

M2 ANNOUNCES ACQUISITION OF DODO AND RECOMMENDED TAKEOVER OFFER FOR EFTEL LIMITED

- M2 to acquire 100% of Dodo Australia Holdings Pty Ltd (“Dodo”) for \$203.9 million, on a debt-free and cash-free basis
- M2 to make a recommended off-market takeover offer for Eftel Limited (“Eftel”) at an offer price of \$0.3581 per share with cash or scrip consideration alternatives, implying a total enterprise value for Eftel of \$44.1 million (inclusive of \$5.6 million net debt)
- Management expects the Acquisitions to contribute in excess of \$400 million revenue and \$50 million EBITDA in FY14, implying an indicative EBITDA valuation multiple for the Acquisitions of approximately 5.0x
- Based on median broker FY14 EPS estimates¹ for M2 and assuming the Acquisitions contribute in excess of \$50 million of EBITDA, the Acquisitions are expected to result in underlying FY14 EPS^{2,3} accretion of approximately 20%⁴
- M2 will fund the Acquisitions and refinance existing debt through a combination of new fully underwritten 3 year, \$400 million loan facilities and the issue of approximately 19.2 million ordinary shares of M2 to Dodo and Eftel shareholders
- Upon completion of the Acquisitions, M2 expects its pro forma leverage to be approximately 1.8x net debt / FY14 EBITDA⁵

Monday, 18 March 2013: M2 Telecommunications Group Ltd (“M2”, ASX: MTU) today announced that it has entered into a binding Share Sale Agreement to acquire 100% of Dodo Australia Holdings Pty Ltd and its related bodies corporate (“Dodo”). M2 also announced that it has signed a Bid Implementation Agreement (“BIA”) with Eftel Limited (“Eftel”, ASX: EFT) whereby M2 will make a recommended off-market takeover offer for all of the issued shares in Eftel (“Offer”) (together, “the Acquisitions”).

The Acquisitions are expected to provide numerous benefits to M2, including:

- a large, profitable and organically growing consumer telecom business which is highly complementary to M2’s existing sizable consumer division
- a proven management team experienced in the consumer segment, including expertise in delivering low cost new customer acquisition through highly targeted marketing and sales campaigns
- a nationally recognised low-cost brand (Dodo) which is well positioned to grow market share in the transition to an NBN world

¹ Median broker estimate for underlying FY14 EPS is \$0.41 per share as of 18 March 2013.

² Underlying EPS includes an add-back of a non-cash cost for amortisation associated with customer contracts acquired in the relevant period (in accordance with Australian Accounting Standards).

³ Australian Accounting Standards allow for 12 months from completion to finalise accounting and purchase price allocation. Fair value adjustments will be subject to purchase price allocation after completion. No amortisation charge has been included for any customer contracts deemed under Australian Accounting Standards, to have been acquired through the acquisition of Dodo and Eftel.

⁴ Based on M2’s current expectations for the earnings contribution from Dodo and Eftel in FY14 that were developed as part of M2’s due diligence, and there being no material change to the run rate performance or growth of those businesses during the period.

⁵ Based on the median of broker estimates for FY14 EBITDA and M2 Management expectations for Dodo and Eftel FY14 EBITDA.

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- established, refined low-cost back-of-house operations and associated systems / technologies
- established capability, systems, licenses and customer base in electricity and gas, offering considerable cross-sell and new customer organic growth opportunities
- delivery of considerable scale to M2's business, with combined FY14 revenues in excess of \$1 billion, providing numerous opportunities for both short and long term cost synergies and operational efficiencies

M2 CEO, Geoff Horth, said, "We are excited to bring Dodo into the M2 Group and are confident that our offer to Eftel shareholders will be well received. The acquisitions are an excellent complement to our consumer division and combined, our business possesses an excellent capability to grow our share of both the consumer and small to medium business markets. Throughout the due diligence process we were very pleased to find the businesses to be highly efficient with robust internal systems and processes; a testament to the skill and dedication of the Dodo and Eftel teams. We look forward to welcoming the Dodo and Eftel teams to the M2 Group."

The Dodo Acquisition

M2 has entered into a binding Share Sale Agreement to acquire 100% of Dodo for a combination of cash and scrip consideration, valuing Dodo at \$203.9 million, on a debt-free and cash-free basis. The transaction is expected to complete in early May 2013. The acquisition of Dodo is not conditional on completion of the Eftel Offer.

Dodo is a privately owned telecommunications company founded in 2001 by Directors Larry Kestelman and Michael Slepoy. The company is focussed principally on the residential market in Australia and offers a range of competitively priced products and services including broadband, home phone, mobile wireless broadband and mobile services, in addition to other essential services including electricity, gas and insurance.

Dodo's power and gas business was launched in 2011, offering electricity principally to residential customers in Victoria. Since then, the business has expanded its electricity offering into New South Wales and Queensland and more recently has started offering gas to customers in Victoria. Dodo has obtained licenses to retail both electricity and gas in Victoria, New South Wales, Queensland, South Australia and the ACT. Dodo offers its insurance product as an authorised representative of A&G Insurance Services ("AGIS") and arranges the issue of policies on behalf of AGIS.

The Eftel Offer

M2 has entered into a Bid Implementation Agreement with Eftel whereby M2 will make a recommended off-market takeover offer for all of the issued shares in Eftel. Under the terms of the Offer, Eftel shareholders may elect to receive either of the following forms of consideration:

- one share in M2 for every 12.34 Eftel Shares ("**All Shares**" Election)⁶; or
- \$0.3581 cash for each Eftel Share ("**All Cash**" Election).

⁶ This is based on M2's volume weighted average share price ("VWAP") on the ASX over the 30 calendar days prior to 15 March 2013 (being the last trading day prior to announcement of the Offer). For those Eftel Shareholders making an "All Shares" Election, the actual value of the Offer Consideration will vary depending on the price of M2 Shares during the Offer Period.

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This represents a premium of:

- 30.2% based on Eftel's closing share price on 13 March 2013 ("**Premium Reference Date**")⁷;
- 18.0% based on Eftel's 10 day VWAP to the Premium Reference Date; and
- 17.2% based on Eftel's 30 day VWAP to the Premium Reference Date.

The Offer implies an enterprise value for Eftel of approximately \$44.1 million.

The Offer is subject to limited conditions, being a 90% minimum acceptance condition, no Material Adverse Change in relation to Eftel, no prescribed occurrence events in relation to Eftel and no regulatory intervention. The Offer is not conditional on completion of the acquisition of Dodo.

The Eftel Directors unanimously recommend that Eftel shareholders accept the Offer, in the absence of a superior proposal.

Commenting on the Offer, Mr Kestelman, a Director of Eftel stated:

"M2's offer represents an attractive value proposition for Eftel shareholders. The transaction is a unique opportunity to increase Eftel's presence nationally, enhance its product and service offering to its customers, and create a combined entity that will have a strong and sustainable future. Accordingly, I intend to accept the Offer and make an "All Shares" Election for all of the Eftel Shares that I own or otherwise control, in the absence of a superior proposal."

Each other Eftel Director has also notified M2 that they intend to accept the Offer and make an "All Shares" Election in respect of all Eftel Shares they or their associated entities own or otherwise control, in the absence of a superior proposal.

Collectively, the Eftel and Dodo Directors and their associated entities control approximately 88% of all Eftel Shares on issue.

The Bid Implementation Agreement includes customary termination provisions, exclusivity restrictions by Eftel in favour of M2 including a right to be notified of and to match any competing proposal, as well as provision for the payment of a \$1 million reimbursement fee by Eftel to M2 or by M2 to Eftel if the Offer does not complete in specific circumstances. An executed copy of the Bid Implementation Agreement accompanies this announcement (Appendix 1).

M2 has entered into a pre-bid option deed with an entity controlled by Larry Kestelman, under which that entity has granted a call option to M2 over 19.9% of the issued Eftel shares that this entity owns or otherwise controls. The full terms of the pre-bid option deed will be separately disclosed by M2 to the ASX.

⁷ M2 considers that the closing price of Eftel Shares on 13 March 2013 provides the most accurate reference to the undisturbed share price of Eftel prior to the announcement of the Offer on 18 March 2013. The closing price of Eftel Shares on 14 March 2013 (being the last trading date prior to Eftel seeking a trading halt in its shares) exhibited abnormal price and volume patterns.

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The indicative timetable in relation to the Offer is set out below:

Key Event	Date
Lodgment of M2's Bidder's Statement with ASIC, ASX and Eftel	Late March 2013
Dispatch of Bidder's Statement	Early April 2013
M2's Offer opens	Early April 2013
M2's Offer closes (unless extended)	Early May 2013

Financial Impact, Acquisition Funding and FY13 Earnings Guidance

Based on median broker FY14 EPS estimates⁸ for M2 and assuming the Acquisitions contribute in excess of \$50 million of EBITDA, the Acquisitions are expected to result in underlying FY14 EPS^{9,10} accretion of approximately 20%¹¹.

M2 will fund the Acquisitions and refinance existing debt through a combination of new fully underwritten 3 year, \$400 million loan facilities and the issue of approximately 19.2 million ordinary shares of M2 to Dodo and Eftel shareholders (assuming that all Eftel Shareholders make an "All Shares" Election).

Upon completion of the Acquisitions, M2 expects its pro forma leverage to be approximately 1.8x net debt / FY14 EBITDA¹². Following the Acquisitions, the M2 Board of Directors aims to maintain its current dividend payout ratio of 70% of net profit after tax. Consistent with existing M2 Board policy, use of cash surplus will be considered for accelerated debt reduction.

On a standalone basis and absent any impact of the Acquisitions during the financial year ending 30 June 2013 ("FY13"), M2 is on track to report underlying earnings at or above the mid point of previously released earnings guidance. Taking into account the Acquisitions, the nominal contribution to earnings in FY13 derived from the Acquisitions is expected to be more than offset by stamp duty and other transaction costs incurred by M2 before the end of the financial year. As a result, pro forma for the Acquisitions, M2 expects to report FY13 underlying earnings towards the lower end of its previous guidance range.

M2 shares issued to shareholders of Dodo / majority shareholders of Eftel

On completion of the acquisition of Dodo, Mr Kestelman and Mr Slepoy may together receive up to approximately 10.5 million M2 shares. On completion of the Eftel takeover offer, Mr Kestelman and Mr Slepoy's associated entities will, if they make an "All Shares" Election, together receive a further (approximate) 6.9 million M2 shares. In aggregate, Mr Kestelman and Mr Slepoy will on completion of the Acquisitions own up to approximately 17.4 million shares in M2, representing approximately 9.8% of M2's pro forma shares on issue.

⁸ Median broker estimate for underlying FY14 EPS is \$0.41 per share as of 18 March 2013.

⁹ Underlying EPS includes an add-back of a non-cash cost for amortisation associated with customer contracts acquired in the relevant period (in accordance with Australian Accounting Standards).

¹⁰ Australian Accounting Standards allow for 12 months from completion to finalise accounting and purchase price allocation. Fair value adjustments will be subject to purchase price allocation after completion. No amortisation charge has been included for any customer contracts deemed under Australian Accounting Standards, to have been acquired through the acquisition of Dodo and Eftel.

¹¹ Based on M2's current expectations for the earnings contribution from Dodo and Eftel in FY14 that were developed as part of M2's due diligence, and there being no material change to the run rate performance or growth of those businesses during the period.

¹² Based on the median of broker estimates for FY14 EBITDA and M2 Management expectations for Dodo and Eftel FY14 EBITDA.

Mr Kestelman has agreed with M2 to certain restrictions as to how he may deal with the M2 shares that he will receive as consideration under the Eftel Offer or on any exercise by M2 of the call option referred to earlier in this announcement. Those restrictions include a lock up period of 12 months. A summary of the Restriction Deed also accompanies this announcement (Appendix 2).

Advisers

Goldman Sachs and / or its affiliates (“Goldman Sachs”) is acting as exclusive financial adviser to M2 in relation to the Acquisitions and sole mandated lead arranger, underwriter and bookrunner to the \$400 million acquisition facilities. Ernst and Young provided independent financial due diligence to M2 in relation to the Acquisitions. KPMG provided independent advice to M2 in respect of the Dodo power and gas business. Minter Ellison is acting as legal adviser to M2 in relation to the Acquisitions.

Investor conference call – 10.30am

Geoff Horth will provide an overview of the transaction, followed by a short Q&A session.

Dial-in details:

Conference ID: 2382 7557 this will need to be quoted when joining the call.

Australian Toll free access number: 1800 123 296

All other international locations dial: + 61 2 8314 8370 (standard call charges will apply)

-- ENDS --

About M2 Telecommunications Group Ltd

Established in 1999, M2 Telecommunications Group Ltd (“M2”, ASX: MTU) is one of Australia’s largest and most profitable telecommunication service providers, supplying a broad range of telecommunications products and services to both the retail and wholesale markets. Headquartered in Melbourne, M2 employs approximately 950 people across Australia and New Zealand.

M2’s retail division targets the small to medium business (“SMB”) market under the Commander brand and the residential market under the iPrimus brand. M2 offers a full suite of traditional and next generation telecommunications services including fixed line voice services, 3G mobile, mobile broadband, ADSL2 broadband, hosted / managed data services and IP / hosted voice solutions.

M2’s Wholesale division provides wholesale fixed line, mobile and data telecommunications services to small and medium-sized telecommunications service providers and Internet Service Providers.

M2 has consistently delivered growth in profit year-on-year since listing on the ASX in 2004 and in June 2012 was added to the S&P / ASX200.

For more about M2 visit www.m2.com.au/Investor-Centre.

Related Company sites (part of the M2 Group):

- www.commander.com
- www.iprimus.com.au
- www.bw.co.nz
- www.m2wholesale.com.au

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Bid Implementation Agreement

M2 Telecommunications Group Ltd ABN 74 091 575 021
(Bidder)

Eftel Limited ABN 47 073 238 178 (Target)

MinterEllison

LAWYERS

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Bid Implementation Agreement

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Details

Date 16 March 2013

Parties

Name **M2 Telecommunications Group Ltd**
Short form name **Bidder**
Notice details Level 10, Primus Building, 452 Flinders Street, Melbourne, Victoria, 3000
Facsimile: 02 9815 5596
Attention: Kellie Dean

Name **Eftel Limited**
Short form name **Target**
Notice details Level 11, 600 St Kilda Road, Melbourne, Victoria, 3004
Facsimile: 03 9090 2535
Attention: The Company Secretary

Background

- A Bidder proposes to acquire Target by means of the Takeover Bid.
- B This agreement is entered into to record and give effect to the terms and conditions on which Bidder proposes to make the Takeover Bid and Target intends to support the Takeover Bid.

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Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

ASIC means the Australian Securities and Investments Commission;

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of the Corporations Act included a reference to this agreement and Target were the designated body.

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

ASX Listing Rules means the official listing rules of the ASX.

Authority means:

- (a) any government or governmental, semi-governmental or local authority within the Commonwealth of Australia or any of its states and territories and any department, office, minister, commission, board, delegate or agency of any such government or authority;
- (b) any judicial or administrative entity or authority within the Commonwealth of Australia or any of its states and territories; or
- (c) any other authority, commission, board, agency or other entity established or having power under statute within the Commonwealth of Australia or any of its states and territories or the ASX Listing Rules including, ASIC and ASX.

Bid Conditions means the terms and conditions of the Takeover Bid set out in Schedule 1.

Bidder Board means the board of directors of Bidder.

Bidder Indemnified Parties means Bidder, its related entities and Representatives.

Bidder Group means Bidder and its related entities (other than members of the Target Group).

Bidder Material Adverse Change means any event, matter or circumstance which individually, or when aggregated with all such other events, matters or circumstances results in or could reasonably be expected to result in:

- (a) the value of the consolidated net assets of the Bidder Group reported in Bidder's financial statements for the half year ended 31 December 2012 being reduced by at least \$20 million;
- (b) the incurrence of any obligations, liabilities, costs or expenses (contingent or otherwise), other than capital expenditure previously disclosed publicly or to the Bidder in writing, where the quantum (whether individually or when aggregated with all such other events) is at least \$11 million;
- (c) the termination or loss of or a reduction in the Target's interest in any material contract, licence or intellectual property right where that termination, reduction or loss is or could reasonably be expected to have a negative impact on Target's earnings of at least \$11 million per annum on an ongoing basis;

other than an event, matter or circumstance:

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- (i) required to be done as a result of this agreement or the Dodo Acquisition;
- (ii) the occurrence of which was fairly disclosed by Bidder in its public announcements to ASX prior to the date of this agreement.

Bidder Material Subsidiary means each subsidiary of the Bidder the loss of which would cause a Bidder Material Adverse Change.

Bidder Prescribed Occurrence means any of the following:

- (a) Bidder converts all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Bidder Group (other than a direct or indirect wholly owned subsidiary of Bidder) enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement;
- (c) any member of the Bidder Group issues equity securities or agrees to make such an issue or grants an option or performance right over any equity securities (including convertible securities) other than to Bidder or to a direct or indirect wholly owned subsidiary of Bidder or pursuant to performance rights, the conversion of convertible securities or the exercise of options the existence of which has been disclosed to ASX before the date of this agreement;
- (d) the Bidder amends or proposes to amend its constitution;
- (e) an order or application is made or a resolution is passed for the winding up of Bidder or any Bidder Material Subsidiary;
- (f) an administrator, liquidator, provisional liquidator, receiver or receiver and manager is appointed in respect of Bidder or any Bidder Material Subsidiary or the whole or any part of the assets or undertaking of Bidder or any Bidder Material Subsidiary, or Bidder or any Bidder Material Subsidiary executes a deed of company arrangement;
- (g) Bidder or any Bidder Material Subsidiary ceases to carry on business or is deregistered;
- (h) any member of the Bidder Group enters into any unusual or abnormal contract or commitment which is outside the ordinary course of business and which could reasonably be expected to:
- (i) change the nature of the business conducted by the Bidder Group; or
- (ii) have a material adverse impact on the business conducted by the Bidder Group;
- (i) any member of the Bidder Group enters into or otherwise becomes a party to, any material transaction with a related party (as that term is defined in Chapter 2E of the Corporations Act) of Bidder (other than between Bidder and a direct or indirect wholly owned subsidiary of Bidder);
- (j) any member of the Bidder Group agrees or announces an intention to take any of the actions referred to in the foregoing paragraphs,

provided that a Bidder Prescribed Occurrence will not include any matter:

- (i) required to be done or procured by Bidder under this agreement, the Dodo Acquisition or which is otherwise contemplated by those agreements;
- (ii) that has been fairly disclosed by Bidder in its public filings with ASX prior to the date of this agreement; or
- (iii) approved in writing by Target, such approval not to be unreasonably withheld or delayed.

Bidder Share means a fully paid ordinary share in the capital of Bidder.

Bidder Shareholder means a holder of Bidder Shares.

Bidder's Statement means the bidder's statement to be issued by Bidder to Target Shareholders in relation to the Offer.

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

Competing Proposal means any expression of interest, offer or proposal by a Third Party in respect of a transaction under which, if the transaction were completed, a person (whether alone or together with one or more Associates) would:

- (a) acquire a legal, equitable or economic interest or Relevant Interest in 10% or more of all Target Shares (whether by way of acquisition of existing Target Shares or issue of new Target Shares);
- (b) acquire the whole or a substantial part of the business or assets of Target or the Target Group;
- (c) acquire control of Target, within the meaning of section 50AA of the Corporations Act;
- (d) otherwise acquire or merge with Target (including by reverse takeover bid or takeover bid, or by establishing a dual listed company structure or stapled security structure);

Confidentiality Agreement means the confidentiality agreement dated in 2012 between Bidder and Target.

Consideration means the consideration to be provided by the Bidder under the Offer, comprising either:

- (a) \$0.3581 cash per Target Share; or
- (b) Consideration Shares,

at the election of each Target Shareholder.

Consideration Shares means that number of Bidder Shares equal to \$0.3581 divided by \$4.4181, per Target Share.

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

Court means the Federal Court of Australia, the Supreme Court of Victoria or any other court of competent jurisdiction under the Corporations Act as Bidder and Target agree in writing.

Dodo Acquisition means the proposed acquisition of Dodo Australia Holdings Pty Ltd by Bidder or a related entity of Bidder.

Encumbrance means any mortgage, fixed or floating charge, pledge, lien, 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.

Equity Raising means any proposed capital raising by Bidder through the issue of Bidder Shares which is announced by Bidder before the end of the Offer Period, including an issue of Bidder Shares to sophisticated and institutional investors or a rights issue, but excluding any issue of Bidder Shares issued under an employee share option plan or employee incentive scheme..

Exclusivity Period means the period starting on the date of this agreement and ending on the first to occur of:

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- (a) termination of this agreement; and
- (b) the Long Stop Date;

GST has the meaning given in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvent means for the purpose of clause 8.1(e) and clause 8.2(e) any one or more of the following events:

- (a) an administrator, liquidator, provisional liquidator, receiver, receiver and manager or equivalent officer has been appointed in respect of a person or the whole or any part of its assets or undertaking;
- (b) an arrangement, compromise or similar arrangement with creditors has been proposed, agreed or sanctioned in respect of a person;
- (c) an order has been or is reasonably likely to be made, or a resolution has been passed, for the winding up or dissolution of a person;
- (d) a person has stopped paying its debts as they fall due or is unable to pay its debts as they fall due; or
- (e) a person has otherwise become, or is otherwise taken to be, insolvent in any jurisdiction.

Integration Committee has the meaning given in clause 7.1.

Long Stop Date means the earlier of:

- (a) the date on which the Offer Period in respect of the Takeover Bid ends; and
- (b) 30 June 2013 or such later date as Bidder and Target agree in writing.

Offer means the offer by Bidder to acquire each Target Share (including all rights attaching to them) under the Takeover Bid for the Consideration.

Offer Period means the period the Offer is open for acceptance, being one month unless it is extended in compliance with this agreement.

Register means the register of Target Shares maintained by Link Market Services Limited on behalf of Target.

Reference Rate means in relation to interest payable on any payment due under this agreement, the average bid rate displayed on the Reuters Screen BBSY for a 3 month term at or about 10.30 am on the first date on which interest accrues on that payment.

Reimbursement Amount means \$1,000,000 (plus GST, if applicable).

Relevant Interest has the meaning given in the Corporations Act.

Representative means:

- (a) in relation to Target, a member of the Target Group, any director, officer or employee of any member of the Target Group, and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to any member of the Target Group in relation to the Transaction; and
- (b) in relation to Bidder, a member of the Bidder Group, any director, officer or employee of any member of the Bidder Group, any financier, financial adviser, accounting adviser, auditor, legal adviser, or technical or other expert adviser or consultant to any member of the Bidder Group in relation to the Transaction.

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Superior Proposal means a written bona fide Competing Proposal which the Target Board acting in good faith, determines is:

- (a) reasonably capable of being completed, taking into account all aspects of the Competing Proposal; and
- (b) more favourable to Target Shareholders than the Takeover Bid, taking into account all terms and conditions of the Competing Proposal.

Takeover Bid means the off-market takeover bid to be made by Bidder for all Target Shares under Chapter 6 of the Corporations Act subject to the Bid Conditions and otherwise in accordance with the terms of this agreement.

Target Board means the board of directors of Target.

Target Constitution means the constitution of Target.

Target Director means a director of Target.

Target Disclosure Materials means the information and documents disclosed in writing by Target or its Representatives about the Target Group and its businesses to the Bidder or its Representatives or otherwise disclosed by Target to ASX prior to the date of this agreement.

Target Indemnified Parties means Target, its related entities and Representatives.

Target Group means Target and its related entities.

Target Material Adverse Change means any event, matter or circumstance which individually, or when aggregated with all such other events, matters or circumstances results in or could reasonably be expected to result in:

- (a) the value of the consolidated net assets of the Target Group reported in Target's financial statements for the half year ended 31 December 2012 being reduced by at least \$3 million;
- (b) the incurrence of any obligations, liabilities, costs or expenses (contingent or otherwise), other than capital expenditure previously disclosed publicly or to the Bidder in writing, where the quantum (whether individually or when aggregated with all such other events) of at least \$1 million;
- (c) the termination or loss of or a reduction in the Target's interest in any material contract, licence or intellectual property right where that termination, reduction or loss is or could reasonably be expected to have a negative impact on Target's earnings of at least \$1 million per annum on an ongoing basis,

other than an event, matter or circumstance:

- (i) required to be done as a result of this agreement;
- (ii) the occurrence of which was fairly disclosed in the Target Disclosure Materials or fairly disclosed by Target in its public announcements to ASX prior to the date of this agreement; or
- (iii) caused or materially contributed to by Bidder.

Target Prescribed Occurrence means any of the following:

- (a) Target converts all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Target Group (other than a direct or indirect wholly owned subsidiary of Target) resolves to reduce its share capital in any way or reclassifies, redeems or repurchases directly or indirectly any of its shares;

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- (c) any member of the Target Group (other than a direct or indirect wholly owned subsidiary of Target) enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement under the Corporations Act;
 - (d) any member of the Target Group issues securities or agrees to make such an issue or grants an option or performance right over any securities (including equity securities, debt securities or convertible securities) other than to Target or to a direct or indirect wholly owned subsidiary of Target or pursuant to performance rights, the conversion of convertible securities or the exercise of options the existence of which has been disclosed to ASX before the date of this agreement;
 - (e) any member of the Target Group creates or agrees to create any Encumbrance over the whole or any part of its assets or undertaking other than an Encumbrance arising in the ordinary course of business;
 - (f) an administrator, liquidator, provisional liquidator, receiver or receiver and manager is appointed in respect of any member of the Target Group or the whole or any part of the assets or undertaking of any member of the Target Group, or any member of the Target Group executes a deed of company arrangement;
 - (g) any member of the Target Group ceases to carry on business or is deregistered under the Corporations Act;
 - (h) any member of the Target Group enters into a contract or commitment restraining any member of the Target Group from competing with any person or conducting activities in any market;
 - (i) any member of the Target Group enters into or otherwise becomes a party to, any material transaction with a related party (as that term is defined in Chapter 2E of the Corporations Act) of Target (other than between Target and a direct or indirect wholly owned subsidiary of Target);
 - (j) during the period from the date of this agreement to the end of the Offer Period, any member of the Target Group (other than a direct or indirect wholly owned subsidiary of Target) declares, pays, or determines to be payable any distribution, bonus or other share of its profits or assets (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
 - (k) any member of the Target Group disposes of, or offers or agrees to dispose of, any material business, asset, joint venture interest, entity or undertaking (or any interest in a business, asset, joint venture, entity or undertaking) or makes an announcement in relation to such a disposal, offer or agreement;
 - (l) any member of the Target Group:
 - (i) enters into any financing arrangement or commitment or agrees to extend, repay or materially amend any existing financing arrangement or commitment; or
 - (ii) guarantees, indemnifies or provides security for the obligations of any person or entity other than a member of the Target Group;
 - (m) any member of the Target Group agrees or announces an intention to take any of the actions referred to in the above paragraphs,

provided that a Target Prescribed Occurrence will not include any matter:

- (i) required to be done or procured by Target under this agreement or which is otherwise contemplated by this agreement;

- (ii) approved in writing by Bidder, such approval not to be unreasonably withheld or delayed.

Target Share means a fully paid ordinary share in the capital of Target.

Target Shareholder means a person who is registered in the Register as the holder of one or more Target Shares.

Target's Statement means the target's statement to be issued by Target to Target Shareholders in relation to the Takeover Bid in accordance with section 638 of the Corporations Act.

Third Party means a person other than the Bidder or its related entities.

Timetable means the indicative timetable set out in Schedule 3.

Transaction means the acquisition of Target by Bidder under the Takeover Bid.

1.2 Related entities

For the purposes of this agreement, one entity is related to another if the first entity:

- (a) controls the second entity;
- (b) is under the control of the second entity; or
- (c) is under the control of a third entity that also controls the second entity,

in each case for the purposes of section 50AA of the Corporations Act but as if section 50AA(4) did not apply.

1.3 References to certain other words and terms

In this agreement:

- (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 signature of this agreement;
 - (ii) any legislation which that legislation re-enacts with or without modification; and
 - (iii) any subordinate legislation made before or after signature of this agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in subclause 1.3(a)(i), or under any legislation which it re-enacts as described in subclause 1.3(a)(ii);
- (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;
- (c) references to an individual or a natural person include their estate and personal representatives;
- (d) the schedules and annexes form part of this agreement and a reference to a clause, subclause, schedule or annex is a reference to a clause, subclause, schedule or annex of or to this agreement;
- (e) subject to clause 16.2, references to a party to this agreement include the successors or assigns (immediate or otherwise) of that party;
- (f) a reference to any time is, unless otherwise indicated, a reference to that time in Victoria, Australia; and
- (g) a reference to \$ or to **dollars** is to Australian currency.

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1.4 Rules of interpretation and construction

In this agreement:

- (a) singular words include the plural and vice versa;
- (b) a word of any gender includes the corresponding words of any other gender;
- (c) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (d) general words must not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (e) nothing is to be construed adversely to a party just because that party put forward this agreement or the relevant part of this agreement;
- (f) headings do not affect interpretation;
- (g) a reference to a document includes the document as novated, altered, supplemented or replaced; and
- (h) a reference to 'fairly disclosed' means disclosed to Bidder or Target, as the case may be, in sufficient detail so as to enable a reasonable and sophisticated buyer or seller, as the case may be, or one of its Representatives, to identify the nature and scope of the relevant matter, event or circumstance.

1.5 Things required to be done other than on a Business Day

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

2. Agreement to Propose Takeover Bid

2.1 Agreement to bid

- (a) Bidder agrees to make the Offer to Target Shareholders subject to the Bid Conditions and otherwise in accordance with the terms of this agreement.
- (b) The Offer will apply to all Target Shares which are on issue prior to the close of the Offer Period.
- (c) Bidder may vary the terms and conditions of the Offer in any manner permitted by the Corporations Act, but only if the varied terms and conditions are no less favourable to Target Shareholders than the terms of the Offer.
- (d) Bidder will:
 - (i) announce the Takeover Bid no later than the time provided in the Timetable or such other time as agreed by the parties; and
 - (ii) use its best endeavours to lodge its Bidder's Statement with ASIC and provide a copy of the lodged Bidder's Statement to Target in accordance with the Timetable or such other time as agreed by the parties.

2.2 Bidder may use subsidiary

- (a) Subject to clause 2.2(b), Bidder may satisfy its obligations under clause 2.1 by causing a subsidiary to perform the obligations referred to in clause 2.1, in which case references to:

- (i) the Takeover Bid are references to the Takeover Bid by that subsidiary; and
- (ii) Bidder making the Takeover Bid are references to Bidder causing that subsidiary to make the Offer under the Takeover Bid.
- (b) If clause 2.2(a) applies, Bidder:
- (i) must procure that its relevant subsidiary performs Bidder's obligations under this agreement; and
- (ii) remains liable to Target for the due performance of those obligations by that subsidiary.

3. Bid Conditions

3.1 Bid conditions

- (a) To the extent that it is within its power to do so, each party must use reasonable endeavours to procure that nothing occurs that will, or is likely to, cause any Bid Condition to be breached or will or is likely to prevent a Bid Condition from being satisfied.
- (b) If a fact, matter or circumstance occurs or arises of which either party is or becomes aware and which will or is likely to cause any Bid Condition to be breached, or will or is likely to prevent any Bid Condition from being satisfied or unreasonably delayed, that party must promptly notify the other party of that fact, matter or circumstance. Each party must, on request from the other party, advise of its progress to satisfy any Bid Condition.

3.2 Declaring free or unconditional

Subject to the Corporations Act, Bidder may at any time (but is not obliged to) declare the Takeover Bid to be free from any Bid Condition, or declare the Takeover Bid unconditional, on such terms (if any) as it may determine.

4. Takeover Bid

4.1 Compliance with Timetable

- (a) Each party agrees to use reasonable endeavours to do all acts and things within its power as may be reasonably necessary for the implementation and performance of the Takeover Bid in accordance with the Timetable.
- (b) Unless otherwise agreed by the parties, Bidder will not be entitled to extend the Offer Period if the Minimum Acceptance Condition is achieved or waived.

4.2 Bidder's Statement

- (a) Bidder must within a reasonable time (and in any event no later than 4 Business Days) prior to lodgement of the Bidder's Statement with ASIC, provide an advanced and reasonably complete draft of the Bidder's Statement to Target and its Representatives for review and consider in good faith the comments of Target and its Representatives when finalising the Bidder's Statement.
- (b) Bidder and Target acknowledge that Bidder will make disclosures in the Bidder's Statement to comply the Corporations Act, Takeovers Panel decisions and guidance notes and ASIC regulatory guides and this may include disclosures relating to the Dodo Acquisition.

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4.3 Target Assistance

- (a) Target must provide on a timely basis any assistance and information that is reasonably requested by Bidder to enable Bidder to prepare and finalise the Bidder's Statement or that is reasonably necessary in connection with Bidder's financing of the Takeover Bid.
- (b) Target agrees with Bidder that, for the purpose of item 6 of section 633(1) of the Corporations Act, Bidder may dispatch the Bidder's Statement to Target Shareholders at any time that Bidder elects after Bidder sends Target a copy of the Bidder's Statement in accordance with item 3 of section 633(1) of the Corporations Act.

4.4 Target's Statement

- (a) Target will dispatch the Target's Statement to Target Shareholders no later than 15 days after the Target receives a notice that all Offers have been sent as required by item 6 of section 633 of the Corporations Act.
- (b) Target must within a reasonable time (and in any event no later than 4 Business Days) prior to lodgement of the Target's Statement with ASIC, provide an advanced and reasonably complete draft of the Target's Statement to Bidder and its Representatives for review and consider in good faith the comments of Bidder and its Representatives when finalising the Target's Statement.
- (c) Bidder and Target acknowledge that Target will make disclosures in the Target's Statement to comply the Corporations Act, Takeovers Panel decisions and guidance notes and ASIC regulatory guides.
- (d) Bidder and Target acknowledge that Target will not engage an independent expert to provide an opinion on whether or not the Offer is fair and reasonable.

4.5 Bidder Assistance

Bidder must provide on a timely basis any assistance and information that is reasonably requested by Target to enable Target to prepare and finalise the Target's Statement.

5. Recommendation of Takeover Bid

5.1 Public announcement

Immediately after execution of this agreement, Target and Bidder must issue their respective announcements in the form set out in Schedule 2.

5.2 Target Directors' recommendation

Target represents and warrants to Bidder that each Target Director has informed Target prior to its entry into this agreement that:

- (a) he supports the Takeover Bid;
 - (b) he will publicly recommend that Target Shareholders accept the Offer in respect of all their Target Shares; and
 - (c) he will not change his public recommendation,
- in each case, in the absence of a Superior Proposal.

5.3 Target Directors' intentions

Target represents and warrants to Bidder that each Target Director has informed Target prior to its entry into this agreement that:

- (a) he intends to accept the Offer in respect of all Target Shares which he controls within the Offer Period; and

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- (b) he intends to elect to receive Bidder Shares as Consideration under the Offer for those Target Shares,

in each case, in the absence of a Superior Proposal.

5.4 Joint promotion of Takeover Bid

Target will support the Offer made under the Takeover Bid during the Offer Period in the absence of a Superior Proposal or termination of this agreement and will jointly promote the Takeover Bid to Target Shareholders with Bidder, including:

- (a) participating in efforts reasonably requested by Bidder to promote the merits of the Takeover Bid;
- (b) participating in joint conference calls and investor presentations; and
- (c) meeting key Target Shareholders, analysts, management, customers, press and other parties mutually agreed by Bidder and Target.

For the avoidance of doubt, Target's obligation under this agreement to promote the Offer includes an obligation not to make any announcement or statement to a Third Party which directly or indirectly implies that the Offer will not be successful.

Bidder will not make any announcement or statement to a Third Party which concerns Target unless such announcement or statement is consistent with communications made jointly in accordance with this clause and Bidder has given Target prior notice of such announcement or statement and its content.

5.5 Change or withdrawal of recommendation

- (a) Subject to clause 5.5(b), Target undertakes to Bidder to ensure that Target Board does not change or withdraw the recommendation referred to in clause 5.2 once made and will not make any public statement which would suggest that the Offer is no longer recommended unless the Target Board determines that a Competing Proposal constitutes a Superior Proposal.
- (b) Before the Target Board withdraws or changes its recommendation under clause 5.5(a), Target must:
 - (i) provide Bidder with sufficient details in relation to the Superior Proposal to enable Bidder to respond to the Superior Proposal; and
 - (ii) give Bidder at least 5 Business Days after the provision of information under clause 5.5(b)(i) to respond to the Superior Proposal, including by revising the Offer to match or better the Superior Proposal if Bidder so chooses in its absolute discretion.

6. Exclusivity

6.1 General

For the purposes of this clause 6, it is acknowledged that any actions by any director, officer or employee of any member of the Target Group or any other Representative of Target acting as authorised agent of Target that would, if they were actions of Target, breach this clause 6, shall be deemed to be a breach by Target of this clause 6 (including for the purposes of the definition of Superior Proposal).

6.2 No existing discussions

Target warrants that as at the date of this agreement, it is not, and must ensure that none of its Representatives are, in any negotiations or discussions, and that it has, and its Representatives

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have, ceased any existing negotiations or discussions, in respect of any Competing Proposal (or which may reasonably be expected to lead to a Competing Proposal) with any person.

6.3 No shop

During the Exclusivity Period, Target must not, and must ensure that each of its Representatives does not, directly or indirectly solicit, invite, encourage or initiate (including by the provision of non public information) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or that may reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything of those things.

6.4 No Talk and no due diligence

Subject to clause 6.5, during the Exclusivity Period, Target must not and must ensure that each of its Representatives does not, directly or indirectly, except with the prior written consent of Bidder:

- (a) enter into, continue or participate in any negotiations or discussions with any person in relation to a Competing Proposal or that may reasonably be expected to encourage or lead to the making of a Competing Proposal;
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
- (c) disclose or otherwise provide any material non public information about the business or affairs of Target Group to any person (other than a public authority) with a view to obtaining a Competing Proposal or which may reasonably be expected to encourage or lead to the receipt of a Competing Proposal; or
- (d) communicate to any person an intention to do anything referred to in this clause 6.4, even if:
 - (e) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or its Representatives; or
 - (f) the Competing Proposal is publicly announced.

6.5 Exceptions

Clause 6.4 does not prohibit any action or inaction by Target or any of its Representatives if:

- (a) the Target Board, acting in good faith, determines that, where there is a Competing Proposal, the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal having regard to the steps the Target Board proposes to take; and
- (b) the Target Board, acting in good faith, determines that failing to respond to that Competing Proposal constitutes or would be likely to constitute, a breach of any of the fiduciary or statutory duties of the directors of Target,
- (c) provided that the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the Target or any of its Representatives in a manner that would breach its obligations under clause 6.4.

6.6 Notice of Competing Proposal

- (a) During the Exclusivity Period, Target must as soon as possible notify Bidder in writing if it, or any of its Representatives, becomes aware of any direct or indirect:
 - (i) approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in

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respect of any expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;

- (ii) proposal made to Target or any of its Representatives, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal; or
- (iii) provision by Target or any of its Representatives of any material confidential information concerning the Target Group or its operations to any person in relation to an actual, proposed or potential Competing Proposal.

- (b) A notification given under clause 6.6(a) must include the identity of the proponent of the Competing Proposal and a summary of all material terms and conditions of the actual, proposed or potential Competing Proposal.

6.7 Matching right

During the Exclusivity Period, Target must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) under which a Third Party and/or Target proposes to undertake or give effect to an actual, proposed or potential Competing Proposal, unless:

- (a) the Target Board acting in good faith determines that the actual, proposed or potential Competing Proposal is or may reasonably be expected to lead to a Superior Proposal having regard to the steps which the Target Board proposes to take;
- (b) Target has provided Bidder with the material terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal; and
- (c) Target has given Bidder at least 5 Business Days after the provision of the information referred to in clause 6.7(b) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal.

7. Other Obligations during Exclusivity Period

7.1 Business integration

From the date of this agreement to the earlier of:

- (a) Bidder acquiring a Relevant Interest in at least 50.1% of the Target Shares and the Offer becoming unconditional; and
- (b) the date this agreement is terminated,

two nominated senior employee representatives of each of the parties (including one executive director from Target) will form an integration committee (**Integration Committee**) to consider matters relevant to conduct of the Target's business and implementing integration of the businesses, including the following:

- (c) implementing the Transaction;
- (d) enabling Bidder to understand Target Group's business and operations and its financial position, financial performance and prospects including its cash flow and working capital position;
- (e) enabling Bidder to prepare for the transition of ownership of the Target Group business to the Bidder Group, including consultation regarding major client, customer or supplier relationships;

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- (f) providing information to Bidder's financiers;
- (g) accounting issues, including taxation, franking credits, acquisition provisioning;
- (h) human resources issues, including management restructure and redundancies;
- (i) communication strategies, including with ASX, other Authorities, employees, customers and the media;
- (j) matters requiring consultation under this agreement; and
- (k) any other purpose agreed between Bidder and Target in writing.

The Integration Committee will meet on a fortnightly basis and at such other times as Bidder reasonably requests, for the purposes of discussing the matters referred to in this clause and resolving any matter referred to in this clause that has not been resolved to the reasonable satisfaction of the Bidder.

7.2 Access and information

Subject to Bidder acquiring a Relevant Interest in at least 50.1% of the Target Shares and the Offer becoming unconditional, during the Exclusivity Period, Target must:

- (a) procure that Bidder and its Representatives are given reasonable access to the properties, books and records and management of the Target Group during normal business hours and on reasonable notice to Target for the purposes of:
- (i) implementing the Transaction;
 - (ii) enabling Bidder to understand Target Group's business and operations and its financial position, financial performance and prospects including its cash flow and working capital position;
 - (iii) enabling Bidder to prepare for the transition of ownership of the Target Group business to the Bidder Group;
 - (iv) providing information to Bidder's financiers; and
 - (v) any other purpose agreed between Bidder and Target in writing,
- unless the provision of such access is prohibited by law; and
- (b) procure that one or more members of the Target Board meets with Bidder and its Representatives on a fortnightly basis and at such other times as Bidder reasonably requests, for the purposes of discussing and resolving any matter referred to in clause 7.2(a) that has not been resolved to the reasonable satisfaction of the Bidder through the exercise of its rights of access under that clause.

7.3 Access to board papers and Target Directors

Subject to Bidder acquiring a Relevant Interest in at least 50.1% of the Target Shares and the Offer becoming unconditional, and unless the provision of such papers is prohibited by law, during the Exclusivity Period Target must at the request of Bidder provide Bidder with copies of papers provided to the Target Board and monthly management accounts for Target and members of the Target Group within 3 Business Days after they are provided to Target Board members and requested by Bidder.

7.4 Conduct of Target's business

Upon Bidder acquiring a Relevant Interest in at least 50.1% of Target Shares and the Bid becoming unconditional, Target must procure that each member of the Target Group carries on

business in the ordinary and usual course and in substantially the same manner as conducted at the date of this agreement as well as using its reasonable endeavours to procure that:

- (a) no Target Prescribed Occurrence occurs;
- (b) each member of the Target Group:
 - (i) preserves its relationships with all Authorities, material customers and suppliers, licensors, licensees, joint venturers and others with whom they have business dealings;
 - (ii) preserves intact its current business organisation and maintains its material assets in good working order necessary to operate all aspects of its business;
 - (iii) keeps available the services of its Senior Employees and procures that those Senior Employees continue to conduct the business and affairs of the Target Group in the ordinary and usual course;
 - (iv) may only enter or agree to enter into any agreement in respect of the employment or engagement of a person in a managerial or executive office (as that expression is defined in the Corporations Act) if:
 - (A) the agreement includes a probationary period of at least three months;
 - (B) the agreement does not include any change of control provision which would be triggered by the Takeover Bid;
 - (C) Bidder is provided with a reasonable opportunity to interview the prospective employee or consultant; and
 - (D) Target takes into consideration any reasonable comments of Bidder prior to determining whether to enter into such agreement;
 - (v) does not enter or agree to enter into any unusual or abnormal contract or commitment;
 - (vi) does not permit any of its insurances to lapse or do anything that would make any policy of insurance void or voidable; or
 - (vii) no member of the Target Group disposes of, or offers or agrees to dispose of, any business, asset, joint venture interest, entity or undertaking (or any interest in a business, asset, joint venture, entity or undertaking) which is valued in its financial accounts at greater than \$200,000 or makes an announcement in relation to such a disposal, offer or agreement.

7.5 Exceptions

The obligations of Target under clause 7.4 do not apply to actions undertaken by any member of the Target Group:

- (a) which are required to be undertaken under this agreement; or
- (b) with the prior written consent of Bidder, such consent not to be unreasonably withheld or delayed.

7.6 Notification to Bidder

- (a) Target must promptly notify Bidder in writing after it becomes aware of a matter which is in breach of or inconsistent with clause 7.4.
- (a) From the date of this agreement, Target must promptly notify Bidder in writing if Target proposes to take any action which would (assuming that Bidder had a Relevant Interest in

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50.1% of Target and the Offer had been declared unconditional) breach or be inconsistent with clause 7.4.

7.7 Bidder representation on Target Board

- (a) Upon Bidder acquiring a Relevant Interest in at least 50.1% of Target Shares and the Offer becoming unconditional Target must, as soon as is practicable, cause the appointment of such number of persons nominated by Bidder to:
 - (i) the Target Board; and
 - (ii) the board of directors of each subsidiary of Target,in each case to give Bidder control of the relevant board.
- (b) If, following completion of the Offer Period, Bidder becomes entitled under Part 6A.1 of the Corporations Act to compulsorily acquire all remaining Target Shares which it does not already own, then as soon as practicable after the end of the Offer Period, Target will take the actions necessary to:
 - (i) ensure the appointment to the Target Board and the board of directors of each subsidiary of Target of the individuals identified by Bidder by notice in writing; and
 - (ii) ensure that all members of the Target Board resign from the Target Board and that all members of the board of directors of any subsidiary of Target resign from such boards.

8. Representations and Warranties

8.1 Target warranties

Target represents and warrants to Bidder (on its own behalf and separately as trustee for each of the other Bidder Indemnified Parties) that each of the following statements is true, accurate and not misleading:

- (a) Target is a corporation validly existing under the laws of its place of incorporation;
- (b) Target has the power to execute, deliver and to perform its obligations under this agreement, and has taken all necessary corporate action to authorise such execution, delivery and the performance of such obligations;
- (c) Target's obligations under this agreement are legal, valid and binding obligations enforceable in accordance with their terms;
- (d) Except in relation to change of control clauses, the execution and delivery by Target of this agreement do not and will not conflict with or constitute a default under any provision of:
 - (i) any agreement or instrument to which it is a party; or
 - (ii) its constitution; or
 - (iii) any law, order, judgment, award, injunction, decree, rule or regulation by which it is bound;
- (e) it is not Insolvent;
- (f) so far as Target is aware, it is not in breach of its continuous and periodic disclosure obligations under the Corporations Act and the ASX Listing Rules and is not relying on

the carve out in ASX Listing Rule 3.1A to withhold any information from public disclosure;

- (g) as at the date of this agreement there are 107,506,425 Target Shares on issue and there are no other shares or other securities (including equity securities, debt securities or convertible securities) or options (listed or unlisted) or performance rights or other instruments which are convertible into securities in Target nor has it offered or agreed to issue any such shares, securities, options or performance rights or other instruments to any Third Party;
- (h) Target has terminated all negotiations and discussions (other than with Bidder and its Representatives) that relate to any Competing Proposal;
- (i) all information Target or its Representatives have provided to Bidder or its Representatives (whether as part of the Target Disclosure Materials or otherwise) is to the knowledge of the Target (after making reasonable enquiries) true and correct in all material respects and is not misleading or deceptive in any material respect (whether by omission or otherwise); and
- (j) to the best of its knowledge, Target is not aware of any material approval, licence, authorisation, authority, consent, permission, clearance, grant, confirmation, order, waiver or ruling required by any law or Authority which is necessary to permit:
 - (i) the Offer being made to and accepted by Target Shareholders; or
 - (ii) completion of the Offer as contemplated by this agreement.

8.2 Bidder warranties

Bidder represents and warrants to Target (on its own behalf and separately as trustee for each of the other Target Indemnified Parties) that each of the following statements is true, accurate and not misleading:

- (a) Bidder is a corporation validly existing under the laws of its place of incorporation;
- (b) Bidder has the power to execute, deliver and to perform its obligations under this agreement, and has taken all necessary corporate action to authorise such execution, delivery and the performance of such obligations;
- (c) Bidder's obligations under this agreement are legal, valid and binding obligations enforceable in accordance with their terms;
- (d) the execution and delivery by Bidder of this agreement does not and will not conflict with or constitute a default under any provision of:
 - (i) any agreement or instrument to which it is a party; or
 - (ii) its constitution; or
 - (iii) any law, order, judgment, award, injunction, decree, rule or regulation by which it is bound;
- (e) Bidder is not Insolvent;
- (f) so far as Bidder is aware, it is not in breach of its continuous and periodic disclosure obligations under the Corporations Act, the ASX Listing Rules and is not relying on the carve out in ASX Listing Rule 3.1A to withhold any information from public disclosure;
- (g) as at the date of this agreement there are:
 - (i) 158,016,251 Bidder Shares on issue; and

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- (ii) 660,000 unlisted options (MTUAM) exercisable at various expiry dates; and
- (iii) 1,500,000 unlisted options exercisable at various expiry dates,

and there are no other shares or other securities (including equity securities, debt securities or convertible securities) or options or performance rights or other instruments which are convertible into securities in Bidder nor has it offered or agreed to issue any such shares, securities, options or performance rights or other instruments to any party;

- (h) as at the date of this agreement, there are no discussions, negotiations or agreements in relation to any proposal involving a change of control transaction relating to Bidder;
- (i) all information Bidder or its Representatives have provided to Target or its Representatives is to the knowledge of the Bidder (after making reasonable enquiries) true and correct in all material respects and is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (j) Bidder does not require any further approvals to undertake or complete the Takeover Bid;
- (k) the Bidder Material Subsidiaries are the only subsidiaries of Bidder which have material operations and/or material assets or material liabilities;
- (l) approval of Bidder Shareholders is not required to permit Bidder to:
 - (i) make the Offer to Target Shareholders; or
 - (ii) complete the Offer to Target Shareholders; and
- (m) Bidder will not undertake nor publicly announce an Equity Raising during the Offer Period.

8.3 Timing of warranties

Each of the representations and warranties in clauses 8.1, and 8.2 is given:

- (a) as at the date of this agreement; or
- (b) if the representation or warranty is expressly stated to be given at a different time, at the time the representation or warranty is expressed to be given.

8.4 Acknowledgements

Each of Bidder and Target acknowledges that:

- (a) in entering into this agreement:
 - (i) Target has relied on the representations and warranties provided by Bidder;
 - (ii) Bidder has relied on the representations and warranties provided by Target;
- (b) the representations and warranties are not extinguished or affected by any investigation into the affairs of business of Bidder or Target or any of their related entities;
- (c) no claim may be made for breach of any representations and warranties based on information that was:
 - (i) on a public register or lodged with ASIC or ASX; or
 - (ii) known or ought reasonably to be known by a party given their knowledge and experience of the telecommunications industry,

prior to the date of this agreement or was fairly disclosed to the Target or Bidder prior to the date of this agreement, as the case may be; and

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- (d) each representation and warranty in this clause 8 is severable and survives termination of this agreement.

8.5 Target's indemnity

Target agrees with Bidder (on Bidder's own behalf and separately as trustee or nominee for each of the other Bidder Indemnified Parties) to indemnify and keep indemnified the Bidder Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Bidder Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clauses 5.2, 5.3 and 8.1.

8.6 Bidder's indemnity

Bidder agrees with Target (on Target's own behalf and separately as trustee or nominee for each of the other Target Indemnified Parties) to indemnify and keep indemnified the Target Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the Target Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clauses 8.2.

8.7 Notice

If Bidder or Target becomes aware of a matter or circumstance which results in or is likely to result in any of the representations or warranties given by that party in this clause 8 being untrue, inaccurate or misleading, it must give notice to the other specifying that matter or circumstance in reasonable detail as soon as reasonably practicable after it becomes aware of that matter or circumstance. Any failure by Bidder or Target to give notice as contemplated by this clause in relation to any matter or circumstance does not, for the avoidance of doubt, prevent it from making any claim arising from that matter or circumstance.

8.8 Releases

- (a) Bidder releases its rights against, and will not make a claim against, any past or present director or other Representative of Target in relation to:
- (i) Target's execution or delivery of this agreement;
 - (ii) any breach of any representation or warranty by Target in this deed;
 - (iii) the Target's response to the Takeover Bid;
 - (iv) the acquisition of any Target Shares under the Takeover Bid; or
 - (v) any disclosure made by Target in the Target Disclosure Materials,
- except to the extent that the past or present director or other Representative of Target has not acted in good faith or has engaged in wilful misconduct.
- (b) Target releases its rights against, and will not make a claim against, any past or present director or other Representative of Bidder in relation to:
- (i) Bidder's execution or delivery of this agreement;
 - (ii) any breach of any representation or warranty by Bidder in this deed;
 - (iii) Bidder making the Takeover Bid;
 - (iv) the issue of any Bidder Shares to Target Shareholders as consideration under the Takeover Bid; or
 - (v) any disclosure made by Bidder in its filings with ASX prior to the date of this agreement,

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except to the extent that the past or present director or other Representative of Bidder has not acted in good faith or has engaged in wilful misconduct.

9. Termination

9.1 Material breach

- (a) Either Bidder or Target (**Terminating Party**) may terminate this agreement at any time by giving written notice to the other if:
- (i) the other is in breach of a material term of this agreement or any representation or warranty given by the other under this agreement is untrue, inaccurate or misleading in any material respect other than as a result of a breach of this agreement by the Terminating Party;
 - (ii) the Terminating Party has given notice to the other of its intention to terminate this agreement under this clause 9.1 and setting out the details of the matters or circumstances giving rise to the termination right; and
 - (iii) in the case of a breach of a material term of this agreement, that breach has not been remedied within 5 Business Days after that date.
- (b) On receipt of a notice under clause 9.1(ii), the recipient of that notice must use its reasonable endeavours for the 5 Business Days referred to in clause 9.1(iii) to remedy the breach that is set out in the notice.

9.2 Bidder termination events

Bidder may terminate this agreement at any time by giving written notice to the Target if:

- (a) Target is in breach of its obligations in clauses 4.3 or 6 (for the avoidance of doubt, no cure period of the kind referred to in clause 9.1(b) applies to any breach of clauses 4.3 or 6);
- (b) the Target Board (or any one or more members of the Target Board) change or withdraw their recommendation that Target Shareholders accept the Offer in respect of all their Target Shares, or their intention to accept the Offer in respect of all of their Target Shares or make a public statement indicating that they no longer support the Offer or that they support a Competing Proposal;
- (c) a Target Prescribed Occurrence occurs; or
- (d) a Target Material Adverse Change occurs.

9.3 Target termination events

Target may terminate this agreement at any time by giving written notice to the Bidder if:

- (a) the Target Board (or a majority of the directors of Target) change or withdraw their recommendation in accordance with clause 5.5, provided that Target has complied with its obligations under clauses 5.5(b) and 6;
- (b) a Bidder Prescribed Occurrence eventuates; or
- (c) a Bidder Material Adverse Change occurs.

9.4 Other termination events

Either Bidder or Target may terminate this agreement by giving written notice to the other if during the Offer Period:

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- (a) a Court or Authority issues a final and non appealable order or ruling or takes an action which permanently restrains or prohibits the Offer;
 - (b) Bidder withdraws the Offer for non-satisfaction of a Bid Condition or because a Competing Proposal has been announced and it has been recommended by the Target Board;
 - (c) the Offer lapses without the Bid Conditions being satisfied or waived; or
 - (d) the Long Stop Date is reached and the Offer Period has not concluded

9.5 Effect of termination

If this agreement is terminated under this clause 9 then:

- (a) except for this subclause 9.5 and clause 10 all the provisions of this agreement will lapse and cease to have effect; and
- (b) neither the lapsing of those provisions nor their ceasing to have effect will affect any accrued rights or liabilities of either party in respect of damages for non-performance of any obligation under this agreement falling due for performance before such lapse and cessation.

10. Reimbursement Amount

10.1 Acknowledgements

Target and Bidder each acknowledge and agree that:

- (a) if Target and Bidder enter into this agreement and the Takeover Bid does not succeed, Bidder Group and Target Group will have incurred significant costs and expenses, including significant opportunity costs;
- (b) the costs and expenses actually incurred by Bidder Group and Target Group will be of such nature that they cannot accurately be ascertained, but that the Reimbursement Amount is a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by Bidder Group and Target Group in such circumstances and has been calculated to reimburse the Bidder Group or the Target Group (as the case may be) for such costs and expenses;
- (c) Bidder has requested that provision be made for the payment of the Reimbursement Amount to the Bidder in the circumstances described in clause 10.2, without which Bidder would not have entered this agreement;
- (d) the Target Board has concluded that it is reasonable and appropriate for Target to agree to payment of the Reimbursement Amount in the circumstances described in clause 10.2 to secure Bidder's participation in the Takeover Bid;
- (e) Target has requested that provision be made for the payment of the Reimbursement Amount to the Target in the circumstances described in clause 10.4, without which Target would not have entered this agreement; and
- (f) the Bidder Board has concluded that it is reasonable and appropriate for Bidder to agree to payment of the Reimbursement Amount in the circumstances described in clause 10.4 to secure Target's participation in the Takeover Bid.

10.2 Reimbursement Amount payable to Bidder

Subject to clause 10.10, Target must reimburse Bidder the Reimbursement Amount without withholding or set off if any of the following occurs and Bidder does not proceed to acquire at least 90% of all Target Shares before the Long Stop Date:

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- (a) at any time before the Long Stop Date, members of the Target Board (or any one or more of them) endorse or otherwise support a Competing Proposal made by a person other than a member of the Bidder Group;
 - (b) a person other than a member of the Bidder Group:
 - (i) acquires or agrees (conditionally or otherwise) to acquire control of Target, within the meaning of section 50AA of the Corporations Act;
 - (ii) acquires, or agrees (conditionally or otherwise) to acquire, the whole or a substantial part of the business or assets of Target or the Target Group;
 - (iii) otherwise acquires or merges or agrees (conditionally or otherwise) to acquire or merge with Target (including by reverse takeover bid or takeover bid, or by establishing a dual listed company structure or stapled security structure),
where an agreement in relation to that acquisition is entered into before the Long Stop Date;
 - (c) a Competing Proposal is announced before the Long Stop Date and, within 6 months after the Long Stop Date:
 - (i) the person making the Competing Proposal (whether alone or together with one or more Associates), acquires a Relevant Interest in more than 20% of all Target Shares (whether by way of acquisition of existing Target Shares or issue of new Target Shares); or
 - (ii) if the Competing Proposal proceeds by way of a takeover bid under Chapter 6 of the Corporations Act, the takeover bid is free or becomes free from defeating conditions and the person making the Competing Proposal acquires a Relevant Interest in more than 20% of all Target Shares;
 - (d) at any time before the earlier of the end of the Offer Period and the Long Stop Date, members of the Target Board (or any one or more of them) fail to make, or change or withdraw, their recommendation to Target Shareholders to accept the Offer in respect of all Target Shares or change their intention to accept the Offer in respect of all their Target Shares or otherwise make any public statement that suggests that the Takeover Bid is no longer recommended, other than because this agreement is terminated by Target under clause 9.1, 9.3(b) or 9.3(c);
 - (e) on the date of this agreement, Target fails to release the announcement substantially in the form of Schedule 2;
 - (f) at any time before the earlier of the end of the Offer Period and the Long Stop Date, Target is in breach of any of its obligations under clauses 5.5(b) or 6, where such breach is material in the context of the Takeover Bid; or
 - (g) Bidder terminates this agreement under clause 9.1 or clause 9.2 other than 9.2(d) (Target Material Adverse Change).

10.3 Bidder's sole remedy

- (a) Despite any other provision of this agreement, where an amount becomes payable to Bidder under clause 10.2 and is actually paid to Bidder, Bidder cannot make any claim (other than a claim under clause 10.2) against Target or its Representatives which relates to any matter, circumstance or fact under or in connection with this agreement, except a claim in relation to a breach of clause 6.

- (b) The amount of any loss or damage caused in relation to a breach of clause 6 shall be reduced by the amount paid to Bidder under clause 10.2. Apart from a claim in relation to a breach of clause 6, in no circumstances will the aggregate liability of Target under or in connection with this agreement exceed the Reimbursement Amount.

10.4 Reimbursement Amount payable to Target

Bidder agrees to pay to Target the Reimbursement Amount if:

- (a) this agreement is terminated by Target under clauses 9.1 or 9.3(b); or
- (b) Bidder does not provide the Consideration to Target Shareholders in accordance with the terms and conditions of the Offer and the Bidder's Statement.

10.5 Target's sole remedy

- (a) Despite any other provision of this agreement, the payment of the Reimbursement Amount to Target under clause 10.4 does not release the Bidder from any claim or action such as for damages, specific performance or interlocutory relief arising from the Bidder's breach of this agreement.
- (b) The amount of any loss or damage caused in relation to a breach of this agreement shall be reduced by the amount paid to Target under clause 10.2.

10.6 Time for payment

The Reimbursement Amount provided for in clause 10.2 or 10.4 must be paid within 10 Business Days after the receipt by Target of a written demand for payment from Bidder or the receipt by Bidder of a written demand for payment by Target, as the case may be. The demand may only be made after the occurrence of an event referred to in clause 10.2 or 10.4. The obligation to reimburse under clause 10.2 or 10.4 cannot be triggered more than once.

10.7 Modifications following regulatory intervention

If any of the following occurs:

- (a) the Court finds that all or any part of the payment required to be made under clause 10.2 or 10.4 is unenforceable by Bidder against Target or by Target against Bidder (as the case may be); or
- (b) as a result of an application to the Takeovers Panel by a party other than Target or its Representatives (in the case of clause 10.2) or by a party other than Bidder or its Representatives (in the case of clause 10.4), the Takeovers Panel indicates that in the absence of a written undertaking pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Reimbursement Amount or the circumstances in which it is to be paid it will make a declaration of unacceptable circumstances,

then, subject to clause 10.8:

- (c) the parties must amend this clause 10 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 subclause 10.7(b)) must give the required undertaking(s); and
- (d) neither the occurrence of any of the events referred to in subclauses 10.7(a) or 10.7(b) nor the amendment of this clause 10 will be taken to be a breach of, or permit any party to terminate, this agreement.

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10.8 No requirement to act unless decision is final

Bidder and Target are only required to take steps under 10.7(c) in relation to any requirement of the Court or the Takeovers Panel if:

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

10.9 Appeals and review of regulatory decisions

Nothing in this agreement requires either Bidder or Target to appeal or seek review of any decision of the Court or the Takeovers Panel referred to in subclauses 10.7(a) to 10.7(b). If either Bidder or Target wishes to appeal or seek review of any such decision then the other must make submissions in the course of those proceedings supporting the review application made by the first party.

10.10 Determination by Court

If a Court determines that payment of all or any part of the Reimbursement Amount is unlawful or involves a breach of the fiduciary or statutory duties of the members of Target Board or the Bidder Board (as the case may be) (**Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without an appeal having been lodged then:

- (a) the obligation of Target or Bidder (as the case may be) to pay the Reimbursement Amount does not apply to the extent of the Impugned Amount; and
- (b) if Bidder has received any part of the Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging an appeal has expired, whichever is the later.

11. Announcements and Confidentiality

11.1 Announcements

As soon as reasonably practicable after the execution of this agreement, Target and Bidder must each issue their respective announcements in the form set out in Schedule 2.

11.2 Other announcements

Subject to clause 11.3, each party must not make, and must procure that its Representatives do not make:

- (a) any public announcement concerning the Transaction or the terms of or the negotiations relating to, this agreement other than the announcement referred to in clause 11.1; or
- (b) any announcement or statement to a Third Party which directly or indirectly implies that the Offer made under the Takeover Bid will not be successful.

11.3 Permitted announcements

Nothing in clause 11.2 prevents any announcement being made:

- (a) with the written consent of Bidder and Target, which must not be unreasonably withheld or delayed; or

- (b) to the extent required by law, ASX Listing Rules or any court of competent jurisdiction or any Authority, but if any party is required to make any such announcement, it must promptly notify the other party, where reasonably practicable and lawful to do so, before the announcement is made and must 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.

12. GST

12.1 Definitions

Words and expressions defined in the GST Act have the same meaning in this clause 12.

12.2 Payments exclusive of GST

Unless expressly stated otherwise, all amounts payable under or in connection with this agreement are exclusive of GST. If GST is payable on a Taxable Supply made under or in connection with this agreement, the recipient of the supply must pay the supplier an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice for that supply.

12.3 Input tax credits

Without limiting clause 12.2, if an amount payable under or in connection with this agreement is calculated by reference to a liability incurred by a party, then the amount of the liability must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of the acquisition of the supply to which the liability relates. A party will be assumed to be entitled to a full Input Tax Credit unless it demonstrates that its entitlement is otherwise before the date on which payment must be made.

13. Notices

13.1 Manner of giving notice

Any notice or other communication to be given under this agreement must be in writing (which includes fax and email) and may be delivered or sent by post or fax or email to the party to be served as follows:

- (a) to Target at:

Address: Level 14, 600 St Kilda Road, Melbourne, Victoria, 3000

Fax number: (03) 9090 2535

Email: notices@team.eftel.com.au

For the attention of: The Company Secretary

With a copy to: Addisons

Address: Level 12, 60 Carrington Street, Sydney NSW 2000

Fax number: 02 8916 2000

Email: michael.ryan@addisonslawyers.com.au and
kristy.dixon@addisonslawyers.com.au

For the attention of: Michael Ryan and Kristy Dixon

(b) to Bidder at:

Address: Level 10, Primus Building, 452 Flinders Street, Melbourne, Victoria, 3000

Fax number: 02 9815 5596

Email: kdean@m2.com.au

For the attention of: Kellie Dean

With a copy to: Minter Ellison Lawyers

Address: Rialto Towers 525 Collins Street, Melbourne, Victoria 3000

Fax number: 03 8608 1103

Email: alberto.colla@minterellison.com

For the attention of: Alberto Colla

or at any such other address or fax number 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).

13.2 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 post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another);
- (c) if sent by fax, at the time shown in the transmission report as being the time at which the whole fax was sent; or
- (d) if sent by email, on the generation of a receipt notice by the recipient's server or, if such notice is not so generated, on delivery to the recipient's server,

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

13.3 Proof of service

In proving service of a notice or other communication, it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail, or that the fax was properly addressed and transmitted or that the email 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 email system, as the case may be.

13.4 Documents relating to legal proceedings

This clause 13 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.

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14. Payments

14.1 Accounts for payments

- (a) Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), any payment to be made to either Bidder or Target under this agreement must be made in Australian dollars by transfer of the relevant amount into the account nominated in writing by Target to Bidder or by Bidder to Target (as the case may be) on or before the date on which the payment is due.

14.2 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 2% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

14.3 Gross up

If a party is required by law to make a deduction or withholding in respect of any sum payable under this agreement, that party must, at the same time as the sum which is the subject of the deduction or withholding is payable, make a payment to the other party of such additional amount as is required to ensure that the net amount received by that party will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.

15. Entire Agreement

15.1 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 these transactions except for the Confidentiality Agreement.

15.2 No reliance

Each party acknowledges that in agreeing to enter into this agreement it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those expressly set out in this agreement) made by or on behalf of any other party before the entering into of this agreement. Each party waives all rights and remedies which, but for this clause 15.2 might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

16. General

16.1 Amendments

This agreement may only be amended in writing and where such amendment is signed by all the parties.

16.2 Assignments

- (a) Subject to clause 16.2(b), none of the rights or obligations of a party under this agreement may be assigned or transferred without the prior written consent of the other party.
- (b) Bidder may assign, charge or grant a security interest over a right under this agreement to:
- (i) a financier in connection with the acquisition of Target Shares (for itself and as agent or trustee for any other such financier); or

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- (ii) a trustee or an agent of a financier in respect of facilities available to Bidder to finance or refinance an amount payable under the Takeover Bid,

and if such a security is enforced, Bidder, financier or trustee or agent may assign the benefit of the rights under this agreement to any purchaser or assignee from the financier or trustee or agent (or any receiver appointed by any of them) who acquires any member of Bidder Group or all or part of Bidder's business.

16.3 Consents

Except as otherwise expressly provided in this agreement a party may give or withhold its consent to any matter referred to in this agreement in its absolute discretion. A party that gives its consent to any matter referred to in this agreement is not taken to have made any warranty or representation as to any matter or circumstance connected with the subject matter of that consent.

16.4 Counterparts

This agreement may be executed in counterparts, which taken together must 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.

16.5 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.

16.6 Further assurance

Each party undertakes to sign all documents and to do all other reasonable acts, which may be necessary to give full effect to this agreement.

16.7 Severability

The provisions contained in each clause and sub-clause of this agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others is invalid.

17. Governing Law and Jurisdiction

17.1 Governing law

This agreement and any non-contractual obligations arising out of or in connection with it are governed by the law applying in Victoria.

17.2 Jurisdiction

The courts having jurisdiction in Victoria 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 Victoria.

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Schedule 1 – Bid Conditions

1. No Target Material Adverse Change

Before the end of the Offer Period, no Target Material Adverse Change occurs, is discovered, announced, disclosed or otherwise becomes known to Bidder or Target (whether or not it becomes public).

2. No Target Prescribed Occurrence

Before the end of the Offer Period, no Target Prescribed Occurrence occurs.

3. Minimum Acceptance Condition

Before the end of the Offer Period, Bidder Group has a Relevant Interest in such number of Target Shares as represents at least 90% in aggregate of all Target Shares on issue.

4. No regulatory intervention

During the period from the date of this agreement to the end of the Offer Period:

- (a) there is not in effect any preliminary or final decision, order or decree issued by an Authority; and
- (b) no application is made to any Authority, or action or investigation is announced, threatened or commenced by an Authority in consequence of or in connection with the Offer,

(other than an application to or a determination by ASIC or the Takeovers Panel in the exercise of the powers and discretions conferred by the Corporations Act), which restrains, impedes or prohibits (or if granted could restrain, impede or prohibit), or otherwise materially adversely impacts upon, the making of the Offer or any transaction contemplated by this agreement, the Offer or the rights of Bidder in respect of Target or Target Shares, or requires the divestiture by Bidder or Bidder's Shareholders of any Target Shares or the divestiture of any assets of Target Group, Bidder, Bidder Group or otherwise.

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Schedule 2 – Respective Announcements

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Schedule 3 – Indicative Timetable

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Schedule 4 - Signing page

EXECUTED as an agreement.

Executed by M2 Telecommunications
Group Ltd ABN 74 091 575 021

Signature of director

Vaughan Bowen
Executive Director

Name of director (print)

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

Kelle Dean
Company Secretary

Name of director/company secretary (print)

Executed for and on behalf of Eftel Limited
ABN 47 073 238 178 by its duly authorised
signatory

Signature of authorised signatory

Name of authorised signatory (print)

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APPENDIX 2

Restriction Deed

Set out below is a summary of the material terms of the executed Restriction Deed between Larry Kestelman (**Kestelman**) and M2 Telecommunications Group Limited (**M2**) in relation to any shares in M2 that are issued to Kestelman under the Takeover Bid or Pre-Bid Option Deed. Effective from the date the Consideration Shares are issued, Kestelman agrees to the following:

- (a) other than in compliance with clause (d) below, Kestelman must not, and Kestelman must procure that his Controlled entities (as applicable) must not, during the Lockup Period:
 - (i) Deal with the Consideration Shares;
 - (ii) create or agree or offer to create, an Encumbrance over or affecting all or any part of the Consideration Shares; or
 - (iii) do or omit to do any act which would have the effect of transferring effective ownership or control of all or any part of the Consideration Shares.
- (b) other than in compliance with clause (d) below, Kestelman must not, and Kestelman must procure that his Controlled entities (as applicable) must not, during the 24 months commencing on the end of the Lock Up Period, Deal in any off-market transaction with the Consideration Shares for an Excluded Purpose.
- (c) Kestelman must not, and Kestelman must procure that his Controlled entities (as applicable) must not, during the 36 months commencing on the Completion Date, increase their aggregate shareholding or the aggregate shareholding with their Associates above 9.9% of the fully paid ordinary shares on issue of M2.
- (d) Kestelman must, and Kestelman must procure that his Controlled entities (as applicable) must, during the 36 months commencing on the Completion Date, tender or vote any fully paid ordinary shares in M2 under their Control in favour of any potential takeover bid, scheme of arrangement or shareholder resolution publically recommended by the board of directors of M2;
- (e) a holding lock (as defined in the ASX Settlement Rules) being placed on the Consideration Shares for the Lock Up Period; and

The Restriction Deed also includes other standard terms and conditions for an agreement of this nature.

Definitions

Capitalised terms used in this Appendix 2 have the meaning given below.

Associate means, in relation to a person:

- (a) an associate of the person under sections 10 to 17 of the Corporations Act as if section 12(1) of the Corporations Act included a reference to this deed;
- (b) a company or trust of which the person has Control; or
- (c) the spouse or child over the age of 18 of the person.

ASX Settlement Rules means the Settlement Operating Rules made by ASX Settlement Pty Limited ABN 49 008 504 532.

Completion means the first to occur of the issue of the Consideration Shares under the Takeover Bid or the Pre-Bid Option Deed.

Completion Date means the date on which Completion occurs.

Consideration Shares means any fully paid ordinary shares in M2 issued to Kestelman and/or his Controlled entities under the Takeover Bid and/or Pre-Bid Option Deed.

Control means:

- (a) of a company by a person:
- (i) the person determines the composition of the board of directors of the company or has the capacity to do so;
 - (ii) the board of directors of the company is accustomed to act in accordance with the instructions, directions or wishes of the person;
 - (iii) the person holds or owns (alone or with its Associates or related bodies corporate):
 - (A) the majority of the issued shares of the company;
 - (B) the majority of the issued shares of any of the company's holding companies;
 - (C) for the avoidance of doubt, the majority of the issued shares of the ultimate holding company of the company; or
 - (D) the majority of any securities or other rights granted by the company entitling holders to distributions based on the profits, earnings or net liquidation proceeds of the company; or
 - (iv) the person controls (as that term is defined in the Corporations Act) the company; and
- (b) of a trust by a person:
- (i) the person is a trustee of the trust;
 - (ii) the person has, either alone or with its Associates, the ability to remove or appoint the trustee of the trust;
 - (iii) the composition of the board of directors of any trustee company of the trust is determined by the person or the person has the capacity to do so;
 - (iv) the board of directors of any trustee company of the trust is accustomed to act in accordance with the instructions, directions or wishes of the person; or
 - (v) the person holds or owns (alone or with its Associates or related bodies corporate):
 - (A) the majority of the issued shares of any trustee company of the trust;
 - (B) the majority of the issued shares of a holding company of any trustee company of the trust;
 - (C) for the avoidance of doubt, the majority of the issued shares of the ultimate holding company of any trustee company of the trust; or
 - (D) the majority of the units, securities or other rights granted by the trust which entitling holders to distributions from the trust; or
 - (vi) the person controls (as that term is defined in the Corporations Act) the trust.

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

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Deal means:

- (a) sell, assign, transfer or otherwise dispose of;
- (b) agree to offer to sell, assign, transfer or otherwise dispose of;
- (c) enter into any option which, if exercised (whether such exercise is subject to conditions or otherwise), enables or requires a party to sell, assign, transfer or otherwise dispose of; and
- (d) decrease or agree to decrease an economic interest,

and **Dealing** has a corresponding meaning.

Excluded Purpose means for the purpose of enabling a private equity investor, industry competitor of M2 or any other party seeking to indirectly or directly control M2 to acquire shares in M2.

Lock Up Period means the 12 months after the Completion Date.

Pre-Bid Option Deed means the agreement titled 'Pre-Bid Option Deed' and entered into by M2 and Cannes Management Pty Ltd as trustee for the Kestelman Family Trust No.2 on or about the date of the Restriction Deed.

Takeover Bid means the off-market takeover bid to be made by M2 for all the fully paid ordinary shares in Eftel Limited under Chapter 6 of the Corporations Act.