition set out in clause 3.1(a).

“**OIO Standard Terms and Conditions**” means the standard conditions of consent published on the OIO website (<http://linz.govt.nz/overseas-investment>) and any conditions of consent required by law on the date of this Agreement, as are applicable to the Transaction.

“**Permitted Encumbrances**” means in respect of the Pushpay Group’s assets, but not the Scheme Shares:

- (a) a reservation of ownership or other purchase money security interest entered into to secure the unpaid balance of purchase money for property supplied to a member of the Pushpay Group in the ordinary course of business;
- (b) a right of set-off or combination of arising by operation of law or practice over money deposited with a bank or financial institution in the ordinary course of business;
- (c) a security interest arising by operation of law and in the ordinary course of business provided that the debt it secures is paid when due or contested in good faith by appropriate proceedings;
or

(d) a security interest arising under section 17(1)(b) of the Personal Property Securities Act 1999 that does not secure payment or performance of an obligation.

“**PPSR**” means the Personal Property Securities Register established under section 139 of the Personal Property Securities Act 1999.

“**Prescribed Occurrence**” means the occurrence of any of the events listed in Schedule One other than an event agreed to by the Bidder in writing.

“**Pushpay Certificate**” has the meaning given to that term in clause 5.3(a).

“**Pushpay Group**” means Pushpay and its Related Companies.

“**Pushpay Indemnified Persons**” means each member of the Pushpay Group and each of their respective directors, officers, employees and other Representatives.

“**Pushpay Information**” means all information included in the Scheme Booklet [and the Scheme Booklet Supplement](#) other than the Bidder Information and the Independent Adviser’s Report.

“**Pushpay Intentional Breach Damages**” has the meaning given to that term in clause 15.7(c).

“**Pushpay Share Incentive Plan**” means the Pushpay Holdings Limited 2016 Share Incentive Plan as fairly disclosed in the Due Diligence Material.

“**Pushpay Undertakings**” means the undertakings set out in Part 2 of Schedule Two.

“**Pushpay Warranties**” means the warranties set out in Part 1 of Schedule Two.

“**Record Date**” means 7.00pm on the date which is four Business Days after the ~~later of: (a) — the Final Orders Date, and (b) — the date on which the last of the OIO Condition and the HSR Condition is satisfied,~~ or such other date agreed between the parties in writing.

“**Reference Rate**” means in relation to interest payable on any payment due under this Agreement, the mid or “FRA” rate for 90 day bank accepted bills (expressed as a percentage) as quoted on the Reserve Bank of New Zealand website (or any successor page) at or about 10.45am on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter on each succeeding Business Day of the period.

“**Register**” means the register of Shares maintained by LINK on behalf of Pushpay.

“**Registrar**” has the meaning given to that term in the Companies Act.

“**Related Company**” has the meaning given to that term in section 2(3) of the Companies Act, read as if a reference to a company was a reference to a body corporate wherever incorporated, and:

- (a) in respect of the Bidder, also means:
- (i) any other person who directly or indirectly Controls the Bidder, is under the Control of the Bidder, or is under common Control with the Bidder;
 - (ii) BGH, any person who is directly or indirectly Controlled by BGH and any person comprising the BGH Capital Fund I or BGH Capital Fund II; and

- (iii) Sixth Street and any person who is directly or indirectly Controlled by, is under the Control of, or is under common Control with, Sixth Street; and
- (b) in respect of Pushpay, also means any other person who directly or indirectly Controls Pushpay, is under the Control of Pushpay, or is under common Control with Pushpay, provided that in no circumstances shall the Bidder or any member of the Bidder Group be deemed a Related Company of Pushpay.

“**Related Party**” has the meaning given in the NZX Listing Rules.

“**Relevant Interest**” has the meaning given in section 235(1) of the FMCA.

“**Relevant Person**” has the meaning given to that term in the definition of “Control”.

“**Representative**” in relation to a person means:

- (a) any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person; and
- (b) when used in clauses 2.5, 14.1, 14.2, 14.3, 14.5, 14.6 and 17.2 only, also includes any Related Company and any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, any Related Company.

“**Responsible Party**” has the meaning given to that term in clause 3.3(a).

“**Restatement Date**” means 16 March 2023.

“**Restricted Shares**” has the meaning given to that term in clause 6.4(a).

“**Restricted Share Units**” means restricted share units (being conditional contractual entitlements to Shares) granted under the Pushpay Share Incentive Plan, the Performance Based RSU Conditions as set out in a letter from Pushpay dated 25 January 2022 or under any similar plan.

“**Reverse Break Fee**” means \$15.3 million (including GST, if any).

“**Scheme**” means a scheme of arrangement under Part 15 of the Companies Act under which, among other matters, all of the Scheme Shares held by Scheme Shareholders will be transferred to the Bidder and the Scheme Shareholders will receive the Consideration, in the form of the Scheme Plan.

“**Scheme Booklet**” means the booklet to be prepared in accordance with this Agreement in connection with the Scheme Meeting and Scheme Resolution (including the notice of meeting, explanatory materials and disclosures and proxy form), the despatch of which is to be, or has been, approved by the Court and which is to be, or has been, sent to Shareholders in advance of the Scheme Meeting.

“**Scheme Booklet Supplement**” means the supplement to the Scheme Booklet to be prepared in accordance with this Agreement in connection with the New Scheme Meeting and the New Resolution (including the notice of meeting), the despatch of which is to be, or has been, approved by the Court and which is to be, or has been, sent to Shareholders in advance of the New Scheme Meeting (as amended or updated from time to time and including any supplementary or replacement document).

“**Scheme Meeting**” means the meeting of Shareholders which (as applicable) is to be, or has been, ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting.

“**Scheme Plan**” means the scheme plan in the form set out in Schedule Five (or in any other form the parties agree in writing or as may be amended by Bidder under clause 5.5) which (as applicable) is to be, or has been, approved by the Court under section 236(1) of the Companies Act.

“**Scheme Resolution**” means the resolution to be put to Shareholders at the Scheme Meeting to approve the Scheme.

“**Scheme Shareholder**” means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date.

“**Scheme Shares**” means all of the Shares on issue at 7.00pm on the Record Date other than the Excluded Shares.

“**Schemes Guidance Note**” means the guidance note issued by the Takeovers Panel regarding schemes of arrangement, published on 19 May 2022 (as may be amended, modified, revised or replaced from time to time), as available on the Takeovers Panel website.

“**Second Court Date**” means the later of:

- (a) if no Court hearing is held in respect of the Final Orders, the last date Pushpay files affidavit(s) verifying the results of the [New](#) Scheme Meeting and such other information as prescribed in the ~~Initial~~[New](#) Orders so as to obtain the Final Orders; and
- (b) if there is a Court hearing in respect of the Final Orders, the first date of such hearing, provided that if such hearing is adjourned, it means the first date on which the adjourned application is heard.

“**Share**” means a fully paid ordinary share in the capital of Pushpay.

“**Shareholder**” means a person who is registered in the Register as the holder of one or more Shares from time to time.

“**Sixth Street**” means Sixth Street Partners, LLC.

“**Sixth Street Shares**” means the following Shares:

- (a) 46,956,131 Shares held by Schrassig Fundamental S.à r.l.;
- (b) 58,350,422 Shares held by Consdorf Adjacent Holdco S.à r.l.;
- (c) 42,398,766 Shares held by Berdorf S.à r.l.; and
- (d) 48,456,468 Shares held by Bertrange S.à r.l,

or any transferee of those Shares as contemplated by the Scheme Plan.

“**Special Pool Payments**” has the meaning given to that term in clause 9.2(e)(x)(A).

“**Specified Shareholder**” means, in respect an Underlying Controller, the nominee who holds legal title to Underlying Controller Shares or Specified Shares (as applicable) of that Underlying Controller.

“Specified Shares” means, in respect of the Specified Shareholder for an Underlying Controller, the number of Underlying Controller Shares which are Scheme Shares held by that Specified Shareholder for that Underlying Controller on the Record Date, as set out in the Specified Shares Notice.

“Specified Shares Notice” means the notice which is to be, or has been, provided by Pushpay to the Registrar in accordance with clause 5.1(j)(ii) after 7.00pm and prior to 10.00pm on the Record Date which:

- (a) sets out, as at the Record Date, the name of each Underlying Controller, the name of the Specified Shareholder who holds Specified Shares for the Underlying Controller, and the number of Specified Shares held by the Specified Shareholder for that Underlying Controller;
- (b) is signed by each Specified Shareholder; and
- (c) confirms that each Specified Shareholder agrees to accept NZ\$1.34 per Specified Share on behalf of the relevant Underlying Controller.

For clarity, the Specified Shares Notice may comprise two or more documents.

“Superior Proposal” means a written bona fide Competing Proposal received by Pushpay after the date of this Agreement that:

- (a) does not result from a breach by Pushpay of any of its obligations under clause 14, or from any act by a member of the Pushpay Group or its Representatives which, if done by Pushpay, would constitute a breach of clause 14 by Pushpay; and
- (b) the Board determines, acting in good faith and after having received written advice from its external financial and legal advisers:
 - (i) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent, timing considerations, the identity and financial condition and capacity of the proponent and any other matters affecting the probability of the Competing Proposal being completed in accordance with its terms;
 - (ii) would, if completed substantially in accordance with its terms, result in a transaction that would be more favourable to Shareholders (as a whole) than the Scheme (if applicable, as amended or varied under any Counter Proposal provided under clause 14.6(b)), taking into account all the terms and conditions of the Competing Proposal (including consideration, form of consideration, conditionality, funding, certainty and timing) and the Scheme and any other matters affecting the probability of the Competing Proposal being completed in accordance with its terms; and
 - (iii) that failing to attempt to advance such Competing Proposal would constitute a breach of the fiduciary duties or statutory obligations by or of a Director.

“Supplier” has the meaning given to that term in clause 19.3.

“Surviving Clauses” means clause 1 (Definitions and interpretation), clause 6.1(e) (Promotion of Transaction), clause 10 (Financing), clause 12 (Releases), clause 15 (Break Fee and Reverse Break Fee), clause 16.14 (Effect of termination), clause 17 (Announcements), clause 19 (GST), clause 20 (Notices),

clause 21 (General) (other than clause 21.8 (Further assurances)), and clause 22 (Governing law and jurisdiction).

“**Takeovers Code**” means the takeovers code set out in the schedule to the Takeovers Regulations 2000 (SR2000/210), as amended by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993.

“**Takeovers Panel**” means the Takeovers Panel as constituted under the Takeovers Act 1993.

“**Tax**” means a tax, levy, charge, impost, fee, deduction, withholding or Duty of any nature, including stamp and transaction Duty or any goods and services tax, value added tax or consumption tax, which is imposed or collected by a Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

“**Third Party**” means a person other than a member of the Bidder Group.

“**Timetable**” means the timetable set out in Schedule Four, or such other timetable as Pushpay and the Bidder agree in writing, subject to any amendments made in accordance with this Agreement (and, as applicable, the Timetable includes the Final Orders Date, the Record Date and the Implementation Date).

“**Transaction**” means the acquisition by the Bidder of all the Scheme Shares through implementation of the Scheme in accordance with the terms of this Agreement.

“**Transition Committee**” has the meaning given to that term in clause 9.4.

“**Underlying EBITDAF**” means the consolidated earnings before interest, tax, depreciation (including gains/(losses) on sale of fixed assets), amortisation, foreign currency gains/(losses), and impairments of the Pushpay Group, excluding (where relevant):

- (b) costs incurred by the Pushpay Group in connection with the Transaction (provided such costs have either been fairly disclosed in the Disclosure Letter or, in relation to costs incurred in relation to the HSR Condition or in relation to enforcing this Agreement or the Deed Poll, such costs have been incurred in good faith);
- (c) costs incurred by the Pushpay Group in connection with the IP Transfer (including costs incurred prior to the date of this Agreement in connection with the proposed transfer of Intellectual Property, as now contemplated by the IP Transfer);
- (d) expenses recognised in relation to Restricted Shares provided as consideration for the acquisition of Resi Media; and
- (e) the fair value discount on unearned revenue recognised from the acquisition of Resi Media,

in each case calculated using the same practices, accounting policies and methodologies that the Pushpay Group used in the preparation of the Underlying EBITDAF guidance provided by Pushpay to NZX and ASX on 15 March 2022.

“**Underlying Controller**” means a person:

- (a) who is the underlying controller of Pushpay Shares;

(b) who has entered into an agreement (“**Underlying Controller Voting Agreement**”) with the Bidder under which that person has, in respect of the number of Pushpay Shares specified in paragraph (a) of the definition of “Specified Shares” in that agreement which are controlled by that person (such specified number of Pushpay Shares being, the “**Underlying Controller Shares**”):

(i) agreed to direct or procure that the Specified Shareholder votes all of the Underlying Controller Shares in favour of the New Resolution; and

(ii) acknowledged that the Underlying Controller will receive NZ\$1.34 per Underlying Controller Share as the Consideration under the Scheme; and

(c) whose Underlying Controller Voting Agreement, at the relevant time, has not been terminated by the Bidder giving notice in writing to the Underlying Controller in accordance with the terms of the Underlying Controller Voting Agreement.

“**Underlying Controller Restatement Date Notice**” means the notice provided by the Bidder to Pushpay on the Restatement Date which sets out, as at the Restatement Date, the name of each Underlying Controller and the number of Underlying Controller Shares held, directly or indirectly through sub-custodians, by the Specified Shareholder for that Underlying Controller.

“**Underlying Controller Shares**” has the meaning given to that term in the definition of Underlying Controller.

“**Underlying Controller Voting Agreement**” has the meaning given to that term in the definition of Underlying Controller.

“**Underlying Controller Voting Confirmation Notice**” means the notice which is to be, or has been, provided by Pushpay to the Registrar in accordance with clause 5.1(j)(i) on the record date for determining voting entitlements for the New Scheme Meeting which:

(a) is signed by each Specified Shareholder;

(b) specifies, as at the record date for determining voting entitlements for the New Scheme Meeting, the number of Underlying Controller Shares that the Specified Shareholder holds, directly or indirectly through sub-custodians, for the relevant Underlying Controller; and

(c) confirms that each Specified Shareholder will vote or has voted all of the Underlying Controller Shares in favour of the New Resolution on behalf of the relevant Underlying Controller.

For clarity, the Underlying Controller Voting Confirmation Notice may comprise two or more documents.

“U.S. Antitrust Pre-consummation Warning Letter” means a letter from the FTC or DOJ that the applicable HSR Act waiting period will expire imminently or has expired but the FTC or DOJ is still investigating the Scheme.

“Voting Deed Poll” means a deed poll in the form set out in the Schemes Guidance Notice in favour of Pushpay and the Takeovers Panel under which:

- (a) in respect of the BGH Shares, each holder of the BGH Shares and BGH in respect of paragraph (a)(ii):
- (i) agrees that it will vote its respective BGH Shares; and
 - (ii) will procure that any other Shares acquired on or after the date of this Agreement by BGH or a person which is Controlled by or Associated with BGH (other than Sixth Street or any person Controlled by Sixth Street) are voted,
- in favour of the Scheme Resolution at the Scheme Meeting (including any interest class approval of the Excluded Shares); and
- (b) in respect of the Sixth Street Shares each holder of the Sixth Street Shares:
- (i) agrees that it will vote its respective Sixth Street Shares; and
 - (ii) it will procure that any other Shares acquired on or after the date of this Agreement by Sixth Street or a person which is Controlled by or Associated with Sixth Street (other than BGH or any person Controlled by BGH) are voted,
- in favour of the Scheme Resolution at the Scheme Meeting (including any interest class approval of the Excluded Shares).

1.2 **Interpretation:** In this Agreement, unless the context otherwise requires, or specifically stated otherwise:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
 - (ii) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this Agreement;
 - (iii) any legislation which that legislation re-enacts with or without modification; and
 - (iv) any subordinate legislation made before or after execution of this Agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.2(a)(ii), or under any legislation which it re-enacts as described in clause 1.2(a)(iii);
- (b) a reference to the NZX Listing Rules or the ASX Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (c) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (d) references to an individual or a natural person include his estate and personal representatives;
- (e) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this Agreement (and the schedules and annexes form part of this Agreement);
- (f) subject to clause 21.2, references to a party to this Agreement include the successors or assigns (immediate or otherwise) of that party;

- (g) a reference to any instrument or document includes any variation or replacement of it;
- (h) unless otherwise indicated, a reference to any time is, a reference to that time in New Zealand;
- (i) unless otherwise stated, a reference to \$, or dollars is to New Zealand currency;
- (j) singular words include the plural and vice versa;
- (k) a word of any gender includes the corresponding words of any other gender;
- (l) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (m) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
- (n) the headings do not affect interpretation; and
- (o) any word or expression cognate with a definition in this Agreement has the meaning corresponding or construed to the definition.

1.3 Pushpay’s knowledge:

- (a) Where any Pushpay Warranty is qualified by the expression “so far as Pushpay is aware” or any similar expression or with a similar qualification as to Pushpay’s awareness or knowledge, and in respect of the reference to Pushpay’s awareness in clause 5.3, Pushpay’s awareness or knowledge is limited to and deemed to include only those facts, matters or circumstances of which any of Molly Matthews, Richard Keys, Joe Berkowitz, Kevin Kuck, Jason Rupert and Aaron Senneff (or any person who replaces any such person) is actually aware as at the time that statement.
- (b) Other than as contemplated by clause 1.3(a), the knowledge, belief or awareness of any person will not be imputed to Pushpay.
- (c) For avoidance of doubt, and without limiting clause 12.1, none of the individuals referred to in clause 1.3(a) has any personal liability in respect of Pushpay Warranties.

1.4 Business Days: Unless otherwise indicated, if the day on or by which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

1.5 Contra proferentem excluded: No term or condition of this Agreement or any document contemplated by this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or a provision of it.

1.6 Independent Adviser’s conclusion: For the avoidance of doubt, for the purposes of this Agreement, the Independent Adviser’s Report will not be treated as having concluded that the Consideration is within or above the Independent Adviser’s valuation range for the Shares if, after the finalisation of the initial Independent Adviser’s Report, the Independent Adviser issues a replacement or supplementary report containing a revised valuation range for the Shares and the Consideration is below the revised valuation range (and, for clarity, such replacement or supplementary report, or any subsequent replacement or supplementary report, is not superseded by a further replacement or

supplementary report containing a revised valuation range for the Shares and the Consideration is within or above the revised valuation range for the Shares).

- 1.7 **Consents:** If under this Agreement the doing of any act, matter or thing is subject to the consent or approval of a party, then unless expressly specified otherwise in this Agreement, that consent or approval may be given (on a conditional or unconditional basis) or withheld in the party's absolute discretion.
- 1.8 **Fair disclosure:** A reference to information or a matter or circumstance being "**fairly disclosed**" means disclosure in writing in a manner such that the information, matter or circumstance would reasonably be expected to come to the knowledge of a diligent and reasonable purchaser, or any of its Representatives, in the ordinary course of carrying out a due diligence exercise in respect of the Pushpay Group and the Business, in sufficient detail such that a purchaser with experience in transactions of the nature of the Transaction can reasonably be expected to understand the nature, relevance and importance of the information, matter or circumstance.
- 1.9 **References to law:** A reference to "**law**" includes statute, regulation, and the binding order of any court or other Government Agency of competent jurisdiction.
- 1.10 **Actions of the Bidder Group:** For the purposes of clause 14, any act by the Conflicted Director that would otherwise result in a breach by Pushpay of clause 14 shall not constitute a breach by Pushpay of clause 14 provided that the relevant breach was caused solely by the relevant act by the Conflicted Director and, when acting, he was not acting on behalf of Pushpay or otherwise directed or instructed to perform the relevant act by Pushpay.
- 2. AGREEMENT TO IMPLEMENT THE SCHEME**
- 2.1 **Pushpay to propose Scheme:** Pushpay agrees to propose and, subject to the Scheme becoming Effective, implement the Scheme on the terms and subject to the conditions set out in this Agreement.
- 2.2 **Bidder to assist:** The Bidder must co-operate with Pushpay and assist Pushpay to propose and implement the Scheme on the terms and subject to the conditions set out in this Agreement.
- 2.3 **Consideration:** Each Scheme Shareholder is entitled to receive the Consideration in respect of each Scheme Share held by that Scheme Shareholder subject to and in accordance with the terms and conditions of this Agreement and the Scheme.
- 2.4 **Bidder to pay Consideration:** In consideration for, and simultaneously with the transfer to the Bidder of each Scheme Share held by each Scheme Shareholder under the terms of the Scheme, the Bidder undertakes in favour of Pushpay, in its own right and on behalf of the Scheme Shareholders, to pay, or procure the payment of, the Consideration to each Scheme Shareholder in accordance with the Scheme and the Deed Poll.
- 2.5 **General implementation obligations:** Each party must do everything reasonably necessary, including by procuring that its Representatives work in good faith and in a timely and co-operative manner with, in the case of the Bidder, Pushpay and its Representatives and, in the case of Pushpay, the Bidder and its Representatives, to implement the Scheme in accordance with this Agreement and all applicable laws.

2.6 **Timetable:**

- (a) Subject to clauses 2.6(b) and 2.6(c), the parties must use their reasonable endeavours to propose and implement the Transaction in accordance with the Timetable or otherwise as soon as reasonably practicable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 2.6(a) to the extent that such failure is due to circumstances outside that party's control provided that such party has used reasonable endeavours to meet the Timetable.
- (c) Each party must keep the other informed about its progress towards implementation of the Transaction in accordance with the Timetable and promptly notify the other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable become unachievable, the parties will consult in good faith to agree to any necessary extension to the Timetable to ensure such matters are completed, and the Scheme is implemented, within the shortest possible timeframe in a manner acceptable to both parties but, in any event, by no later than the End Date.
- (e) For clarity, clause 2.6(a) does not limit Pushpay's ability to deal with a Competing Proposal to the extent permitted by clause 14.

2.7 **No amendment to Scheme without Bidder's consent:** Pushpay must not promote or consent to any modification of, or amendment to, the Scheme or the Final Orders, or the making or imposition by the Court or any Government Agency of any condition to the Scheme, without:

- (a) the Bidder's counsel's consent, where a modification or amendment is made, imposed or requested at a Court hearing (and the Bidder must procure that such consent is not unreasonably withheld or delayed); or
- (b) the Bidder's prior written consent, in the case of any other modification or amendment (such consent not to be unreasonably withheld or delayed).

3. **CONDITIONS PRECEDENT**

3.1 **Conditions:** The Scheme will not become Effective and the obligations of the Bidder under clause 2.4 do not become binding unless and until each of the conditions set out in the "Condition" column of the following table has been satisfied or waived in accordance with this clause 3:

CONDITION	RESPONSIBILITY	WAIVER
(a) (OIO approval) the Bidder has obtained all consents required under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 to the implementation of the Scheme on terms or conditions acceptable to the Bidder, acting reasonably, provided that the Bidder may not withhold its approval to the terms or	Bidder	None

CONDITION	RESPONSIBILITY	WAIVER
<p>conditions of any such consent if the terms or conditions imposed:</p> <p>(i) are the OIO Standard Terms and Conditions or are consistent in all material respects with the OIO Standard Terms and Conditions; or</p> <p>(ii) arise from or relate to the performance or fulfilment of, or are consistent with, the Bidder's or any of the Bidder's Related Companies' undertakings, plans or intentions specified in writing in the Bidder's OIO application or any subsequent written correspondence with the OIO;</p>		
(b) (HSR approval) any applicable waiting periods under the HSR Act shall have expired or been terminated;	Bidder and Pushpay	None
(c) (Independent Adviser) the Independent Adviser provides an Independent Adviser's Report to Pushpay prior to the New Scheme Meeting which concludes that the Consideration is within or above the Independent Adviser's valuation range for the Shares;	Pushpay	Pushpay
(d) (Shareholder approval) Shareholders approve the Scheme at the New Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;	Pushpay	None
(e) (Court approval) subject to clause 3.2, the Court approves the Scheme in accordance with section 236 of the Companies Act;	Pushpay	None
(f) (No restraint) no judgment, order, restraint or prohibition enforced or issued by any Government Agency is in effect at 8.00am on the Implementation Date, that prohibits, prevents or materially restricts the implementation of the Scheme;	Bidder and Pushpay	Bidder and Pushpay
(g) (No Prescribed Occurrence) no Prescribed Occurrence occurs between (and including) the date of this Agreement and 8.00am on the Implementation Date; and	Pushpay	Bidder

CONDITION	RESPONSIBILITY	WAIVER
(h) (No Material Adverse Change) no Material Adverse Change occurs, is announced or is discovered between (and including) the date of this Agreement and 8.00am on the Implementation Date.	None	Bidder

3.2 **Court approval:** If the Court’s approval of the Scheme in accordance with section 236(1) of the Companies Act would impose any terms or conditions other than those set out in the form of Scheme Plan attached as Schedule Five, then each such term or condition must be approved in writing by Pushpay and the Bidder (both acting reasonably) prior to the Court granting the Final Orders.

3.3 **Satisfaction of Conditions:** In respect of each Condition:

- (a) Each party specified in the “Responsibility” column of the table in clause 3.1 opposite that Condition (the “**Responsible Party**”) must use reasonable endeavours to apply for, seek, or procure that the Condition is satisfied:
 - (i) in the case of the Conditions in clauses 3.1(a) to 3.1(e), as soon as practicable and in any event before the Condition Satisfaction Date; and
 - (ii) in the case of the Conditions in clauses 3.1(f), 3.1(g) and 3.1(h), at all times before 8.00am on the Implementation Date.
- (b) The other party must:
 - (i) co-operate with the Responsible Party towards satisfying each Condition; and
 - (ii) subject to applicable laws relating to the exchange of information, promptly provide all information and other assistance reasonably required by the Responsible Party for the purposes of procuring the satisfaction of the Condition.
- (c) Each party must not take any action for the purpose of deliberately hindering, subverting, undermining or preventing the satisfaction of the Condition, except to the extent that such action is required by law.
- (d) No party will be in breach of its obligations under clause 3.3(b) or 3.3(c) to the extent that it takes an action or omits to take an action that is expressly required or expressly permitted to be done, or expressly permitted not to be done, under or in accordance with this Agreement.
- (e) Pushpay will not be in breach of its obligations under clause 3.3(b) or 3.3(c) if it takes, or omits to take, an action in response to a Competing Proposal to the extent permitted by clause 14.
- (f) Nothing in this clause 3.3 will require any party to incur any additional costs (other than customary advisor costs and filing fees) or to offer, agree to or accept any undertakings, commitments or conditions (other than as required under clause 3.1(a)).

3.4 **Specific obligations relating to OIO Condition:** Without limiting clauses 3.3 and 3.6, in respect of the OIO Condition:

- (a) the Bidder must:
 - (i) submit the OIO Application, for the purpose of fulfilling the OIO Condition, to the OIO as soon as practicable and, in any event, by no later than the date that is five Business Days after the date of this Agreement;
 - (ii) promptly and diligently progress the OIO Application (including by responding to the OIO in a comprehensive and timely manner, and where applicable in compliance with prescribed timeframes, in respect of all its questions and other correspondences) so as to expedite satisfaction of the OIO Condition;
 - (iii) use its best endeavours to provide all notices, information and documents requested by the OIO to the OIO promptly, and in any event within the timeframes set by the OIO;
 - (iv) not resile from or change, with a consequence that may be adverse to the prospects of satisfying the OIO Condition, any of the assurances or commitments provided by the Bidder to the OIO in connection with the OIO Application; and
 - (v) other than on termination of this Agreement, once the OIO Application has been submitted to the OIO, not (without Pushpay's prior written consent):
 - (A) withdraw or procure the withdrawal of the OIO Application; or
 - (B) amend the OIO Application in any manner that may be adverse to the prospects of satisfying the OIO Condition.
- (b) Subject to clause 3.4(c), each party must:
 - (i) consult with the other party in advance of all material communications (written or oral) with the OIO relating to the OIO Application or the Transaction (provided that any commercially sensitive or personal information may be redacted from the information provided) and take any reasonable comments made by the other party into account in good faith before finalising the relevant communication;
 - (ii) provide the other party with copies of any material written communications sent to or received from the OIO, and either oral or written summaries of any material conversations with the OIO, in relation to the OIO Application or the Transaction (provided that any commercially sensitive or personal information may be redacted from the information provided), promptly upon despatch or receipt or the conclusion of the conversation (as the case may be); and
 - (iii) allow the other party the opportunity to be present at any material meetings (including remote meetings) with the OIO, where the other party's presence is acceptable to the OIO (except for any part of a meeting where any commercially sensitive or personal information is likely to be discussed).
- (c) Nothing in clause 3.4(b) requires Pushpay to disclose to the Bidder, or consult with the Bidder in respect of, any correspondence, discussions or information to the extent relating to a

Competing Proposal, the actual or purported termination of this Agreement or any claim under, or disagreement or dispute between the parties in respect of, this Agreement or the Transaction.

- (d) Pushpay must submit the vendor information form to the OIO on, or as soon as practicable after and, in any event, by no later than the date that is one Business Day after, the date on which Bidder files its application to the OIO in accordance with clause 3.4(a)(i).

3.5 **Specific obligations relating to the HSR Condition:** Without limiting clauses 3.3 and 3.6, in respect of the HSR Condition:

- (a) Each of the Bidder and Pushpay must:
 - (i) submit the notifications required under the HSR Act, for the purpose of fulfilling the HSR Condition, to the FTC and DOJ as soon as practicable and, in any event, by no later than the date that is 10 Business Days after the date of this Agreement;
 - (ii) use best endeavours to progress its notifications (including by responding to the FTC and DOJ in a comprehensive and timely manner in respect of all its questions and other correspondences) so as to expedite satisfaction of the HSR Condition, including but not limited to:
 - (A) using best endeavours to provide all information and documentary material requested by the FTC and DOJ to the FTC and DOJ promptly;
 - (B) subject to applicable laws relating to the exchange of information, consult with each other (including each other party's respective outside legal counsel) in advance of all material communications (written or oral) with the FTC and DOJ relating to the notifications required under the HSR Act or the Transaction;
 - (C) subject to applicable laws relating to the exchange of information, provide each other with any material written communications to be sent to the FTC and DOJ in relation to the notifications required under the HSR Act or the Transaction and take any reasonable comments made by the other party into account in good faith before the relevant communication is made, provided, for the avoidance of doubt, that the Bidder shall have ultimate decision-making authority with respect to the content of such communications and strategy for satisfying the HSR Condition;
 - (D) subject to applicable laws relating to the exchange of information, provide the other party with copies of any material written communications sent to or received from the FTC or DOJ, and either oral or written summaries of any material conversations with the FTC or DOJ, in relation to the required notifications under the HSR Act or the Transaction, promptly upon despatch or receipt (as the case may be), provided that materials provided pursuant to this clause 3.5(a) may be redacted (x) to remove any commercially sensitive information, including references to valuation of Pushpay and any personal information, (y) as necessary to comply with contractual obligations and (z) as necessary to address reasonable privilege concerns; and

- (E) allow the other party the opportunity to be present at any substantive meetings with the FTC or DOJ, where the other party's presence is acceptable to the FTC or DOJ.
- (b) The Bidder must be responsible for all fees associated with required notifications under the HSR Act.
- (c) Notwithstanding anything to the contrary contained in this clause 3.5 or elsewhere in this Agreement, the Bidder shall not have any obligation to:
 - (i) provide Pushpay with drafts of, a copy of the final version of, the notification required from the Bidder under the HSR Act in relation to the Transaction;
 - (ii) negotiate, commit to or effect, by consent decree, hold separate order, or otherwise, the sale, divestiture or disposition of such operations, divisions, businesses, product lines, customers or assets of the Bidder, Pushpay or any other person;
 - (iii) agree to enter into any licence or similar agreement with respect to, or agree to restrict the ownership or operation of, or agree to conduct or operate in a specific manner, any portion of the operations, divisions, businesses, product lines or assets of the Bidder, Pushpay or any other person; or
 - (iv) otherwise take or commit to take any actions that after the Implementation Date would limit the Bidder or its subsidiaries' freedom of action with respect to, or its or their ability to retain, one or more of the operations, divisions, businesses, product lines, customers or assets of the Bidder, Pushpay or any other person.
- (d) The Bidder and Pushpay agree that the receipt by either or both of them of a U.S. Antitrust Pre-consummation Warning Letter shall not constitute grounds for the assertion that the HSR Condition has not been satisfied.

3.6 Notifications:

- (a) Each party will keep the other party fully informed as to the progress made towards procuring the satisfaction of the Conditions.
- (b) If it becomes known that a Condition has become incapable of satisfaction, the party with that knowledge will promptly inform the other party in writing, and in any event within two Business Days of the relevant fact having become known to that party.
- (c) Each party must notify the other party in writing of the satisfaction of a Condition as soon as reasonably practicable after that party becomes aware of it. Any notification delivered pursuant to this clause 3.6(c) must be accompanied by sufficient evidence to reasonably satisfy the other party of the fulfilment of the Condition, including a copy of any consent, approval, order or other documentation.

3.7 Waiver of Conditions: Where the "Waiver" column of the table in clause 3.1 opposite a Condition states "none", that Condition may not be waived. Each other Condition is only for the benefit of, and may only be waived in writing by:

- (a) if one party is specified in the “Waiver” column of the table in clause 3.1 opposite that Condition, that party; or
- (b) if both Pushpay and the Bidder are specified in the “Waiver” column of the table in clause 3.1 opposite that Condition, those parties jointly.

A party entitled to waive, or to join in the waiver of, a Condition may do so in its absolute discretion.

3.8 Method of waiver: Where a Condition may be waived by:

- (a) Pushpay, Pushpay may only waive the Condition by giving notice in writing to the Bidder; and
- (b) the Bidder, the Bidder may only waive the Condition by giving notice in writing to Pushpay.

Where a Condition may only be waived by both Pushpay and the Bidder, those parties may only waive the Condition by agreeing in writing to do so.

3.9 Effect of waiver: If a party waives or joins in the waiver of a Condition in accordance with this clause 3, that waiver does not:

- (a) preclude that party from bringing a claim against the other party for any breach of this Agreement; or
- (b) constitute a waiver of any other Condition.

3.10 Delay in satisfaction of Conditions:

- (a) Without limiting clause 3.6:
 - (i) the Bidder must promptly notify Pushpay if the OIO Condition or HSR Condition has not been satisfied by 5.00pm on the day that is 10 Business Days prior to the Condition Satisfaction Date; and
 - (ii) each party must promptly notify the other parties if any event or change in circumstances occurs that prevents or is reasonably likely to prevent any Condition (other than the Conditions in clause 3.1(g) and 3.1(h)) being satisfied before the Condition Satisfaction Date, and the failure to satisfy the Condition which would otherwise occur has not been (or cannot be) waived.
- (b) If a party gives notice under clause 3.10 then, without limiting clause 2.5, the parties must:
 - (i) if a change to the Timetable or an extension of the Condition Satisfaction Date would, in the reasonable opinion of the parties, assist with the satisfaction of the relevant Condition, consult in good faith about whether to change the Timetable and/or extend the Condition Satisfaction Date; or
 - (ii) if a change of the Timetable would not, in the reasonable opinion of the parties, assist with the satisfaction of the relevant Condition, consult in good faith about whether the Transaction may proceed by way of alternative means or methods.
- (c) For the avoidance of doubt, if the Condition Satisfaction Date or the End Date is extended by agreement between the parties in accordance with this Agreement, this clause 3.10 will apply in respect of each successive Condition Satisfaction Date or End Date (as applicable).

3.11 **Notice of Adverse Circumstances:**

- (a) If, prior to 8.00am on the Implementation Date, Pushpay or the Bidder becomes aware of a matter, event or circumstance that it considers in good faith will give rise to, or there is a reasonable possibility that it will give rise to, a Material Adverse Change (“**Adverse Circumstance**”), it must promptly notify the other party of the relevant Adverse Circumstance (which notice must state that it is a notice for the purposes of this clause 3.11).
- (b) After giving notice of an Adverse Circumstance, the parties must consult in good faith for at least five Business Days or, if shorter, until 5.00pm on the day prior to the Implementation Date, regarding the appropriate method of calculating the adverse financial consequences of the Adverse Circumstance, having regard to the various matters which are to be excluded under the definition of Material Adverse Change.

3.12 **Additional MAC requirements:** If Pushpay:

- (a) gives notice to the Bidder under clause 3.11(a), then that notice must also include:
 - (i) all material details of the relevant Adverse Circumstance, including Pushpay’s good faith quantification of the estimated financial impact of the Adverse Circumstance and copies of all workings and relevant materials used to calculate such financial impact; and
 - (ii) the details, to the extent that such details are reasonably practical to provide in the circumstances, of any matters that it believes should be excluded under the definition of Material Adverse Change in relation to that Adverse Circumstance (including, where practical, its good faith estimate of the financial impact of any such matters); or
- (b) receives notice from the Bidder of an Adverse Circumstance under clause 3.11(a), then provided the Bidder has included in its notice reasonable details of the Adverse Circumstance including its good faith quantification of the estimated financial impact (to the extent the estimated financial impact is reasonably able to be determined by the Bidder at the time of the giving of the notice), Pushpay must respond in writing to the Bidder within five Business Days of receiving that notice (or, if shorter, by no later than 5.00pm on the Business Day prior to the Implementation Date) with such information as the Bidder reasonably requests in that notice in order for the Bidder to be able to determine:
 - (i) the financial impact of the Adverse Circumstance; and
 - (ii) any matters that should be excluded under the definition of Material Adverse Change in relation to that Adverse Circumstance (including the financial impact of that matter).

3.13 **Termination:** Notwithstanding anything in this clause 3 or any rights of termination implied by law, this Agreement may only be terminated in respect of a Condition in accordance with clause 16.

3.14 **Implementation Date:** If all the Conditions (other than the Conditions in clauses 3.1(f), 3.1(g) and 3.1(h)) are satisfied or waived (to the extent capable of waiver) on or before 5.00pm on the Condition Satisfaction Date, then the Bidder must not elect under paragraph (a) of the definition of Implementation Date an Implementation Date that is after the End Date.

4. SCHEME BOOKLET

4.1 **Pushpay's obligations:** Without limiting clause 2, Pushpay must:

- (a) subject to clause 4.2(a), prepare the Scheme Booklet so that it contains:
 - (i) all information required by the Schemes Guidance Note, the Companies Act and any other applicable laws;
 - (ii) all information requested or required by the Takeovers Panel in order for Pushpay to obtain from the Takeovers Panel a Letter of Intention and No-objection Statement;
 - (iii) the responsibility statements referred to in clause 4.4; and
 - (iv) unless there has been a change of recommendation, and subject to the Independent Adviser in the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares, the Director Recommendation;
- (b) if not already appointed, appoint the Independent Adviser (including obtaining approval from the Takeovers Panel for that appointment), and provide all assistance and information that is reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (c) provide the Bidder with:
 - (i) successive drafts of the Scheme Booklet (excluding the Independent Adviser's Report) for the purposes of enabling the Bidder to provide comments on the Scheme Booklet; and
 - (ii) successive drafts of the Independent Adviser's Report or, if the Independent Adviser does not permit the full report to be provided to the Bidder (after Pushpay has used its reasonable endeavours to have the Independent Adviser consent to the draft of the full report being provided to the Bidder (it being acknowledged that whether any or all and which parts of the Independent Adviser's Report is provided to the Bidder remains entirely at the Independent Adviser's sole and absolute discretion and Pushpay will not be liable to the Bidder for any decision by the Independent Adviser to not provide, or to provide, or to not consent or to consent to the provision of, any part of the Independent Adviser's Report to the Bidder under this clause)), successive drafts of any extract of the Independent Adviser's Report that refers to factual information about the Bidder, in each case for the purpose of enabling the Bidder to provide comments on any such factual matters in those drafts,

in each case in a timely manner and so that the Bidder has a reasonable opportunity to review and comment on those drafts, and consider and take into account in good faith the reasonable comments of the Bidder and its Representatives when preparing revised drafts of the Scheme Booklet or providing feedback on the Independent Adviser's Report (as applicable);
- (d) as soon as practicable after preparation of an advanced draft of the Scheme Booklet suitable for review by the Takeovers Panel, provide that draft to the Bidder with a request for the Bidder's confirmations as referred to in clauses 4.2(e) and 4.2(h);

- (e) as soon as practicable after receipt of the confirmations from the Bidder referred to in clauses 4.2(e) and 4.2(h), provide the Takeovers Panel with the draft Scheme Booklet together with an application for a Letter of Intention (as contemplated by clause 5.1(a));
- (f) keep the Bidder reasonably informed of any matters raised by the Takeovers Panel in relation to the Scheme Booklet (other than matters that relate to a Competing Proposal) and consult with the Bidder to resolve any such issues expeditiously (provided that, where such issues relate to the Bidder Information, Pushpay will not take any steps to address them without the Bidder's written consent, not to be unreasonably withheld);
- (g) as soon as reasonably practicable after:
 - (i) the Takeovers Panel has completed its review of the Scheme Booklet; and
 - (ii) the Takeovers Panel has provided the Letter of Intention contemplated by clause 5.1(a), procure that a meeting of the Board is convened to approve the Scheme Booklet:
 - (iii) for lodgement with the Court together with the application for Initial Orders; and
 - (iv) subject to the Initial Orders being granted and the terms of those orders, for sending to Shareholders;
- (h) after the Board has provided the approvals contemplated by clause 4.1(g), lodge the Scheme Booklet with the Court seeking the Initial Orders; and
- (i) notify the Bidder if Pushpay becomes aware either:
 - (i) of new information (other than information relating to a Competing Proposal) which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet under clause 4.1(a)(i); or
 - (ii) that any part of Pushpay Information in the Scheme Booklet is misleading or deceptive in any material respect, including by omission (except in respect of information relating to a Competing Proposal),

and, if in either case Pushpay becomes aware, or if Pushpay receives a notification from the Bidder under clause 4.2(f):

- (iii) between despatch of the Scheme Booklet to Shareholders and the date of the Scheme Meeting, then, if considered by Pushpay that supplementary disclosure is required, Pushpay will:
 - (A) provide supplementary disclosure to Shareholders in accordance with applicable law and after consulting with the Bidder in good faith as to the content and presentation of that supplementary disclosure and taking into account the Bidder's reasonable comments; and
 - (B) if Pushpay considers it necessary or appropriate: (x) seek the Court's guidance in respect of such supplementary disclosure; and (y) adjourn the Scheme Meeting to the earliest possible date that will allow Shareholders to consider the supplementary disclosure; and

- (iv) between the date of the Scheme Meeting and the Second Court Date, if considered by Pushpay that supplementary disclosure is required, apply to the Court for orders as to the procedure to be followed for the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme, after consulting with the Bidder and taking into account the Bidder's reasonable comments.

4.2 **Bidder's obligations:** Without limiting clause 2, the Bidder must:

- (a) prepare and provide to Pushpay, for inclusion in the Scheme Booklet information:
 - (i) about the Bidder Group; and
 - (ii) equivalent to the information that would meet the requirements of Schedule 1 to the Takeovers Code,

as required under the Schemes Guidance Note, the Companies Act and any other applicable laws or as requested or required by the Takeovers Panel in order for Pushpay to obtain from the Takeovers Panel a Letter of Intention and a No-objection Statement;
- (b) provide Pushpay with successive drafts of the information referred to in clause 4.2(a) in a timely manner, to provide a reasonable opportunity for Pushpay to review those drafts and consider in good faith the reasonable comments of Pushpay and its Representatives when preparing revised drafts of that information (with the parties' intention being that, so far as is practicable, the Scheme Booklet is finalised within 30 Business Days after the date on which the initial draft of the Scheme Booklet is provided by Pushpay to the Bidder);
- (c) provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (d) as soon as practicable after receipt of any draft of the Scheme Booklet from Pushpay, review and provide comments on that draft;
- (e) before Pushpay provides the Scheme Booklet to the Takeovers Panel in accordance with clause 4.1(e) and again before the Scheme Booklet is sent to Shareholders in accordance with clause 5.1(e)(ii), deliver to Pushpay written consent from the Bidder to the inclusion of the Bidder Information in the Scheme Booklet in the form and context it appears;
- (f) notify Pushpay if the Bidder becomes aware at any time either:
 - (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Bidder Information under any applicable law, the Schemes Guidance Note or any Takeovers Panel requirement in connection with the Letter of Intention contemplated by clause 5.1(a) or the No-objection Statement contemplated by clause 5.1(g); or
 - (ii) that any part of the Bidder Information is misleading or deceptive in a material respect, including by omission,

and if the Bidder provides such notification, Pushpay will comply with clause 4.1(i);

- (g) procure that it is represented by counsel at the Court hearings convened for the purposes of considering the Initial Orders and the Final Orders (it being understood, for the avoidance of doubt, that Pushpay will prepare the Court documentation for the Initial Orders and Final Orders); and
 - (h) before a draft of the Scheme Booklet is lodged with the Takeovers Panel, and again before the Scheme Booklet is sent to Shareholders, confirm to Pushpay the accuracy and completeness of the Bidder Information in the Scheme Booklet, including that it does not contain any material statement that is false or misleading in a material respect including because of any omission.
- 4.3 **Bidder confirmations and approvals:** If the Bidder requires any change to be made to the form or content of the Bidder Information as a condition of giving its consent as referred to in clause 4.2(e) then:
- (a) if Pushpay disagrees with the change, the parties must consult in good faith about the change and the reasons for it with a view to agreeing an alternative change that satisfies both parties; and
 - (b) if the parties are unable to reach agreement, Pushpay must make such changes to the Bidder Information as the Bidder reasonably requires.
- 4.4 **Responsibility statements:** The Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties, to the effect that:
- (a) Pushpay has provided, and is responsible for, the Pushpay Information in the Scheme Booklet, and that none of the Bidder, its Related Companies or their respective Representatives assumes any responsibility for the accuracy or completeness of the Pushpay Information;
 - (b) the Bidder has provided, and is responsible for, the Bidder Information, and that none of Pushpay, its Related Companies or their respective Representatives assumes any responsibility for the accuracy or completeness of the Bidder Information; and
 - (c) the Independent Adviser has provided and is responsible for the Independent Adviser's Report and none of the Bidder, Pushpay, or their respective Related Companies or Representatives assumes any responsibility for the accuracy or completeness of the Independent Adviser's Report.

4A. NEW MEETING MATERIALS

4A.1 Pushpay's obligations: Without limiting clause 2, Pushpay must:

- (a) subject to clause 4A.2(a), prepare the Scheme Booklet Supplement so that it contains:
 - (i) all information required by the Companies Act and any other applicable laws;
 - (ii) all information requested or required by the Takeovers Panel in order for Pushpay to obtain from the Takeovers Panel a Letter of Intention and No-objection Statement;
 - (iii) the responsibility statements referred to in clause 4A.4; and
 - (iv) unless there has been a change of recommendation, and subject to the Independent Adviser in the Independent Adviser's Report concluding that the Consideration is within

or above the Independent Adviser's valuation range for the Shares, the Director Recommendation;

- (b) instruct the Independent Adviser to prepare the IAR Supplement and provide all assistance and information that is reasonably requested by the Independent Adviser to enable it to prepare the IAR Supplement;
- (c) provide the Bidder with successive drafts of:
 - (i) the Scheme Booklet Supplement for the purposes of enabling the Bidder to provide comments on those drafts; and
 - (ii) any extract of the IAR Supplement that refers to factual information about the Bidder, for the purposes of enabling the Bidder to provide comments on such factual matters in those drafts,

in each case in a timely manner and so that the Bidder has a reasonable opportunity to review and comment on those drafts, and consider and take into account in good faith the reasonable comments of the Bidder and its Representatives when preparing revised drafts of the Scheme Booklet Supplement or providing feedback on the IAR Supplement (as applicable);
- (d) as soon as practicable after preparation of an advanced draft of the Scheme Booklet Supplement, provide that draft to the Bidder with a request for the Bidder's confirmation as referred to in clauses 4A.2(d)(ii);
- (e) provide the Takeovers Panel with the draft New Meeting Materials as soon possible after the Restatement Date, together with an application for a Letter of Intention (as contemplated by clause 5.1(ff)(i));
- (f) keep the Bidder reasonably informed of any matters raised by the Takeovers Panel in relation to the New Meeting Materials (other than matters that relate to a Competing Proposal) and consult with the Bidder to resolve any such issues expeditiously (provided that, where such issues relate to the Bidder Information, Pushpay will not take any steps to address them without the Bidder's written consent, not to be unreasonably withheld);
- (g) as soon as reasonably practicable after:
 - (i) the Takeovers Panel has completed its review of the New Meeting Materials; and
 - (ii) the Takeovers Panel has provided the Letter of Intention contemplated by clause 5.1(ff)(i),

procure that a meeting of the Board is convened to approve the New Meeting Materials;

 - (iii) for lodgement with the Court together with the application for New Orders; and
 - (iv) subject to the New Orders being granted and the terms of those orders, for sending to Shareholders;
- (h) after the Board has provided the approvals contemplated by clause 4A.1(g), lodge the New Meeting Materials with the Court seeking the New Orders; and

- (i) notify the Bidder if Pushpay becomes aware either:
 - (i) of new information (other than information relating to a Competing Proposal) which, had it been known at the time the Scheme Booklet Supplement was prepared, should have been included in the Scheme Booklet Supplement under clause 4A.1(a)(i); or
 - (ii) that any part of Pushpay Information in the Scheme Booklet is misleading or deceptive in any material respect, including by omission (except in respect of information relating to a Competing Proposal),

and, if in either case Pushpay becomes aware, or if Pushpay receives a notification from the Bidder under clause 4A.2(e):

- (iii) between despatch of the New Meeting Materials to Shareholders and the date of the New Scheme Meeting, then, if considered by Pushpay that supplementary disclosure is required, Pushpay will:

- (A) provide supplementary disclosure to Shareholders in accordance with applicable law and after consulting with the Bidder in good faith as to the content and presentation of that supplementary disclosure and taking into account the Bidder's reasonable comments; and

- (B) if Pushpay considers it necessary or appropriate: (x) seek the Court's guidance in respect of such supplementary disclosure; and (y) adjourn the New Scheme Meeting to the earliest possible date that will allow Shareholders to consider the supplementary disclosure; and

- (iv) between the date of the New Scheme Meeting and the Second Court Date, if considered by Pushpay that supplementary disclosure is required, apply to the Court for orders as to the procedure to be followed for the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme, after consulting with the Bidder and taking into account the Bidder's reasonable comments.

4A.2 Bidder' obligations: Without limiting clause 2, Bidder must:

- (a) provide all assistance and information reasonably requested by Pushpay to enable it to prepare the Scheme Booklet Supplement;
- (b) provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the IAR Supplement;
- (c) as soon as practicable after receipt of any draft of any New Meeting Materials from Pushpay, review and provide comments on that draft;
- (d) before the New Meeting Materials are sent to Shareholders in accordance with clause 5.1(ff)(iii)(B):
 - (i) deliver to Pushpay written consent from the Bidder to the inclusion of any Bidder Information in the Scheme Booklet Supplement in the form and context it appears;

- (ii) confirm to Pushpay the accuracy and completeness of any Bidder Information in the Scheme Booklet Supplement, including that it does not contain any material statement that is false or misleading in a material respect including because of any omission;
- (e) notify Pushpay if the Bidder becomes aware at any time that any part of the Bidder Information is misleading or deceptive in a material respect, including by omission, and if the Bidder provides such notification, Pushpay will comply with clause 4A.1(i); and
- (f) procure that it is represented by counsel at the Court hearings convened for the purposes of considering the New Orders and the Final Orders (it being understood, for the avoidance of doubt, that Pushpay will prepare the Court documentation for the New Orders and Final Orders).

4A.3 **Bidder confirmations and approvals:** If the Bidder requires any change to be made to the form or content of the Bidder Information as a condition of giving its consent as referred to in clause 4A.2(d)(i) then:

- (a) if Pushpay disagrees with the change, the parties must consult in good faith about the change and the reasons for it with a view to agreeing an alternative change that satisfies both parties; and
- (b) if the parties are unable to reach agreement, Pushpay must make such changes to the Bidder Information as the Bidder reasonably requires.

4A.4 **Bidder confirmations and approvals:** Unless the parties agree otherwise (both acting reasonably), the Scheme Booklet Supplement must contain responsibility statements, in a form to be agreed between the parties, to the effect that:

- (a) Pushpay has provided, and is responsible for, the Pushpay Information in the Scheme Booklet Supplement, and that none of the Bidder, its Related Companies or their respective Representatives assumes any responsibility for the accuracy or completeness of the Pushpay Information;
- (b) the Bidder has provided, and is responsible for, the Bidder Information, and that none of Pushpay, its Related Companies or their respective Representatives assumes any responsibility for the accuracy or completeness of the Bidder Information; and
- (c) the Independent Adviser has provided and is responsible for the IAR Supplement and none of the Bidder, Pushpay, or their respective Related Companies or Representatives assumes any responsibility for the accuracy or completeness of the IAR Supplement.

5. SCHEME IMPLEMENTATION STEPS

5.1 Pushpay's obligations: Pushpay must, in accordance with clause 2.6 and without limiting clause 2:

- (a) before the First Court Date, apply to the Takeovers Panel for a Letter of Intention;
- (b) prior to sending any material correspondence to the Takeovers Panel relating to the Scheme (other than correspondence to the extent relating to a Competing Proposal, the actual or purported termination of this Agreement or any claim under, or disagreement or dispute between the parties in respect of, this Agreement or the Transaction), provide the Bidder with a

draft of that correspondence and consider in good faith all of the reasonable comments of the Bidder on that correspondence;

- (c) promptly provide the Bidder with a copy of all material correspondence to and from the Takeovers Panel relating to the Scheme (other than correspondence to the extent relating to a Competing Proposal, the actual or purported termination of this Agreement or any claim under, or disagreement or dispute between the parties in respect of, this Agreement or the Transaction);
- (d) after the Takeovers Panel has provided the Letter of Intention contemplated by clause 5.1(a), apply to the Court for Initial Orders convening the Scheme Meeting;
- (e) if the Court makes and seals the Initial Orders:
 - (i) deliver a copy of the Initial Orders to the Registrar for registration under section 236(4) of the Companies Act, by no later than 10 Business Days after the date the Initial Orders are granted;
 - (ii) send the Scheme Booklet to Shareholders; and
 - (iii) hold the Scheme Meeting in accordance with, and otherwise complying in all respects with, the Initial Orders (including putting the Scheme Resolution to Shareholders for a vote at the Scheme Meeting);
- (f) on sending the Scheme Booklet to Scheme Shareholders, lodge a copy of that Scheme Booklet with NZX and ASX in accordance with the NZX Listing Rules and the ASX Listing Rules (as applicable);

(ff) and:

- (i) before the New Court Date, apply to the Takeovers Panel for a Letter of Intention;
- (ii) after the Takeovers Panel has provided the Letter of Intention contemplated by sub-clause (ff)(i), apply to the Court for New Orders convening the New Scheme Meeting;
- (iii) ~~(e)~~ if the Court makes and seals the New Orders:
 - (A) deliver a copy of the New Orders to the Registrar for registration under section 236(4) of the Companies Act, by no later than 10 Business Days after the date the New Orders are granted;
 - (B) send the New Meeting Materials to Shareholders; and
 - (C) hold the New Scheme Meeting in accordance with, and otherwise complying in all respects with, the New Orders (including putting the New Resolution to Shareholders for a vote at the New Scheme Meeting); and
- (iv) on sending the New Meeting Materials to Scheme Shareholders, lodge a copy of those New Meeting Materials with NZX and ASX in accordance with the NZX Listing Rules and the ASX Listing Rules (as applicable);

- (g) if the ~~Scheme~~-New Resolution is passed by the requisite majorities of Shareholders as set out under section 236A(4) of the Companies Act, ~~and subject to the satisfaction of the OIO Condition and HSR Condition before the Condition Satisfaction Date:~~
- (i) enter into, and use reasonable endeavours to procure that LINK enters into, the Escrow Agreement before making the applications contemplated by clause 5.1(g)(ii); and
 - (ii) promptly apply to:
 - (A) the Takeovers Panel for the production of a No-objection Statement; and
 - (B) the Court for its approval of Final Orders;
- (h) if the Court grants the Final Orders:
- (i) promptly deliver to the Registrar for registration a copy of the Final Orders for registration in accordance with section 236(4) of the Companies Act, by no later than 10 Business Days after the date the Final Orders are granted;
 - (ii) prior to sending any material correspondence to NZX or ASX in respect of the suspension or cessation of quotation of Shares or de-listing of Pushpay in connection with the Transaction, provide the Bidder with a draft of that correspondence and consider in good faith all of the reasonable comments of the Bidder on that correspondence;
 - (iii) apply to NZX and ASX to:
 - (A) suspend trading in the Shares from the close of trading on the date that is two Business Days after the ~~later of: (AA) — the Final Orders Date; or (BB) — the date on which the last of the OIO Condition and the HSR Condition are satisfied;~~ or such other date as may be agreed between the parties in writing; and
 - (B) de-list Pushpay with effect from close of trading on the Implementation Date;
 - (iv) promptly provide the Bidder with a copy of all material correspondence to and from the NZX and the ASX in respect of the suspension or cessation of quotation of Shares or de-listing of Pushpay in accordance with clause 5.1(h)(iii) and keep the Bidder reasonably informed of any matters raised by the ASX or the NZX in respect of the suspension or cessation of quotation of Shares or de-listing of Pushpay and consult with the Bidder to resolve any such issues expeditiously; and
 - (v) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration; ~~and~~
- (i) if the Scheme becomes Effective:
- (i) subject to all of the Conditions being satisfied or, to the extent capable of waiver, waived, provide an “Unconditional Notice” (as defined in the Escrow Agreement) to the Escrow Agent under clause 10 of the Escrow Agreement, promptly after 8.00am, and in any event before 9.00am, on the Implementation Date;

- (ii) subject to the Bidder satisfying its obligations under clause 5.2(d), give effect to the transfer of the Scheme Shares to the Bidder in accordance with the Scheme on the Implementation Date; and
- (iii) do all other things contemplated of it under the Scheme for the implementation of the Scheme and the Transaction and all other things (if any) within its power as may be reasonably necessary for the implementation of the Scheme and the Transaction:
 - (A) in accordance with the Scheme Plan and the Final Orders; and
 - (B) on a basis consistent with this Agreement; and

- (j) subject to clause 5.2A(a), provide to the Registrar:
 - (i) on the record date for determining voting entitlements for the New Scheme Meeting, the Underlying Controller Voting Confirmation Notice; and
 - (ii) on the Record Date, the Specified Shares Notice,
in each case, in reliance on the information provided to Pushpay by the Specified Shareholder, the Bidder and other relevant third parties.

5.2 **Bidder's obligations:** Without limiting clause 2, the Bidder must:

- (a) on the date of this Agreement, deliver to Pushpay:
 - (i) the Debt Commitment Letter and Debt Fee Letter executed by all parties to those letters; and
 - (ii) the Equity Commitment Letters executed by all parties to those letters;

(aa) on the Restatement Date, deliver to Pushpay:

 - (i) an amended and restated version of the Equity Commitment Letters executed by all parties to those documents; and
 - (ii) the Underlying Controller Restatement Date Notice;
- (b) within 10 Business Days after the date of this Agreement, deliver to Pushpay:
 - (i) the Deed Poll executed by the Bidder; and
 - (ii) the Voting Deed Poll executed by all parties to that document;

(bb) by 5.00pm on the date which is five Business Days after the Restatement Date, deliver to Pushpay the New Voting Deed Polls executed by all parties to each of those documents;
- (c) deliver to Pushpay a copy of the Escrow Agreement executed by the Bidder before the application for Final Orders is filed with the Court;
- (d) if the Scheme becomes Effective:
 - (i) subject to all of the Conditions being satisfied or, to the extent capable of waiver, waived, provide an "Unconditional Notice" (as defined in the Escrow Agreement) to the Escrow

Agent under clause 10 of the Escrow Agreement, promptly after 8.00am, and in any event before 9.00am, on the Implementation Date;

- (ii) accept a transfer of the Scheme Shares; and
- (iii) provide, or procure the provision of, the Consideration in accordance with clause 2.4, the Deed Poll and the Scheme Plan on or before the Implementation Date; ~~and~~
- (e) do all other things contemplated of it under the Scheme for the implementation of the Scheme and the Transaction and all other things (if any) within its power as may be reasonably necessary for the implementation of the Scheme and the Transaction in accordance with the Scheme Plan and the Final Orders; ~~and~~
- (f) provide any information reasonably requested by Pushpay for the purposes of preparing the Underlying Controller Voting Confirmation Notice and the Specified Shares Notice.

5.2A Specified Shares Notice and Underlying Controller Voting Confirmation Notice

- (a) If any matter which is required to be included in the Underlying Controller Voting Confirmation Notice or the Specified Shares Notice cannot be provided, then the parties will use their respective reasonable endeavours, acting in good faith, to determine whether any alternative matter could instead be provided in order to address the purpose for including that original matter.
- (b) When complying with their obligations under clause 5.1(j), 5.2(f) and 5.2A(a), the parties will apply the following principles:
 - (i) the desire by the parties to ensure that the Scheme can be successfully implemented and in accordance with the Timetable;
 - (ii) the purpose of:
 - (A) the Underlying Controller Voting Confirmation Notice is to provide Pushpay, the Bidder, the Court, the Registrar and the scrutineer of voting at the New Scheme Meeting with clarity that the Underlying Controller Shares, if voted, have been voted in favour of the New Resolution at the New Scheme Meeting; and
 - (B) the Specified Shares Notice is to provide Pushpay, the Bidder, the Court and the Registrar with clarity that the lower consideration of NZ\$1.34 per Share is being paid in respect of the appropriate Scheme Shares;
 - (iii) Bidder and Pushpay will work collaboratively and in good faith;
 - (iv) Pushpay will be responsible for dealing with the Registrar and New Zealand Central Securities Depository Limited (including requesting any necessary or desirable (having regard to the purpose described in sub-clause (b)(ii)) information, instruction or confirmation and exercising any control it may have (contractual or otherwise, and whether direct or indirect) to request the relevant party to provide the applicable information, instruction or confirmation);

- (v) Bidder will be responsible for dealing with the Underlying Controllers and any sub-custodians (including requesting any necessary or desirable (having regard to the purpose described in sub-clause (b)(ii)) information, instructions or confirmations and exercising any control it may have (contractual or otherwise, and whether direct or indirect) to request the relevant party to provide the applicable information, instruction or confirmation); and
- (vi) each party will take any action reasonably requested of it by the other party.

5.2B Reliance by Pushpay:

- (a) The Bidder acknowledges and agrees that Pushpay is entitled to rely on, and will rely on, the Underlying Controller Voting Confirmation Notice for the purposes of verifying the votes of the interest class comprising Specified Shareholders who hold Underlying Controller Shares.
- (b) The Bidder acknowledges and agrees that Pushpay is entitled to rely on, and will rely on, the Specified Shares Notice for the purposes of determining the Consideration payable to Specified Shareholders who hold Specified Shares.

5.3 Conditions certificate:

- (a) Subject to clause 5.3(b):
 - (i) between 8.00am and midday on the day that is one Business Day after the ~~later of: (A) — the Final Orders Date; and (B) — the date on which the last to be satisfied of the OIO Condition and the HSR Condition is satisfied,~~ (or such other date that is on or about that date as may be notified by the Bidder to Pushpay at least three Business Days before such certificate is to be delivered);
 - (ii) between 8.00am and midday on the day before the Implementation Date; and
 - (iii) between 6.00am and 7.00am on the Implementation Date,

Pushpay must give the Bidder a certificate from Pushpay signed by the Pushpay Group CEO and CFO stating that, so far as Pushpay is aware:

 - (iv) except to the extent previously waived, the Conditions in clauses 3.1(f), 3.1(g) and 3.1(h) would have been satisfied if 8.00am on the Implementation Date was read as the time the certificate is given to the Bidder and Pushpay is not aware of anything that would prevent those Conditions being satisfied;
 - (v) it is not in breach of clauses 9.2 or 11.1; and
 - (vi) there has not been any breach of any other provision of this Agreement which might entitle the Bidder to terminate under clause 16,

(“Pushpay Certificate”).
- (b) If any of the statements referred to in clause 5.3(a) would be inaccurate, Pushpay must provide a qualified Pushpay Certificate setting out reasonable details of the matters which cause or are likely to cause that certificate not to be accurate.

- (c) For the avoidance of doubt:
 - (i) a Pushpay Certificate is signed by the Pushpay Group CEO and CFO in his or her capacity as an officer of Pushpay, and in no other capacity; and
 - (ii) no personal liability will be assumed by the Pushpay Group CEO or CFO as a result of the statements in the Pushpay Certificate.

5.4 **Provision of information to the Independent Adviser:** Pushpay must, in relation to any information that it or any of its Representatives provides to the Independent Adviser after the date of this Agreement in connection with the preparation of the Independent Adviser's Report ("**IAR Information**"):

- (a) prepare and provide that IAR Information to the Independent Adviser in good faith (including by having regard to material risks, opportunities and adverse circumstances);
- (b) to the extent any IAR Information contains any Forward Looking Information, prior to that Forward Looking Information being provided to the Independent Adviser, ensure that the provision of that Forward Looking Information to the Independent Adviser has been approved by the committee of the Board comprising the Non-Conflicted Directors that has been delegated authority to consider matters relating to the Transaction; and
- (c) ensure that any information that Pushpay considers (acting in good faith) is, or is reasonably likely to be, material to the financial performance, position or prospects of the Pushpay Group which becomes known by any Non-Conflicted Director or Senior Manager (as defined in the NZX Listing Rules) but which had not previously been provided to the Independent Adviser, has been provided to the Independent Adviser.

5.5 **Amendments to Scheme Plan:**

- (a) Subject to clause 5.5(b), the Bidder may, in its sole discretion and without the consent of Pushpay, amend the Scheme Plan by:
 - (i) deleting in their entirety the steps (and any associated provisions) in the Scheme Plan relating to the transfer of the BGH Shares and the Sixth Street Shares contained in clause 4.1(c) to 4.1(g) (inclusive); or
 - (ii) amending any or all of the steps (and any associated provisions) in the Scheme Plan relating to the transfer of the BGH Shares and the Sixth Street Shares contained in clause 4.1(c) to 4.1(g) (inclusive) provided that any such amendment must not be adverse to the interests of Pushpay or the Scheme Shareholders,

provided that, in each case, any steps provided for by such an amendment must comply with applicable law and the Bidder must provide Pushpay with written notice of any such amendment to the Scheme Plan at least five Business Days prior to Pushpay applying to the Court for its approval of Final Orders in accordance with clause 5.1(g)(ii)(B).

- (b) The Bidder must not take an action under clause 5.5(a) that has the effect of changing the number of Excluded Shares or otherwise changing the aggregate Consideration payable to

Scheme Shareholders without Pushpay's prior written consent (not to be unreasonably withheld or delayed).

6. OTHER IMPLEMENTATION OBLIGATIONS

6.1 Promotion of Transaction:

- (a) During the Exclusivity Period, subject to:
- (i) there being no Superior Proposal; and
 - (ii) the Independent Adviser's Report having first concluded that the Consideration is within or above the Independent Adviser's valuation range for the Shares,

Pushpay will use reasonable endeavours to promote, and will provide reasonable cooperation to the Bidder in promoting, the merits of the Transaction to Shareholders, including:

- (iii) complying with any reasonable request by the Bidder to require disclosure of information in accordance with sections 290 and 291 of the FMCA, subject to its statutory and contractual obligations, and providing the information obtained as a result of requiring such disclosure to the Bidder;
- (iv) providing, subject to Pushpay's statutory or contractual obligations, such information regarding Shareholders and their holdings as the Bidder reasonably requests;
- (v) procuring that LINK provides to the Bidder, in the form reasonably requested by the Bidder, details of the Register to facilitate, subject to clause 6.1(b), the canvassing of Shareholders by the Bidder or the provision by the Bidder of the Consideration in accordance with this Agreement, the Scheme and the Deed Poll;
- (vi) retaining the services of a proxy solicitation firm approved by the Bidder to actively solicit affirmative proxies for the Scheme and, following the sending of the Scheme Booklet to Shareholders, providing the Bidder with daily proxy updates in respect of the Scheme Meeting and the aggregate tally of votes received by Pushpay in respect of the Scheme;
- [\(viA\) retaining the services of a proxy solicitation firm approved by the Bidder to actively solicit affirmative proxies for the Scheme and, following the sending of the New Meeting Materials to Shareholders, providing the Bidder with daily proxy updates in respect of the New Scheme Meeting and the aggregate tally of votes received by Pushpay in respect of the Scheme;](#)
- (vii) promptly report to Bidder any information Pushpay becomes aware of regarding opposition to the Scheme by the Shareholders (excluding unsubstantiated rumours or similar information or opposition by any individual Shareholder holding an immaterial number of Shares);
- (viii) procuring that senior executives of the Pushpay Group are available on reasonable notice to:

- (A) meet (in person or remotely, as reasonably requested by the Bidder) with key Shareholders if reasonably requested to do so by the Bidder; and
- (B) communicate with the employees, joint venture partners and key suppliers of the Pushpay Group,

in each case to discuss and promote the Transaction with such persons; and

- (ix) undertaking, in cooperation with the Bidder, other reasonable actions to promote the affirmative vote of Shareholders for the Transaction, as reasonably requested by the Bidder.

- (b) Pushpay and the Bidder will use reasonable endeavours to agree, as soon as practicable after the date of this Agreement, key messaging and principles to govern all communications between the Bidder (or any Representative of the Bidder) and Shareholders (“**Communications Principles**”), which will apply throughout the period that the Non-Conflicted Directors continue to unanimously recommend that Shareholders vote in favour of the Scheme.

- (c) During the period that the Non-Conflicted Directors continue to unanimously recommend that Shareholders vote in favour of the Scheme, the Bidder must not, directly or indirectly:

- (i) send information or correspondence to Shareholders;
- (ii) call Shareholders as part of an outbound call programme or other similar communication plan; or
- (iii) otherwise engage in proxy solicitation or other canvassing of Shareholders,

in connection with the Scheme (together, “**Bidder Shareholder Communications**”), without first providing Pushpay with a draft of the Bidder Shareholder Communication in a timely manner and so that Pushpay has a reasonable opportunity to review and comment on that draft, and consider and take into account in good faith the reasonable comments of Pushpay and its Representatives when preparing a revised draft of the relevant Bidder Shareholder Communication. Nothing in this clause 6.1(c) will apply in the case of an unscheduled in-bound call received by the Bidder or its Representatives from any Shareholder or any out-bound call made by Bidder or its Representatives to one or a small number of Shareholders (rather than Shareholders generally) on a discrete or ad hoc basis, provided that the Bidder will act, and will ensure that its Representatives act, consistently with the Communications Principles (once agreed pursuant to 6.1(b)) in conducting any such calls.

- (d) The Bidder must ensure that any information and correspondence provided to, and call scripts used to call Shareholders (and the calls themselves):

- (i) comply with all applicable laws, including the FMCA and the Fair Trading Act 1986;
- (ii) are not misleading or deceptive, including by omission; and
- (iii) during the period that the Non-Conflicted Directors continue to unanimously recommend that Shareholders vote in favour of the Scheme, comply with the Communications Principles (once agreed pursuant to 6.1(b)).

- (e) If this Agreement is terminated under clause 16 (other than clause 16.1, 16.4 or 16.11), the Bidder agrees to pay, within 13 Business Days after termination, all of the Pushpay Group's reasonable out of pocket costs (exclusive of GST) incurred in promoting the Transaction to Shareholders in accordance with this Agreement up to a maximum of \$50,000.

6.2 **Board changes:** Subject to the Consideration having been paid to Scheme Shareholders, Pushpay must procure that:

- (a) such persons as the Bidder nominates (by notice to Pushpay no later than five Business Days before the Implementation Date) and who are legally entitled to be appointed and who have provided to Pushpay a signed consent to act by that time are appointed as directors of Pushpay and/or such other Pushpay Group members on the Implementation Date (by no later than 5.00pm); and
- (b) unless otherwise agreed by the Bidder in writing, each Director and, if requested by the Bidder, any director of the other Pushpay Group members, other than those appointed in accordance with clause 6.2(a), resigns as a director of each relevant member of the Pushpay Group with effect from the Implementation Date (by no later than 5.00pm on the Implementation Date) and acknowledges in writing that he or she has no claim against any member of the Pushpay Group other than for accrued but unpaid directors fees and expenses (or, in respect of any executive directors, any accrued employee remuneration).

6.3 **Restricted Share Units:**

- (a) Pushpay acknowledges and agrees that:
 - (i) as at the date of this Agreement, 7,306,460 Restricted Share Units (corresponding to 7,306,460 Shares, assuming maximum achievement of any applicable performance goals and before any net settlement cancellations on account of taxation) remain outstanding; and
 - (ii) Pushpay may not issue any further Restricted Share Units after the date of this Agreement.
- (b) Prior to the Record Date, the Board will determine, in its sole discretion and in accordance with the terms of the Pushpay Share Incentive Plan, that:
 - (i) certain Restricted Share Units will vest and be settled prior to the Record Date, and the Shares that result from such vesting will be issued to the holders of such Restricted Share Units prior to the Record Date and will be included and treated as Scheme Shares;
 - (ii) in relation to all performance based Restricted Share Units outstanding as at the Implementation Date, such performance-based Restricted Share Units shall be treated in accordance with their respective terms as in effect on the date of this Agreement, including the forfeiture and cancellation without payment of any portion of such performance-based Restricted Share Units where the performance targets applicable to the vesting of such performance based Restricted Share Units have not been satisfied based on the Consideration under this Agreement (“**Forfeited RSUs**”), provided that any vesting of performance-based Restricted Share Units and related issue of Shares

occurs prior to the Record Date and provided further that the maximum number of performance-based Restricted Share Units that may vest is 2,681,073; and

- (iii) in relation to all other Restricted Share Units that remain outstanding as at the Implementation Date which are not captured by clause 6.3(b)(i), each such outstanding Restricted Share Unit shall, without any required action on the part of the holder of any such Restricted Share Unit, be cancelled on or before 7.00am on the Implementation Date (“**Cancelled RSUs**”) and, in return, the member of the Pushpay Group that employs the holder of the Cancelled RSU must pay to that holder, on or before 7.00am on the Implementation Date, an amount in cash (without interest) equal to:
 - (A) the Consideration multiplied by the number of Shares subject to the holder’s Cancelled RSUs (assuming, for the avoidance of doubt, that the Cancelled RSUs were fully vested); less
 - (B) all applicable Tax withholdings, all withholdings and deductions required by law, and all other authorised deductions,

(“**RSU Cancellation Payment**”). For the avoidance of doubt, following the Implementation Date no holder of Cancelled RSUs or Forfeited RSUs will be entitled to be issued any Shares in respect of its Cancelled RSUs or Forfeited RSUs (as applicable).

- (c) All RSU Cancellation Payments will be paid in the currency in which the holder of the Cancelled RSU is paid salary or wages by the holder’s employing member of the Pushpay Group. All payments in currencies which are not New Zealand dollars will be undertaken in a manner and at an exchange rate determined by Pushpay (in its discretion) and neither the Bidder or Pushpay will be responsible for, or have any liability of any nature, in connection with that conversion.
- (d) Prior to the Implementation Date, at a meeting duly called and held or by written consent, the Board shall have caused:
 - (i) the Pushpay Share Incentive Plan to be terminated effective as of 8.00am on the Implementation Date;
 - (ii) no more than the maximum number of Shares to be transferred or issued to participants in the Pushpay Share Incentive Plan prior to the Record Date that is permitted under clause 6.3(b); and
 - (iii) all Restricted Share Units that are outstanding as of immediately prior to the Implementation Date to have been cancelled and extinguished, as set forth in this clause 6.3, such that, as at 8:00am on the Implementation Date, there are no outstanding Restricted Share Units,

in each case, without any ongoing liability to the Bidder or Pushpay and their respective group members (other than payment in accordance with this clause 6.3). Nothing in this clause 6.3, whether express or implied, shall create any rights under subpart 1 of part 2 of the Contract and Commercial Law Act 2017 or any third party beneficiary or other rights in or for the benefit of any holder of Restricted Share Units, Cancelled RSUs or Forfeited RSUs.

6.4 **Restricted Shares:**

- (a) In this clause 6.4, “**Restricted Shares**” means any Shares that are subject to restrictions on transfer which are enforceable by Pushpay, including (to the extent applicable) the “**Founder Restricted Shares**” that were issued under the Membership Interest Purchase Agreement dated 20 August 2021 under which the Pushpay Group acquired Resi Media, LLC (“**Founder Restricted Shares**”).
- (b) Pushpay:
 - (i) warrants that the:
 - (A) terms of the restrictions on transfer applicable to the Founder Restricted Shares; and
 - (B) terms of the restrictions applicable to Shares issued to the holders of Restricted Share Units on vesting of Restricted Share Units,have, in each case, been fairly disclosed in the Due Diligence Material;
 - (ii) undertakes that, except for usual restrictions of transfer in respect of Shares issued on the basis contemplated by clause 6.3(b)(i), Pushpay will not agree to any restrictions on transfer of Shares that would result in those Shares being Restricted Shares; and
 - (iii) hereby waives, subject to the satisfaction or waiver (as applicable) of all of the Conditions and with effect from 8.00am on the Implementation Date, all restrictions on transfer that would apply to the transfer of the Restricted Shares to the Bidder pursuant to the Scheme.
- (c) The parties acknowledge and agree that, for the avoidance of doubt:
 - (i) Restricted Shares are Shares and are not a separate class of share issued by Pushpay; and
 - (ii) all Restricted Shares on issue on the Record Date will be released from any restrictions on transfer in accordance with clause 6.4(b)(iii) and treated as Scheme Shares.
- (d) Pushpay must take no action in respect of the Restricted Shares or the Restricted Share Units, which would, or would be reasonably likely to, create a separate interest class (as referred to in section 236(A)(4) of the Companies Act) of votes in respect of the Scheme. For the avoidance of doubt, the taking of any action contemplated or permitted by clause 6.3 or 6.4 will not breach this clause 6.4(d).

6.5 **Release of Encumbrances:** After the signing of this Agreement and in addition to its obligations under clause 10.1, Pushpay will:

- (a) assist the Bidder to:
 - (i) identify any Encumbrances over the assets of the Pushpay Group which are not Permitted Encumbrances; and
 - (ii) procure the release of any such Encumbrances identified under clause 6.5(a)(i); and

- (b) use reasonable endeavours to procure the removal of any such Encumbrances identified under clause 6.5(a)(i) from the PPSR,

in each case, on or before the Implementation Date.

6.6 **Completion of IP Transfer:**

- (a) Pushpay and the Bidder will work together in good faith and use their respective reasonable endeavours to agree the steps required to implement the IP Transfer (including any minimum amount of outstanding debt) and to document those steps in a steps paper to be agreed between the parties as soon as practicable following the date of this Agreement (the “**IP Transfer Steps Paper**”). For the avoidance of doubt, Pushpay is not required to agree to any IP Transfer Steps Paper unless Pushpay, acting reasonably, is satisfied that the IP Transfer contemplated by that paper will not be detrimental to the Pushpay Group if the Transaction is not implemented.
- (b) Pushpay will, and will procure that each Pushpay Group member will, undertake all steps reasonably required (including the passing of all required board and shareholder resolutions and the execution of all applicable documents) to complete the IP Transfer ~~as close as possible to the Implementation Date but (unless Bidder instructs otherwise in writing) in any event on or before the earlier of: between 5.00pm and 11.59pm on (i) 6 April 2023; and (ii) the Business Day prior to the Implementation Date, and in accordance with the IP Transfer Steps Paper.~~ Pushpay must consult with Bidder in relation to the proposed timing for each of the required steps under the IP Transfer.
- (c) The Bidder will provide all assistance reasonably requested by Pushpay to complete the IP Transfer in accordance with clause 6.6(b).
- (d) For the avoidance of doubt, the final form of the IP Transfer Steps Paper and any proposed variations or amendments to the IP Transfer Steps Paper require the prior written approval of the Bidder, and Pushpay is only permitted to implement the IP Transfer in accordance with the IP Transfer Steps Paper.
- (e) For the avoidance of doubt, the implementation of the IP Transfer under the IP Transfer Steps Paper agreed under clause 6.6(a) will be treated as an action that Pushpay is required to take under this Agreement for the purposes of paragraph (b)(ii) of the definition of Material Adverse Change, clause 9.3(g) and clause 11.1(c)(i).

7. **COURT PROCEEDINGS**

7.1 **Court documents:**

- (a) In relation to each Court application made in relation to the Scheme, including any appeal, Pushpay must provide the Bidder with drafts of all documents required to be provided by Pushpay to the Court (including the originating applications, affidavits, memoranda, submissions and draft Court orders) a reasonable time before they are due to be submitted to the Court (and, in any event, not less than 72 hours before submission unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of the Bidder on those documents. Notwithstanding the previous sentence, unless required by law, Pushpay is not required to provide to the Bidder any document, or any part of a document, that relates to a

Competing Proposal or to any claim under, or disagreement or dispute between the parties in respect of this Agreement or the Transaction. Nothing in this clause 7.1(a) restricts Pushpay's right to make any claim under or in respect of this Agreement or the Transaction in accordance with the terms of this Agreement.

- (b) Pushpay must not provide the Court with any Court orders (whether in draft or not) or applications for Court orders, or consent to any changes to any Court orders, without the Bidder having approved (acting reasonably) such documents being submitted to the Court or such changes being consented to.
- (c) The Bidder's counsel will only prepare and make submissions to the Court if required by the Court or requested by Pushpay. Any such submissions must support Pushpay's application for orders. The Bidder must provide Pushpay with drafts of all documents to be provided by the Bidder to the Court a reasonable time before they are due to be submitted to the Court (and, in any event, not less than 72 hours before submission unless it is impractical in the circumstances) and must consider in good faith the reasonable comments of Pushpay on those documents. Notwithstanding the previous sentence, unless required by law, the Bidder is not required to provide to Pushpay any document, or any part of a document, that relates to any claim under, or disagreement or dispute between the parties in respect of, this Agreement or the Transaction. Nothing in this clause 7.1(c) restricts the Bidder's right to make any claim under or in respect of this Agreement or the Transaction in accordance with the terms of this Agreement.
- (d) The Bidder must not, in any event or at any time, oppose the granting of Initial Orders, the New Orders or Final Orders without Pushpay's prior written consent (such consent not to be unreasonably withheld).

7.2 **Representation:** In relation to each Court application made in relation to the Scheme, including any appeal, but subject at all times to clause 4.2(g):

- (a) Pushpay consents to the separate representation of the Bidder by counsel; and
- (b) the Bidder may appear and be represented in relation to the Court applications.

7.3 **Court proceedings and conditionality:**

- ~~(a)~~ — If the Court declines to make the orders sought by Pushpay under clause ~~5.1(d) or~~ 5.1(g)(ii)(B) or 5.1(ff)(ii), due in whole or in part to the lack of satisfaction of, or the potential timing of, satisfaction of (or where capable of waiver, waiver of) the Conditions, Pushpay must promptly make a further application for Initial-New Orders or Final Orders (as applicable), as soon as practicable after ~~the earlier of:~~ (i) the parties satisfying the steps or matters specified by the Court or apparent from its directions or reasons as required, or desirable, in order to grant the New Orders or Final Orders (as the case may be) ("**Court Guidance**"); ~~and~~
- ~~(ii)~~ — ~~the OIO Condition and the HSR Condition having been satisfied.~~
- ~~(b)~~ (a) Pushpay will use its best endeavours to follow the Court Guidance and any guidance or requirements of the Takeovers Panel including, if indicated, providing supplementary information to Shareholders and/or convening a second New Scheme Meeting.

- 7.4 **Appeal if orders not made:** If the Court does not make any order sought by Pushpay under clause 5 (the “**Decision**”), to the extent clause 7.3 does not apply:
- (a) Pushpay and the Bidder must consult in good faith as to the effect of the refusal and whether to appeal the Decision; and
 - (b) if, within 10 Business Days after the Decision, Pushpay and the Bidder agree to appeal the Decision or either of those parties obtains an opinion from an independent King’s Counsel, practising in the field of corporate and securities law litigation, to the effect that there are reasonable prospects of successfully appealing the Decision, then:
 - (i) Pushpay must appeal the Court’s decision within the timeframe set out in rule 29 of the Court of Appeal (Civil) Rules 2005;
 - (ii) the cost of any such appeal is to be borne:
 - (A) if Pushpay and the Bidder agreed to appeal the Decision, equally between the parties; or
 - (B) if Pushpay and the Bidder did not agree to appeal the Decision, by the party who obtained the opinion from the independent King’s Counsel;
 - (iii) if the End Date (or any date which is 10 Business Days prior to the End Date) would otherwise occur before the appeal is finally determined, then, provided that the Bidder has provided its prior written consent, the End Date shall be deferred to the date that is 20 Business Days after the appeal from the Decision is finally determined; and
 - (iv) if the appeal is successful and the relevant order is made, then, provided that the Bidder has provided its prior written consent, the End Date shall be further deferred (excluding any deferral under clause 7.4(b)(iii)) by the number of Business Days contemplated by the Timetable between the Final Orders Date and the Implementation Date (inclusive).

8. RECOMMENDATION AND VOTING INTENTIONS

8.1 Recommendation and voting intentions of Non-Conflicted Directors:

- (a) Pushpay must ensure that each Non-Conflicted Director:
 - (i) recommends that Shareholders vote in favour of the Scheme; and
 - (ii) undertakes to vote, or procure the voting of, all Shares held or controlled by him or her or his or her Associates in favour of the Scheme,subject to:
 - (iii) there being no Superior Proposal; and
 - (iv) the Independent Adviser’s Report concluding that the Consideration is within or above the Independent Adviser’s valuation range for the Shares,(the “**Director Recommendation**”). Sub-clause (a)(ii) does not require any Non-Conflicted Director to enter into a voting or other agreement with the Bidder in relation to the voting of all

Shares held or controlled by him or her or his or her Associates at the Scheme Meeting [or the New Scheme Meeting](#).

- (b) Pushpay must ensure that the Director Recommendation is included in the Initial Announcement.
- (c) Unless there has been a change to the Director Recommendation after the Initial Announcement in accordance with the terms of this Agreement, and subject to the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares, Pushpay must ensure that the Director Recommendation is included in the Scheme Booklet [and the Scheme Booklet Supplement](#).

8.2 **Change to recommendation or voting intentions:** Pushpay must ensure that no Non-Conflicted Director changes, qualifies or withdraws, or makes any statement inconsistent with, the Director Recommendation unless:

- (a) the Independent Adviser's Report concludes that the Consideration is below the Independent Adviser's valuation range for the Shares; or
- (b) Pushpay receives a Superior Proposal and the change, qualification or withdrawal of the Director Recommendation is made in accordance with clause 14.6,

provided that, for the avoidance of doubt, reliance by Pushpay on the exclusions to this clause 8.2 will not prevent the Bidder from having the benefit of, and enforcing, its rights under clauses 14.6 and 15.2. The:

- (c) taking by Pushpay of any action permitted by clause 14.6(c)(i); and
- (d) the making of an announcement to NZX and ASX under clause 14.6(c)(ii), provided such announcement is limited to advising of the receipt of a Competing Proposal, the fact that the Bidder has an opportunity to provide a Counter Proposal to the Competing Proposal during the Matching Period and, if applicable, advising of any associated delay in the Timetable,

will not constitute a change of, qualification to, withdrawal of, or statement inconsistent with, the Director Recommendation.

8.3 **Notification of new circumstances:** Without limiting the operation of clauses 8.1, 8.2 or 14, if during the Exclusivity Period:

- (a) Pushpay receives, or expects to receive, an Independent Adviser's Report in which the Independent Adviser concludes that the Consideration is below the Independent Adviser's valuation range for the Shares (including either the initial Independent Adviser's Report or any update of, or any revision, amendment or supplement to, that report); or
- (b) a Non-Conflicted Director notifies Pushpay that he or she intends to, or Pushpay otherwise expects that a Non-Conflicted Director is reasonably likely to change, qualify, withdraw, adversely modify or make a statement inconsistent with the Director Recommendation except as permitted by clause 8.2,

then Pushpay must:

- (c) immediately notify the Bidder of this fact and any public statement that the Board intends to make if such event occurs; and
- (d) consult with the Bidder in good faith for not less than two Business Days after the date on which the notice under clause 8.3(c) is given to consider and determine whether there are any steps that can be taken to avoid such a change, qualification, withdrawal, modification or inconsistent statement,

and if Pushpay is required to consult with the Bidder under clause 8.3(d) then Pushpay will ensure that the Director Recommendation is not changed, qualified, withdrawn or modified or an inconsistent statement made until the end of the consultation period and, notwithstanding any other provision of this Agreement, Pushpay may, in its discretion, delay any action contemplated by the Timetable (including adjourning the Scheme Meeting [or the New Scheme Meeting \(as applicable\)](#)) to allow that consultation to occur.

9. ACCESS, INFORMATION AND CONDUCT OF BUSINESS

9.1 **Access and information:** From the date of this Agreement until and including the Implementation Date, Pushpay must:

- (a) procure that the Bidder and its Representatives are given reasonable access to:
 - (i) the properties, books and records and senior management of the Pushpay Group, during normal business hours at mutually convenient times, on reasonable notice to Pushpay; and
 - (ii) information about the Business reasonably requested by the Bidder or its Representatives,

for the purposes of:

- (iii) implementing the Scheme and enabling the Bidder to prepare for the transition of ownership of the Pushpay Group to the Bidder; and
- (iv) any other purpose agreed between Pushpay and the Bidder in writing,

except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed by any member of the Pushpay Group to third parties and provided that:

- (v) such access shall occur in such manner as Pushpay reasonably determines to be appropriate to comply with applicable law and protect the confidentiality of the Transaction;
- (vi) all requests for such access shall be directed to Pushpay's Chief Executive ~~Officer, interim Chief Financial~~ Officer or such other persons as Pushpay may designate in writing from time to time (collectively, the "**Designated Contacts**");
- (vii) without limiting the Confidentiality Agreements:
 - (A) other than the Designated Contacts, the Bidder is not authorised to and shall not (and shall cause its Representatives and Related Companies not to) contact any director, officer, employee, customer, supplier, distributor, landlord, lender, or

other material business relation of the Business in connection with the Transaction prior to the Scheme becoming Effective without the prior written consent of Pushpay; and

- (B) the Bidder must not meet with, correspond with, or otherwise engage with, senior executives of the Pushpay Group regarding their continued employment or the terms of their continued employment after the Implementation Date without Pushpay's prior written consent (which consent must be provided by a Non-Conflicted Director);
- (viii) the Bidder will focus on issues that it considers to be material and reasonably necessary;
- (ix) providing access or information pursuant to this clause 9.1 does not:
 - (A) in the opinion of Pushpay (acting reasonably) result in unreasonable disruptions to the Business; or
 - (B) require Pushpay to make further disclosure to any other person or Government Agency; and
- (x) nothing in this clause 9.1 will require Pushpay to provide information:
 - (A) that would compromise the Pushpay Group's legal professional privilege;
 - (B) concerning its directors' and management's consideration of the Scheme or any Competing Proposal;
 - (C) concerning any actual or purported termination of this Agreement; or
 - (D) concerning any claim under or in connection with, or disagreement or dispute between the parties with respect to, the Agreement or the Transaction,

but this proviso does not limit Pushpay's obligations under clause 14;

- (b) keep the Bidder updated on all developments in its Business that Pushpay (acting in good faith) determines are material, including the operations of the Pushpay Group and its financial position, prospects and affairs, and procure that senior management of the Pushpay Group meet with Representatives of the Bidder (at and during times and at frequencies which do not unreasonably interfere with or disrupt the operation of the Business) to discuss and consult in good faith with the Bidder in respect of any such material developments;
- (c) provide the Bidder with copies of papers provided to the Board (in the same format as was provided to the Bidder in folder 02.02.06 of the Data Room, as listed in the Data Room Index and included in the Due Diligence Material) and monthly management accounts for the Pushpay Group that include:
 - (i) trial balances in the same format as was provided to the Bidder in folder 02.12.19 and document 02.09.03 of the Data Room (as listed in the Data Room Index and included in the Due Diligence Material); and
 - (ii) monthly reports of customer level and pipeline information in the same format as was provided to the Bidder in document 05.16 in respect of customer level information and

document 05.15 in respect of pipeline information (as listed in the Data Room Index and included in the Due Diligence Material),

within three Business Days after they are provided to Directors provided, however, that Pushpay may redact information from such papers to the extent it is commercially sensitive or relates to the Transaction; and

- (d) provide the Bidder with any information or documentation reasonably requested by the Bidder if the Bidder (in good faith) believes that the Bidder may be entitled to exercise a termination right under this Agreement provided, however that:
 - (i) the Bidder's request outlines the reasons for the Bidder's request by reference to the relevant termination right under this Agreement that the Bidder believes it may be entitled to exercise and the reason that the Bidder believes that it may be entitled to exercise that termination right;
 - (ii) the information or documentation requested by the Bidder relates to the Bidder's claim or potential claim; and
 - (iii) the Bidder is, to the extent practicable, specific in its request as to the information or documentation requested.

9.2 **Conduct of business:** From the date of this Agreement until and including completion of implementation of the Scheme on the Implementation Date, Pushpay must ensure that it and each other member of the Pushpay Group:

- (a) carries on its business as a going concern in the ordinary course and in substantially the same manner as conducted on the date of this Agreement and does not make any significant change to the nature or scale of its business or enter any new business or undertake any activities that are material to the Business as a whole in which it was not engaged as at the date of this Agreement;
- (b) do not amend (in a manner which is adverse to the Pushpay Group) or terminate its existing insurance policies and, following the expiry of those policies, uses reasonable endeavours to obtain insurance in respect of the Pushpay Group's business and assets covering such risks and for such amounts as would be maintained in accordance with the Pushpay Group's ordinary practice and in any event to a level no less than that in place immediately prior to the date of this Agreement;
- (c) uses reasonable endeavours to:
 - (i) keep available the services of its Directors and the senior executives of the Pushpay Group; and
 - (ii) preserve its relationships with Government Agencies and customers, suppliers, licensors, licensees, and others with which it has material business dealings;

- (d) to the extent permitted by law and subject to clauses 9.1(a)(ix)(B) and 9.1(a)(x) (which will apply with all necessary modifications), notifies the Bidder of, and keeps the Bidder reasonably and promptly informed of any material change in the status of:
- (i) any action, claim, litigation, prosecution, or other form of proceeding, brought by or against any member of the Pushpay Group or any current director or employee in connection with their role as a director or employee (as applicable) of the Pushpay Group where the amount claimed exceeds US\$500,000 (including any proceedings agreed between the parties in the Disclosure Letter); and
 - (ii) any actual or threatened material enquiry or investigation by a Government Agency (including in relation to Tax) of any member of the Pushpay Group that is notified to a member of the Pushpay Group;
- (e) does not:
- (i) create or incur any liability or indebtedness (whether contingent or otherwise) in excess of:
 - (A) US\$900,000 in respect of any liability or related series of liabilities; and
 - (B) US\$2,000,000 in aggregate,
 except normal liabilities or indebtedness incurred in the ordinary course of the Business provided, however, that, Pushpay must consult with the Bidder prior to Pushpay incurring any normal liabilities or indebtedness in the ordinary course of the Business (under this sub-clause (i)) where the value of such liability (or related series of liabilities) exceeds US\$900,000 and the incurring of such liability is not otherwise permitted by clause 9.2;
 - (ii) incur or commit to capital expenditure in excess of:
 - (A) US\$3 million in aggregate in respect of the financial year ending 31 March 2023 (including capital expenditure incurred or committed before the date of this Agreement); or
 - (B) US\$1 million in aggregate in respect of the financial year ending 31 March 2024, but excluding capital expenditure related to the Pushpay Group's catholic business segment;
 - (iii) create or otherwise permit to arise any new Encumbrance except a Permitted Encumbrance;
 - (iv) acquire or dispose of any shares or other securities in any body corporate or any units in any trust, except for:
 - (A) the acquisition of shares or securities in an entity which, at the time of the acquisition, was a wholly owned member of the Pushpay Group;
 - (B) the cancellation of any Restricted Share Units; or

- (C) the buyback and cancellation of Founder Restricted Shares under the founder restricted share agreement applicable to those Shares (as fairly disclosed in the Due Diligence Material);
- (v) without limiting clause 9.2(e)(xix), acquire or dispose of, transfer, assign, license, abandon or allow to lapse or expire any assets, rights or properties (excluding shares or other securities, which are addressed in clause 9.2(e)(iv)) other than assets, rights or properties acquired or disposed of, transferred, assigned, licensed, abandoned or allowed to lapse or expire, in each case in the ordinary course of the Business or from or to members of the Pushpay Group with a book value (either singularly or in the aggregate) not exceeding US\$500,000; or
- (vi) enter into, or terminate any participation in, any partnership, joint venture or similar commitment, other than:
 - (A) referral payment arrangements;
 - (B) referral processes, including co-marketing, channel partnership and distribution arrangements; or
 - (C) software integration arrangements,
 in each case that are contained in partnership agreements entered into by the Pushpay Group in the ordinary course of the Business but subject to the other restrictions set out in this clause 9.2(e) (including in particular clause 9.2(e)(viii));
- (vii) increase the Pushpay Group's financial indebtedness above the aggregate credit or facility limits available to the Pushpay Group disclosed in the Due Diligence Material;
- (viii) enter into, waive any material rights under, seek a waiver of material rights from the counterparty, vary or terminate any contract (except for termination of a contract for breach by, or insolvency affecting, the counterparty), commitment or arrangement which:
 - (A) if the minimum term is 12 months or less, may require annual expenditure by, or result in a change in annual revenues to, the relevant member of the Pushpay Group in excess of US\$2.5 million; or
 - (B) if the minimum term is more than 12 months, may require aggregate expenditure by the relevant member of the Pushpay Group over the term of the contract, commitment or arrangement in excess of US\$2.5 million a year or US\$7.5 million in aggregate; or
 - (C) is considered by Pushpay otherwise to be of material importance to the business of the Pushpay Group; or
 - (D) restrains any member of the Pushpay Group or any person that controls Pushpay from engaging in or competing with any business in any place;

- (ix) make any amendments to the standard terms and conditions of any member of the Pushpay Group from those which apply as at the date of this Agreement and have been fairly disclosed in the Due Diligence Material, other than:
 - (A) those of an immaterial nature; or
 - (B) in the ordinary course of business where the amendment is not materially adverse to the relevant member of the Pushpay Group; or
 - (C) to comply with the requirements of contractual counterparties of the Pushpay Group which provide payment processing or other integrations or services to the Pushpay Group or its customers;
- (x) enter into any contract, commitment or arrangement to make any payment, or make any payment, to any Representative of the Pushpay Group other than:
 - (A) for the payment of director remuneration to Directors in accordance with the remuneration contemplated by the notice of meeting for Pushpay's 2022 annual meeting and approved by Shareholders at that meeting (including payment of the "special pool" contemplated by the notice of meeting and approved by Shareholders ("**Special Pool Payments**")); or
 - (B) in accordance with the relevant Representative's rights under the constitutional documents of a member of the Pushpay Group, statutory entitlements or contractual entitlements (in respect of an arrangement entered into before the date of this Agreement or after the date of this Agreement in compliance with this Agreement);
- (xi) give any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Pushpay Group, and other than the provision of indemnities to directors and employees of the Pushpay Group in compliance with applicable law;
- (xii) grant any equity or equity-based awards or increase the remuneration (including any benefits in kind) of, make any bonus payment, retention payment or termination payment to, or otherwise change the terms and conditions of employment of any Director or any employee of any member of the Pushpay Group, except:
 - (A) in accordance with any contractual entitlement which exists as at that date of this Agreement and which was fairly disclosed in the Due Diligence Material; or
 - (B) for any agreement to make a bonus payment (and the payment of that bonus) in the ordinary course of business in connection with (1) the hiring of a new employee or (2) the promotion of an existing employee, provided that the bonus is consistent with Pushpay's past practice and usual remuneration policies; or
 - (C) for any increase in remuneration (including an increase in benefits or the payment of, or agreement to pay, a bonus) to an employee where the Pushpay Group considers (acting reasonably and in good faith) that, absent such increase, the Pushpay Group is reasonably likely to lose the services of that employee; or

- (D) for any increase in an existing employee's remuneration or benefits in connection with the promotion of that employee in the ordinary course of business, provided that the increase in remuneration or benefits is consistent with Pushpay's past practice and usual remuneration policies; or
 - (E) for salary and other remuneration increases in the ordinary course of business and consistent with Pushpay's past practice and usual remuneration policies, provided such change does not result in an increase in annual aggregate remuneration costs of the Pushpay Group as a whole of more than (1) 2% in respect of the balance of the financial year ended 31 March 2023 and (2) 4% in respect of the financial year ended 31 March 2024; and
 - (F) for the periodic renewal of any sales incentive commission plan in the ordinary course of business and consistent with Pushpay's past practice; or
 - (G) for Special Pool Payments to Directors;
- (xiii) accelerate the time of payment or vesting, or fund or otherwise secure payment of, any compensation, rights or benefits (including any equity or equity-based awards) or make any material determinations under any employee benefit plan sponsored or maintained by the Pushpay Group, except in accordance with clauses 6.3 and 6.4;
 - (xiv) terminate (other than for "cause", as determined consistent with past practice) the employment of, or hire or promote:
 - (A) any employee or contractor for personal services of any member of the Pushpay Group with an aggregate annual remuneration package that exceeds US\$300,000 per annum; or
 - (B) any Senior Manager (as defined in the NZX Listing Rules);
 - (xv) make or forgive any loans to any current or former employees or contractors for personal services of any member of the Pushpay Group (other than salary advances in the ordinary course of business consistent with past practice);
 - (xvi) amend or terminate any employee benefit plan sponsored or maintained by the Pushpay Group (except for administrative amendments to or annual renewals of such plans in the ordinary course of business), or establish, adopt, or enter into any new such arrangement;
 - (xvii) enter (or commit to enter) into, amend, terminate or extend any collective bargaining agreement or other agreement with a labour union, works council or similar organisation (or enter into negotiations to do any of the foregoing) or recognise or certify any labour union, works council or similar organisation or group of employees of any member of the Pushpay Group as the bargaining representative for any employees of any member of the Pushpay Group;
 - (xviii) except as required by the terms of any contractual entitlement which exists as at the date of this Agreement and which was fairly disclosed in the Due Diligence Material, waive the restrictive covenant obligations of any employee or contractor for personal services;

- (xix) acquire any interest in “sensitive land” for the purposes of the Overseas Investment Act 2005;
- (xx) do anything which might reasonably be expected to give rise to a material breach of law or do or omit to do anything which results in a material risk of termination, revocation, suspension, modification or non-renewal of any material Authorisation held by it;
- (xxi) commence, compromise or settle any litigation or similar proceedings, except:
 - (A) debt recovery litigation or proceedings in the ordinary course; or
 - (B) the settlement of any employee dispute for a payment of US\$250,000 or less;
- (xxii) make any material change in accounting methods, principles or practices used by it (except if required by a change in International Financial Reporting Standards or any New Zealand equivalent to the International Financial Reporting Standards);
- (xxiii) enter into, amend or close out any material foreign exchange, interest rate, swap, derivative or hedge without the Bidder’s prior written consent under clause 9.3(a);
- (xxiv) make any material Tax election, including in connection with the IP Transfer (other than an election in the ordinary course of business consistent with past practice), or settle, compromise or prejudice any material Tax liability, or initiate or engage in any disputes procedures or challenge proceedings relating to Tax;
- (xxv) make any material change to any publicly stated corporate strategy; or
- (xxvi) agree, conditionally or otherwise, to do any of the things referred to in the preceding paragraphs of this clause 9.2(e), or announce or represent to any person that any of those things will be done.

For the avoidance of doubt, where a sub-clause of clause 9.2(e) sets out a list of exceptions separated by “or”, Pushpay may rely on all or any combination of the exceptions in that sub-clause, and may do so more than once, in each case in accordance with the terms of that exception.

9.3 **Exception:** Any member of the Pushpay Group may do anything referred to in clause 9.2(e), or not do anything required to be done under clauses 9.2(a) or 9.2(d):

- (a) with the prior written consent of the Bidder (such consent not to be unreasonably withheld, conditioned or delayed), including the consent contained in paragraph 12 of the Disclosure Letter, and any such request for consent is to be submitted to the Bidder through the Transition Committee in accordance with clause 9.4;
- (b) necessary to perform or comply with its contractual obligations (as fairly disclosed to the Bidder in the Due Diligence Material or otherwise entered into in accordance with clause 9.2);
- (c) to the extent that the proposed action (including a proposed payment) has been fairly disclosed in the Due Diligence Material;
- (d) necessary to comply with:
 - (i) any law, including the payment of Tax as required by applicable law;

- (ii) generally accepted accounting principles;
- (iii) any regulatory requirement (including the NZX Listing Rules or the ASX Listing Rules);
or
- (iv) any direction or order of a Government Agency;
- (e) reasonably necessary to respond to any emergency or other disaster;
- (f) reasonably necessary to comply with any requirements or regulations made or imposed by a Government Agency or other regulatory authority in relation to the COVID-19 pandemic;
- (g) that it is expressly:
 - (i) required to do under or in accordance with this Agreement; or
 - (ii) permitted to do, or is permitted not to do, under or in accordance with this Agreement;
or
- (h) that it undertakes in response to a Competing Proposal, but only to the extent that the action is permitted under clause 14,

and in the case of the situations described in paragraphs (d), (e) and (f) above, provided that, except to the extent prohibited by law in relation to paragraphs (d)(i), (d)(iii), (d)(iv) and (f) only, Pushpay informs the Bidder as soon as possible of the actions taken or proposed to be taken, and, to the extent practicable, considers any feedback or suggestions made by the Bidder as to the proposed course of action. The parties note that the objective of this clause is that no action is taken or not taken, which may affect the future prospects of the Pushpay Group, including its relationships with third parties without reasonable involvement of the Bidder.

9.4 **Transition Committee:** As soon as practicable, and in any event within one week after the date of this Agreement, Pushpay and the Bidder shall form a transition committee (the “**Transition Committee**”) comprising representatives of each of Pushpay and the Bidder. The Transition Committee will discuss any matters in respect of which the Bidder’s consent is sought pursuant to clause 9.3(a). The representatives of Pushpay on the Transition Committee will have authority to submit matters that would otherwise be restricted under clause 9.2 to the Bidder for approval in accordance with clause 9.3(a). The representatives of the Bidder on the Transition Committee will have authority to provide consent in writing on behalf of the Bidder for the purposes of clause 9.3(a) to any actions of Pushpay that would otherwise be restricted under clause 9.2.

9.5 **Further provisions in respect of clause 9.2:**

- (a) If Pushpay seeks the Bidder’s written consent or approval under clause 9.3(a) then, unless Pushpay receives a written response within 10 Business Days, the Bidder is deemed to have granted the written consent or written approval sought by Pushpay. The Bidder will not, by virtue of having been deemed to have granted its written consent or approval under this clause 9.5 to any matter, be deemed to have also granted its written consent or approval for the purposes of paragraphs (a)(ii) or (b)(ii) of the definition of Material Adverse Change in respect of the same matter and, for the avoidance of doubt, that same matter for which the Bidder’s

consent or approval was sought under clause 9.3(a) may still be taken into account for the purposes of assessing whether a Material Adverse Change has occurred.

- (b) For the avoidance of doubt and without limiting clause 9.3(g), if the Pushpay Group takes an action expressly permitted under any sub-clause of clause 9.2(e), then that action shall not breach any other sub-clause of clause 9.2(e) (unless the relevant sub-clause of clause 9.2(e) under which the relevant action is permitted is expressly stated to be subject to, or not to limit the operation of, any other sub-clause or clauses of clause 9.2(e)).

9.6 **Consents to change of control:**

- (a) The parties acknowledge that the Pushpay Group's material contracts may contain provisions requiring:

- (i) the consent of the counterparty to that contract to a change of control, "deemed assignment" or similar that arises under the terms of that contract as a result of the Transaction;
- (ii) notification of a change of control to a Government Agency; or
- (iii) a waiver from the counterparty to that contract of any breach or termination or cancellation right which will arise or otherwise be enforceable under the terms of that contract as a result of the Transaction,

(each a "**Change of Control Consent or Notification**").

- (b) Pushpay and the Bidder will, as soon as practicable after the date of this Agreement, work in good faith to develop both:

- (i) a list of Change of Control Consent or Notification requirements; and
- (ii) a proposed course of action to initiate contact with such parties and request that they provide any consents, confirmations or waivers required or appropriate in response to such Change of Control Consent or Notification.

- (c) Subject to clause 9.6(d), during the Exclusivity Period:

- (i) Pushpay will, and will procure that each member of the Pushpay Group will, use reasonable endeavours to obtain or make each Change of Control Consent or Notification that the Bidder and Pushpay have identified pursuant to clause 9.6(b) and which the Bidder requests that it obtain or make;
- (ii) the Bidder must cooperate with and use its reasonable endeavours to assist Pushpay to obtain or make each required Change of Control Consent or Notification (but without contacting any contractual counterparties directly without Pushpay's consent);
- (iii) each party must promptly provide to the relevant counterparty all information reasonably required for the purposes of obtaining or making each required Change of Control Consent or Notification, including responding to any reasonable requests for additional information from the relevant counterparty; and

- (iv) Pushpay will use reasonable endeavours to assist with obtaining the agreed Change of Control Consents and Notifications and will collaborate with the Bidder to introduce it to relevant counterparties to jointly discuss the implications of the Transaction, including Change of Control Consents or Notifications.
- (d) Nothing in this clause 9.6 will require either party to pay any money or provide any other valuable consideration to or for the benefit of any person or otherwise be contrary to the interests of either party, as the case may be.
- (e) The parties agree that:
 - (i) the Scheme is not conditional on Pushpay making or obtaining any required Change of Control Consents or Notifications;
 - (ii) the implementation of the Scheme will not be delayed if all or any required Change of Control Consents or Notifications have not been obtained or issued on or before the Implementation Date; and
 - (iii) without limiting the Bidder's right to terminate for a Material Adverse Change under clause 16.12, failure by a member of the Pushpay Group to obtain any Change of Control Consent or Notification or any other third party consent or confirmation in connection with the Scheme, or the exercise by a contractual counterparty of a termination right or any other contractual rights in connection with the Scheme:
 - (A) will not affect the parties' obligations to implement the Scheme;
 - (B) will not, in and of itself, constitute a breach of this Agreement by Pushpay; and
 - (C) together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this Agreement.

10. FINANCING

10.1 **Assistance with financing:** Pushpay agrees to provide reasonable co-operation and assistance (and cause the Pushpay Group and its Representatives to provide co-operation and assistance) to the Bidder in connection with the arrangement or syndication or provision of any debt or equity financing by any Bidder Group member for the purposes of funding the Consideration as may be reasonably requested by the Bidder, including:

- (a) facilitating liaison between the Bidder and Pushpay's existing financiers, as may be reasonably requested by the Bidder, including for the purposes of Pushpay notifying and discussing change of control procedures and/or managing the repayment and/or continuation of those counterparties on or after the Implementation Date and the efficient termination and/or continuation of their existing financing arrangements with Pushpay with effect from that time;
- (b) providing the Bidder within a reasonable timeframe (including providing any consent required under the Confidentiality Agreements to such disclosure, subject to such financiers entering into confidentiality arrangements which are reasonably required by Pushpay) with financial and other relevant information regarding the Pushpay Group, as may be reasonably requested by the Bidder;

- (c) making available (on an in-person or remote basis, as is convenient for the executive) senior executives of Pushpay to meet with potential financiers (at convenient times), as may be reasonably requested by the Bidder;
- (d) obtaining documents reasonably requested by the Bidder or the Debt Financing Sources, including executing and delivering any customary prepayment/cancellation notices and any other similar customary documentation reasonably requested by the Bidder or the Debt Financing Sources, in each case that are subject to the Scheme becoming Effective, relating to the repayment of Pushpay's existing indebtedness identified by the Bidder, and the release on the Implementation Date of all related Encumbrances;
- (e) solely with respect to the Pushpay Group, using reasonable endeavours to facilitate the pledging of, granting a security interest in and obtaining perfection of any Encumbrances on, collateral to take effect on, and in connection with, implementation of the Scheme; and
- (f) providing as promptly as reasonably practicable (and in any event, no less than 4 Business Days prior to the Implementation Date) all documentation and other information required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including (A) the USA Patriot Act and (B) a certification regarding beneficial ownership as required by 31 C.F.R. §1010.230 to any Debt Financing Source that has requested such certification, relating to the Pushpay Group, in each case as reasonably requested in writing by the Bidder or the Debt Financing Sources at least 8 Business Days prior to the Implementation Date,

provided that:

- (g) no Pushpay Group member shall be required to enter into any agreements or arrangements in respect of any Debt Financing or Equity Financing prior to implementation of the Scheme on the Implementation Date (except as contemplated by clause 9.1(d) and "know-your-customer" information as described above);
- (h) no Pushpay Group member shall be required to provide any confidential, competitively sensitive or privileged information where the provision of such information is reasonably likely to cause prejudice to the commercial or legal interests of any member of the Pushpay Group, or would be reasonably likely to jeopardise any lawyer-client or other legal privilege, provided that Pushpay will work in good faith and use reasonable endeavours to implement arrangements to permit such access, disclosure or provision in a manner that does not result in the events set forth in this clause 10.1(h), provided further that if the Pushpay Group withholds any confidential, competitively sensitive or privileged information in reliance on this clause 10.1(h), Pushpay will promptly provide written notice to the Bidder of that fact, including a reasonably detailed description as to why the information has not been provided, except to the extent, in the case of privileged information, such notice or description would be reasonably likely to cause a waiver of such lawyer-client or other legal privilege;
- (i) the Bidder must promptly reimburse Pushpay for all reasonable out-of-pocket costs incurred by Pushpay in connection with providing co-operation under this clause 10.1;

- (j) the Pushpay Group and its Representatives are not required to do any act, matter or thing under this clause 10.1 to the extent such act, matter or thing would breach any applicable law or any confidentiality obligations owed by any member of the Pushpay Group to third parties; and
 - (k) clauses 9.1(a)(v) to 9.1(a)(x) will apply to this clause 10.1 with all necessary modifications.
- 10.2 **Bidder to enforce Equity Commitment Letters:** Pushpay may, by written notice to the Bidder at any time after a payment obligation becomes due under any Equity Commitment Letter, require the Bidder to enforce any of its rights under the relevant Equity Commitment Letter (including by requiring the Bidder to seek specific performance of that Equity Commitment Letter, subject to the terms thereof). If the Bidder receives notice from Pushpay under this clause 10.2, then it must take all reasonable steps necessary to promptly enforce its relevant rights under the applicable Equity Commitment Letter.
- 10.3 **Disputes:** For the avoidance of doubt, if Pushpay brings proceedings against the Bidder seeking specific performance of this Agreement it may, at the same time, require the Bidder to seek specific performance of the Equity Commitment Letters, subject to the terms thereof.
- 10.4 **No variations to Commitment Letters:** The Bidder will not, without Pushpay's prior written consent, vary or waive any such right, power or remedy in any Equity Commitment Letter or Debt Commitment Letter in any material respect which will, or is reasonably likely to, prejudice the Bidder's ability to:
- (a) provide the Consideration in accordance with this Agreement, the Scheme and the Deed Poll;
 - (b) pay the Reverse Break Fee when due and payable under this Agreement; or
 - (c) pay any final, non-appealable award of damages, up to an aggregate amount contemplated by the applicable provision of clause 15.8, made by a court of competent jurisdiction or Government Agency against the Bidder in favour of Pushpay in respect of a breach of this Agreement by the Bidder or against the Bidder in favour of the Scheme Shareholders in respect of a breach of the Deed Poll by the Bidder.
- 10.5 **Financing undertakings:**
- (a) The Bidder shall use reasonable endeavours to arrange and consummate the Financing on the terms and subject to the conditions described in the Commitment Letters prior to the Implementation Date, including to:
 - (i) maintain in effect the Commitment Letters;
 - (ii) negotiate and enter into definitive agreements with respect to the Financing (the "**Definitive Agreements**") consistent with the terms and conditions set out in the Commitment Letters (other than modifications to such terms and conditions as are acceptable to the Bidder provided that such modifications would be permitted under the restrictions on amendments and modifications applicable to the Commitment Letters pursuant to clause 10.5(c)); and
 - (iii) satisfy (or obtain the waiver of) on a timely basis all conditions in the Commitment Letters and the Definitive Agreements which are within the Bidder's control and are

required to be satisfied by the Bidder to consummate the Financing by the Implementation Date.

- (b) Without limiting the generality of clause 10.5(a), in the event that all conditions contained in the Commitment Letters (other than the implementation of the Scheme and those conditions that are to be satisfied or waived on the Implementation Date) have been satisfied or waived, the Bidder shall use its reasonable endeavours to:
- (i) consummate and obtain the proceeds of the Debt Financing; and
 - (ii) obtain the proceeds of the Equity Financing in accordance with the terms of the Equity Commitment Letters,

in each case, on or prior to the Implementation Date, to the extent the proceeds thereof are required to implement the Scheme and the other transactions contemplated by this Agreement and the Scheme.

- (c) The Bidder shall not, without the prior written consent of Pushpay, permit any amendment, termination or modification to, or any waiver of any provision or remedy under, the Commitment Letters or any Debt Fee Letter if such amendment, modification, waiver or remedy:
- (i) adds new (or, adversely to the interests of the Bidder or the ability of the Bidder to consummate and obtain the proceeds of the Financing, modifies any existing) conditions to the consummation of the Financing;
 - (ii) reduces the aggregate amount of the Debt Financing when taken together with the Equity Financing, such that the aggregate amount of the Financing would be less than the amount required to pay the Financing Amounts; or
 - (iii) otherwise would reasonably be expected to hinder in any material respect, delay or prevent implementation on the Implementation Date.

Notwithstanding the foregoing, any amendment, restatement, amendment and restatement, supplement or modification to (x) add or replace any additional agents, lenders, lead arrangers, bookrunners, syndication agents or other financial institutions as provided for in the Debt Commitment Letter or (y) update or amend titles, allocations, and fee sharing arrangements with respect to the Debt Financing Sources or (z) reflect any change in relation to the proposed timing and/or steps for the transfer of the BGH Shares and the Sixth Street Shares, in each case, shall be permitted and shall not, subject to clause 5.5(b), require written consent of Pushpay. The Bidder shall promptly deliver to Pushpay copies of any written amendment, modification, waiver or replacement relating to the Financing promptly after execution. Any references in this Agreement (other than with respect to representations in this Agreement made by Bidder that speak as of the date hereof), to the “Debt Commitment Letter”, “Debt Fee Letter” and similar terms, shall include such debt financing and letters, as amended, restated, amended and restated, supplemented or modified.

- (d) In the event that any portion of the Debt Financing required, together with the portion of the Financing that remains available, to pay the Financing Amounts becomes unavailable, regardless of the reason therefore, the Bidder will:
- (i) use its reasonable endeavours to obtain alternative debt financing (the “**Alternative Financing**”) (to the extent available, in an amount sufficient, when taken together with the available portion of the Financing, to implement the Scheme and to pay the Financing Amounts) from the same or other financing sources and which are on terms (taken as a whole) not materially less favourable to the Bidder (or its Related Companies) than those set forth in the Debt Commitment Letter; and
 - (ii) promptly notify Pushpay of such unavailability.

The Bidder shall deliver to Pushpay true and complete copies of any commitment letters and any related fee letters (subject, in the case of such fee letters, to redaction solely of fee amounts, pricing caps, original issue discount and other economic provisions that are customarily redacted in connection with transactions of this type, none of which redacted provisions would reasonably be expected to adversely affect the conditionality, enforceability, termination, aggregate principal amount or availability of the Alternative Financing on the Implementation Date, except to the extent covered by an increase in the Equity Financing) with respect to any Alternative Financing. As applicable, for the purposes of this Agreement:

- (iii) the term “**Commitment Letters**” shall be deemed to include any commitment letter (or similar agreement) with respect to any Alternative Financing arranged in compliance with this clause (and any Commitment Letter remaining in effect at the time in question); and
 - (iv) the Debt Financing shall include any Alternative Financing.
- (e) The Bidder shall provide Pushpay with: (x) prompt written notice of any material breach, default, termination, cancellation or repudiation by any party to the Commitment Letters relating to the Financing of which the Bidder has knowledge and (y) a copy of any written notice or other written communication received by the Bidder from any Debt Financing Source with respect to any actual or alleged (in writing) material breach, default, termination, cancellation or repudiation by any party to the Debt Commitment Letter or the Debt Fee Letter.
- (f) To the extent requested by Pushpay, the Bidder shall keep Pushpay reasonably informed on a reasonably current basis of the status and its efforts to consummate the Financing.

10.6 **Use of logos:** Pushpay hereby consents to the use of the names, trademarks and logos of the Pushpay Group in connection with the Debt Financing, provided that the Bidder shall ensure that such names, trademarks and logos are used solely in a manner that is not intended, or that is not reasonably likely, to harm or disparage the reputation or goodwill of the Pushpay Group.

10.7 **No financing condition:** In no event shall the receipt or availability of any funds or financing (including the Financing) by the Bidder or any of its Related Companies or any other financing or other transactions be a condition to any of the Bidder's obligations under this Agreement.

11. WARRANTIES AND UNDERTAKINGS

11.1 Pushpay Warranties and Pushpay Undertakings:

- (a) Pushpay warrants to the Bidder, that each of the Pushpay Warranties is true, accurate and not misleading as at:
- (i) the date of this Agreement;
 - (ii) 8.00am on the date that the Scheme Booklet is sent to the Shareholders;
 - [\(iiA\) 8.00am on the date that the New Meeting Materials are sent to the Shareholders;](#)
 - (iii) 8.00am on the Second Court Date; and
 - (iv) 8.00am on the Implementation Date,
- except that a Pushpay Warranty that refers to only one of those dates is given solely as at that date.
- (b) Pushpay undertakes to the Bidder that it will comply with each of the Pushpay Undertakings.
- (c) The Pushpay Warranties (except for the Fundamental Warranties) are given subject to, are qualified by, and no person will have a claim (including under clause 11.3) for breach of a Pushpay Warranty in respect of, any matter:
- (i) expressly provided for in this Agreement or the Disclosure Letter; or
 - (ii) fairly disclosed in the Due Diligence Material; or
 - (iii) fairly disclosed through the NZX and ASX market announcement platforms at least two Business Days' before the date of this Agreement; or
 - (iv) any matter fairly disclosed by searches against the name of a Pushpay Group member in the following registers:
 - (A) the Pacer Case Locator maintained by the Administrative Office of the U.S. Courts on behalf of the Federal Judiciary as at 24 October 2022 (in New York, United States of America);
 - (B) the Companies Office, the Intellectual Property Office of New Zealand, the PPSR and Land Information New Zealand as at 25 October 2022; or
 - (C) the High Court of New Zealand as at 26 October 2022; or
 - (v) anything done or omitted to be done at the written request, or with the written approval, of the Bidder.
- (d) No warranty or representation is given by or on behalf of Pushpay, and the Bidder may not bring any claim of any nature under this Agreement or in connection with the Transaction, with respect to any Forward Looking Information, in each case whether contained in the Due Diligence Material or otherwise.

11.2 **Bidder Warranties and Bidder Undertakings:**

- (a) The Bidder represents and warrants to Pushpay each of the Bidder Warranties is true, accurate and not misleading as at:
- (i) the date of this Agreement;
 - (ii) 8.00am on the date that the Scheme Booklet is sent to the Shareholders;
 - (iiA) 8.00am on the date that the New Meeting Materials are sent to the Shareholders;
 - (iii) 8.00am on the Second Court Date; and
 - (iv) 8.00am on the Implementation Date,
- except that a Bidder Warranty that refers to only one of those dates is given solely as at that date.
- (b) The Bidder undertakes to Pushpay that it will comply with each of the Bidder Undertakings.

11.3 **Indemnity by Pushpay:** Subject to clause 15.7, Pushpay indemnifies the Bidder against, and must pay to the Bidder on demand an amount equal to, all Losses directly incurred or suffered by the Bidder Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Pushpay Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Pushpay Undertakings.

11.4 **Indemnity by Bidder:** Subject to clause 15.8, the Bidder indemnifies Pushpay against, and must pay to Pushpay on demand an amount equal to, all Losses directly incurred or suffered by Pushpay Indemnified Persons arising out of or in connection with:

- (a) any matter or circumstance that results in any of the Bidder Warranties being untrue, inaccurate or misleading when given; or
- (b) any breach of the Bidder Undertakings.

11.5 **No other warranties, representations or additional rights:**

- (a) Each party acknowledges and agrees that, except for the express warranties and the other express provisions of this Agreement:
- (i) it has entered into this Agreement in reliance solely on its own judgment and not in reliance on any representations, promises, assurances or collateral arrangements of any party or any other person;
 - (ii) all other representations or warranties, whether express or implied, are expressly excluded to the maximum extent permitted by law; and
 - (iii) except for the Pushpay Warranties in clauses 7, 8 and 15 of Schedule Two, no party and no other person gives or makes any warranty or representation as to the accuracy, content, completeness, value or otherwise of, nor has or accepts any liability in respect of,

any information (written, oral or otherwise) directly or indirectly provided or made available to or used by any other party in connection with the Transaction.

(b) The Pushpay Warranty in clause 8 of Schedule Two is subject to the terms of any express disclaimer which is contained in any particular document or information in the Due Diligence Material (each, a “**Disclaimer**”). The Bidder will not have any claim in respect of the Pushpay Warranty in clause 8 of Schedule Two or under the indemnity in clause 11.3 to the extent such claim is precluded or disclaimed by the relevant Disclaimer.

(c) To the maximum extent permitted by law, other than a party’s right to bring a claim for:

- (i) breach of an express warranty or express obligation set out in this Agreement; or
- (ii) fraud or wilful misconduct by another party,

each party agrees that it is not entitled to, must not bring, encourage or facilitate, and irrevocably waives any right to bring, any other or separate claim, complaint, proceeding or cause of action for damages or other relief of any nature (including under the Takeovers Code, the Takeovers Act 1993, the FMCA or the Fair Trading Act 1986 or any corresponding or equivalent legislation in any relevant jurisdiction) arising from any alleged misrepresentation or breach of warranty made or given in connection with this Agreement or the Transaction.

(d) The parties agree that, for the purposes of section 5D of the Fair Trading Act 1986 and section 43 of the Consumer Guarantees Act 1993:

- (i) the Scheme Shares are being acquired in trade;
- (ii) the parties are all in trade;
- (iii) sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 and the provisions of the Consumer Guarantees Act 1993 do not apply to this Agreement or to any matters, information, representations or circumstances covered by this Agreement;
- (iv) it is fair and reasonable that the parties are bound by this clause 11.5; and
- (v) each party has been able to fully negotiate the terms of this Agreement and has been represented by and received advice from a lawyer during the negotiations leading to this Agreement.

11.6 **Status of warranties, undertakings and indemnities:** Each warranty, undertaking and indemnity made or given under this clause 11 is severable and survives termination of this Agreement and each undertaking and indemnity given in this clause 11 is a continuing obligation.

12. RELEASES

12.1 Release of Pushpay Indemnified Persons:

(a) Without limiting clause 11.5, the Bidder waives and releases, and must procure that each member of the Bidder Group waives and releases, all rights and claims which it may have against any Pushpay Indemnified Person (other than Pushpay) in respect of:

- (i) any misrepresentation, inaccuracy or omission in or from any information or advice given by that Pushpay Indemnified Person;
 - (ii) the preparation of Pushpay Information;
 - (iii) any breach of any warranty or obligation of Pushpay under this Agreement;
 - (iv) any statement which is false or misleading, whether in content or by omission, in connection with the Transaction; or
 - (v) any other act or omission in connection with this Agreement or the Transaction,
- except where the Pushpay Indemnified Person has engaged in wilful misconduct or fraud.

(b) The parties acknowledge and agree that:

- (i) Pushpay has sought and obtained the waiver and release in this clause 12.1 as agent for and on behalf of each Pushpay Indemnified Person and may enforce the provisions of this clause 12.1 on behalf of any Pushpay Indemnified Person;
- (ii) any Pushpay Indemnified Person may plead this clause 12.1 in response to any claim made by any member of the Bidder Group against them; and
- (iii) the undertakings contained in this clause 12.1 are given for the benefit of each Pushpay Indemnified Person and are intended to be enforceable against the Bidder by each Pushpay Indemnified Person in accordance with the provisions of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

12.2 Release of Bidder Indemnified Persons:

(a) Without limiting clause 11.5, Pushpay waives and releases, and must procure that each member of the Pushpay Group waives and releases, all rights and claims which it may have against any Bidder Indemnified Person (other than the Bidder) in respect of:

- (i) any misrepresentation, inaccuracy or omission in or from any information or advice given by that Bidder Indemnified Person;
 - (ii) the preparation of the Bidder Information;
 - (iii) any breach of any warranty or obligation of the Bidder under this Agreement;
 - (iv) any statement which is false or misleading, whether in content or by omission, in connection with the Transaction; or
 - (v) any other act or omission in connection with this Agreement or the Transaction,
- except where the Bidder Indemnified Person has engaged in wilful misconduct or fraud.

(b) The parties acknowledge and agree that:

- (i) the Bidder has sought and obtained the waiver and release in this clause 12.2 as agent for and on behalf of each Bidder Indemnified Person and may enforce the provisions of this clause 12.2 on behalf of any Bidder Indemnified Person;

- (ii) any Bidder Indemnified Person may plead this clause 12.2 in response to any claim made by any member of the Pushpay Group against them; and
- (iii) the undertakings contained in this clause 12.2 are given for the benefit of each Bidder Indemnified Person and are intended to be enforceable against Pushpay by each Bidder Indemnified Person in accordance with the provisions of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

13. D&O INSURANCE AND INDEMNITIES

13.1 D&O insurance policies:

- (a) The Bidder acknowledges that, subject to the remainder of this clause 13.1, Pushpay may, prior to the Implementation Date, enter into a run-off directors' and officers' liability insurance policy for a period of seven years after implementation of the Scheme in respect of any director or officer of any member of the Pushpay Group ("**D&O Run-off Policy**") and pay all premiums required.
- (b) Pushpay must undertake a tender process for the D&O Run-off Policy pursuant to which Pushpay must seek proposals from three reputable insurance brokers to provide a D&O Run-off Policy from a panel of reputable insurers that have a rating that is the same as, or better than, the rating of the insurers for the Pushpay Group's directors' and officers' liability insurance in force at the date of this Agreement on the following basis:
 - (i) the same amount of coverage;
 - (ii) the same deductible or excess; and
 - (iii) otherwise on terms that are no less favourable to the current directors or officers of the Pushpay Group than the Pushpay Group's directors' and officers' liability insurance in force at the date of this Agreement (other than for the seven-year period of the policy).
- (c) Pushpay must keep the Bidder reasonably informed of all material developments in the tender process, provide a copy of the proposals received under the tender process and consult with the Bidder in good faith and take into account the Bidder's reasonable comments in respect of the terms of, and the costs of, the D&O Run-off Policy.
- (d) Provided Pushpay has complied with clauses 13.1(a) and 13.1(b), the Bidder agrees that Pushpay entering into and paying the premium for the D&O Run-off Policy does not breach any provision of this Agreement.
- (e) After the Implementation Date, the Bidder must not, and must procure that its Related Companies do not, vary or cancel the D&O Run-off Policy obtained in accordance with clause 13.1 or do any act, matter or thing (or fail or omit to do any act, matter or thing) that is reasonably likely to result in such D&O Run-off Policy being terminated or becoming voidable.

13.2 Indemnities continue:

- (a) Subject to the Scheme becoming Effective, the Bidder undertakes in favour of Pushpay and each director, officer or employee of a member of the Pushpay Group that the Bidder and its Related Companies will:

- (i) for a period of seven years from the Implementation Date, ensure that the constitutional documents of Pushpay and each other member of the Pushpay Group contain such rules as are contained in their constitutional documents at the date of this Agreement that provide for each Pushpay Group member to indemnify each of its directors, officers and employees against any liability (excluding for fraud or wilful misconduct) incurred by that person in his or her capacity as a director, officer or employee of the Pushpay Group member; and
 - (ii) procure that Pushpay and each member of the Pushpay Group complies with any provisions in any deeds of indemnity made by them in favour of their respective directors and officers from time to time and in the form fairly disclosed in the Due Diligence Material, provided that clause 13.1 will apply instead in relation to any run-off insurance that is required to provided under the terms of any such deed.
- (b) The undertakings contained in clause 13.2(a) are subject to any Companies Act restriction, or any restriction in the law of a jurisdiction in which a Pushpay Group member is incorporated, and will apply to the maximum extent permitted by any such restriction.
 - (c) The undertakings contained in clause 13.2(a) are given until the earlier of the end of the relevant period specified in the relevant clause or the relevant Pushpay Group member ceasing to be part of the Bidder Group, provided that this clause 13.2(c) will not adversely affect any indemnities which continue in accordance with their terms.

13.3 Benefit of clauses 13.1 and 13.2:

- (a) In clauses 13.1 and 13.2, a reference to a director, officer or employee of the Pushpay Group includes a current or former director, officer or employee of the Pushpay Group.
- (b) Clauses 13.1 and 13.2 are for the benefit of each person who is a current or former director, officer or employee of any member of the Pushpay Group and are intended to be enforceable in accordance with Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

14. EXCLUSIVITY AND MATCHING RIGHTS

14.1 No shop restriction: Subject to clause 14.11, during the Exclusivity Period, Pushpay must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage or initiate or otherwise seek to procure any Competing Proposal or any offer, proposal, expression of interest, enquiry, negotiation or discussion with any Third Party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 14.1(a) on its behalf.

14.2 No talk restriction: Subject to clause 14.4 and clause 14.11, during the Exclusivity Period, Pushpay must not, and must procure that none of its Representatives, directly or indirectly:

- (a) enter into, permit, continue or participate in negotiations or discussions with any Third Party in relation to a Competing Proposal, or for the purpose of or that may reasonably be expected to encourage or lead to a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 14.2(a) on its behalf,

even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged, initiated or otherwise procured by Pushpay or any of its Representatives, was received before the date of this Agreement and/or has been publicly announced.

14.3 **No due diligence restriction:** Subject to clause 14.4 and clause 14.11, but without limiting clause 14.2, during the Exclusivity Period, Pushpay must not, and must procure that each of its Representatives does not, directly or indirectly:

- (a) make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to Pushpay or any of its Related Companies that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 14.3(a) on its behalf.

14.4 **Fiduciary exceptions to no talk and no due diligence restrictions:** The restrictions in clauses 14.2 and 14.3 do not apply to the extent that they restrict Pushpay or any its Representatives from taking, or not taking, any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated, initiated or otherwise procured in contravention of clause 14.1) if the following requirements are satisfied:

- (a) the Board has determined, after taking advice from its external financial and legal advisers, that the Competing Proposal is, or is reasonably likely to become, a Superior Proposal;
- (b) acting in good faith and after having obtained advice from its external legal advisers, the Board has determined that it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of any member of the Board;
- (c) prior to Pushpay disclosing any non-public information to the Third Party, the Third Party has entered into a written agreement in favour of Pushpay restricting the use and disclosure by the Third Party and its affiliates and advisers of the information made available to the Third Party, on terms which Pushpay reasonably considers (acting in good faith) to be no more favourable in any material respect to the Third Party than those in the Confidentiality Agreements; and
- (d) to the extent that any non-public information made available to the Third Party is material and has not previously been provided to the Bidder (or differs in any material respect from any information previously provided to the Bidder), Pushpay provides or makes that information available to the Bidder at the same time as it is provided to the Third Party or promptly thereafter,

provided that the requirements in clauses 14.4(c) and 14.4(d) only apply where Pushpay intends to rely on this clause 14.4 in respect of clause 14.3. Those requirements do not apply where Pushpay intends to rely on this clause 14.4 in respect of clause 14.2.

14.5 **General notification obligations:**

- (a) During the Exclusivity Period, Pushpay must notify the Bidder as soon as practicable in the circumstances and, in any event, within 48 hours if:
 - (i) Pushpay or any of its Representatives receives a Competing Proposal, or an inquiry or approach from a Third Party to initiate any discussions or negotiations that could reasonably be expected to lead to a Competing Proposal, or any request for Pushpay to take any action contemplated by clause 14.2(a) or 14.3(a);
 - (ii) Pushpay or any of its Representatives receives any request for information relating to the Pushpay Group or its Business or any request for access to any non-public information of any member of the Pushpay Group in connection with a current or future Competing Proposal; or
 - (iii) Pushpay proposes to take any action in reliance on the exception in clause 14.4.
- (b) A notice given under clause 14.5(a) must be accompanied by all material details of the relevant event, including (as the case may be):
 - (i) the identity of the person who provided the Competing Proposal or made the relevant inquiry or approach to initiate discussions or to whom any information is proposed to be provided as referred to in clause 14.5(a);
 - (ii) all material terms and conditions of any Competing Proposal, including the amount and form of consideration to be offered, the conditions to which it is subject, the proposed timetable and any break fee arrangements (to the extent known);
 - (iii) whether or not Pushpay intends to progress or respond to the relevant inquiry, approach, offer, bid, proposal or request (or whether, acting in good faith, Pushpay has not yet been able to make such a decision); and
 - (iv) the nature of the information or access requested and/or provided or action proposed to be taken.
- (c) Without limiting Pushpay's other obligations under this clause 14.5, Pushpay shall keep the Bidder reasonably informed on a prompt and timely basis of the status and any developments regarding any Competing Proposal which Pushpay (acting reasonably) considers are material, within 24 hours after receipt or delivery thereof (including, if a notice given under clause 14.5(a) states, in accordance with clause 14.5(b)(iii) that Pushpay has not yet decided whether it intends to progress or respond to the relevant inquiry, approach, offer, bid, proposal or request (or similar statement), updating the Bidder on a prompt and timely basis when it makes such a decision).

14.6 **Matching rights:**

- (a) Without limiting clause 14.1 or clause 14.2, during the Exclusivity Period, Pushpay:

- (i) must not, and must procure that each of its Representatives does not, enter into, or agree to enter into, any agreement, arrangement or understanding to undertake, give effect to or implement any Competing Proposal;
- (ii) must procure that no Non-Conflicted Director changes, qualifies or withdraws his or her Director Recommendation in favour of the Scheme in order to publicly recommend any Competing Proposal; and
- (iii) must not make, and ensure that no Non-Conflicted Director makes, any public statement recommending any Competing Proposal to Shareholders,

unless and until:

- (iv) acting in good faith and after having taken advice from its external financial and legal advisers, the Board has determined that the Competing Proposal is a Superior Proposal and failing to take one or more of the actions specified in clause 14.6(a)(i) to (iii) would constitute a breach of the fiduciary duties or statutory obligations of any member of the Board; and
- (v) Pushpay has, as soon as reasonably practicable after the Board has determined that the Competing Proposal is a Superior Proposal and that failing to take one or more of the actions specified in clause 14.6(a)(i) to (iii) would constitute a breach of the fiduciary duties or statutory obligations of any member of the Board, given the Bidder:
 - (A) a notice setting out all material terms of the Competing Proposal in accordance with clause 14.5 and a written explanation as to why the Board considers the Competing Proposal is a Superior Proposal; and
 - (B) at the same time, to the extent not already provided under clause 14.4(d), provide any information that is required to be provided to the Bidder under clause 14.4(d); and
- (vi) Pushpay has given the Bidder at least five Business Days after the date that Pushpay gives the notice to the Bidder under clause 14.6(a)(v)(A) (including all of the information required to be provided under that clause) in respect of the Competing Proposal in which to provide a Counter Proposal in accordance with clause 14.6(b) (“**Matching Period**”); and
- (vii) upon the expiry of the Matching Period:
 - (A) the Bidder has not provided a Counter Proposal under clause 14.6(b); or
 - (B) if the Bidder has provided a Counter Proposal under clause 14.6(b) and Pushpay having complied with clause 14.7, acting in good faith and after having taken written advice from its external financial and legal advisers, the Board has determined that (1) the Competing Proposal remains a Superior Proposal (taking into account the Counter Proposal); and (2) failing to respond to such Competing Proposal would continue to constitute a breach of the fiduciary duties or statutory obligations of the Board.

- (b) During the Matching Period, the Bidder may (but is not required to) make an irrevocable written offer to Pushpay or Shareholders (in a form which, if accepted by Pushpay, will be legally binding on the Bidder) to amend the terms of the Scheme and this Agreement and, if applicable, the Commitment Letters, which the Bidder in good faith believes will provide a no less favourable outcome, taken as a whole, for Shareholders compared to the terms and conditions offered under the relevant Superior Proposal (a “**Counter Proposal**”).
- (c) If Pushpay gives notice to the Bidder under clause 14.6(a)(v)(A) then Pushpay may:
 - (i) in its discretion, delay any action contemplated by the Timetable (including adjourning the [New Scheme Meeting](#)) to allow the Matching Period to be exhausted and, if applicable, to agree a Counter Proposal under clause 14.7(a)(ii); and
 - (ii) make any announcement to NZX and ASX that Pushpay, acting in good faith, considers appropriate in the circumstances to ensure that it complies with applicable law, the NZX Listing Rules and/or the ASX Listing Rules.

14.7 **Pushpay’s response to Counter Proposal:**

- (a) If, during the Matching Period, the Bidder makes a Counter Proposal:
 - (i) Pushpay must procure that the Board considers the Counter Proposal in good faith and, if it considers that the terms and conditions of the Counter Proposal (taken as a whole) are less favourable to Shareholders than those in the relevant Superior Proposal, must consult with the Bidder as to the relative merits of the Counter Proposal and the Superior Proposal; and
 - (ii) if the Board determines that the terms and conditions of the Counter Proposal taken as a whole are no less favourable to Shareholders than those in the relevant Superior Proposal, then:
 - (A) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and
 - (B) Pushpay must procure that each Non-Conflicted Director makes a public statement recommending the Counter Proposal to Shareholders (which recommendation may be expressed to be subject to there being no further Superior Proposal and the Independent Adviser concluding that the consideration contemplated by the Counter Proposal being within or above the Independent Adviser’s valuation range for the Shares).

14.8 **Changes to proposals:** Any material change to a Competing Proposal, including any material change to the matters notified under clause 14.5, will be taken to constitute a new Competing Proposal in respect of which Pushpay must separately comply with its obligations under clauses 14.5 to 14.7.

14.9 **No matching:** If:

- (a) Pushpay has complied with clause 14.6 in relation to a Competing Proposal; and
- (b) clause 14.6(a)(vii) applies,

then:

- (c) clause 14 (other than this clause 14.9) will cease to apply;
- (d) the Exclusivity Period will end;
- (e) Pushpay may enter into a binding implementation agreement or similar binding arrangement to implement, and Pushpay and the Board may take any action in respect of, any Competing Proposal; and
- (f) either party may terminate this Agreement by notice in writing to the other party.

14.10 **Return of confidential information:** If Pushpay has at any time in the 12 months before the date of this Agreement provided any confidential information to a person other than a member of the Bidder Group in connection with a Competing Proposal, Pushpay must, except to the extent that the Board considers it necessary to provide access to due diligence under clause 14.4 or 14.11, promptly request in writing the immediate return or destruction by that person of such confidential information.

14.11 **General exceptions to exclusivity provisions:** Nothing in this clause 14 prevents Pushpay or its Representatives from:

- (a) making normal presentations to, or responding to bona fide enquiries from, brokers, portfolio investors and analysts in accordance with usual investor relations practice or for the purposes of promoting the Scheme;
- (b) disclosing information required to be provided by law, any court of competent jurisdiction, or the NZX Listing Rules or the ASX Listing Rules or as may be requested or required by any Government Agency;
- (c) taking any action required by law in response to an unsolicited takeover notice given under rule 41 of the Takeovers Code in respect of, or takeover offer made under the Takeovers Code for, equity securities of Pushpay (including complying with clause 15 of Schedule 2 to the Takeovers Code) provided that (for clarity, but subject to clause 14.11(d)) the restrictions set out in clauses 14.1, 14.2 and 14.3 apply in relation to any steps to seek, respond to, progress or implement any alternative Competing Proposal to that which is the subject of the takeover notice or takeover offer received; or
- (d) in respect of a takeover notice or takeover offer of the type referred to in clause 14.11(c),
 - (i) providing non-public information to;
 - (ii) entering into a confidentiality agreement with; or
 - (iii) having discussions with,

the offeror who gives the takeover notice or makes the takeover offer, to the extent such steps are reasonably required to comply with the Takeovers Code to ensure that Pushpay does not, and Directors do not, breach the Takeovers Code (including the prohibition on defensive tactics in Rule 38 of the Takeovers Code).

14.12 **Standstill arrangements with other parties:** During the Exclusivity Period, except with the prior written consent of the Bidder, Pushpay must not amend or waive (which, for clarity, includes

communicating any intention not to enforce) the terms of any standstill agreement or arrangement between Pushpay and any person other than a member of the Bidder Group.

15. BREAK FEE AND REVERSE BREAK FEE

15.1 **Acknowledgement and agreement:** Pushpay (on the one hand) and the Bidder (on the other hand) each acknowledges and agrees that:

- (a) the other party and its Related Companies have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:
 - (i) advisory costs;
 - (ii) costs of management and directors' time;
 - (iii) in respect of the Bidder, funding costs;
 - (iv) out of pocket expenses; and
 - (v) opportunity costs of pursuing the Transaction or in not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by each party and its Related Companies are of such nature that they cannot accurately be ascertained;
- (c) the Break Fee and Reverse Break Fee are not penalties but, rather, each are liquidated damages based on a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the relevant party and its Related Companies in pursuing the Transaction;
- (d) the parties have negotiated the inclusion of this clause 15 in this Agreement and would not have entered into this Agreement without it; and
- (e) each party has received external legal and financial advice in relation to this clause 15 and has concluded that it is reasonable and appropriate for it to agree to payment of the Break Fee or Reverse Break Fee (as applicable) in the circumstances described in clauses 15.2 or 15.3 (as applicable) in order to secure the other party's entry into this Agreement.

15.2 **Circumstances where Break Fee payable:**

- (a) Subject to clause 15.5 and clause 15.9, Pushpay must pay the Break Fee to the Bidder if:
 - (i) at any time before this Agreement is terminated, a Competing Proposal is publicly announced and the person making the Competing Proposal or one or more persons that Control, are under the Control of, or are Associated with, that person completes, within 12 months after the date of that announcement, a Competing Proposal with any member of the Pushpay Group or with Shareholders (whether or not the completed Competing Proposal is the same as or different to the Competing Proposal that was originally announced);
 - (ii) any Non-Conflicted Director:
 - (A) fails to give the Director Recommendation in the Initial Announcement;

- (B) fails to make the Director Recommendation in the Scheme Booklet [and the Scheme Booklet Supplement](#); or
- (C) adversely changes, qualifies or withdraws, or makes any statement inconsistent with, the Director Recommendation,

except as a result of one or more of the following:

- (D) subject to clause 15.2(b), the Independent Adviser issuing an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares; or
 - (E) Pushpay receiving a Superior Proposal, subject to Pushpay's compliance with clause 14.6;
- (iii) the Bidder terminates this Agreement under clauses 16.1 or 16.11 (except for termination in reliance on the Prescribed Occurrence in paragraph 15(c) of Schedule One (other than where the action, claim, litigation, arbitration or prosecution is brought by a Government Agency));
 - (iv) either party terminates this Agreement under clause 16.4(a); or
 - (v) the Bidder terminates this Agreement under clause 16.4(b).
- (b) If the exception in clause 15.2(a)(ii)(D) applies, the Break Fee will nonetheless be payable by Pushpay to the Bidder if, prior to the issue of the Independent Adviser's Report concluding that the Consideration was not within or above the Independent Adviser's valuation range, a Competing Proposal is received by Pushpay or made public and within 12 months after the date that Competing Proposal is received or becomes public, the person making the Competing Proposal or one or more persons that Control, are under the Control of, or are Associated with, that person completes a Competing Proposal with any member of the Pushpay Group or with Shareholders (whether or not the completed Competing Proposal is the same as or different to the Competing Proposal that was originally received or made public).

15.3 **Circumstances where Reverse Break Fee payable:** Subject to clause 15.5 and clause 15.9, the Bidder must pay the Reverse Break Fee to Pushpay if Pushpay terminates this Agreement under:

- (a) clause 16.2; or
- (b) clause 16.6 for failure to satisfy the HSR Condition as a result of the entry into of, or completion of, any acquisition or other similar transaction or arrangement by any member of the Bidder Group after the date of this Agreement.

15.4 **Payment of Break Fee or Reverse Break Fee:** If the Break Fee or Reverse Break Fee become payable under this Agreement, Pushpay or the Bidder (as the case requires) must pay it to or as directed by the other party without withholding or set-off (except as required by law) within 13 Business Days after receipt of a written demand for payment from the other party. The obligation to make the payment described in the preceding sentence will be satisfied by the payment of the relevant amount in immediately available funds to the recipient's nominated account. For the avoidance of

doubt, if only a portion of the Break Fee or the Reverse Break Fee is held by a Court to be enforceable, that portion which is payable must be paid within 13 Business Days of the relevant determination.

15.5 **Break Fee or Reverse Break Fee not payable:** Notwithstanding anything else in this Agreement:

- (a) neither the Break Fee nor Reverse Break Fee is payable if the Scheme becomes Effective; and
- (b) each of the Break Fee and Reverse Break Fee is payable only once.

15.6 **Additional circumstances in which Break Fee not payable:** A Break Fee will not be payable under clause 15.2(a)(i) in respect of a Competing Proposal if the Competing Proposal:

- (a) is a proposal of the nature referred to in paragraph (e)(i)(A) of the definition of Competing Proposal and which does not fall within any other paragraph or sub-paragraph of the definition of Competing Proposal;
- (b) did not result from a breach of clause 14 by Pushpay;
- (c) was not agreed to, approved by or consented to any member of the Pushpay Group;
- (d) was not approved by Shareholders under the Companies Act, Takeovers Code, NZX Listing Rules or Pushpay's constitution;
- (e) does not result in any member of the Pushpay Group or any Shareholder receiving any consideration or other benefit; and
- (f) does not require Pushpay to abandon, or otherwise fail to proceed with, the implementation of the Scheme.

15.7 **Bidder exclusive remedy and Pushpay liability cap:**

- (a) Subject to clauses 15.7(c) and 15.10, the Bidder acknowledges and agrees that payment of the Break Fee is the sole and exclusive remedy available to the Bidder in connection with any event or occurrence referred to in clause 15.2 and Pushpay is not liable for any Loss arising in connection with any such event or occurrence other than for any liability that it may have to pay the Bidder the Break Fee under this clause 15.
- (b) Notwithstanding any other provision of this Agreement but subject to clauses 15.7(c), 15.7(d) and 15.9, Pushpay's maximum aggregate liability under or in connection with this Agreement or the Transaction (whether under this Agreement, at law (including negligence), under any statute or regulation, in equity or otherwise) is limited to, and will not exceed, an amount equal to the Break Fee. If the Break Fee has been demanded by the Bidder and paid by Pushpay, Pushpay will have no further liability to the Bidder under or in connection with this Agreement or the Transaction.
- (c) If Pushpay breaches this Agreement where the relevant act or omission was made or not taken (as the case may be) for the deliberate intention or purpose of not completing the Transaction, then Pushpay's maximum aggregate liability under or in connection with this Agreement or the Transaction (whether under this Agreement, at law (including negligence), under any statute or regulation, in equity or otherwise) is limited to, and will not exceed, an amount equal to three

times the amount of the Break Fee (including GST, if any) (such damages being the “**Pushpay Intentional Breach Damages**”).

- (d) Nothing in this clause 15.7 limits Pushpay’s liability for fraud.
- (e) The Bidder’s right to receive the Break Fee or any Pushpay Intentional Breach Damages shall not limit or otherwise affect the Bidder’s right to seek specific performance as provided in clause 15.10, provided that in no event shall the Bidder be entitled to receive both:
 - (i) specific performance and payment of the Break Fee; or
 - (ii) specific performance and payment of any damages (including any Pushpay Intentional Breach Damages) or any Losses under clause 11.3.

15.8 **Pushpay exclusive remedy and Bidder liability cap:**

- (a) Subject to clauses 15.8(c) and 15.10, Pushpay acknowledges and agrees that payment of the Reverse Break Fee is the sole and exclusive remedy available to Pushpay in connection with any event or occurrence referred to in clause 15.3 and the Bidder is not liable for any Loss arising in connection with any such event or occurrence other than for any liability that it may have to pay Pushpay the Reverse Break Fee under this clause 15.
- (b) Notwithstanding any other provision of this Agreement but subject to clauses 15.8(c), 15.8(d) and 15.9, the Bidder’s maximum aggregate liability under or in connection with this Agreement or the Transaction (whether under this Agreement, at law (including negligence), under any statute or regulation, in equity or otherwise) is limited to, and will not exceed, an amount equal to the Reverse Break Fee. If the Reverse Break Fee has been demanded by Pushpay and paid by the Bidder, the Bidder will have no further liability to Pushpay under or in connection with this Agreement or the Transaction.
- (c) If the Bidder breaches this Agreement where the relevant act or omission was made or not taken (as the case may be) for the deliberate intention or purpose of not completing the Transaction, then the Bidder’s maximum aggregate liability under or in connection with this Agreement or the Transaction (whether under this Agreement, at law (including negligence), under any statute or regulation, in equity or otherwise) is limited to, and will not exceed, an amount equal to three times the amount of the Reverse Break Fee (including GST, if any) (such damages being the “**Bidder Intentional Breach Damages**”).
- (d) Nothing in this clause 15.8 limits the Bidder’s liability for fraud.
- (e) Pushpay’s right to receive the Reverse Break Fee or any Bidder Intentional Breach Damages shall not limit or otherwise affect Pushpay’s right to seek specific performance as provided in clause 15.10, provided that in no event shall Pushpay be entitled to receive both:
 - (i) specific performance and payment of the Reverse Break Fee; or
 - (ii) specific performance and payment of any damages (including any Bidder Intentional Breach Damages) or any Losses under clause 11.4.

- 15.9 **Amendments to Break Fee Arrangements:** If:
- (a) the Takeovers Panel indicates to either party in writing that it requires any:
 - (i) reduction to the amount of the Break Fee or Reverse Break Fee; or
 - (ii) narrowing of the circumstances in which either is to be paid,(the “**Break Fee Arrangements**”) as a condition of granting a Letter of Intention or No-objection Statement or not otherwise opposing the Scheme; or
 - (b) the Court requires any modification to the Break Fee Arrangements (provided that any such modification does not result in an increase in the amount of the Break Fee or Reverse Break Fee or any broadening of the circumstances in which either is to be paid) as a condition of making orders convening the [New](#) Scheme Meeting,

then the parties must amend this clause 15 to the extent required to give effect to the requirements of the Court or the Takeovers Panel, as the case may be, and in the circumstances referred to in clause 15.9(b) must give any required undertakings.

- 15.10 **Specific performance:** Subject to clause 15.7(e) and 15.8(e), nothing in this Agreement precludes Pushpay or the Bidder from bringing proceedings against the other party for specific performance or other equitable relief.
- 15.11 **Deemed loss:** The Bidder agrees that if Pushpay seeks damages from the Bidder, any Loss suffered by Shareholders as a result of a breach of this Agreement or the Deed Poll by the Bidder will be deemed to be suffered by Pushpay (except to the extent that the Bidder pays damages directly to Shareholders on account of any Loss suffered due to the applicable breach).
- 15.12 **Deed Poll:** Subject to clause 15.8, nothing in this Agreement limits Shareholders’ rights, or Pushpay’s rights as attorney and agent for Shareholders, under the Deed Poll.

16. TERMINATION

- 16.1 **Events affecting the Pushpay Group:** The Bidder may terminate this Agreement by giving notice to Pushpay in accordance with clause 16.3: if
- (a) there is a breach of any:
 - (i) Pushpay Warranty or any event occurs or circumstances arises that would cause any Pushpay Warranty to be untrue as at 8.00am on the Implementation Date, in each case where the consequences of that breach (other than in respect of a Fundamental Warranty) are material in the context of the Scheme taken as a whole; or
 - (ii) Pushpay Undertaking or any other obligation of Pushpay under this Agreement, where the consequences of that breach are material in the context of the Scheme taken as a whole; or
 - (b) Pushpay breaches clause 8.1 or 8.2.
- 16.2 **Events affecting Bidder:** Pushpay may terminate this Agreement by giving notice to the Bidder in accordance with clause 16.3 if:

- (a) there is a breach of any Bidder Warranty or any event occurs or circumstances arises that would cause any Bidder Warranty to be untrue as at 8.00am on the Implementation Date; or
- (b) there is a breach of any Bidder Undertaking, clause 10.5, or any other obligation of the Bidder under this Agreement,

in each case where the consequences of that breach are material in the context of the Scheme taken as a whole.

16.3 **Notice of termination:** A party may only exercise a right of termination under clause 16.1 or 16.2 if:

- (a) the party wishing to terminate has given notice to the other party before 8.00am on the Implementation Date setting out the circumstances that it considers permit it to do so and stating its intention to do so;
- (b) the relevant circumstances have not been remedied within 15 Business Days after the time that the notice is given or any shorter period ending at 5.00pm on the day before the Implementation Date; and
- (c) the party wishing to terminate does so by notice before the earlier to occur of 30 Business Days after the time that the notice referred to in clause 16.3(a) is given and 8.00am on the Implementation Date.

16.4 **Counter Proposal / definitive agreement to implement a Competing Proposal:**

- (a) Either party may, by notice to the other party, terminate this Agreement in accordance with clause 14.9(f) at any time before 8.00am on the Implementation Date.
- (b) The Bidder may, by notice to Pushpay given at any time before 8.00am on the Implementation Date, terminate this Agreement if Pushpay or any other Pushpay Group company enters into a definitive agreement to implement a Competing Proposal.

16.5 **Condition failure:** Subject to any waiver of a Condition under clause 3.7 (in respect of a Condition which is capable of waiver), this Agreement may be terminated for non-satisfaction of a Condition in accordance with clauses 16.6 to 16.12 (inclusive).

16.6 **Conditions 3.1(a) and 3.1(b) - OIO Condition and HSR Condition:** If the OIO Condition and/or the HSR Condition becomes incapable of satisfaction by the Condition Satisfaction Date and:

- (a) the Bidder has delivered notice to that effect to Pushpay under clause 3.10(a)(i) ("**Regulatory Condition Notice**"); and
- (b) the parties have not reached agreement to extend the Condition Satisfaction Date under clause 3.10(b) within five Business Days after the Bidder's delivery of the Regulatory Condition Notice,

then either party may terminate this Agreement by notice to the other before 8.00am on the Implementation Date, provided that the terminating party has complied in all material respects with that party's obligations under clause 3.3, 3.4 and 3.5 (as applicable) in respect of the OIO Condition and/or the HSR Condition (as applicable).

16.7 **Condition 3.1(c) - Independent Adviser's Report:** Pushpay may terminate this Agreement by notice to the Bidder at any time before the [New](#) Scheme Meeting if the Independent Adviser's Report

concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares.

16.8 **Condition 3.1(d) – Scheme Resolution not passed:** If:

- (a) at the New Scheme Meeting, the ~~Scheme~~New Resolution is not passed by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act; and
- (b) the parties do not agree, by the earlier of 5.00pm on the 2nd Business Day after the New Scheme Meeting and the date which is 20 Business Days prior to the End Date, to hold another New Scheme Meeting,

then either party may terminate this Agreement by notice to the other before 8.00am on the Implementation Date, provided that the terminating party has complied in all material respects with its obligations in respect of the New Scheme Meeting and the ~~Scheme~~New Resolution.

16.9 **Condition 3.1(e) - Court determines not to grant the Final Orders:**

- (a) If:
 - (i) the Court determines not to grant the Final Orders; and
 - (ii) the parties have not reached agreement under clause 7.4(a) to appeal that determination or the determination is not required to be appealed under clause 7.4(b) within 10 Business Days after the determination,

then either party may terminate this Agreement by notice to the other before 8.00am on the Implementation Date, provided that the terminating party has complied in all material respects with its obligations under this Agreement that are relevant to seeking or obtaining Final Orders.

- (b) If an appeal under clause 7.4(a) or 7.4(b) is unsuccessful or is withdrawn, then either party may terminate this Agreement by notice to the other before 8.00am on the Implementation Date.

16.10 **Condition 3.1(f) – No restraints:** If the Condition in clause 3.1(f) is not satisfied at 8.00am on the Implementation Date, then either party may terminate this Agreement by notice to the other at any time before 8.00am on the Implementation Date, provided that the terminating party has complied in all material respects with that party's obligations under clause 3 in respect of the Condition in clause 3.1(f), including clause 3.10.

16.11 **Condition 3.1(g) – Prescribed Occurrences:** Subject to clause 16.16, if a Prescribed Occurrence occurs on or after the date of this Agreement and before 8.00am on the Implementation Date, the Bidder may terminate this Agreement by notice to Pushpay.

16.12 **Condition 3.1(h) – Material Adverse Change:** The Bidder may terminate this Agreement before 8.00am on the Implementation Date by notice to Pushpay if each of the following is satisfied:

- (a) a Material Adverse Change occurs, is announced or is discovered between (and including) the date of this Agreement and 8.00am on the Implementation Date; and
- (b) the Bidder has complied with its obligations under 3.11(b).

- 16.13 **End Date:** Either Pushpay or the Bidder may terminate this Agreement by giving notice in writing to the other if the Scheme has not become Effective by 5.00pm on the End Date, provided that, if relevant, the parties have complied with their obligations under clause 3.10, and the terminating party's failure to comply with its obligations under this Agreement has not directly and materially contributed to the Scheme not becoming Effective by the End Date.
- 16.14 **Effect of termination:** If this Agreement is terminated under this clause 16, then:
- (a) except as provided in clause 16.14(b) and 16.14(c), all the provisions of this Agreement cease to have effect and each party is released from its obligations to further perform this Agreement;
 - (b) each party retains all rights that it has against the other party in respect of any breach of this Agreement occurring before termination; and
 - (c) the provisions of, and the rights and obligations of each party under, this clause 16.14 and each of the Surviving Clauses survive termination of this Agreement.
- 16.15 **No other termination:**
- (a) This clause 16 sets out the only rights for the parties to cancel, rescind or terminate this Agreement. No party has any right to cancel or terminate this Agreement whether before or after the implementation of the Scheme on any other basis (as a result of any matter, information or circumstance), including:
 - (i) for misrepresentation;
 - (ii) for repudiation, anticipatory breach or breach of this Agreement; or
 - (iii) in respect of any matter giving rise to, or the subject of, a claim arising out of or in connection with this Agreement (whether arising in tort (including negligence), in contract, statute, by operation of law or otherwise).
 - (b) The parties agree that sections 35 to 49 of the Contract and Commercial Law Act 2017 do not apply to this Agreement.
- 16.16 **Relevant Events:**
- (a) If the Bidder considers that a Prescribed Occurrence of the nature set out paragraph 15(c) of Schedule One ("**Relevant Event**") may have occurred:
 - (i) the Bidder must promptly notify Pushpay of that fact, which notice must set out reasonable details of the Bidder's reasons for considering that the Relevant Event may have occurred; and
 - (ii) the Bidder and Pushpay, each acting reasonably and in good faith, must consult as to whether a Relevant Event has occurred for a period of at least 20 Business Days or, if shorter, until 5.00pm on the day before the Implementation Date.
 - (b) The Bidder must not terminate this Agreement under clause 16.11 on the basis that a Relevant Event has occurred unless:
 - (i) it has complied with its obligations under clause 16.16(a); and

- (ii) at the expiry of the period referred to in clause 16.16(a)(ii), the Bidder, acting in good faith, including having regard to the factors set out in the Disclosure Letter and having taken advice from external legal advisers with relevant specialist expertise, considers that the Relevant Event has occurred.

17. ANNOUNCEMENTS

17.1 **Initial announcements:** As soon as reasonably practicable after this Agreement is signed, Pushpay must issue the Initial Announcement, which must include the Director Recommendation, to NZX and ASX.

17.2 **Other announcements:** Each party must not make, and must procure that its Representatives do not make, any public announcement concerning the Scheme or the subject matter of this Agreement other than:

- (a) the Initial Announcement in accordance with clause 17.1;
- (b) with the written consent of the other party, which must not be unreasonably withheld or delayed;
- (c) in accordance with clause 14.6(c)(ii); or
- (d) if requested or required by a Government Agency or if required by law, any court of competent jurisdiction, the NZX Listing Rules, the ASX Listing Rules or the rules of any other recognised stock exchange, but if either party is so required to make any announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must, if practicable, co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement.

17.3 **Permitted communications:** Clause 17.2 shall not prevent the announcing party from:

- (a) merely referring to the other party by name;
- (b) repeating any material in relation to the other party from an announcement which has previously been released or approved by, or agreed with the other party (in which case, where practicable, the announcing party will give the other party advance notice);
- (c) responding to media and other stakeholders where not inconsistent with announcements that are permitted to be made in accordance with the terms of this Agreement, including clauses 17.2 and 17.3; or
- (d) making disclosures regarding:
 - (i) the actual or purported termination of this Agreement; or
 - (ii) any claim, disagreement or dispute under or in connection with this Agreement.

18. PAYMENTS

18.1 **Manner of payment:** Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this Agreement must be made in New Zealand dollars by

transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds, without set-off or withholding (except as required by law). The relevant account for a given payment is the account that the party due to receive the payment specifies, not less than 10 Business Days before the date on which payment is due, by giving notice to the party due to make the payment.

18.2 **Default interest:** If a party defaults in making any payment when due of any sum payable under this Agreement, it must pay interest on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 4% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

19. GST

19.1 **Interpretation:** Words and expressions that are defined in the GST Act have the same meaning when used in this clause 19. For the purposes of this clause 19, references to GST chargeable and input tax credit entitlements of any entity include GST chargeable against, and the input tax credit entitlements of, the representative member of the GST group of which the entity is a member.

19.2 **Consideration exclusive of GST:** For the avoidance of doubt, the parties agree that the supply of Shares pursuant to this Agreement is an exempt or zero-rated supply of a financial service and therefore not subject to GST. Except for the Break Fee, the Reverse Break Fee, the Pushpay Intentional Breach Damages and the Bidder Intentional Breach Damages (which are inclusive of GST, if any) all other stated amounts payable or consideration to be provided under or in connection with this Agreement do not include GST (“**GST Exclusive Consideration**”).

19.3 **Payment of GST:** If GST is chargeable on any supply made under or in connection with this Agreement the recipient must pay to the party that has made or will make the supply (the “**Supplier**”), in addition to the GST Exclusive Consideration, an additional amount equal to the GST chargeable on that supply (the “**Additional Amount**”). The recipient must pay the Additional Amount without set-off, demand or deduction, at the same time and in the same manner as any GST Exclusive Consideration for that supply is required to be paid, except that the recipient is not required:

- (a) to pay the Additional Amount unless and until the Supplier has issued a tax invoice under clause 19.4; or
- (b) to pay any GST Default Amounts included in the Additional Amount if those GST Default Amounts result from the Supplier failing to comply with its obligations under the GST Act.

19.4 **Tax invoice:** For any supply to which clause 19.3 applies, the Supplier must issue a tax invoice which complies with the GST Act. The Supplier must issue a tax invoice within 20 Business Days after receipt of a request for tax invoice from the other party.

19.5 **Adjustments:** If an event referred to in section 25(1) of the GST Act occurs in relation to a taxable supply made under or in connection with this Agreement, the GST payable on that supply will be recalculated to reflect that adjustment, a debit note or credit note will be issued as required by the GST Act and an appropriate payment will be made between the parties. The Supplier must issue a debit note or credit note within 20 Business Days after receipt of a request for a debit note or credit note from the other party.

19.6 **Input tax credits:** Notwithstanding any other provision of this Agreement, if an amount payable under or in connection with this Agreement is calculated by reference to any loss, damage, cost, expense, charges or other liability incurred or suffered by a party, then the amount payable must be reduced by the amount of any input tax credit or other deduction from output tax to which that entity is entitled in respect of the acquisition of any supply to which the loss, damage, cost, expense, charge or other liability relates. For the avoidance of doubt, this clause 19.6 does not apply to adjust the Break Fee or Reverse Break Fee.

19.7 **GST information:** If requested to do so by Pushpay, the Bidder must promptly notify Pushpay of the Bidder's tax resident status, GST registration and whether the Bidder makes more than 75% taxable supplies over total supplies.

20. NOTICES

20.1 **Manner of giving notice:** Any notice or other communication to be given under this Agreement must be in writing (which includes email) and may be delivered or sent by email to the party to be served as follows:

(a) to Pushpay at:

Address: **Pushpay Holdings Limited**
167 Victoria Street West
Auckland 1010
New Zealand

Email: molly.mathews@pushpay.com
richard.keys@pushpay.com
joe.berkowitz@pushpay.com

For the attention of: Molly Matthews, Richard Keys, Joe Berkowitz

with a copy (which will not constitute notice) to:

Address: Harmos Horton Lusk, Level 33, Vero Centre, 48 Shortland Street,
Auckland, New Zealand

Email: nathanael.starrenburg@hhl.co.nz
annie.steel@hhl.co.nz

For the attention of: Nathanael Starrenburg, Annie Steel

(b) to the Bidder at:

Address: Bell Gully, Level 22, Vero Centre, 48 Shortland Street, Auckland
1010, New Zealand

Email: james.cooney@bellgully.com
amon.nunns@bellgully.com

For the attention of: James Cooney, Amon Nunns

with a copy (which will not constitute notice) to:

Address: Bell Gully, Level 22, Vero Centre, 48 Shortland Street, Auckland,
New Zealand

Email: james.cooney@bellgully.com
amon.nunns@bellgully.com

For the attention of: James Cooney, Amon Nunns

and

Address: Willkie Farr & Gallagher LLP

787 Seventh Avenue

New York, NY 10019

Email: mguercio@willkie.com
jkubek@willkie.com

For the attention of: Matthew Guercio, Jonathan Kubek

or at any such other address or email address notified for this purpose to the other parties under this clause.

20.2 **When notice given:** Any notice or other communication is deemed to have been given:

- (a) if delivered, on the date of delivery; or
- (b) if sent by email, four business hours (being the hours between 9am and 5pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an "out of office" automated message),

but if the notice or other communication would otherwise be taken to have been received after 5.00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

20.3 **Email notice required:** If, at the time a notice is to be given under this Agreement, New Zealand is on any alert level notified by the New Zealand Government in relation to COVID-19, or there is any other public emergency, which materially restricts movement within New Zealand, any notice given under this Agreement must be given by email (except to the extent that the notice is required by law to be given by another means, in which case it must also be provided by email).

20.4 **Proof of service:** In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the e-mail was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's e-mail system, as the case may be.

20.5 **Documents relating to legal proceedings:** This clause 20 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement.

21. GENERAL

21.1 Amendments:

- (a) This Agreement may only be amended prior to the Scheme becoming Effective.
- (b) Any amendment to this Agreement will only be effective if it is in writing and signed by all the parties.
- (c) Subject to clause 21.1(b), this Agreement may be varied by the parties to it without the approval of any Shareholder, any Pushpay Indemnified Person, any Bidder Indemnified Person or any director, officer or employee of Pushpay or of any other member of the Pushpay Group.

21.2 Assignments: None of the rights or obligations of a party under this Agreement may be assigned, provided as security, transferred or novated without the prior written consent of the other party (such consent not to be unreasonably withheld).

21.3 Costs: Except as otherwise expressly provided in this Agreement, each party must pay the costs and expenses incurred by it in connection with entering into and performing its obligations under this Agreement, the Scheme and the Deed Poll.

21.4 Confidentiality:

- (a) Subject to clause 21.4(c), Pushpay agrees that it continues to be bound by the Confidentiality Agreements.
- (b) Subject to clause 21.4(c), the Bidder agrees:
 - (i) to be bound by the Confidentiality Agreements, as if the Bidder were the “Recipient” for the purposes of the Confidentiality Agreements, on and from the date of this Agreement; and
 - (ii) that all information provided by Pushpay under this Agreement is “Confidential Information” for the purposes of the Confidentiality Agreements.
- (c) Pushpay and the Bidder agree that:
 - (i) clause 3.2(b) (insofar as it applies to the use of Confidential Information (as that term is defined in the Confidentiality Agreements) by the Bidder for the purposes of the Bidder complying with any of its obligations under this Agreement (including satisfaction of the OIO Condition and the HSR Condition)); and
 - (ii) clause 9.3,

of the Confidentiality Agreements shall no longer apply to BGH, Sixth Street, the Bidder or their respective Representatives from the date of this Agreement and the Confidentiality Agreements are hereby amended to this effect. The agreement in this clause 21.4(c) is given for the benefit of BGH and Sixth Street and is intended to be enforceable against Pushpay by BGH and Sixth Street in accordance with the provisions of Part 2, Subpart 1 of the Contract and Commercial Law Act 2017.

- (d) For the avoidance of doubt, subject to clause 21.4(c), this Agreement does not limit, modify or terminate the obligations of any Related Company or affiliate of the Bidder under the Confidentiality Agreements if any such person is a party to or otherwise bound by the Confidentiality Agreements.
- (e) The rights and obligations of the parties under the Confidentiality Agreements survive the termination of this Agreement.
- 21.5 **Entire agreement:** This Agreement contains the entire agreement between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction except for the Confidentiality Agreements.
- 21.6 **Execution in counterparts:** This Agreement may be executed in any number of counterparts, each of which is to be an original, but all of which taken together are to constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this Agreement by executing a counterpart. Scanned signatures are taken to be valid, sufficient and binding to the same extent as original signatures.
- 21.7 **Exercise and waiver of rights:** The rights of each party under this Agreement:
- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by this Agreement, are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically,
- and delay in exercising or non exercise of any such right is not a waiver of that right.
- 21.8 **Further assurances:** Each party must execute and deliver any documents and do all things as may reasonably be required by the other party to give full effect to this Agreement.
- 21.9 **Severability:** The provisions contained in each clause of this Agreement are enforceable independently of each other clause of this Agreement and the validity and enforceability of any clause of this Agreement will not be affected by the invalidity or unenforceability of any other clause, provided that where any provision of this Agreement offends any law applicable to it and the offending clause can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result.
- 22. GOVERNING LAW AND JURISDICTION**
- 22.1 **Governing law:** This Agreement and any non-contractual obligations arising out of or in connection with it is governed by New Zealand law.
- 22.2 **Jurisdiction:** The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to any non-contractual obligations arising out of or in connection with this Agreement) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.

Signatures

PUSHPAY HOLDINGS LIMITED by:

Signature of director

Name of director

Signature of director

Name of director

PEGASUS BIDCO LIMITED by:

Signature of director

Name of director

Signature of director

Name of director

Schedule One

Prescribed Occurrences

1. **Distributions:** Pushpay or any other Pushpay Group member authorises, declares, pays, or makes any distributions (within the meaning of the Companies Act) of any nature (including, without limitation, any dividends, share buybacks, redemptions or other form of capital reduction), in each case other than any cancellation of any Restricted Share Units or a distribution by a member of the Pushpay Group to Pushpay or a wholly owned subsidiary of Pushpay.
2. **Securities:** Any Pushpay Group member issues, agrees to issue, or grants an option or right to subscribe for, shares, convertible securities, other securities or financial products of any nature (including warrants, options, convertible notes, entitlements, rights or interests in any ordinary shares or other financial products) other than:
 - (a) the issuance of shares by a wholly owned subsidiary of Pushpay to Pushpay or another wholly owned subsidiary of Pushpay; or
 - (b) the transfer or issue of Shares due to the vesting of Restricted Share Units in accordance with clause 6.3.
3. **Reclassification or buyback:** Pushpay or any other Pushpay Group member:
 - (a) alters the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any other member of the Pushpay Group;
 - (b) converts all or any of the Shares into a larger or smaller number; or
 - (c) buys back (or agrees to buy back) any shares or other securities (other than any cancellation of any Restricted Share Units in accordance with clause 6.3 or in accordance with the terms of those Restricted Share Units or the buyback of Founder Restricted Shares as permitted by clause 9.2(e)(iv)(C)).
4. **Constitution:** Any alteration to the constitutional documents of any Pushpay Group member (except as required by law or the NZX Listing Rules or ASX Listing Rules).
5. **Insolvency Event:** An Insolvency Event occurs in respect of any member of the Pushpay Group (other than of a non-trading entity) and the relevant Insolvency Event has not been addressed to the Bidder's reasonable satisfaction by the earlier of: (i) 5 days after the occurrence of the relevant Insolvency Event; and (ii) 5.00pm on the day prior to the Implementation Date.
6. **Amalgamations:** A resolution is passed for any amalgamation of any member of the Pushpay Group, or any of them is involved in any merger or scheme of arrangement (other than a solvent scheme of arrangement or an amalgamation, merger or scheme of arrangement involving solely Pushpay and/or one or more wholly owned subsidiaries of Pushpay).
7. **Termination payments:** A member of the Pushpay Group is, or will be, under any obligation to make any payment or provide any consideration to any of its employees or directors in the event of any

- member of the Pushpay Group becoming a subsidiary of the Bidder or under the Bidder's control (except as fairly disclosed in the Due Diligence Material or as approved in writing by the Bidder).
8. **Delisting:** The Shares cease to be quoted, or are suspended from trading for a period of longer than three trading days, on the NZX or the ASX (other than in connection with implementation of the Scheme).
 9. **Employee remuneration:** A member of the Pushpay Group increases the remuneration of (including with regard to any superannuation, benefits, incentives or bonuses), or materially varies the terms of employment of, or terminates the employment of, any of its directors, Senior Managers (as defined in the NZX Listing Rules) or employees with a remuneration of over US\$300,000 per annum, other than within the exceptions provided in clauses 9.2(e)(x) – (xxiv) or 9.3 or on the basis of retirement by rotation under the NZX Listing Rules.
 10. **Acceleration of rights:** A member of the Pushpay Group accelerates the rights of any of its directors, officers or employees to benefits of any kind, other than within the exceptions provided in clauses 9.2(e)(x), 9.2(e)(xii), 9.2(e)(xiii), 9.2(e)(xv), 9.2(e)(xxi) or 9.3.
 11. **Related party transactions:** A member of the Pushpay Group enters into a transaction with a Related Party (other than a Related Party that is also a member of the Pushpay Group) that is material to the Pushpay Group taken as a whole.
 12. **Financial advisor arrangements:** A member of the Pushpay Group amends (or agrees to amend) in a material respect any agreement or arrangement with any financial advisor in relation to the Transaction or a Competing Proposal, or enters into an agreement or arrangement with a new financial advisor, in respect of the Transaction or a Competing Proposal.
 13. **Disposal:** A member of the Pushpay Group:
 - (a) disposing, or agreeing to dispose, of; or
 - (b) granting any person any Encumbrance, other than a Permitted Encumbrance, over, the whole or a substantial part of the Pushpay Group's business or property.
 14. **Resolutions:** The board or shareholders of any Pushpay Group member pass a resolution to do or authorise the doing of any act or matter referred to in any of the preceding clauses of this Schedule One.
 15. **Proceedings/determinations:** Any:
 - (a) enforcement action, investigation, inquiry or audit is announced or commenced, or there is a material development in relation to any action, investigation, inquiry or audit by a Government Agency; or
 - (b) decision, determination or ruling by a Government Agency; or
 - (c) action, claim, litigation, arbitration or prosecution by any party (including by a Government Agency) is notified or commenced,

against or involving a member of the Pushpay Group which is, or is reasonably likely to be, materially adverse to the Pushpay Group taken as a whole or is materially adverse in the context of the Transaction.

Schedule Two

Pushpay Warranties and Undertakings

PART 1

PUSHPAY WARRANTIES

1. **Existence:** Each Pushpay Group member is duly organised and validly existing under the laws of the jurisdiction in which it is organised.
2. **Capacity:** Pushpay has the power to execute this Agreement and to perform its obligations under this Agreement and the Scheme, and has taken all necessary corporate action to authorise such execution.
3. **Binding effect:** Pushpay's obligations under this Agreement are legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. **No conflicts:** The execution by Pushpay of this Agreement and the performance of its obligations under this Agreement and the Scheme do not and will not conflict with or constitute a default under any provision of:
 - (a) its constitution; or
 - (b) any law, order, judgment, award, injunction, decree, rule or regulation by which Pushpay is bound and which would prevent it from entering into and performing its obligations under this Agreement.
5. **Compliance:** Except as contemplated by the Conditions, no approval from any Government Agency is required to be obtained by Pushpay in order to execute and perform this Agreement and no regulatory action of any nature of which Pushpay is aware as at the date of this Agreement has been taken that would prevent or restrict Pushpay's obligations under this Agreement.
6. **Share capital:**
 - (a) As at the date of this Agreement, the only shares and equity securities on issue in Pushpay are:
 - (i) 1,141,144,570 Shares (being fully paid ordinary shares quoted on the NZX and ASX); and
 - (ii) 7,306,460 Restricted Share Units,and there are no other shares, options or other securities (including equity securities, share appreciation rights, phantom shares, debt securities or convertible securities) or other instruments which are convertible into securities in a member of the Pushpay Group on issue, nor has any member of the Pushpay Group offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any such shares, options or other securities or other instruments to any third party.
 - (b) As at 8.00am on the Implementation Date, there will be on issue no more than 1,148,451,030 Shares and no options or other financial products (including equity securities, share appreciation rights, phantom shares, debt securities or convertible securities) or other

instruments which are convertible into securities in a member of the Pushpay Group will be outstanding or become outstanding.

7. **Disclosure:**

- (a) Pushpay is in compliance with its continuous and periodic disclosure obligations under the NZX Listing Rules and the ASX Listing Rules; and
- (b) as at the date of this Agreement, except:
 - (i) as fairly disclosed in the Due Diligence Material; and
 - (ii) for the details and existence of the Transaction,

Pushpay is not withholding from disclosure to NZX or ASX any material information in reliance on a 'safe harbour' from the continuous disclosure provisions in the NZX Listing Rules and the ASX Listing Rules.

8. **Due Diligence Material:** The Due Diligence Material has been prepared and provided in good faith and, as far as Pushpay is aware, on the date that they were prepared, the items comprising the Due Diligence Material were true and accurate in all materials respects and no information that has been included in the Due Diligence Material was, when given, materially false or misleading, including by omission.

9. **Material Contracts:** Folder 13.02 of the Due Diligence Material contains each contract pursuant to which a member of the Pushpay Group is a party that, as at the date of this Agreement:

- (a) involves a partnership, joint venture, strategic alliance or similar agreement with any person that is material in the context of the Pushpay Group, if any;
- (b) involves outstanding indebtedness for borrowed money in excess of US\$225,000 (excluding intra-group indebtedness owed between members of the Pushpay Group); or
- (c) involves any settlement arrangement under which the Pushpay Group is required to make outstanding payments in excess of US\$200,000 or that contain material non-monetary obligations which are due to be performed after the date of this Agreement.

10. **Land:** No Pushpay Group member has a legal or equitable interest in land that has not been fairly disclosed in the Due Diligence Material.

11. **Authorisations:**

- (a) Each member of the Pushpay Group has complied and is in compliance with, in all material respects with all New Zealand and foreign laws and regulations applicable to it.
- (b) Each member of the Pushpay Group has all material Authorisations necessary for it to conduct the Business as presently being conducted.
- (c) At the date of this Agreement, as far as Pushpay is aware, no member of the Pushpay Group is under investigation with respect to the violation of any laws or applicable Authorisations.

12. **Competing Proposals:** Pushpay is not, as at the date of this Agreement, in negotiations or discussions (other than with the Bidder and its Representatives in relation to the Scheme) with any person relating to any Competing Proposal.
13. **Disputes:** At the date of this Agreement, except as fairly disclosed in the Due Diligence Material, there is:
- (a) no current Claim which has been notified in writing to, or in respect of which proceedings have been commenced against, a member of the Pushpay Group, or
 - (b) so far as Pushpay is aware, no pending or threatened Claim.

In this paragraph 13, “**Claim**” means any claim, dispute, demand, action, litigation, prosecution, arbitration, investigation, audit, mediation or other proceeding which Pushpay reasonably expects will or is likely to result in an award, settlement, fine, penalty, order, loss or other liability to the Pushpay Group of more than US\$2 million.

14. **No Material Adverse Change:** As at the date of this Agreement, so far as Pushpay is aware, there is no matter, event or circumstance which constitutes or is likely to constitute a Material Adverse Change.
15. **No other material information:** As at the date of this Agreement, Pushpay is not aware of any material circumstance which has not been disclosed in the Due Diligence Material and which might reasonably be expected to materially and adversely affect the financial position, business, assets, prospects or profitability of the Pushpay Group or the value of the Shares, or which might otherwise reasonably be expected to be material to a purchaser of the Shares.
16. **Outstanding financing:** At the date of this Agreement, the Pushpay Group does not have any outstanding financing that is not reflected in its financial statements and notes thereto for the year ended 31 March 2022, and since 31 March 2022 up to the date of this Agreement no member of Pushpay Group has engaged in any financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.
17. **Anti-corruption laws and sanctions:**
- (a) As far as Pushpay is aware on the date of this Agreement, neither the Pushpay Group, nor any of its officers, directors or employees, nor any agent or other third party representative acting on behalf of the Pushpay Group, has made, offered, promised, or authorised, directly or indirectly, any payment for unlawful contributions, unlawful gifts, unlawful entertainment or other unlawful expenses relating to political activity, or any bribe, unlawful payoff, influence payment, kickback or other similar unlawful payment to any person for the purpose of either gaining an improper business advantage or encouraging the recipient to violate the policies of his or her employer or to breach an obligation of good faith or loyalty, in each case in violation of any applicable Anti-Corruption Laws.
 - (b) On the date of this Agreement:
 - (i) neither the Pushpay Group nor, as far as Pushpay is aware, any of its officers, directors, employees, agents, or representatives acting on its behalf is a Sanctioned Person or has transacted business with a Sanctioned Person or in violation of Sanctions;

- (ii) the Pushpay Group, and to its knowledge, its directors, officers, employees, and agents are in compliance with applicable Sanctions in all material respects; and
 - (iii) Pushpay has implemented and maintains in effect and enforces policies and procedures reasonably designed to ensure compliance by the Pushpay Group and its directors, officers, employees and agents with Sanctions applicable to such persons.
- (c) The Pushpay Group is in compliance in all material respects with all applicable Anti-Money Laundering Laws.
 - (d) As at the date of this Agreement, no Pushpay Group member is required to be registered with the U.S. Department of the Treasury as a money services business, as such term is defined by U.S. federal law or regulation, nor is, at the date of this Agreement, any of the Pushpay Group required to be registered or licensed as a money services business, money transmitter, or equivalent enterprise under the applicable laws of any other jurisdiction.
 - (e) As far as Pushpay is aware on the date of this Agreement, none of the Pushpay Group's officers, directors, or agents is currently a Government Official.
 - (f) During the two years prior to the date of this Agreement, the Pushpay Group has not received from any Government Agency or any other person any notice, written inquiry, or internal or external allegation, or made any voluntary or involuntary disclosure to a Government Agency related to any actual or potential violation of applicable Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions. At the date of this Agreement, no proceeding by or before any Government Agency involving any member of the Pushpay Group with respect to Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions has been notified in writing to Pushpay, or to the knowledge of Pushpay, is threatened.
 - (g) For the purposes of the warranties in paragraph 17 of this Schedule:
 - (i) **“Anti-Corruption Laws”** means:
 - (A) the U.S. Foreign Corrupt Practices Act of 1977, as amended;
 - (B) the UK Bribery Act 2010;
 - (C) the Criminal Code Act 1995 (Cth);
 - (D) the Secret Commissions Act 1910 (NZ) and the Crimes Act 1961 (NZ); and
 - (E) any similar applicable law that has as its objective the prevention of corruption, including legislation enacted in furtherance of the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions 1997.
 - (ii) **“Anti-Money Laundering Laws”** means anti-money laundering laws and regulations applicable to the Pushpay Group from time to time, including the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (NZ) and the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Australia) and the Bank Secrecy Act of 1970.

- (iii) **“Government Official”** means, whether in New Zealand, the United States of America, Australia or elsewhere:
 - (A) an officer, agent or employee of a government, government-owned enterprise (or any agency, department or instrumentality thereof), political party or public international organisation;
 - (B) a candidate for government or political office; or
 - (C) an agent, officer, or employee of any entity owned by a government.
- (iv) **“Sanctioned Person”** means at any time:
 - (A) any person or entity listed on any Sanctions-related list of designated or blocked persons;
 - (B) any person resident in, or entity organised under the laws of, a country or territory that is the subject of comprehensive Sanctions (including Cuba, Iran, North Korea, Syria, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, and the Crimea region); or
 - (C) any person or entity majority-owned or controlled by or acting on behalf of any of the foregoing.
- (v) **“Sanctions”** means those economic and financial sanctions and trade embargoes imposed, administered or enforced from time to time by:
 - (A) the European Union and implemented by its member States;
 - (B) the United Nations Security Council;
 - (C) Her Majesty’s Treasury of the United Kingdom;
 - (D) the U.S. government, including those administered by the U.S. Treasury Department, Office of Foreign Assets Control and the U.S. Department of State;
 - (E) the Australian government;
 - (F) the New Zealand government; or
 - (G) other relevant sanctions authority.

18. **Privacy and Cybersecurity:**

- (a) In connection with the collection, storage, use and/or disclosure of any information of a particular individual that constitutes “personal information,” “personal data” or “personally identifiable information” as defined in applicable laws (collectively **“Personal Data”**) by or on behalf of the Pushpay Group, as far as Pushpay is aware on the date of this Agreement, the Pushpay Group is in compliance, in all material respects, with:
 - (i) all applicable laws (being limited to the federal and state laws of the United States and New Zealand for the purposes of this sub-clause (i)) relating to privacy, data security, telephone and text message communications, marketing by email or other channels, and

data loss, theft and breach of security notifications in all jurisdictions in which the Pushpay Group has a material presence;

- (ii) the Pushpay Group's privacy policies; and
- (iii) to the extent applicable to the Business, the requirements of all contracts, codes of conduct or industry standards by which Pushpay is bound, including the applicable aspects of the Payment Card Industry Data Security Standard (collectively, "**Data Protection Requirements**").

(b) The Pushpay Group has, prior to the date of this Agreement, fairly disclosed in the Due Diligence Material documentation of its security measures and written policies which are designed to seek to protect the confidentiality, integrity, security, and availability of all Personal Data owned, stored, used, maintained or controlled by or on behalf of the Pushpay Group ("**Data Security Policies**").

(c) As far as Pushpay is aware on the date of this Agreement:

- (i) the Pushpay Group complies with the Data Security Policies;
- (ii) the Pushpay Group has not experienced any unlawful, accidental or unauthorised destruction, loss, use, modification or disclosure of or access to Personal Data which is material to, or in the context of, the Business;
- (iii) the Pushpay Group has not received any subpoenas, demands, or other notices from any Government Agency relating to any actual or potential violation of any applicable Data Protection Requirement;
- (iv) no notice, complaint, claim, inquiry, audit, investigation, enforcement action, proceeding, or litigation of any kind has been served on, or initiated against, the Pushpay Group or any of its officers, directors, or employees (in their capacity as such) by any Government Agency or other person under any Data Protection Requirement; and
- (v) the execution, delivery and performance of this Agreement shall not breach any Data Protection Requirement.

19. **Intellectual Property:**

(a) At the date of this Agreement:

- (i) folder 11 of the Due Diligence Material contains a list of all registrations and applications for registration of Intellectual Property owned or purported to be owned by the Pushpay Group (the "**Registered IP**"), which is complete and accurate in all material respects on the date of this Agreement;
- (ii) all Registered IP is subsisting, unexpired and, as far as Pushpay is aware, valid and enforceable;
- (iii) the Pushpay Group exclusively owns all Registered IP; and

- (iv) all Registered IP and all other material Intellectual Property owned or purported to be owned by the Pushpay Group (collectively, the “**Pushpay IP**”) is free and clear of all Encumbrances other than Permitted Encumbrances.
- (b) As at the date of this Agreement, as far as Pushpay is aware, the conduct of the Business does not infringe, misappropriate or otherwise violate (“**Infringe**”) the Intellectual Property of any person in any material respect.
- (c) The Pushpay Group owns, or has the lawful right to use, all Intellectual Property necessary for Pushpay to conduct the Business in the ordinary course in the manner in which the Business was conducted on the date of this Agreement.
- (d) As at the date of this Agreement:
 - (i) no member of the Pushpay Group has received any written notice of any current claim asserting Infringement of the Intellectual Property of any person, or challenging the ownership, enforceability, validity, scope or use of the Pushpay IP and, as far as Pushpay is aware, as at the date of this Agreement, no claim is pending or threatened; and
 - (ii) so far as Pushpay is aware, no person is Infringing any Pushpay IP in any material respect.
- (e) Pushpay has, prior to the date of this Agreement, fairly disclosed in the Due Diligence Material the Pushpay Group policies for the use of open source software or other open source assets (“**Open Source Policies**”).
- (f) As far as Pushpay is aware at the date of this Agreement:
 - (i) the Pushpay Group complies with the Open Source Policies in all material respects; and
 - (ii) the Pushpay Group does not use open source software or other open source assets in a manner that would materially impair the value of, or otherwise be materially adverse to, the Pushpay IP.
- (g) Pushpay has, prior to the date of this Agreement, fairly disclosed in the Due Diligence Material documentation of the measures it has designed to seek to ensure the confidentiality and security of:
 - (i) the Pushpay IP;
 - (ii) the IT Assets used in connection with the Business; and
 - (iii) all information and data stored, transmitted or otherwise processed thereon or thereby, (the “**Pushpay IT Assets**”) from unauthorised or improper disclosure, access or use.
- (h) As far as Pushpay is aware on the date of this Agreement, the Pushpay IT Assets are adequate for the operations of the Business in the ordinary course.

20. **Independent Adviser:** All information provided by or on behalf of Pushpay to the Independent Adviser, as at the date that information was provided:

- (a) was when provided, provided in good faith (including by having regard to material risks, opportunities and adverse circumstances);
- (b) was, other than Forward Looking Information, true and accurate in all material respects and not misleading in any material respect (including by omission); and
- (c) on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet [or the Scheme Booklet Supplement \(as applicable\)](#), and, when provided, will be true and correct in all material respects and will not be misleading or deceptive in a material respect, including by omission.

PART 2

PUSHPAY UNDERTAKINGS

1. **Pushpay Information:** Pushpay will ensure that the Pushpay Information:
 - (a) is prepared in good faith and on the understanding that each of the Bidder Indemnified Persons will rely on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet [or the Scheme Booklet Supplement \(as applicable\)](#);
 - (b) complies with the Companies Act, the FMCA and all other applicable laws on the date the Scheme Booklet [or the Scheme Booklet Supplement \(as applicable\)](#) is sent to Shareholders; and
 - (c) in the form and context in which it appears in the Scheme Booklet [or the Scheme Booklet Supplement \(as applicable\)](#) is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet [or the Scheme Booklet Supplement \(as applicable\)](#) is sent to Shareholders.

2. **Scheme Booklet:** Pushpay will provide to Shareholders and the Bidder all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Pushpay Information, in the form and context in which it appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive in a material respect, including by omission. This clause is not intended to limit any continuous disclosure obligations.

- 2A **Scheme Booklet Supplement:** [Pushpay will provide to Shareholders and the Bidder all new material information of which it becomes aware after the Scheme Booklet Supplement has been sent to Shareholders and before the date of the New Scheme Meeting which is necessary to ensure that the Pushpay Information, in the form and context in which it appears in the version of the Scheme Booklet Supplement sent to Shareholders, is not misleading or deceptive in a material respect, including by omission. This clause is not intended to limit any continuous disclosure obligations.](#)

3. **Money services business:**
 - (a) If Pushpay becomes aware that, as a result of change of law or change in interpretation of law, a member of the Pushpay Group is required to be:
 - (i) registered with the U.S. Department of the Treasury as a money services business, as such term is defined by U.S. federal law or regulation; or

- (ii) registered or licensed as a money services business, money transmitter, or equivalent enterprise under the applicable laws of any other jurisdiction,

(“**Registration Obligations**”), Pushpay must:

- (iii) promptly notify the Bidder of that fact;
- (iv) consult in good faith with the Bidder with a view to agreeing what steps to take in response to the applicable Registration Obligation; and
- (v) implement any steps agreed under clause 3(a)(iv), including in accordance with any agreed timelines.

(b) Pushpay must not, and must ensure that the Pushpay Group does not:

- (i) commence business in a new jurisdiction which would result in a member of the Pushpay Group becoming subject to a Registration Obligation that is material to the Pushpay Group as a whole; or
- (ii) make any changes to its products or the manner in which it conducts the Business if that change would, or is reasonably likely to, result in a member of the Pushpay Group becoming subject to a Registration Obligation that is material to the Pushpay Group as a whole.

(c) The Pushpay Group will take reasonable steps to comply with the Open Source Policies in all material respects.

(d) The Pushpay Group will take reasonable steps to use open source software or other open source assets in a manner that does not materially impair the value of, or is otherwise materially adverse to, the Pushpay IP.

Schedule Three

Bidder Warranties and Undertakings

PART 1

BIDDER WARRANTIES

1. **Existence:** The Bidder is a company duly incorporated under the laws of New Zealand.
2. **Capacity:** The Bidder has the power to execute and deliver and to perform its obligations under this Agreement and the Deed Poll, and has taken all necessary corporate action to authorise such execution and delivery and the performance of such obligations.
3. **Binding effect:** The obligations of the Bidder under this Agreement are, and the obligations of the Bidder under the Deed Poll will, on execution of the Deed Poll be, legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. **No conflicts:** The execution and delivery by the Bidder of this Agreement and the execution and, in due course, delivery by the Bidder of the Deed Poll do not and will not conflict with or constitute a default under any provision of:
 - (a) the constitution of the Bidder; or
 - (b) any law, order, judgment, award, injunction, decree, rule or regulation by which the Bidder is bound.
5. **Certain occurrences:** No Insolvency Event has occurred in relation to the Bidder or a member of the Bidder Group nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict the Bidder's obligations under this Agreement.
6. **Compliance:** Except as contemplated by the Conditions, no approval from any Government Agency is required to be obtained by the Bidder in order to execute and perform this Agreement.
7. **Financing:**
 - (a) **Unconditional funding:** As of the date of this Agreement [and as at the Restatement Date](#), the Bidder has a reasonable basis to expect that it will have available to it by 8:00am on the Implementation Date sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both), to satisfy its obligations to pay the Consideration in accordance with clause 2.4, the Scheme Plan and the Deed Poll.
 - (b) **Equity commitments:**
 - (i) The Equity Commitment Letters have been duly executed by the parties to those letters and constitute legally binding obligations of those parties that are enforceable in accordance with their respective terms.
 - (ii) Under the Equity Commitment Letters the equity investors have agreed, subject to the terms and conditions of the Equity Commitment Letters, to invest in the Bidder the amounts set out in those letters.

- (c) **Debt commitments:**
- (i) The Debt Commitment Letter and the Debt Fee Letter have been duly executed by the parties to those letters and constitute legally binding obligations of those parties that are enforceable in accordance with their respective terms.
 - (ii) Under the Debt Commitment Letter, the Debt Financing Sources have agreed, subject to the terms and conditions of the Debt Commitment Letter, to provide debt financing in the amounts set out in that letter.
- (d) As of the date of this Agreement, the Bidder has delivered to Pushpay a true and complete copy of the executed Debt Commitment Letter, Debt Fee Letter and Equity Commitment Letters, and in the case of the Debt Fee Letter, subject to redaction solely of the fee amounts, pricing caps, original issue discount and other economic provisions that are customarily redacted in connection with transactions of this type, none of which redacted provisions would be reasonably expected to adversely affect the conditionality, enforceability, termination, aggregate principal amount or availability of the Debt Financing.

(dd) As of the Restatement Date, the Bidder has delivered to Pushpay a true and complete copy of the executed amended and restated Equity Commitment Letters.

- (e) Except as expressly set out in the Commitment Letters, there are no other conditions precedent to the obligations of the Debt Financing Sources and the equity investors under the Equity Commitment Letters, as applicable, to provide the Financing that would permit the Debt Financing Sources or the equity investors under the Equity Commitment Letters, as applicable, to reduce the aggregate principal amount of the Financing.
- (f) As of the date of this Agreement, the Bidder does not have a reasonable basis to believe that it will be unable to satisfy on a timely basis all conditions to be satisfied by it in any of the Commitment Letters on or prior to the Implementation Date, nor does the Bidder have actual knowledge at the date of this Agreement that any Debt Financing Source or any equity investor under the Equity Commitment Letters will not perform its obligations, respectively, under the Commitment Letters.
- (g) There are no side letters, understandings or other agreements, contracts or arrangements of any kind relating to the Commitment Letters that could affect the conditionality, enforceability, availability or termination of the Financing or the aggregate principal amount of the Financing Amounts.
- (h) Assuming the Conditions in clause 3.1 are met, the Financing, if funded in accordance with the Commitment Letters, shall provide the Bidder with cash proceeds on the Implementation Date sufficient for the satisfaction on the Implementation Date of all of the Bidder's obligations under this Agreement and the Deed Poll or otherwise in connection with implementation of the Scheme, including:
 - (i) the payment of the Consideration payable on the Implementation Date;
 - (ii) any fees and expenses of or payable by the Bidder or the Bidder's Related Companies;and

(iii) if applicable, for any repayment or refinancing of any outstanding indebtedness of the Pushpay Group contemplated by, or required in connection with the transactions described in, the Commitment Letters,

(such amounts, collectively, the “**Financing Amounts**”).

- (i) To the actual knowledge of the Bidder at the date of this Agreement, no event has occurred which (with or without notice, lapse of time or both) would constitute a breach or failure to satisfy a condition by the Bidder under the terms and conditions of the Commitment Letters.
- (j) As of the date of this Agreement, the Commitment Letters have not been modified, amended or altered and none of the respective commitments thereunder have been terminated, reduced, withdrawn or rescinded in any respect and, to the actual knowledge of the Bidder at the date of this Agreement, no such termination, reduction, withdrawal or rescission thereof is contemplated (except as contemplated or as permitted as of the date hereof in the Commitment Letters).
8. **Shares:** Except for the Sixth Street Shares and the BGH Shares, none of the Bidder Group members has a Relevant Interest in any Shares (other than as may be created by this Agreement [or arising from any voting agreement entered into in connection with the Scheme](#)).

9. **Collateral arrangements:** None of BGH, Sixth Street, any Bidder Group member or any Associate of any of the foregoing has provided or agreed to provide any consideration or other benefit to any Scheme Shareholder, other than the Consideration.

PART 2

BIDDER UNDERTAKINGS

1. **Bidder Information:** The Bidder will ensure that the Bidder Information:
- (a) is prepared in good faith and on the understanding that each of Pushpay Indemnified Persons will rely on that information to prepare the Scheme Booklet [or the Scheme Booklet Supplement \(as applicable\)](#) and to propose and implement the Scheme in accordance with the Companies Act;
 - (b) complies with the Companies Act and the FMCA and all other applicable laws; and
 - (c) in the form and context in which it appears in the Scheme Booklet [or the Scheme Booklet Supplement \(as applicable\)](#) is true and correct in all material respects and is not misleading or deceptive, including by omission as at the date the Scheme Booklet [or the Scheme Booklet Supplement \(as applicable\)](#) is sent to Shareholders.
2. **Updates to Scheme Booklet:** The Bidder will provide to Pushpay all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Bidder Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to the Shareholders, is not misleading or deceptive in any material respect, including by omission.

2A **Updates to Scheme Booklet:** The Bidder will provide to Pushpay all new material information of which it becomes aware after the Scheme Booklet Supplement has been sent to Shareholders and

before the date of the New Scheme Meeting which is necessary to ensure that any Bidder Information, in the form and context in which that information appears in the version of the Scheme Booklet Supplement sent to the Shareholders, is not misleading or deceptive in any material respect, including by omission.

3. **Independent Adviser:** All information provided by or on behalf of the Bidder to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet or the Scheme Booklet Supplement (as applicable), will be true and correct in all material respects and will not be misleading or deceptive, including by omission.

Schedule Four

Timetable

	Event	Indicative Timetable
1.	Execution of this Agreement by Pushpay and the Bidder	28 October 2022
2.	Announcement that this Agreement has been entered into	28 October 2022
3.	Bidder to submit its application under the Overseas Investment Act 2005	Within 5 Business Days of item 1
4.	Pushpay to submit its Vendor Information Form under the Overseas Investment Act 2005	Within 1 Business Day (in Auckland, New Zealand only) of item 3
5.	Bidder and Pushpay to submit required notifications under the HSR Act	Within 10 Business Days of item 1
6.	Draft Scheme Booklet (including Independent Adviser's Report (subject to clause 4.1(c)(ii))) provided to Bidder	Within 15 Business Days (in Auckland, New Zealand only) of item 2
7.	Comments on Scheme Booklet provided by Bidder to Pushpay for review	Within 5 Business Days of item 6
8.	Final draft Scheme Booklet (including Independent Adviser's Report (subject to clause 4.1(c)(ii))) provided to Bidder for review	Within 3 Business Days (in Auckland, New Zealand only) of item 7
9.	Final draft Scheme Booklet (including Independent Adviser's Report) provided to the Takeovers Panel for review	Within 2 Business Days (in Auckland, New Zealand only) of item 8
10.	Final draft of Scheme Booklet provided to Bidder	On the same date as item 9
11.	Scheme Booklet (including Independent Adviser's Report) approved by Takeovers Panel and Panel issues Letter of Intention	Within 15 Business Days (in Auckland, New Zealand only) of item 9
12.	Application for Initial Orders filed	Within 1 Business Day (in Auckland, New Zealand only) of item 11
13.	First Court Date	As soon as possible after item 12, subject to court availability
14.	Sealed Initial Orders and a Minute of the Court from the First Court Date sent to Takeovers Panel (together with any updated material)	On the same date as item 13
15.	Scheme Booklet (including Independent Adviser's Report) sent to Shareholders	Within 4 Business Days (in Auckland, New Zealand only) of receiving the Initial Orders
16.	Time and date for determining eligibility to vote at Scheme Meeting	48 hours before the scheduled meeting time for the Scheme Meeting

	Event	Indicative Timetable
17.	Scheme Meeting	Within 15 Business Days of item 15 (in Auckland, New Zealand only)
<u>18.</u>	<u>Scheme Booklet Supplement (including IAR Supplement) approved by Takeovers Panel and Panel issues Letter of Intention</u>	<u>By 29 March 2023</u>
<u>19.</u>	<u>Application for New Orders filed</u>	<u>By 30 March 2023</u>
<u>20.</u>	<u>New Court Date</u>	<u>As soon as possible after item 19 (subject to court availability)</u>
<u>21.</u>	<u>Sealed New Orders and a Minute of the Court from the New Court Date sent to Takeovers Panel (together with any updated material)</u>	<u>On the same date at item 20</u>
<u>22.</u>	<u>Scheme Booklet Supplement (including IAR Supplement) sent to Shareholders</u>	<u>Within 4 Business Days (in Auckland, New Zealand only) of receiving the New Orders</u>
<u>23.</u>	<u>Time and date for determining eligibility to vote at New Scheme Meeting</u>	<u>48 hours before the scheduled meeting time for the New Scheme Meeting</u>
<u>24.</u>	<u>New Scheme Meeting</u>	<u>10 Business Days after item 22 (in Auckland, New Zealand only)</u>
18 <u>25.</u>	Documents filed in respect of Second Court Date	Within 5 Business Days (in Auckland, New Zealand only) after the <u>New</u> Scheme Meeting
19 <u>26.</u>	Second Court Date	Within 5-3 Business Days (in Auckland, New Zealand only) of item 18-25 (subject to court availability)
20 <u>27.</u>	Final Orders Date	On the Second Court Date
21 <u>28.</u>	Suspend trading on NZX and ASX	2 Business Days after the later of: the Final Orders Date; or <ul style="list-style-type: none"> the date on which the last of the OIO Condition and the HSR Condition are satisfied.
22 <u>29.</u>	Record Date	4 Business Days after the later of: the Final Orders Date; or <ul style="list-style-type: none"> the date on which the last of the OIO Condition and the HSR Condition are satisfied.
23 <u>30.</u>	Implementation Date	3-10 Business Days (at the Bidder's election) after the Record Date

Schedule Five

Scheme Plan

SCHEME PLAN

SCHEME OF ARRANGEMENT PURSUANT TO PART 15 OF THE COMPANIES ACT 1993

Parties

PUSHPAY HOLDINGS LIMITED (“Pushpay”)

PEGASUS BIDCO LIMITED (“Bidder”)

Each person who is registered in the Register as the holder of one or more Scheme Shares (together, the “Scheme Shareholders”)

**OCEANIA EQUITY INVESTMENTS PTY LTD AS TRUSTEE FOR OCEANIA
TRUST (“Oceania”)**

**BGH CAPITAL PTY LTD ABN 59 617 386 982 IN ITS CAPACITY AS INVESTMENT
MANAGER OR ADVISER TO BGH CAPITAL FUND I (“BGH”)**

PEGASUS HOLDINGS NZ LIMITED (“Topco”)

PEGASUS MIDCO I LIMITED (“Midco I”)

PEGASUS MIDCO II LIMITED (“Midco II”)

SCHRASSIG FUNDAMENTAL S.À R.L. (“Schrassig”)

CONSDORF ADJACENT HOLDCO S.À R.L. (“Consdorf”)

BERDORF S.À R.L. (“Berdorf”)

BERTRANGE S.À R.L. (“Bertrange”)

Agreed Terms

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Scheme Plan:

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Auckland, New Zealand, Melbourne, Australia and Los Angeles, California, United States of America and excluding any day between 24 December 2022 and 3 January 2023 (both dates inclusive).

“**Companies Act**” means the Companies Act 1993.

“**Conditions**” means the conditions precedent set out in the first column of the table of clause 3.1 of the Scheme Implementation Agreement.

“**Consideration**” means ~~-\$1.34 in cash in respect of each-~~;

(a) \$1.34 in respect of each Specified Share held by a Specified Shareholder; or

(b) in respect of each other Scheme Share held by a Scheme Shareholder ~~or such other amount notified to Pushpay by the Bidder in accordance with clause 7.1, \$1.42 per Scheme Share.~~

“**Court**” means the High Court of New Zealand, Auckland Registry.

“**Deed Poll**” means the deed poll entered into by the Bidder in favour of the Scheme Shareholders dated ~~F~~15 November 2022.

“**Encumbrance**” means any security interest (within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind, and any agreement to create any of the foregoing.

“**End Date**” has the meaning given to that term in the Scheme Implementation Agreement.

“**Escrow Agreement**” means the escrow agreement dated [] between the Bidder, Pushpay and LINK.

“**Final Orders**” means orders of the Court on application of Pushpay, that the Scheme be binding on Pushpay, the Bidder, the Shareholders and such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act.

“**Final Orders Date**” means the day on which the Final Orders are granted by the Court.

“**Government Agency**” means any foreign or New Zealand government, any department, officer or minister of any government, and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, supervisor, tribunal or entity, and any court or any minister of the Crown in right of New Zealand or a foreign government.

~~“**HSR Condition**” has the meaning given to that term in the Scheme Implementation Agreement.~~

~~“**Initial Orders**” means, on application by Pushpay, orders by the Court for the purposes of section 236(2) of the Companies Act.~~

“**Implementation Date**” means the date on which the Scheme is to be implemented, being:

- (a) at the election of the Bidder, any date during the period beginning on the date that is three Business Days after the Record Date and ending on (and including) the date that is 10 Business Days after the Record Date, provided that such election is made by the Bidder before 11.59 pm on the ~~day which is the later of:~~
- ~~(i) the Final Orders Date; and~~
 - ~~(ii) the date on which the last of the OIO Condition and the HSR Condition is satisfied; or~~

(b) such other date agreed between Pushpay and the Bidder.

“**LINK**” means Link Market Services Limited.

“**New Orders**” means, on application by Pushpay, orders by the Court for the purposes of section 236(2) of the Companies Act in connection with the New Scheme Meeting.

“**New Scheme Meeting**” means the meeting of Shareholders which (as applicable) is to be, or has been, ordered by the Court to be convened pursuant to the New Orders in respect of the Scheme and includes any adjournment of that meeting.

“**New Resolution**” means the resolution to be put to Shareholders at the New Scheme Meeting to approve the Scheme.

“**NZX**” means NZX Limited and, where the context requires, the main board financial market that it operates.

~~“**OIO Condition**” has the meaning given to that term in the Scheme Implementation Agreement.~~

“**Record Date**” means 7.00pm on the date which is four Business Days after the later of: (a) — the Final Orders Date; and (b) — the date on which the last of the OIO Condition and the HSR Condition are satisfied, or such other date agreed between Pushpay and the Bidder in writing.

“**Register**” means the register of Shares maintained by LINK on behalf of Pushpay.

“**Registered Address**” means, in relation to a Shareholder, the address shown in the Register as at the Record Date.

“**Registrar**” has the meaning given to that term in the Companies Act.

“**Restatement Date**” means 16 March 2023.

“**Scheme**” means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by the Bidder and Pushpay in writing.

“**Scheme Implementation Agreement**” means the scheme implementation agreement between the Bidder and Pushpay dated 28 October 2022 as amended or amended and restated from time to time.

~~“**Scheme Meeting**” means the meeting of Shareholders which (as applicable) is to be, or has been, ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting.~~

“**Scheme Shareholder**” means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date.

“**Scheme Shares**” means all of the Shares on issue at 7.00pm on the Record Date other than the Excluded Shares.

“**Share**” means a fully paid ordinary share in the capital of Pushpay.

“**Shareholder**” means a person who is registered in the Register as the holder of one or more Shares from time to time.

“Specified Shareholder” means, in respect an Underlying Controller, the nominee who holds legal title to Underlying Controller Shares or Specified Shares (as applicable) of that Underlying Controller.

“Specified Shares” means, in respect of the Specified Shareholder for an Underlying Controller, the number of Underlying Controller Shares which are Scheme Shares held by that Specified Shareholder for that Underlying Controller on the Record Date, as set out in the Specified Shares Notice.

“Specified Shares Notice” means, subject to clause 2A.2, the notice which is to be, or has been, provided by Pushpay to the Registrar in accordance with clause 5.1(j)(ii) of the Scheme Implementation Agreement after 7:00pm and prior to 10:00pm on the Record Date which:

- (a) sets out, as at the Record Date, the name of each Underlying Controller, the name of the Specified Shareholder who holds Specified Shares for the Underlying Controller, and the number of Specified Shares held by the Specified Shareholder for that Underlying Controller;
- (b) is signed by each Specified Shareholder; and
- (c) confirms that each Specified Shareholder agrees to accept NZ\$1.34 per Specified Share on behalf of the relevant Underlying Controller.

For clarity, the Specified Shares Notice may comprise two or more documents.

“Takeovers Code” means the takeovers code set out in the schedule to the Takeovers Regulations 2000 (SR 2000/210), as amended by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993.

“Trading Halt Date” means the date which is two Business Days after the ~~later of: (a) — the Final Orders Date; and (b) — the date on which the last of the OIO Condition and the HSR Condition are satisfied,~~ or such other date as Pushpay and the Bidder agree in writing.

“Trust Account” has the meaning given to that term in clause 3.1.

“Unconditional” means the satisfaction or, if capable of waiver, waiver of each of the conditions in clause 2.

“Underlying Controller” means a person:

- (a) who is the underlying controller of Pushpay Shares;
- (b) who has entered into an agreement (“Underlying Controller Voting Agreement”) with the Bidder under which that person has, in respect of the number of Pushpay Shares specified in paragraph (a) of the definition of “Specified Shares” in that agreement which are controlled by that person (such specified number of Pushpay Shares being, the “Underlying Controller Shares”):
 - (i) agreed to direct or procure that the Specified Shareholder votes all of the Underlying Controller Shares in favour of the New Resolution; and
 - (ii) acknowledged that the Underlying Controller will receive NZ\$1.34 per Underlying Controller Share as the Consideration under the Scheme; and

(c) whose Underlying Controller Voting Agreement, at the relevant time, has not been terminated by the Bidder giving notice in writing to the Underlying Controller in accordance with the terms of the Underlying Controller Voting Agreement.

"Underlying Controller Restatement Date Notice" means the notice provided by the Bidder to Pushpay on the Restatement Date which sets out, as at the Restatement Date, the name of each Underlying Controller, and the number of Underlying Controller Shares held, directly or indirectly through sub-custodians, by the Specified Shareholder for that Underlying Controller.

"Underlying Controller Shares" has the meaning given to that term in the definition of Underlying Controller.

"Underlying Controller Voting Agreement" has the meaning given to that term in the definition of Underlying Controller.

"Underlying Controller Voting Confirmation Notice" means the notice which is to be, or has been, provided by Pushpay to the Registrar in accordance with clause 5.1(j)(i) of the Scheme Implementation Agreement on the record date for determining voting entitlements for the New Scheme Meeting which:

- (a) is signed by each Specified Shareholder;
- (b) specifies, as at the record date for determining voting entitlements for the New Scheme Meeting, the number of Underlying Controller Shares that the Specified Shareholder holds, directly or indirectly through sub-custodians, for the relevant Underlying Controller; and
- (c) confirms that each Specified Shareholder will vote or has voted all of the Underlying Controller Shares in favour of the New Resolution on behalf of the relevant Underlying Controller.

For clarity, the Underlying Controller Voting Confirmation Notice may comprise two or more documents.

1.2 **Interpretation:** In this Scheme Plan, unless the context otherwise requires, or specifically stated otherwise:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
 - (i) that legislation as amended, extended or applied by or under any other legislation made before or after execution of this Scheme Plan;
 - (ii) any legislation which that legislation re-enacts with or without modification; and
 - (iii) any subordinate legislation made before or after execution of this Scheme Plan under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.2(a)(i), or under any legislation which it re-enacts as described in clause 1.2(a)(ii);
- (b) a reference to the NZX Listing Rules or the ASX Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;

- (c) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (d) references to an individual or a natural person include his, her or its estate and personal representatives;
- (e) a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure of or to this Scheme Plan (and the schedules and annexes form part of this Scheme Plan);
- (f) subject to clause 21.2 of the Scheme Implementation Agreement, references to a party to this Scheme Plan include the successors or assigns (immediate or otherwise) of that party;
- (g) a reference to any instrument or document includes any variation or replacement of it;
- (h) unless otherwise indicated, a reference to any time is, a reference to that time in New Zealand;
- (i) unless otherwise stated, a reference to \$, or dollars is to New Zealand currency;
- (j) singular words include the plural and vice versa;
- (k) a word of any gender includes the corresponding words of any other gender;
- (l) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (m) general words must not be given a restrictive meaning just because they are followed by particular examples intended to be embraced by the general words;
- (n) nothing is to be construed adversely to a party just because that party put forward this Scheme Plan or the relevant part of this Scheme Plan; and
- (o) the headings do not affect interpretation.

1.3 **Business Days:** Unless otherwise indicated, if the day on or by which any act, matter or thing is to be done is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

2. CONDITIONS

2.1 **Conditions:** The implementation of the Scheme is conditional in all respects on:

- (a) all of the Conditions having been satisfied or, if capable of waiver, waived in accordance with the terms of the Scheme Implementation Agreement by 8.00am on the Implementation Date;
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their respective terms before 8.00am on the Implementation Date; and
- (c) such other conditions made or required by the Court under section 236(1) and 237 of the Companies Act and agreed to in writing by Pushpay and the Bidder in accordance with clause 3.2 of the Scheme Implementation Agreement having been satisfied or waived (to the extent capable of waiver) before 8.00am on the Implementation Date.

2A DELIVERY OF SPECIFIED SHARES NOTICE

2A.1 Obligation to deliver Specified Shares Notice: Subject to:

- (a) the Scheme Implementation Agreement not having been terminated; and
- (b) the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(f), 3.1(g) and 3.1(h) of the Scheme Implementation Agreement); and
- (c) clause 2A.2.

Pushpay must deliver, or procure to be delivered, the Specified Shares Notice to the Bidder and Link, after 7:00pm and prior to 10:00pm on the Record Date, on the basis that, in preparing the Specified Shares Notice, Pushpay is relying on information provided to Pushpay by the Specified Shareholder, the Bidder and other relevant third parties.

2A.2 Alternative Specified Shares Notice: If Pushpay cannot provide the Specified Shares Notice under clause 2A.1 because it does not have knowledge of (including because it has not received from any relevant person) any matter that is required to be contained in the Specified Shares Notice, then the Bidder and Pushpay must use their respective reasonable endeavours, acting in good faith and in accordance with clause 5.2A of the Scheme Implementation Agreement, to:

- (a) determine whether any alternative matter could instead be provided in order to address the purpose for including that original matter; and
- (b) agree on alternative requirements for the Specified Share Notice.

3. PAYMENT OF CONSIDERATION INTO TRUST ACCOUNT

3.1 Obligation to pay Consideration into Trust Account: Subject to:

- (a) the Scheme Implementation Agreement not having been terminated; and
- (b) the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(f), 3.1(g) and 3.1(h) of the Scheme Implementation Agreement),

the Bidder must deposit, or procure the deposit of, in immediately available cleared funds an amount equal to the aggregate amount of the Consideration payable to the Scheme Shareholders in a New Zealand dollar denominated trust account operated by LINK and notified to the Bidder at least five Business Days prior to the Implementation Date (that account the “**Trust Account**”), by no later than 5.00pm on the Business Day before the Implementation Date.

3.2 Trust Account:

- (a) The Trust Account will be established and operated by LINK in accordance with the Escrow Agreement.
- (b) Prior to payment of the Consideration in accordance with clause 4.1(i) and clause 5, LINK will hold all amounts deposited by the Bidder into the Trust Account on trust for the Bidder under the Escrow Agreement.

3.3 **Interest:** Any interest earned on the amounts deposited by the Bidder into the Trust Account is payable to the Bidder, less any bank fees or other third party costs or withholdings or deductions required by law, in accordance with the Bidder's written instructions to LINK.

3.4 **Scheme not implemented: If:**

- (a) the Scheme is not implemented for any reason by 5.00pm on the Implementation Date; or
- (b) this Scheme becomes void under clause 7.5,

LINK must, on written request by Bidder in accordance with the Escrow Agreement, immediately repay all amounts in the Trust Account, less any bank fees or other third party costs or withholdings or deductions required by law, to the Bidder in accordance with the Bidder's written instructions to LINK.

4. IMPLEMENTATION OF THE SCHEME

4.1 **Implementation obligations:** Subject to:

- (a) the Scheme becoming Unconditional (to be confirmed to LINK by written notice from the Bidder and Pushpay in accordance with the Escrow Agreement); and
- (b) the Consideration having been deposited into the Trust Account in accordance with clause 3.1 and LINK confirming in writing to Pushpay and the Bidder that this has occurred,

commencing at 9.00am on the Implementation Date the following steps will occur sequentially:

Transfer of Shares held by BGH and Sixth Street entities

- (c) first, without any further act or formality, 35,890,537 Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred from Oceania to Topco, and Pushpay must enter, or procure that LINK enters, the name of Topco in the Register in respect of those Shares;
- (d) second, without any further act or formality:
 - (i) 46,956,131 Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred from Schrassig to Topco;
 - (ii) 58,350,422 Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred from Consdorf to Topco;
 - (iii) 42,398,766 Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred from Berdorf to Topco; and
 - (iv) 48,456,468 Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred from Bertrange to Topco,and Pushpay must enter, or procure that LINK enters, the name of Topco in the Register in respect of those Shares;
- (e) third, without any further act or formality, 232,052,324 Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred from Topco to

Midco I, and Pushpay must enter, or procure that LINK enters, the name of Midco I in the Register in respect of those Shares;

- (f) fourth, without any further act or formality, 232,052,324 Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred from Midco I to Midco II, and Pushpay must enter, or procure that LINK enters, the name of Midco II in the Register in respect of those Shares;
- (g) fifth, without any further act or formality, 232,052,324 Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred from Midco II to the Bidder, and Pushpay must enter, or procure that LINK enters, the name of the Bidder in the Register in respect of those Shares;

Transfer of Scheme Shares

- (h) sixth, without any further act or formality all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to the Bidder, and Pushpay must enter, or procure that LINK enters, the name of the Bidder in the Register in respect of all of the Scheme Shares; and
- (i) seventh, subject to compliance in full with clause 4.1(h), the Bidder is deemed to have irrevocably authorised and instructed LINK to pay from the Trust Account the Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder [\(and taking into account any Specified Shares held by that Scheme Shareholder, as specified in the Specified Shares Notice\)](#) as set out in the Register on the Record Date in accordance with clause 5.

4.2 **Agreed terms:** The respective parties to each of the Share transfers contemplated by clauses 4.1(c), 4.1(d)(i), 4.1(d)(ii), 4.1(d)(iii), 4.1(d)(iv), 4.1(e), 4.1(f) and 4.1(g) may agree the terms of the transfer between themselves.

4.3 Transfers:

- (a) [A reference in clause 4.1\(c\) and clauses 4.1\(d\)\(i\) to 4.1\(d\)\(iv\) to a transfer of Shares from the transferee named in each such clause \(“Transferee”\) to Topco means a transfer from the person who holds those Shares as registered holder, directly or indirectly, on behalf of that Transferee \(“Trustee”\).](#)
- (b) [The Bidder must, prior to 9.00am on the Implementation Date, notify LINK in writing of the full name of the Trustee which holds Shares for each Transferee.](#)

5. PAYMENT OF THE CONSIDERATION

5.1 **Method of payment:** The payment under clause 4.1(i) will be satisfied by:

- (a) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable LINK and Pushpay to make payments of New Zealand dollars by electronic funds transfer, LINK must pay the Consideration in New Zealand dollars to the Scheme Shareholder by electronic funds transfer of the relevant amount to the bank account nominated by that Scheme Shareholder;

- (b) where a Scheme Shareholder has not, prior to the Record Date, provided bank account details to enable LINK and Pushpay to make payments of New Zealand dollars by electronic funds transfer, the following provisions and clause 5.7 will apply:
- (i) where a Scheme Shareholder has, prior to the Record Date, provided bank account details to enable LINK and Pushpay to make payments of Australian dollars by electronic funds transfer, LINK must pay the Consideration (less any applicable costs, exchange rate spread and fees) to the Scheme Shareholder by electronic funds transfer of the relevant amount in Australian dollars to the bank account nominated by that Scheme Shareholder; and
 - (ii) where a Scheme Shareholder with a Registered Address outside of New Zealand and Australia has, prior to the Record Date, provided sufficient written instructions (to LINK's satisfaction) to enable LINK to make payment in a currency other than New Zealand dollars or Australian dollars (and LINK is able to make payment in that currency), LINK must pay the Consideration (less any applicable costs, exchange rate spread and fees) to the Scheme Shareholder by electronic funds transfer of the relevant amount in the applicable currency to the bank account nominated by that Scheme Shareholder; or
- (c) where a Scheme Shareholder has not provided the information and/or taken the steps contemplated by clauses 5.1(a) or 5.1(b) to enable payment to be made to such Scheme Shareholder in a manner contemplated by one of those clauses (or if an electronic payment to such Scheme Shareholder is rejected by the recipient bank) LINK must retain the Consideration owed to that Scheme Shareholder in the Trust Account to be claimed by the Scheme Shareholder in accordance with clause 5.5.

If a Shareholder has given more than one payment direction, then the later direction in time of receipt will be followed.

5.2 Joint holders: In the case of Scheme Shares held in joint names:

- (a) the Consideration is payable to the bank account nominated by the joint holders or, at the sole discretion of Pushpay, nominated by the holder whose name appears first in the Register as at the Record Date; and
- (b) any other document required to be sent under this Scheme Plan will be sent to either, at the sole discretion of Pushpay, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

5.3 Surplus in Trust Account: To the extent that, following satisfaction of the obligations under clause 4.1(i), there is a surplus in the Trust Account, LINK must pay that surplus, less:

- (a) any amount retained under clauses 5.1(c) or 5.6(b); and
 - (b) any bank fees or other third party costs or withholdings or deductions required by law,
- to the Bidder in accordance with the Bidder's written instructions to LINK.

- 5.4 **Holding on trust:** Pushpay must, in respect of any monies retained by LINK pursuant to clauses 5.1(c) or 5.6(b), instruct LINK to hold such monies in the Trust Account on trust for the relevant Scheme Shareholders for a period of 24 months and thereafter, subject to clause 5.5, to pay any remaining money in the Trust Account to Pushpay.
- 5.5 **Unclaimed monies:** During the period of 24 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder that has not received payment of the Consideration in accordance with clause 5.1(a) or 5.1(b), LINK must, if such Scheme Shareholder has taken the necessary steps required to effect payment to such Scheme Shareholder in a manner contemplated by clause 5.1(a) or 5.1(b), pay to that Scheme Shareholder the Consideration held on trust for that Scheme Shareholder in a manner contemplated by clause 5.1(a) or 5.1(b) (or in any other manner approved by LINK and agreed to by that Scheme Shareholder).
- 5.6 **Orders of a court or Government Agency:** Notwithstanding any other provision of this Scheme Plan, if written notice is given to Pushpay on or prior to the Record Date of an order or direction made by a court of competent jurisdiction or a Government Agency that:

- (a) requires Consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 4.1(i), Pushpay will be entitled to procure, and the Bidder will be deemed to have instructed LINK to ensure, that provision of that Consideration is made in accordance with that order or direction; or
- (b) prevents the Consideration from being provided to any particular Scheme Shareholder in accordance with clause 4.1(i), or the payment of such Consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Consideration, [taking into account any Specified Shares held by that Scheme Shareholder, as specified in the Specified Shares Notice](#)) will be retained in the Trust Account until such time as provision of the Consideration to the Scheme Shareholder in accordance with clause 4.1(i) or clause 5.5 (as applicable) is permitted by that order or direction or otherwise by law,

and such provision or retention (as the case may be) will constitute the full discharge of the Bidder's and Pushpay's obligations under clause 4.1(i) with respect to the amount so provided or retained.

- 5.7 **Exchange rate:** If a Scheme Shareholder elects to be paid in Australian dollars (as contemplated by clause 5.1(b)(i)) or in a currency other than New Zealand dollars or Australian dollars (as contemplated by clause 5.1(b)(ii)), the conversion of the Consideration from New Zealand dollars into the relevant currency will be undertaken in a manner and at an exchange rate determined by LINK (in LINK's discretion) and neither the Bidder or Pushpay will be responsible for, or have any liability of any nature, in connection with that conversion.

6. DEALING IN SHARES

6.1 Recognition of dealings:

- (a) Following the sealing of the Final ~~Court~~ Orders, Pushpay will advise NZX and ASX of the grant of the Final ~~Court~~ Orders and, once known, the Trading Halt Date and Record Date and use its

reasonable endeavours to procure that the NZX and ASX suspend trading in the Shares from the close of trading on the Trading Halt Date.

- (b) Pushpay must not accept for registration, nor recognise for any purpose (except a transfer pursuant to this Scheme Plan and any subsequent transfer by the Bidder or its successors in title), any Share transfer or Share transmission application or other similar request received after 7.00pm on the Record Date or received prior to such time but not in registrable or actionable forms.

6.2 **Register:**

- (a) Pushpay must register registrable transmission applications or registrable transfers of Shares received prior to the close of trading on the Trading Halt Date before 7.00pm on the Record Date provided that, for the avoidance of doubt, nothing in this clause 6.2(a) requires Pushpay to register a transfer that relates to a transfer of Shares on which Pushpay has a lien.
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them, after 7.00pm on the Trading Halt Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Pushpay and the Bidder are entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Consideration, but subject to the requirements of the NZX Listing Rules, Pushpay must maintain the Register in accordance with the provisions of this clause 6.2 until the Consideration has been paid to the Scheme Shareholders. The Register in this form, [and the Specified Shares Notice \(to the extent that it specifies the number, and holder, of Specified Shares\)](#), will solely determine entitlements to the Consideration.
- (d) From 7.00pm on the Record Date, each entry that is current on the Register (other than entries on the Register in respect of Excluded Shares), will cease to have effect except as evidence of entitlement to the Consideration in respect of the Scheme Shares relating to that entry.
- (e) As soon as possible on the first Business Day after the Record Date and in any event by 7.00pm on that day, Pushpay must make available to the Bidder in the form the Bidder reasonably requires, details of the names, Registered Addresses and holdings of Pushpay Shares for each Scheme Shareholder as shown in the Register on the Record Date.

7. **GENERAL PROVISIONS**

7.1 **Amendments to Consideration:** The Bidder may increase the Consideration by written notice at any time to Pushpay prior to the [New](#) Scheme Meeting, provided that the Scheme Implementation Agreement has not been terminated in accordance with its terms prior to the date on which the Bidder is required to deposit the aggregate Consideration in the Trust Account under clause 3.1.

7.2 **Title to and rights in Scheme Shares:**

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme Plan to the Bidder will, at the time of transfer of them to the Bidder, vest in the Bidder free from all Encumbrances and free from any restrictions on transfer of any kind.

- (b) Each Scheme Shareholder is taken to have warranted to the Bidder on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those Shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all Encumbrances and restrictions on transfer of any kind, and that the Scheme Shareholder has full power and capacity to transfer the Scheme Shareholder's Shares to the Bidder together with any rights and entitlements attaching to those Shares.

7.3 **Authority given to Pushpay:** Each Scheme Shareholder, without the need for any further act:

- (a) on the Final Orders Date irrevocably appoints Pushpay as the Scheme Shareholder's attorney and agent for the purpose of enforcing the Deed Poll against the Bidder (but without limiting each Scheme Shareholder's right to itself enforce the Deed Poll); and
- (b) on the Implementation Date, irrevocably appoints Pushpay as the Scheme Shareholder's attorney and agent for the purpose of executing any document or doing or taking any other act necessary, desirable or expedient to give effect to the Scheme and the transactions contemplated by it,

and Pushpay, for itself and on behalf of each of its directors, accepts each such appointment. Each such attorney and agent, may sub-delegate its functions, authorities or powers under this clause 7.3 to one or more of Pushpay's directors or senior executives.

7.4 **Binding effect of Scheme:**

- (a) The Scheme binds:
- (i) Pushpay;
 - (ii) the Bidder;
 - (iii) all of the Scheme Shareholders (including those who did not attend the [New](#) Scheme Meeting to vote on this Scheme, did not vote at the [New](#) Scheme Meeting, or voted against this Scheme at the [New](#) Scheme Meeting);
 - (iv) Oceania;
 - (v) BGH;
 - (vi) Topco;
 - (vii) Midco I;
 - (viii) Midco II;
 - (ix) Schrassig;
 - (x) Consdorf;
 - (xi) Berdorf; and
 - (xii) Bertrange.
- (b) In the event of any inconsistency, this Scheme Plan overrides the constitution of Pushpay.

- 7.5 **When this Scheme becomes void:** If the Scheme has not become Unconditional on or before the End Date, or if the Scheme Implementation Agreement is terminated in accordance with its terms at any time, this Scheme Plan is immediately void and of no further force or effect (other than clauses 3.3 and 3.4).
- 7.6 **No liability when acting in good faith:** Each Scheme Shareholder agrees that none of the directors, officers, employees or advisers of Pushpay or the Bidder will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.
- 7.7 **Governing law:** This Scheme Plan and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.
- 7.8 **Jurisdiction:** The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Scheme Plan (including a dispute relating to any non-contractual obligations arising out of or in connection with this Scheme Plan) and each party irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand.
- 7.9 **Successor obligations:** To the extent that any provision of the Scheme or this Scheme Plan imposes any obligation on the Bidder or Pushpay that continues or arises after the implementation of the Scheme, such obligation may instead be performed by any successor or related company of the Bidder or Pushpay (as applicable) in which case the obligation will be satisfied as if performed by the Bidder or Pushpay (as applicable).

Schedule Six

Deed Poll

DEED POLL

SCHEME OF ARRANGEMENT RELATING TO PUSHPAY HOLDINGS LIMITED

Dated

2022

BY:

PEGASUS BIDCO LIMITED (“Bidder”)

IN FAVOUR OF:

SCHEME SHAREHOLDERS (as defined below)

Introduction

- A. Pushpay Holdings Limited (“**Pushpay**”) and the Bidder are parties to the Scheme Implementation Agreement.
 - B. Pushpay has agreed in the Scheme Implementation Agreement to propose a scheme of arrangement between Pushpay, the Bidder and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to the Bidder and the Bidder will provide or procure the provision of the Consideration to the Scheme Shareholders.
 - C. The Bidder is entering into this Deed Poll for the purpose of undertaking in favour of the Scheme Shareholders to pay the Consideration to the Scheme Shareholders in accordance with the terms of the Scheme Plan.
-

This Deed Records

1. DEFINITIONS AND INTERPRETATION

1.1 **Defined terms:** In this Deed, unless the context requires otherwise:

“**Final Orders**” means orders of the Court on application of Pushpay, that the Scheme shall be binding on Pushpay, the Bidder, the Scheme Shareholders and/or such other class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act.

“**Scheme Implementation Agreement**” means the scheme implementation agreement between Pushpay and the Bidder dated 28 October 2022 whereby Pushpay has agreed to propose a scheme of arrangement under which all of the Scheme Shares held by Scheme Shareholders will be transferred to the Bidder and the Bidder will pay the Consideration to the Scheme Shareholders.

“**Scheme Plan**” means the scheme plan attached as Schedule Five to the Scheme Implementation Agreement, subject to any alterations or conditions approved by the Bidder and Pushpay in writing or

any amendments by the Bidder under clause 5.5 of the Scheme Implementation Agreement, and in each case which are disclosed to the Court prior to the Court making the Final Orders.

“**Scheme Shareholder**” means a person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date.

“**Unconditional**” means the satisfaction or, where capable of waiver, waiver of each of the conditions in clause 2 of the Scheme Plan.

1.2 **Other defined terms:** Words defined in the Scheme Plan which are not separately defined in this Deed Poll have the same meaning when used in this Deed Poll.

1.3 **Interpretation:** Clauses 1.2 and 1.3 of the Scheme Plan apply to the interpretation of this Deed Poll, except that references to “this Scheme Plan” are to be read as reference to “this Deed Poll”.

2. NATURE OF THIS DEED POLL

2.1 **Third party rights and appointment of attorney:** The Bidder acknowledges and agrees that:

- (b) this Deed Poll is intended to, and does, confer a benefit on, and therefore may be relied on and enforced by, any Scheme Shareholder in accordance with its terms under Part 2, Subpart 1 of the Contract and Commercial Law Act 2017 (but not otherwise), even though the Scheme Shareholders are not party to it; and
- (c) under the Scheme Plan each Scheme Shareholder appoints Pushpay as the Scheme Shareholder’s attorney and agent to enforce this Deed Poll against the Bidder with effect on and from the date prescribed for such appointment in the Scheme Plan (but without limiting each Scheme Shareholder’s right to itself enforce this Deed Poll).

Notwithstanding clauses 2.1(b) and 2.1(c) this Deed Poll may be varied by agreement between Pushpay and the Bidder in accordance with clause 9.2 without the approval of any Scheme Shareholder.

2.2 **Continuing obligations:** This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until either:

- (b) the Bidder has fully performed its obligations under it; or
- (c) it is terminated under clause 4.1.

3. CONDITIONS

3.1 The Bidder’s obligations under clause 5.2 are conditional on the Scheme becoming Unconditional.

4. TERMINATION

4.1 **Termination:** The obligations of the Bidder under this Deed Poll will automatically terminate, and the terms of this Deed Poll will be of no force or effect, if the Scheme Implementation Agreement is validly terminated in accordance with its terms before the Scheme becomes Unconditional unless the Bidder and Pushpay otherwise agree in writing.

4.2 **Consequences of termination:** If this Deed Poll is terminated under clause 4.1, then the Bidder is released from its obligations to further perform this Deed Poll.

5. SCHEME CONSIDERATION

5.1 **Deposit of Consideration:** Subject to:

- (b) the Scheme Implementation Agreement not being terminated; and
- (c) the Scheme having become Unconditional (except for the Conditions set out in clauses 3.1(f), 3.1(g) and 3.1(h) of the Scheme Implementation Agreement),

the Bidder undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 5.00pm on the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into the Trust Account to be held and dealt with by LINK in accordance with the Scheme Plan and the Escrow Agreement.

5.2 **Payment of Consideration:** The Bidder irrevocably acknowledges and agrees that, subject to:

- (b) the Scheme becoming Unconditional; and
- (c) compliance in full by Pushpay with its obligations under clause 4.1(c) of the Scheme Plan,

the Consideration deposited into the trust account referred to in clause 5.1 must be, and will be, paid in accordance with clauses 3.1, 4.1(i) and 5 of the Scheme Plan in satisfaction of the Scheme Shareholders' respective entitlements to receive the Consideration under the Scheme in accordance with the Scheme Plan.

6. WARRANTIES

6.1 The Bidder warrants in favour of each Scheme Shareholder that:

- (b) it is a company or other body corporate validly incorporated under the laws of New Zealand;
- (c) it has the corporate power to enter into, and perform its obligations under, this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken, or will prior to the Implementation Date take, all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (e) this Deed Poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (f) this Deed Poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

7. **MAXIMUM LIABILITY OF BIDDER**

Notwithstanding any other provision of this Deed Poll but without limiting clause 15.10 of the Scheme Implementation Agreement (which provides that Pushpay may bring proceedings for specific performance), the maximum aggregate liability of the Bidder to:

(b) all Scheme Shareholders under this Deed and the Scheme Implementation Agreement; and

(c) Pushpay under the Scheme Implementation Agreement,

or at law (including negligence), under any statute or regulation, in equity or otherwise, in respect of:

(d) any or all breaches of this Deed Poll and/or the Scheme Implementation Agreement by the Bidder where the relevant act or omission was made or not taken (as the case may be) for the deliberate intention or purpose of not completing the Transaction, will not exceed, in aggregate, NZ\$45.9 million (inclusive of GST, if any) (being the amount equal to three times the amount of the Reverse Break Fee); or

(e) any or all other breaches of this Deed Poll and/or the Scheme Implementation Agreement not captured by clause 7(d) above by the Bidder will not exceed, in aggregate, NZ\$15.3 million (inclusive of GST, if any) (being the amount of the Reverse Break Fee).

8. **NOTICES**

8.1 **Manner of giving notice:** Any notice or other communication to be given under this Deed Poll must be in writing and may be physically delivered or sent by email to the Bidder as follows:

Address: Level 26, 101 Collins Street
Melbourne VIC 3000
Australia

Attention: David Brooks

Email: james.cooney@bellgully.com

with a copy (which will not constitute notice) to:

Address: Bell Gully, Level 22, Vero Centre, 48 Shortland Street,
Auckland New Zealand

Attention: James Cooney / Amon Nunns

Email: james.cooney@bellgully.com / amon.nunns@bellgully.com

and

Address: Willkie Farr & Gallagher LLP, 787 Seventh Avenue New York, NY, USA

Attention: Matthew Guercio / Jonathan Kubek

Email: mguercio@willkie.com / jkubek@willkie.com

or at any such other address or email address notified for this purpose to the other parties under this clause. Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

8.2 **When notice given:** In the absence of earlier receipt, any notice or other communication is deemed to have been given:

- (b) if delivered, on the date of delivery; or
- (c) if sent by email, four business hours (being the hours between 9am and 5pm on a Business Day in the jurisdiction of the recipient) after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered (excluding an “out of office” automated message),

but if the notice or other communication would otherwise be taken to be received after 5.00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9.00am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

8.3 **Email notice required:** If at the time a notice is to be given under this Agreement New Zealand is on any alert level notified by the New Zealand Government in relation to COVID-19, or there is any other public emergency, which materially restricts movement within New Zealand, any notice given under this Agreement must be given by email (except to the extent that the notice is required by law to be given by another means, in which case it must also be provided by email).

8.4 **Proof of service:** In proving service of a notice or other communication, it is sufficient to prove that delivery was made or that the e-mail was properly addressed and transmitted by the sender’s server into the network and there was no apparent error in the operation of the sender’s e-mail system, as the case may be.

8.5 **Documents relating to legal proceedings:** This clause 8 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this Deed Poll.

9. GENERAL

9.1 Waiver:

- (b) The Bidder may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right in respect of the Scheme unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (c) For the purposes of clause 9.1(b):
 - (i) conduct includes a delay in exercising a right;
 - (ii) right means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and
 - (iii) waiver includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

9.2 Variation:

- (b) Subject to clauses 9.2(c) and 9.2(d), this Deed Poll may not be varied.

- (c) Before the date on which the Final Orders are made, this Deed Poll may be varied by agreement in writing between the Bidder and Pushpay, in which event the Bidder will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.
 - (d) If the Court orders that it is a condition of the Scheme that the Bidder enter into a new deed poll which has the effect of reversing any variation under clause 9.2(c), then, if the Bidder so agrees, the Bidder must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.
- 9.3 **Cumulative rights:** The rights, powers and remedies of the Bidder and the Scheme Shareholders under this Deed Poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this Deed Poll.
- 9.4 **Assignment:** The rights and obligations of the Bidder and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 9.4 is invalid.
- 9.5 **Governing law and jurisdiction:**
- (a) This Deed Poll and any non-contractual obligations arising out of or in connection with it is governed by the law applying in New Zealand.
 - (b) The courts having jurisdiction in New Zealand have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed Poll (including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed Poll) and the Bidder irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in New Zealand in respect of any proceedings arising out of or in connection with this Deed Poll, and irrevocably waives any objection to the venue of any legal process in those courts on the basis that the proceeding has been brought in an inconvenient forum.

Executed and delivered as a deed poll:

PEGASUS BIDCO LIMITED by:

Signature of director

Signature of director

Name of director

Name of director

Schedule Seven

Escrow Agreement

[Date]

TO: Pegasus Bidco Limited (**Bidder**)

AND TO: PUSHPAY HOLDINGS LIMITED (**Pushpay**)

Acquisition of shares in Pushpay by Bidder by way of court-approved scheme of arrangement under Part 15 of the Companies Act 1993 (Scheme)

The parties acknowledge that the Scheme will be implemented pursuant to the Scheme Plan attached as Schedule 1 to this letter or is in such other form as agreed in writing between Bidder and Pushpay and the Court approves under section 236(1) of the Companies Act (the **Scheme Plan**). Capitalised terms not otherwise defined in this letter have the meaning given to them in the Scheme Plan.

LINK agrees to arrange a “ring fenced” bank account (**Account**) with ANZ Bank New Zealand Limited (**Bank**) which will be used for the sole purpose of paying the Consideration to Scheme Shareholders on the Implementation Date.

The details of the Account that will be set up are as follows:

Full Name:	LINK MARKET SERVICES LIMITED O/A PUSHPAY HOLDINGS LIMITED
Account (System/Account):	01-0505-0235542-085
SWIFT:	ANZBNZ22

The terms on which LINK will manage the Account are as follows:

Status of the Account

1. LINK will manage the Account on behalf of Bidder and Pushpay in accordance with this letter and the Scheme Plan.
2. The Account will be the Trust Account referred to in the Scheme Plan. Bidder acknowledges that this letter constitutes notice of the Trust Account for the purposes of clause 3.1 of the Scheme Plan.

Pre-implementation

3. Bidder and Pushpay will provide LINK prior written notice of the Record Date and the Implementation Date.
4. LINK will prepare the Register as at 7.00pm NZT on the Record Date, recording the Scheme Shareholders and the number of Scheme Shares held by each Scheme Shareholder at that time. LINK will provide a copy of the Register to Bidder and Pushpay promptly after it has been prepared.

5. LINK will comply with clause 6.1(b) of the Scheme Plan and will not register any transfer of Shares after 7:00pm on the Record Date (except a transfer pursuant to the Scheme Plan and any subsequent transfer by Bidder or its successors in title).

Payment and holding of Consideration

6. Bidder will pay an amount equal to the aggregate amount of the Consideration payable to all Scheme Shareholders into the Account in accordance with clause 3.1 of the Scheme Plan. LINK will provide written confirmation to Bidder and Pushpay as soon as practicable after LINK has received those funds.
7. LINK will receive, and hold, all funds paid into the Account on trust for Bidder. LINK will only pay funds out of the Account in accordance with this letter or if otherwise:
- (a) jointly instructed in writing by Bidder and Pushpay; or
 - (b) instructed by the Court.
8. LINK will not grant an Encumbrance over any funds in the Account and, within five Business Days after establishing the Account, LINK will provide to Bidder and Pushpay a written confirmation from the Bank that:
- (a) the Account that is managed by LINK on behalf of Bidder and Pushpay will not be included in any set off arrangement between Bank and LINK; and
 - (b) all funds in the Account will be held independently from all other LINK funds and accounts.
9. Bidder will be solely entitled to receive all interest accrued on any amounts paid into the Account and LINK must pay such interest (less any bank fees or other third party costs or withholdings or deductions required by law) to an account nominated in writing by Bidder.

10. [Pushpay will provide the Specified Shares Notice to the Bidder and LINK in accordance with clause 2A.1 of the Scheme Plan.](#)

Implementation

11. ~~10.~~ If, after 8.00am on the Implementation Date, Bidder and Pushpay give written notice to LINK that the Scheme is Unconditional (as defined in the Scheme Plan) (**Unconditional Notice**), LINK will, starting at 9.00am on the Implementation Date (and after the completion of any earlier steps set out in clause 4.1 of the Scheme Plan), in the following order:
- (a) register the transfer of all of the Scheme Shares to the Bidder; and
 - (b) after complying with paragraph (a),
 - (i) subject to paragraph ~~11~~12, pay from the Account, in accordance with the Scheme Plan, to each Scheme Shareholder the Consideration multiplied by the Scheme Shareholder's Scheme Shares, [taking into account any Specified Shares held by that Scheme Shareholder \(as specified in the Specified Shares Notice\)](#); and
 - (ii) pending payment of the Consideration to a Scheme Shareholder (including in the circumstances contemplated by clause 5.1(c) of the Scheme Plan), hold an amount equal to the Consideration multiplied by the Scheme Shareholder's Scheme Shares ([taking into](#)

account any Specified Shares held by that Scheme Shareholder, as specified in the Specified Shares Notice on trust for that Scheme Shareholder.

12. ~~11.~~ If, prior to the Implementation Date, Pushpay gives written notice to LINK that Consideration payable to a Scheme Shareholder must:
- (a) be provided to a third party under clause 5.6(a) of the Scheme Plan; or
 - (b) not be provided to a Scheme Shareholder as contemplated by clause 5.6(b) of the Scheme Plan,
- then, as applicable, LINK will pay or hold the Consideration in accordance with clause 5.6 of the Scheme Plan.

Post-implementation

13. ~~12.~~ As required by clause 5.3 of the Scheme Plan, if, following the payment of the Consideration under paragraph ~~10(b)(i)~~ 11(b)(i), there is any surplus in the Trust Account (including as a result of any accrued interest), LINK must pay that surplus, less:
- (a) any amount retained in the Account under paragraphs ~~10(b)(ii)~~ 11(b)(ii) and/or ~~11(b)~~ 12(b); and
 - (b) any bank fees or other third party costs or withholdings or deductions required by law,
- to an account nominated in writing by Bidder.

14. ~~13.~~ LINK must hold any amount retained in the Account under paragraphs ~~10(b)(ii)~~ 11(b)(ii) and/or ~~11(b)~~ 12(b) on trust for each relevant Scheme Shareholder for a period of two years (“**Trust Period**”). During the Trust Period, LINK must comply with clause 5.5 of the Scheme Plan in respect of amounts of the Consideration that are held in the Account.

15. ~~14.~~ At the end of the Trust Period, LINK must pay any remaining money in the Account to Pushpay.

Condition failure

16. ~~15.~~ If the Scheme is not implemented for any reason by 5.00pm on the Implementation Date or the Scheme becomes void under clause 7.5 of the Scheme Plan, LINK must, on written request by Bidder, pay all of the funds in the Account (less any bank fees or other third party costs or withholdings or deductions required by law) to an account nominated in writing by Bidder.

Yours sincerely

[]

LINK Market Services Limited

This letter is acknowledged, accepted and agreed by:

Pegasus Bidco Limited by:

Authorised signatory

Name

Pushpay Holdings Limited by:

Authorised signatory

Name

SCHEDULE 1
SCHEME PLAN
(attached)