

# Scheme Implementation Agreement for the acquisition of Trade Me Group Limited

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## **PARTIES**

Titan AcquisitionCo New Zealand Limited

**Apax**

Trade Me Group Limited

**Company**

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Agreement dated 12 December 2018

## PARTIES

### Titan AcquisitionCo New Zealand Limited

(NZCN 7170554), a company incorporated in New Zealand, with its registered office at Level 22, 48 Shortland Street, Auckland, New Zealand ("**Apax**")

### Trade Me Group Limited

Level 5, 2 Market Lane, Wellington 6011, New Zealand (the "**Company**")

## INTRODUCTION

- A. The Company is listed on the NZX Main Board and the ASX (under a foreign exempt listing) under the ticker code 'TME'.
- B. Apax proposes to acquire all of the shares in the Company by way of a scheme of arrangement under Part 15 of the Companies Act.
- C. The parties have entered into this agreement to record the arrangements by which Apax and the Company intend to propose and implement the Scheme.

## AGREEMENT

### 1. INTERPRETATION

#### 1.1 Definitions: In this agreement, unless the context otherwise requires:

"**Apax Group**" means Apax and each of its Related Companies.

"**Apax Indemnified Person**" means each member of the Apax Group and each of their respective Representatives.

"**Apax Information**" means all information given by Apax to the Company in writing for inclusion in the Scheme Booklet, being:

- (a) information about Apax Group and its businesses and interests; and
- (b) any other information which the parties agree (acting reasonably) is Apax Information and that is identified in the Scheme Booklet as such.

"**Apax Undertakings**" means the undertakings set out in Part 2 of Schedule 3.

"**Apax Warranties**" means the warranties set out in Part 1 of Schedule 3.

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

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

"**Associate**" has the meaning given to the term "Associated Persons" in section 12(1) of the FMCA and "**Associated**" shall have the corresponding meaning.

"**Bill Rate**" means, in respect of any rate of interest to be calculated pursuant to this agreement, the Reserve Bank of New Zealand 90 day B2 Wholesale interest rate stated on the following page (or any successor page) <http://www.rbnz.govt.nz/statistics/b2> at or about 3.00pm on the first Business Day of the period in respect of which such rate of interest is to be calculated, and thereafter intervals of 90 days from that Business Day.

"**Break Fee**" means NZ\$19,199,400.

"**Board**" means the board of directors of the Company.

"**Business**" means the business carried on by the Trade Me Group as at the date of this agreement.

"**Business Day**" means any day other than a Saturday, Sunday, a statutory public holiday in Auckland or Wellington, New Zealand and excluding any day between 24 December 2018 and 4 January 2019 (both dates inclusive).

"**Change of Control Consent**" has the meaning given to that term in clause 10.1.

"**Companies Act**" means the Companies Act 1993.

"**Competing Proposal**" means any proposed:

- (a) takeover (whether a full or partial takeover under the Takeovers Code) in respect of the Company by a Third Party;
- (b) scheme of arrangement in respect of a Trade Me Group member involving a Third Party;
- (c) transfer or issuance of financial products of the Company to a Third Party, where the Shareholders' approval is required under the Takeovers Code;
- (d) sale of assets or financial products of the Trade Me Group to a Third Party, where such sale constitutes a division or similarly material part of the Trade Me Group's Business (and, for clarity, will not include any sale, disposal of assets or winding up in relation to any business, division, subsidiary or other interest of the Trade Me Group having a value of less than \$10 million); or
- (e) any strategic alliance, joint venture, partnership, economic or synthetic merger or other transaction which, would have the effect of a Third Party, directly or indirectly, having a Relevant Interest in more than 20% of the Shares.

For the purposes of the definition of "Competing Proposal":

- (f) any such proposal may be indicative, conditional or otherwise non-binding;
- (g) paragraphs (c) and (d) above include any agreement (within the meaning of section 6 of the FMCA) whereby such a transaction is effected through a series of linked or related transactions which if conducted as a single transaction would

constitute a "Competing Proposal" within the meaning of paragraphs (c) and (d) above; and

(h) "Third Party" shall mean a Third Party together with its Associates.

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

"**Consideration**" means \$6.45 in respect of each Scheme Share held by a Scheme Shareholder, as adjusted by virtue of any Counter Proposal that is given effect to.

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

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

"**Counter Proposal**" has the meaning set out in clause 13.9(b)(iii).

"**Court**" means the High Court of New Zealand.

"**Data Room Index**" means the index of materials and information disclosed in writing in the data room established by the Company in relation to the Transaction (including written answers given by or on behalf of the Company to questions and requests for information made by or on behalf of the Apax Group through the data room), in a form agreed between the parties in writing prior to the date of this agreement.

"**Debt Commitment Letter**" means the binding debt commitment letter provided by financiers in favour of Apax in connection with the debt component of the funding of Apax's obligations in respect of the Transaction, a copy of which was provided to the Company on or about the date of this agreement.

"**Deed Poll**" means the deed poll to be entered into by Apax in favour of the Scheme Shareholders, in the form set out in Schedule 7 or such other form agreed between the parties.

"**Disclosure Letter**" means a letter delivered by the Company to Apax prior to the entry into this agreement, together with the attachments to that letter, and which discloses facts, matters and circumstances that are, or may be, inconsistent with the Trade Me Warranties, or which are otherwise intended to form part of the Due Diligence Materials for the purposes of this agreement.

"**Due Diligence Material**" means:

- (a) the due diligence materials and information, including written answers given by or on behalf of the Company to questions and requests for information made by or on behalf of the Apax Group, listed in the Data Room Index; and
- (b) the Disclosure Letter.

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

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

**"Encumbrance"** means any security interest (within the meaning of section 17(1)(a) of the PPSA) and any option, right to acquire, right of pre-emption, assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (other than any reservation of title by suppliers in the ordinary course of business), and any agreement to create any of the foregoing, but excludes (where created in the ordinary course of business):

- (a) every lien or retention of title arrangement securing the unpaid balance of purchase money for property acquired in the ordinary course of business;
- (b) any security interest in relation to personal property (as those terms are defined in the PPSA and to which that Act applies) that is created or provided for by:
  - (i) a transfer of an account receivable or chattel paper;
  - (ii) a lease for a term of more than one year; or
  - (iii) a commercial consignment,that is not a security interest within the meaning of section 17(1)(a) of the PPSA;
- (c) the interest of the lessor or owner in respect of assets subject to a lease, a hire-purchase agreement or a conditional sale agreement.

**"End Date"** means the day 7 months after the day on which this agreement has been signed by the last party to sign it, or such later date as the parties agree in writing.

**"Equity Commitment Letter"** means the binding equity commitment letter provided in favour of Apax in connection with the equity component of the funding of Apax's obligations in respect of the Transaction, a copy of which was provided to the Company on or about the date of this agreement.

**"Exclusivity Period"** means the period from and including the execution of this agreement to the date it is validly terminated.

**"Executive Long-Term Incentive Share Scheme"** means the Company's Executive Long-Term Incentive Share Scheme pursuant to which Restricted Shares are held by TMG Trustee Limited as bare trustee for participants in that share scheme.

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

**"Final Orders Date"** means the day on which the Final Orders are sealed by the Court.

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

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

**"Fundamental Warranties"** means the Trade Me Warranties set out in paragraphs 1 - 6 (inclusive) of Part 1 of Schedule 2.

**"Government Agency"** means any government, any department, officer or minister of any government and any governmental, semi-governmental, regulatory, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity, in any jurisdiction, and includes (for the avoidance of doubt) the Overseas Investment Office, the Takeovers Panel and the Financial Markets Authority.

**"GST"** means tax charged under section 8 of the Goods and Services Tax Act 1985.

**"Implementation Date"** means the day on which the Scheme is to be implemented, being 2 Business Days after the Record Date, or such other date agreed between the parties in writing.

**"Independent Adviser"** means the person appointed by the Company, and approved by the Takeovers Panel, as independent adviser to prepare the Independent Adviser's Report.

**"Independent Adviser's Report"** means the independent adviser's report prepared by the Independent Adviser in relation to the Scheme, as amended or updated from time to time and including any supplementary or replacement report.

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

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

- (a) the person ceases or threatens to cease to carry on all or substantially all of its business or operations;
- (b) the person is unable to pay its debts when due, or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency, or makes a general assignment or an arrangement or composition or compromise with or for the benefit of any of its creditors, or stops or threatens to stop payments generally;
- (c) the person goes into receivership or has a receiver, receiver and manager, statutory manager, voluntary administrator, trustee or other similar officer appointed in respect of all or any of its property;
- (d) a distress order, attachment order, freezing order or other execution is levied or enforced upon or commenced against any of its assets;

- (e) any resolution is proposed or passed, or any proceeding is commenced or order made, for the liquidation or dissolution of that person;
- (f) any application is made or notice is filed for the deregistration of a person;
- (g) any other form of secured creditor enforcement, including as mortgagee in respect of real property;
- (h) the person takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this definition; or
- (i) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

**"Matching Period"** has the meaning set out in clause 13.9(b).

**"Material Adverse Change"** means any matter, event, condition or change in circumstances or thing that occurs, or is announced, after the date of this agreement ("**Specified Event**") which has, or is reasonably likely to have, either individually or when aggregated with any other matters, events or circumstances of a similar kind or category, the effect of:

- (a) diminishing the consolidated net assets of the Trade Me Group taken as a whole by at least \$112,000,000; or
- (b) diminishing the consolidated EBITDA of the Trade Me Group (excluding any non-recurring items to the extent that the impact of such items on the consolidated EBITDA of the Trade Me Group is recovered under the Trade Me Group's insurance) in either the financial year ending 30 June 2020 or 30 June 2021 by 15% or more against what it would reasonably have been expected to be but for the Specified Event;

in each case other than matters, events or circumstances:

- (c) required or specifically permitted by this agreement or the Scheme;
- (d) a matter, event, condition or change in circumstance, to the extent that it was fairly disclosed to Apax in the Due Diligence Material or by the Company through the NZX market announcements platform two Business Days before the date of this agreement;
- (e) done or not done at the written request or with the written approval of Apax;
- (f) resulting from the actual or anticipated change of control of the Company contemplated by the Transaction;
- (g) resulting from changes in general economic or political conditions, the publicly traded securities market in general or law; and
- (h) resulting from changes in generally accepted accounting principles or the judicial interpretation of them,



provided however, that with respect to clause (g), such matter does not have a materially disproportionate effect on the Trade Me Group.

"**NZX**" means NZX Limited.

"**NZX Listing Rules**" means the NZX Main Board Listing Rules.

"**OIO Application**" means Apax's application under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 in connection with the Scheme.

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

"**One Incentive Plan**" means the Trade Me Group Limited "One Incentive Plan" established as an incentive scheme for senior employees of the Business and which entitles participants to receive Restricted Shares and receive cash on the achievement of certain performance conditions, as detailed in the One Incentive Plan rules and offer letters all as fairly disclosed in the Due Diligence Material.

"**Performance Rights**" means all options or rights to receive Shares (including Restricted Shares) held by the Trade Me Group employees or officers, and includes any rights in respect of any Restricted Shares currently held by TMG Trustee Limited for participants under the Executive Long-Term Incentive Share Scheme and any rights to receive Shares (including Restricted Shares) under the One Incentive Plan all as fairly disclosed in the Due Diligence Material.

"**PPSA**" means the Personal Property Securities Act 1999.

"**Prescribed Occurrence**" means the occurrence of any of the events listed in Schedule 1 other than an event:

- (a) agreed to by Apax in writing; or
- (b) expressly required or permitted by this agreement.

"**Record Date**" means 7:00pm on the date which is five Business Days after the later of:

- (c) the Final Orders Date; and
- (d) the date on which the OIO Condition is satisfied,

or such other date agreed between the parties in writing.

"**Register**" means the Share register maintained by Link Market Services Limited on behalf of the Company.

"**Registrar**" has the meaning given in the Companies Act.

"**Related Company**"

- (a) has the meaning given to that expression in section 2(3) of the Companies Act, provided that, for this purpose, references to "company" in that section will extend to any body corporate wherever incorporated or registered; and

- (b) in respect of Apax, includes any fund, limited partnership or other collective investment vehicle which is managed or controlled by an entity which also manages or controls Apax or is a related company (as contemplated by paragraph (a) of this definition) of Apax or any of those parties.

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

**"Relief"** means any loss, allowance, credit, deduction, rebate or other relief taken into account in computing any Tax liability or any right to the repayment or refund of Tax.

**"Representatives"** in relation to a person means any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person.

**"Restricted Shares"** means Shares that are either currently held by TMG Trustee Limited for participants under the Executive Long-Term Incentive Share Scheme or which may be allocated to participants under the One Incentive Plan.

**"Reverse Break Fee"** means \$19,199,400.

**"Scheme"** means a scheme of arrangement under Part 15 of the Companies Act under which all of the Scheme Shares held by Scheme Shareholders will be transferred to Apax and the Scheme Shareholders will receive the Consideration, in the form of the **"Scheme Plan"** set out in Schedule 5 or in such other form as the parties agree in writing and the Court approves under section 236(1) of the Companies Act.

**"Scheme Booklet"** means the explanatory memorandum (including the notice of meeting and proxy form) to be prepared in accordance with this agreement in connection with the Scheme, the despatch of which is to be approved by the Court and which is to be sent to Shareholders in advance of the Scheme Meeting.

**"Scheme Meeting"** means the meeting of Shareholders ordered by the Court to be convened pursuant to the Initial Orders in respect of the Scheme and includes any adjournment of that meeting.

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

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

**"Scheme Shares"** means all of the Shares on issue on the Record Date.

**"Second Court Date"** means the later of:

- (a) if no hearing is held in respect of the Final Orders, the last date the Company files affidavit(s) satisfying the Initial Orders so as to obtain the Final Orders; and
- (b) if there is a hearing in respect of the Final Orders, the first date of such hearing, provided that if such hearing is adjourned, it means the first date on which the adjourned application is heard.

**"Share"** means a fully paid ordinary share in the Company.

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

**"Superior Proposal"** means a written bona fide Competing Proposal received after the date of this agreement that the Board determines, acting in good faith and after having taken advice from its external financial and legal advisers:

- (a) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including its conditions precedent; and
- (b) is more favourable to Shareholders than the Scheme, taking into account all the terms and conditions of the Competing Proposal and the Scheme.

**"Takeovers Code"** means the takeovers code approved in the Takeovers Code Approval Order 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993.

**"Takeovers Panel"** means the Takeovers Panel established by section 5(1) of the Takeovers Act 1993.

**"Tax"** or **"Taxation"** means all forms of taxation including all statutory or governmental taxes, levies, duties and rates, whether imposed in New Zealand or elsewhere, and includes:

- (a) any reassessments of any such taxation;
- (b) loss of Relief; and
- (c) all penalties, interest, fines or the like imposed in respect of any such taxation or loss of Relief.

**"Third Party"** means a person other than a member of the Apax Group.

**"Timetable"** means the timetable set out in Schedule 4, or such other timetable as the parties may agree in writing.

**"Trade Me Director"** means each director of the Company from time to time.

**"Trade Me Group"** means the Company and its Related Companies.

**"Trade Me Indemnified Persons"** means each member of the Trade Me Group and each of their respective Representatives.

**"Trade Me Information"** means all information included in the Scheme Booklet other than the Apax Information and the Independent Adviser's Report.

**"Trade Me Undertaking"** means the undertakings set out in Part 2 of Schedule 2.

**"Trade Me Warranties"** means the warranties set out in Part 1 of Schedule 2.

**"Transaction"** means the acquisition by Apax of all the Scheme Shares through the implementation of the Scheme in accordance with the terms of this agreement.

1.2 **References:** In this agreement, unless the context otherwise requires:

- (a) headings are to be ignored in construing this agreement;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after the date of this agreement);
- (d) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (e) reference to a party, person or entity includes:
- (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
  - (ii) an employee, sub-contractor, agent, successor, assign, executor, administrator and other representative of such party, person or entity;
- (f) "**written**" and "**in writing**" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (g) the words "**including**" or "**includes**" do not imply any limitation;
- (h) a reference to any time is, a reference to that time in New Zealand;
- (i) a reference to "**law**" includes any statute, regulation, by-law, determination, ordinance, rule (including applicable listing rules) or other like provision, as amended from time to time, in any jurisdiction;
- (j) references to money are to New Zealand dollars; and
- (k) a reference to a matter, information or a circumstance being "**disclosed**" or "**fairly disclosed**" (or any similar expression) means disclosure in writing in a manner such that the matter, information or circumstance would reasonably be expected to come to the knowledge of a diligent and reasonable purchaser or any of its representatives in the ordinary course of carrying out a due diligence exercise in respect of the Trade Me Group and the Business, in such a way that such a purchaser (experienced in transactions of this nature) might reasonably be expected to understand the relevance and importance of the matter, information or circumstance.

1.3 **Consents:** If the doing of any act, matter or thing under this agreement is dependent on the consent or approval of a party or is within the discretion of a party, then, unless specified otherwise in this agreement, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

1.4 **No contra proferentem:** No term or condition of this agreement will be construed adversely to a party solely because that the party was responsible for the preparation of this agreement or a provision of it.

1.5 **Knowledge:** Where any Trade Me Warranty is qualified by the expression "**so far as the Company is aware**" or any similar expression, the Company will be deemed to know or be aware of all matters or circumstances of which Jon Macdonald, Caroline Rawlinson, Lucy Elwood or Simon Young are, after due enquiry in the context of the Transaction, actually aware as at the date the statement is made. For clarity, and without limiting clause 11.5, none of the individuals referred to in this clause 1.5 has any personal liability in respect of the Trade Me Warranties.

## 2. SCHEME

2.1 **Proposal:** The Company must, as soon as reasonably practicable, propose and implement the Scheme on and subject to the terms of this agreement.

2.2 **Consideration:** Subject to the terms of this agreement, in consideration for, and simultaneously with, the transfer to Apax of each Scheme Share held by each Scheme Shareholder under the terms of the Scheme, Apax undertakes in favour of the Company (in the Company's own right and on behalf of each of the Scheme Shareholders) to pay the Consideration to each Scheme Shareholder in accordance with the Scheme and the Deed Poll.

2.3 **General obligations:** Each party must do everything reasonably necessary, including by procuring that its Representatives work in a timely and co-operative manner with the other party and its Representatives, to implement the Scheme in accordance with this agreement and all applicable laws.

### 2.4 **Timetable:**

- (a) Each party must use reasonable endeavours to take all necessary steps and exercise all rights necessary to ensure that the Scheme is proposed and implemented in accordance with the Timetable or otherwise as soon as reasonably practicable.
- (b) If any aspect of the Timetable is not able to be achieved, the parties must consult in good faith and if there is a material delay expected, they will consult with a view to amending the Timetable as required to permit the Scheme to be implemented before the End Date.

For clarity, neither this clause nor the Timetable limit the Company's ability to deal with a Competing Proposal that the Board considers is reasonably capable of becoming a Superior Proposal in accordance with clause 13 or to the extent necessary to deal with any other circumstances in accordance with this agreement and the Board's fiduciary duties.

2.5 **No amendment:** The Company must not consent to any modification of, or amendment to, the Scheme or Final Orders, or the making or imposition by the Court or any Government Agency of any condition to the Scheme, without Apax's prior written consent.

### 3. CONDITIONS

3.1 The Scheme will not become Effective, and the obligations of Apax under clause 2.2, and, once signed, the Scheme or the Deed Poll, do not become binding, unless and until each of the Conditions set out in the following table are satisfied or waived in accordance with this clause 3.

	CONDITION	RESPONSIBILITY	WAIVER
(a)	<b>(OIO consent)</b> before 8:00am on the End Date, all consents required to be given under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 in connection with the Scheme being given on terms acceptable to Apax, acting reasonably (subject to clause 3.3);	Apax	None
(b)	<b>(Court approval)</b> subject to clause 3.2, approval of both the Initial Orders and Final Orders being given by the Court in accordance with Part 15 of the Companies Act on terms reasonably acceptable to the Company and Apax, each acting reasonably;	Company	None
(c)	<b>(Shareholder approval)</b> approval of the Scheme being given by the Shareholders at the Scheme Meeting by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act;	Company	None
(d)	<b>(No restraint)</b> no law, judgment, order, restraint or prohibition enforced or issued by any Government Agency being in effect as at 8:00am on the Implementation Date that prohibits, prevents, materially delays or makes illegal the implementation of the Scheme;	None	None
(e)	<b>(No Prescribed Occurrence)</b> no Prescribed Occurrence occurring between the date of this agreement and 8:00am on the Implementation Date.	Company	Apax

3.2 **Court Approval:** If the Court's approval of the Scheme in accordance with section 236(1) of the Companies Act would impose any terms or conditions other than those set out in the Scheme plan set out in Schedule 5, then each such term or condition must be approved in writing by both parties (both acting reasonably) prior to the Court granting the Final Orders.

3.3 **OIO Condition:** Apax may not withhold its approval to the terms or conditions of any consent granted under the Overseas Investment Act 2005 and the Overseas Investment Regulations 2005 for the purposes of clause 3.1(a) if the terms or conditions imposed are the standard terms or conditions set out in Schedule 6 or are of similar effect.

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### 3.4 Endeavours to satisfy Conditions:

- (a) The party specified in the "Responsibility" column of the table in clause 3.1 opposite each Condition is primarily responsible for the satisfaction of that Condition and (where applicable) must promptly apply for or seek each consent or approval required to satisfy that Condition, and diligently pursue it. Such party must use reasonable endeavours to satisfy that Condition:
- (i) in the case of any Condition in clauses 3.1(a) to (c), as soon as practicable and in any event before the End Date; and
  - (ii) in the case of either Condition in clauses 3.1(e) at all times before 8:00am on the Implementation Date.
- (b) Regardless of whether a party is primarily responsible for the satisfaction of a particular Condition in accordance with clause 3.4(a), each party must:
- (i) co-operate with the other party towards satisfying each Condition;
  - (ii) promptly provide all information and other assistance reasonably required by the other party for the purposes of procuring the satisfaction of each Condition; and
  - (iii) not take any action or omit to take any action to deliberately hinder, subvert or undermine the satisfaction of any Condition, except to the extent that such action is required by law, and provided that, this provision does not limit the Company's ability to deal with a Competing Proposal that the Board considers is capable of becoming a Superior Proposal in accordance with clause 13 or to the extent necessary to deal with any other circumstances in accordance with the terms of this agreement and the Board's fiduciary duties.
- (c) Nothing in this clause 3.4 will limit each party's discretion to determine whether or not a Condition has been satisfied.

### 3.5 Notifications:

- (a) Each party will keep the other party fully informed as to the progress made towards procuring the satisfaction of the Conditions.
- (b) If it becomes known that a Condition has become incapable of satisfaction, the party with that knowledge will promptly inform the other party in writing, and in any event within two Business Days of the relevant fact having become known to that party.
- (c) Each party must notify the other party in writing of the satisfaction of a Condition as soon as reasonably practicable after that party becomes aware of it. Any notification delivered pursuant to this clause 3.5(c) must be accompanied by sufficient evidence to reasonably satisfy the other party of the fulfilment of the Condition, including a copy of any consent, approval, order or other documentation.

- 3.6 **Waiver:** Where the column of the table in clause 3.1 opposite a Condition headed "waiver" states "none", that Condition has been inserted for the benefit of both parties and cannot be waived by either of the parties. Each other Condition has been inserted for the benefit of, and may only be waived by, Apax by notice in writing to the Company.
- 3.7 **Specific obligations relating to OIO Condition:** Without prejudice to each party's obligations under clause 3.4, Apax must:
- (a) submit the OIO Application no later than the date that is two Business Days after the date of this agreement;
  - (b) promptly provide to the Overseas Investment Office all other notices, information and documents reasonably requested by the Overseas Investment Office for the purpose of fulfilling the OIO Condition;
  - (c) diligently progress the OIO Application (including, to the extent within its control, by responding to the Overseas Investment Office in a fulsome and timely manner, and where applicable, in compliance with prescribed timeframes, in respect of all its questions and other correspondences);
  - (d) notify the Company of any material communication, whether written or oral, received by Apax in relation to the OIO Condition;
  - (e) consult with the Company with respect to any filing, notice or information to be provided to, or material correspondence to be had with, the Overseas Investment Office (provided that any commercially or competitively sensitive information in any application or other filing, notice, information or correspondence will only be provided to the Company's solicitors, on a counsel-only basis);
  - (f) other than on termination of this agreement, not withdraw or vary (with a consequence that might be adverse to its prospects of satisfying the OIO Condition), or procure such withdrawal or variation, of the OIO Application; and
  - (g) ensure that a representative of the Company is provided with an opportunity to be present at any meetings with Overseas Investment Office (except to the extent that the Overseas Investment Office expressly requests that a party should not be present at the meeting or part or parts of the meeting or to the extent Apax reasonably believes any commercially or competitively sensitive information is to be discussed at the meeting).
- 3.8 **Alternative method or timing:** If a party becomes aware that due to any event or change in circumstances the OIO Condition or the Condition in clause 3.1(d):
- (a) has become incapable of being satisfied; or
  - (b) is not likely to be fulfilled or waived (to the extent capable of waiver) before 5.00pm on the End Date,

then as soon as is practicable the parties will consult in good faith to:

- (c) if a deferral of the Timetable would not, in the reasonable opinion of the parties, assist with the satisfaction of the relevant Condition, endeavour to agree whether the Transaction may proceed by way of alternative means or methods; or



- (d) if a deferral of the Timetable would, in the reasonable opinion of the parties, assist with the satisfaction of the relevant Condition, endeavour to agree to:
- (i) to the extent reasonably possible, change the date of the application made to the Court for an order under section 236(1) of the Companies Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the Company and Apax (being a date no later than two Business Days before the End Date); or
  - (ii) extend the relevant date or extend the End Date by a period of up to one month (with the expectation that there is only one such extension under this agreement).

3.9 **Termination:** If the parties are unable to reach agreement under clause 3.8 within five Business Days (or such longer period as agreed by the parties) of becoming aware of the relevant occurrence or by the End Date, then, if the circumstances in clause 3.8(a) or (b) are then continuing, either party may terminate this agreement on written notice to the other party, at which time, subject to clause 14.8, this agreement will be terminated and of no effect.

#### 4. SCHEME BOOKLET

4.1 **Company's obligations:** The Company will:

- (a) prepare the Scheme Booklet so that it contains:
  - (i) all information required by the Companies Act, the NZX Listing Rules and ASX Listing Rules and any other applicable laws, including any requirements of the Takeovers Panel;
  - (ii) the responsibility statements referred to in clause 4.4; and
  - (iii) a statement by the Trade Me Directors reflecting the recommendation and undertaking referred to in clause 8 (modified appropriately where the Consideration is within or above the Independent Adviser's valuation range for the Shares);
- (b) appoint the Independent Adviser, and provide all assistance and information that is reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (c) provide Apax with successive drafts of the Scheme Booklet and any extracts of the Independent Adviser's Report that contain any factual matters about Apax in a timely manner and so that Apax has a reasonable opportunity to review and comment on those drafts (with the parties' intention being that, so far as is practicable, the Scheme Booklet be prepared within 15 Business Days of the date on which the initial draft of the Scheme Booklet is provided by the Company to Apax);
- (d) as soon as practicable after preparation of an advanced draft of the Scheme Booklet suitable for review by the Takeovers Panel and NZX, provide that draft to Apax;

- (e) in respect of each draft of the Scheme Booklet reviewed by Apax, consider and take into account in good faith all of the reasonable comments of Apax and its Representatives when preparing a revised draft of the Scheme Booklet;
- (f) as soon as practicable after receipt of the confirmation from Apax referred to in clause 4.2(e), provide the Takeovers Panel and NZX the draft Scheme Booklet;
- (g) consult with Apax in good faith in relation to any matters raised by either the Takeovers Panel or NZX in relation to the Scheme Booklet and use reasonable endeavours, in co-operation with Apax, to resolve any such matters;
- (h) as soon as practicable after the NZX and the Takeovers Panel have completed their review of the Scheme Booklet and the Takeovers Panel has indicated in writing that it intends to issue a “no objection” statement before the Second Court Date and, procure that a meeting of the Board is convened to approve the Scheme Booklet for lodgement with the Court and, subject to the Initial Orders being granted and the terms of those orders, for dispatch to Shareholders;
- (i) send the Scheme Booklet to Shareholders in accordance with requirements set out in the Initial Orders (and otherwise as soon as reasonably practicable, including within the Timetable); and
- (j) advise Apax if the Company becomes aware:
- (i) of new information which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet;
  - (ii) that any part of the Scheme Booklet (other than the Independent Adviser's Report or the Apax Information) is misleading or deceptive in any material respect, including by omission; or
  - (iii) that information that was required to be disclosed in the Scheme Booklet under applicable law was not included,

and in any of those cases, if the Company becomes so aware at any time (after consulting in good faith with Apax as to the need for and content and presentation of the disclosures discussed below (except where doing so would, in the Company's reasonable opinion, cause it to breach law or is not reasonably practicable)):

- (iv) between the approval of the Scheme Booklet in accordance with clause 4.1(h) and the date of the Scheme Meeting, then, if considered by the Company that supplementary disclosure is required, it will provide supplementary disclosure to Shareholders in an appropriate and timely manner in accordance with applicable law and will, if it considers it necessary or appropriate, (A) seek the Court's guidance in respect of the Supplementary Disclosure; and (B) adjourn the Scheme Meeting to the earliest date possible; or
- (v) between the date of the Scheme Meeting and the Second Court Date, then, if considered by the Company that supplementary disclosure is required, it will apply to the Court for orders as to the procedure to be

followed as to the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme.

4.2 **Apax obligations:** Apax must:

- (a) prepare and provide to the Company for inclusion in the Scheme Booklet information:
- (i) about Apax and the Apax Group;
  - (ii) about the various funding arrangements Apax has available to it in order to fund the Consideration (without disclosing any commercially sensitive terms); and
  - (iii) equivalent to the information that would meet the requirements of Schedule 1 to the Takeovers Code,
- as required to be included in Scheme Booklet by the Companies Act, the Takeovers Panel, the NZX Listing Rules and any other applicable laws;
- (b) give the Company a reasonable opportunity to review successive drafts of the information referred to in clause 4.2(a) in a timely manner and so that the Company has a reasonable opportunity to review the form and content of that information, and in respect of each draft provided, consider and take into account in good faith all reasonable comments of the Company and its Representatives when preparing revised drafts of that information (with the parties' intention being that, so far as is practicable, the Scheme Booklet be prepared within 15 Business Days of the date on which the initial draft of the Scheme Booklet is provided by the Company to Apax);
- (c) provide all assistance and information reasonably requested by the Independent Adviser to enable it to prepare the Independent Adviser's Report;
- (d) as soon as reasonably practicable after receipt of any draft of the Scheme Booklet from the Company, review and provide comments on that draft;
- (e) subject to clause 4.3, before the Company provides the Scheme Booklet to the Takeovers Panel and NZX in accordance with clause 4.1(f), deliver to the Company consent from Apax to the inclusion of the Apax Information in the Scheme Booklet in the form and context it appears; and
- (f) advise the Company if Apax becomes aware at any time after giving consent to the Company under clause 4.2(e) either:
- (i) of new information which is material and which, had it been known at the time the Scheme Booklet was prepared, should have been included in the Apax Information;
  - (ii) that any part of the Apax Information is misleading or deceptive in a material respect, including by omission; or
  - (iii) that information that was required to be disclosed as part of the Apax Information under applicable law was not included,

and if Apax provides such advice, the Company will, at any time (after consulting in good faith with Apax as to the need for and content and presentation of the disclosures referred to in paragraphs (iv) and (v) below (as relevant), except where doing so would, in the Company's reasonable opinion, cause it to breach law or is not reasonably practicable):

- (iv) between the approval of the Scheme Booklet in accordance with clause 4.1(h) and the date of the Scheme Meeting, if considered by the Company that supplementary disclosure is required, provide supplementary disclosure to Shareholders in an appropriate and timely manner in accordance with applicable law and will, if it considers it necessary or appropriate, (A) seek the Court's guidance in respect of the Supplementary Disclosure; and (B) adjourn the Scheme Meeting to the earliest date possible; and
- (v) between the date of the Scheme Meeting and the Second Court Date if considered by the Company that supplementary disclosure is required, apply to the Court for orders as to the procedure to be followed as to the provision of supplementary disclosure to Shareholders and the effect on the approval of the Scheme.

4.3 **Apax confirmation and approval:** If Apax requires any change to be made to the form or content of the Apax Information as a condition of giving its consent as referred to in clause 4.2(e) then:

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

4.4 **Responsibility statements:** The Scheme Booklet must contain responsibility statements, in a form to be agreed between the parties, to the effect that:

- (a) the Company has provided, and is responsible for, the Trade Me Information in the Scheme Booklet, and that none of Apax, its Related Companies or their respective Representatives assumes any responsibility for the accuracy or completeness of the Trade Me Information;
- (b) Apax has provided, and is responsible for, the Apax Information but no other part of the Scheme Booklet, and that none of the Company, its Related Companies or their respective Representatives assumes any responsibility for the accuracy or completeness of the Apax Information; and
- (c) the Independent Expert has provided and is responsible for the Independent Expert's Report, and that none of Apax, the Company or their respective Related Companies or Representatives assumes any responsibility for the accuracy or completeness of the Independent Adviser's Report.

## 5. SCHEME IMPLEMENTATION STEPS

5.1 **Company's obligations:** Without limiting clause 2.3 and 2.4, the Company must use its reasonable endeavours, as soon as reasonable practicable, including within the Timetable, to:

- (a) before the First Court Date, in consultation with Apax, to the extent reasonably appropriate, apply to the Takeovers Panel for a letter of intention indicating that the Takeovers Panel:
  - (i) intends to provide a statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Court granting the Final Orders; and
  - (ii) does not intend to seek to be heard by the Court in relation to the application for Initial Orders;
- (b) apply to the Court for Initial Orders under section 236(2) of the Companies Act convening the Scheme Meeting, and if the Court makes and seals those orders, dispatch the Scheme Booklet to Shareholders and hold the Scheme Meeting in accordance with, and otherwise complying in all respects with, those Initial Orders;
- (c) if the Initial Orders are granted and sealed by the Court, promptly deliver a copy of the Initial Orders to the Registrar for registration in accordance with section 236(4) of the Companies Act (and, in accordance with the requirements of the Companies Act, by no later than 10 Business Days after the date the Initial Orders are granted);
- (d) upon sending the Scheme Booklet to Scheme Shareholders, lodge a copy of that Scheme Booklet with NZX and ASX in accordance with the NZX Listing Rules and the ASX Listing Rules (as applicable);
- (e) if the Scheme Resolution is passed by the requisite majorities of Shareholders as set out under section 236A(4) of the Companies Act 1993, apply to the Takeovers Panel for the production of a statement under section 236A(2)(b)(ii) of the Companies Act stating that the Takeovers Panel has no objection to the Final Orders being granted by the Court under section 236(1) (and, if applicable, section 237) of the Companies Act;
- (f) if the Scheme Resolution is passed by the requisite majorities of Shareholders, seek the Court's approval of the Final Orders;
- (g) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court):
  - (i) promptly deliver to the Registrar for registration a copy of the Final Orders for registration in accordance with section 236(4) of the Companies Act (and, in accordance with the requirements of the Companies Act), by no later than 10 Business Days after the date the Final Orders are granted;
  - (ii) do all other things contemplated by or necessary to give full effect to the Scheme Plan and the Final Orders in accordance with this agreement

(including using reasonable endeavours to ensure that the Conditions have been satisfied or, if capable of waiver, waived in accordance with clause 3); and

- (h) if the Scheme becomes Effective:
  - (i) use its reasonable endeavours to procure that the NZX and ASX suspend trading in the Shares from the close of trading on the date that is two Business Days after the date on which the Scheme becomes Effective or such other date agreed between the parties in writing;
  - (ii) close the Register as at the Record Date to determine the identity of the Scheme Shareholders and their entitlements to the Consideration; and
  - (iii) subject to Apax satisfying its obligations under clause 5.2(c), effect the transfer of the Scheme Shares to Apax in accordance with the Scheme on the Implementation Date.

5.2 **Apax's obligation:** Without limiting clause 2.3, Apax must:

- (a) no later than two Business Days before the First Court Date, deliver to the Company a copy of the Deed Poll duly executed by Apax;
- (b) without limiting clause 7.2, if requested by the Company, procure that it is represented by counsel at the Court hearings convened for the purposes of considering the Initial Orders and the Final Orders, at which (through its counsel), Apax will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme; and
- (c) if the Court approves the Scheme in accordance with section 236(1) of the Companies Act (and once the Final Orders are sealed by the Court), do all other things contemplated by or necessary to give full effect to the Scheme Plan and the Final Orders (including using reasonable endeavours to ensure that the Conditions have been satisfied or, if capable of waiver, waived in accordance with clause 3, and providing the Consideration in accordance with the Scheme and the Final Orders).

## 6. COMPANY'S OTHER IMPLEMENTATION OBLIGATIONS

6.1 **Information about Shareholders:** The Company must:

- (a) comply with all reasonable requests by Apax to require disclosure of information in accordance with sections 290 and 291 of the FMCA and give Apax the information obtained as a result of requiring such disclosure; and
- (b) procure that its share registry provides to Apax, in the form reasonably requested by Apax, details of the Register and all other information about the Shareholders which Apax reasonably requires in order to:
  - (i) canvas approval of the Scheme by Shareholders; or

- (ii) facilitate the provision by Apax of the Consideration in accordance with this agreement, the Scheme and the Deed Poll.

## 6.2 Promotion of Transaction:

- (a) During the period commencing on the date of this agreement and ending on the first to occur of the termination of this agreement and the End Date, the Company will provide reasonable cooperation to Apax in promoting the merits of the Transaction to Shareholders, including:
  - (i) encouraging Shareholders to exercise their rights to vote on the resolution to approve the Scheme at the Scheme Meeting; and
  - (ii) procuring that senior executives of the Trade Me Group, as may be reasonably available, meet with key Shareholders if reasonably requested to do so by Apax,

subject to there being no Superior Proposal and provided the Independent Adviser's Report has first concluded that the Consideration is within or above the Independent Adviser's valuation range for the Shares. If Apax engages in canvassing Shareholders in relation to the Scheme, Apax must provide the Company with details of the information and correspondence provided to Shareholders, as reasonably requested by the Company, and Apax must ensure that such information and correspondence complies with all applicable laws, including the FMCA and Fair Trading Act 1986.

- (b) Apax agrees to pay 50% of the Trade Me Group's out of pocket costs (exclusive of GST) incurred promoting the Transaction to Shareholders up to a maximum of \$50,000, provided that the Company and Apax discuss in advance all promotional activities which relate to published materials, outbound programmed call scripts and other similar planned promotional materials and that Apax is given a reasonable opportunity to comment on the strategy, form and content of such promotional activities and the Company must consider and take into account in good faith all reasonable comments of Apax and its Representatives.

## 6.3 Board changes: The Company must procure that:

- (a) such persons as Apax nominates by notice to the Company no later than 4 Business Days before the Implementation Date and who have provided to the Company a signed consent to act by that time (as well as any other information required to be provided to the Registrar) are appointed as additional directors of each member of the Trade Me Group specified in the notice, on the Implementation Date (by no later than 5:00pm); and
- (b) unless otherwise agreed by Apax in writing, each director of each member of the Trade Me Group, other than those appointed in accordance with clause 6.3(a), resigns as a director with effect from the Implementation Date (by no later than 5:00 pm on the Implementation Date) and acknowledges in writing that he or she has no claim against any member of the Trade Me Group other than for accrued but unpaid directors fees and expenses.

## 7. COURT PROCEEDINGS

### 7.1 Court documents:

- (a) In relation to each Court application made in relation to the Scheme, including any appeal, the Company must give Apax drafts of all documents required to be given by the Company to the Court (including the originating applications, affidavits, memoranda, submissions and draft Court orders) a reasonable time before they are due to be submitted to the Court (and in any event, except in situations of urgency, not less than 72 hours before submission) and must consider in good faith whether to incorporate the reasonable comments of Apax and its Representatives on those documents.
- (b) The Company must not provide the Court with any Court orders (whether in draft or not) or applications for Court orders, or consent to any changes to any Court orders, without Apax having approved such documents being submitted to the Court or such changes being consented to.

7.2 **Representation:** In relation to each Court application or appearance made in relation to the Scheme, including any appeal, the Company will consent to the separate representation of Apax by counsel and Apax may appear and be represented in relation to the Court applications or other appearances relating to the Scheme.

7.3 **Assistance:** The Company will use its reasonable endeavours to follow the steps or matters specified by the Court, or apparent from its directions or reasons, as required or desirable in order to grant the Initial Orders or Final Orders (as the case may be) or requirements of the Takeovers Panel, including, if indicated, providing supplementary information to Shareholders and/or convening a second Scheme Meeting.

7.4 **Appeal if orders not made:** If the Court does not make any order sought by the Company under clause 5 (the "**Decision**"), then, to the extent clause 7.3 does not apply, the Company and Apax must consult as to the effect of the refusal and whether to appeal the Decision, including as to who is to bear the costs of any such appeal, and, where applicable appropriate amendments to the timetable for the Scheme and/or the End Date.

## 8. RECOMMENDATION AND VOTING INTENTIONS

8.1 **Recommendation and voting:** The Company must ensure that each Trade Me Director:

- (a) recommends that Shareholders vote in favour of the Scheme; and
- (b) undertakes to vote, or procure the voting of, all of the Shares held or controlled by him or her in favour of the Scheme,

in each case subject to:

- (c) there being no Superior Proposal; and
- (d) the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.



## 8.2 Change to recommendation or voting intentions:

- (a) The Company must ensure that no Trade Me Director changes, qualifies or withdraws the recommendation or undertaking referred to in clause 8.1 or makes any statement inconsistent with that recommendation or that undertaking, unless the Company receives a Superior Proposal or the Independent Adviser's Report concludes that the Consideration is below the Independent Adviser's valuation range for the Shares.
- (b) If the Board or the Company becomes aware that a Trade Me Director is likely to change, qualify or withdraw his or her recommendation or undertaking as described in clause 8.1, or make any statement inconsistent with that recommendation or undertaking, the Board must:
  - (i) give written notice to Apax of such event and any public statement that the Board intends to make if such event occurs; and
  - (ii) consult in good faith with Apax in respect of the relevant event, before publication of such public statement, to the extent permitted by law.

## 9. ACCESS, INFORMATION AND CONDUCT OF BUSINESS

### 9.1 Access and information: From the date of this agreement until the Implementation Date, the Company must:

- (a) procure that Apax and its Representatives are given reasonable access to:
  - (i) the properties, books and records and senior management of the Trade Me Group, during normal business hours, and on reasonable notice to the Company; and
  - (ii) information about the Business reasonably requested by Apax or its Representatives,for the purposes of:
  - (iii) implementing the Scheme and enabling Apax to prepare for the transition of ownership of the Trade Me Group to Apax; and
  - (iv) any other purpose agreed between the Company and Apax in writing,except to the extent that the provision of such access is prohibited by law or any confidentiality obligations owed by the Trade Me Group to third parties and provided that:
  - (v) Apax will focus on issues that it considers to be material, having regard to management commitments and the impact of information requests on the Company's Business;
  - (vi) providing access and/or information pursuant to this clause 9.1(a) is done in a way which minimises disruption to the Company's business; and

- (vii) nothing in this clause 9.1(a) will require the Company to provide information concerning its directors' and management's consideration of the Scheme or any Competing Proposal (and nothing in this clause limits Trade Me's obligations under clause 13);
- (b) keep Apax updated on all material developments in its Business; and
- (c) provide Apax copies of papers provided to the Board (including monthly management accounts for the Trade Me Group) within three Business Days after they are provided to Board members, however, the Company may redact information from such papers to the extent it is commercially sensitive or relates to the Transaction or a Competing Proposal,

provided that to the extent that any information is provided under this clause 9.1 that is not publicly available, it will be kept confidential by the recipient of that information in accordance with the confidentiality agreement referred to in clause 19.4.

9.2 **Conduct of business; positive obligations:** From the date of this agreement until and including the Implementation Date, the Company must procure that:

- (a) the Business is carried on as a going concern and in the normal and ordinary course, consistent with past practices preceding the date of this agreement, and this obligation will include using reasonable endeavours to:
  - (i) keep available the services of its current executive leadership team, subject to any matter fairly disclosed to Apax in the Due Diligence Material or through the NZX market announcements platform before the date of this agreement; and
  - (ii) maintain and preserve its relationships with relevant Government Agencies, customers, suppliers, licensors, licensees, joint venturers and others having business dealings with it,

but nothing in this clause 9.2(a)(i) or clause 9.2(a)(ii) shall require the Company to act in a manner inconsistent with the terms of this agreement;

- (b) the tangible assets of the Business are maintained in as good a state of operating condition, order and repair as they were at the date of this agreement, having regard to the age and book value of such assets, except for ordinary depreciation and fair wear and tear;
- (c) Apax is promptly notified of:
  - (i) any claim that is made or legal proceedings instituted against it, or any other member of the Trade Me Group, or any director or employee of any other member of the Trade Me Group (of which it becomes aware), other than any claim or legal proceeding that has potential liability which is less than \$500,000;
  - (ii) any decision by it or any other member of the Trade Me Group proposes to initiate or settle any claims, disputes, demands or proceedings for an amount resulting in a cost to the Trade Me Group which in aggregate exceeds \$500,000; and

- (iii) any actual or threatened material enquiries or investigations by any Government Agency in relation to the Business (including in relation to Tax) and any material correspondence with any Government Agency in relation to the Business (which, for clarity, does not include any enquiries or investigations arising out of or in connection with the conduct of Trade Me's members or other individuals listing on, or otherwise engaging with, the Trade Me platforms);
- (d) all material licences, approvals and permits necessary to operate the Business are kept in force, and all conditions attaching to those licences, approvals and permits are complied with in all material respects;
- (e) all insurance policies currently in force at the date of this agreement in favour of the Trade Me Group and the Business are maintained on materially the same terms and conditions, and that all premiums payable in respect of such policies are paid when due.

9.3 **Conduct of business; negative obligations:** From the date of this agreement until and including the Implementation Date, the Company must procure that it, and each other member of the Trade Me Group, does not:

- (a) create or incur any liability or indebtedness (whether contingent or otherwise, and including by way of drawing down on any facility), except normal liabilities or indebtedness incurred in the ordinary course of the Business and not exceeding \$10,000,000 (in aggregate);
- (b) create or otherwise permit to arise any Encumbrance over any of its assets;
- (c) commence, compromise or settle any litigation, arbitration or other similar proceedings for an amount exceeding \$500,000;
- (d) provide any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Trade Me Group;
- (e) exceed borrowing or cash reserve limitations as established by any financier of the member office Trade Me Group;
- (f) make any material Taxation election (other than an election in the ordinary course of the Business), or settle, compromise or prejudice any material Tax liability;
- (g) make any change in accounting methods, principles or practices used by it (except if required by a change in International Financial Reporting Standards);
- (h) employ any new employees, other than:
  - (i) new hires contemplated by the FY19 forecast (as fairly disclosed to Apax in the Due Diligence Material) or new hires employed in the ordinary course of Business where such hires are made to fill a vacant position within the Business (and provided that the terms and remuneration of those new hires are equivalent to those on which the departed employee was employed); or
  - (ii) employees with an annual remuneration of less than \$200,000;

- (i) alter or accelerate the remuneration or other conditions of employment or engagement of any of its directors, officers, senior employees and executives, other than changes consistent with the normal business practices employed by the Trade Me Group or as contemplated by clause 9.5;
- (j) make any payment or incur (or enter into) any unbudgeted capital expenditure except in the normal and ordinary course of the Business, other than payments not exceeding in aggregate \$2,000,000 and excluding any capitalised development costs;
- (k) acquire or dispose of any assets (including shares or other similar interests), other than current assets acquired or disposed of in the ordinary course of the Business, or an asset, or assets which should reasonably be assessed together, with a book value not exceeding \$1,000,000;
- (l) issue, redeem, or buy back any shares (other than in connection with the forfeiture of any Performance Rights), or increase, reduce or otherwise alter its share capital, or grant any options or rights for the issue of shares or other securities;
- (m) alter, adopt or revoke the provisions of its constitution (other to comply with law, including the NZX Listing Rules);
- (n) enter into, vary or terminate any contract, or series of contracts which should reasonably be assessed together, where the aggregate payments made, or revenues received, by, the Trade Me Group in any 12-month period exceed \$1,000,000, other than contracts entered into, varied or terminated in the ordinary course of its Business;
- (o) acquire any land or enter into any new leases in respect of any land;
- (p) enter into any material joint venture, strategic alliance or partnership; or
- (q) do anything which might reasonably be expected to give rise to a breach of law.

9.4 **Exceptions:** Nothing in clauses 9.2 or 9.3 restricts the Company (or any other member of the Trade Me Group) from doing anything which is, but only to the extent it is:

- (a) expressly contemplated or required by this agreement or to give effect to the Scheme;
- (b) necessary for the Company (or any other member of the Trade Me Group) to perform or comply with its contractual obligations (as fairly disclosed to Apax in the Due Diligence Material or otherwise entered into pursuant to this clause 9);
- (c) necessary for the Company (or any other member of the Trade Me Group) to comply with any law or any regulatory requirement or direction of a Government Agency;
- (d) necessary for the Company (or any other member of the Trade Me Group) to preserve or maintain the continuity of the Business or respond to any emergency, act of god or other disaster;

- (e) fairly disclosed in the Due Diligence Materials (including the FY19 budget) or by the Company through the NZX markets announcements platform before the date of this agreement;
- (f) reasonably undertaken in connection with the forecast debt refinancing of the Trade Me Group, scheduled to occur in 2019 in relation to its existing debt facility, provided that, the Trade Me Group will not undertake a refinancing that
  - (i) materially increases the amount of debt principal of the Trade Me Group from that fairly disclosed to Apax in the Due Diligence Material; (ii) obliges the Trade Me Group to pay material early repayment costs; or (iii) includes materially different default events or covenants; and provided that once the OIO Condition has been satisfied, the Trade Me Group will not commit to any refinancing (or other changes to the terms) of its existing debt facility without Apax's prior written consent (not to be unreasonably withheld, conditioned or delayed); or
- (g) approved in writing by Apax,

provided that the Company must notify Apax prior to or as soon as possible after any action is taken in accordance with clause 9.4 if that action would otherwise constitute a breach of clauses 9.2 or 9.3 (but for this clause 9.4), with such notice to include sufficient detail of the action to be, or which was, taken.

**9.5 Performance Rights:** Apax acknowledges that:

- (a) as at the date of this agreement, 578,602 Restricted Shares are held by TMG Trustee Limited as bare trustee for participants in the Company's legacy Executive Long-Term Incentive Share Scheme; and
- (b) prior to the Record Date, certain Restricted Shares will vest (whether under entitlements or existing rights at the discretion of the Board, whether accelerated or not) under the Executive Long-Term Incentive Share Scheme, resulting in a maximum of 492,486 Shares ("**Maximum Performance Shares**") being transferred by TMG Trustee Limited to participants in that incentive scheme, with such Shares to be included as Scheme Shares.

The Company must ensure that:

- (c) any Restricted Shares which are not transferred by TMG Trustee Limited to participants in accordance with clause 9.5(b) must be acquired and cancelled by the Company for no net monetary consideration in accordance with the Executive Long-Term Incentive Scheme before the Record Date;
- (d) no more than the Maximum Performance Shares are vested and transferred to the beneficial holders of the relevant Restricted Shares under the Executive Long-Term Incentive Share Scheme prior to the Record Date, such that those Shares are Scheme Shares;
- (e) the One Incentive Plan is varied so that all entitlements of current or future participants under the One Incentive Plan to receive or be allocated Shares (including Restricted Shares) are converted into rights to be paid a cash incentive (with the terms of the One Incentive Plan to otherwise remain unaffected); and

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- (f) TMG Trustee Limited does not exercise the votes attached to any of the Restricted Shares that it holds and for which there is no underlying beneficiary pursuant to the Executive Long-Term Incentive Share Scheme at the Scheme Meeting; and
- (g) subject to (a) and (b) above, all Performance Rights (including those under the Executive Long-Term Incentive Share Scheme and One Incentive Plan) lapse or are cancelled or forfeited prior to the Record Date such that, on the Implementation Date, there are no Performance Rights (provided that, for clarity, the One Incentive Plan will remain in place as a cash incentive scheme, as contemplated by (e) above),

with the overall effect being:

- (h) that upon the Scheme becoming Effective, no person will have any rights to equity or voting securities in the Company other than Apax, there will be no Performance Rights outstanding and there will be no Restricted Shares on issue, and provided that;
- (i) if any action to be taken under this clause 9.5 would have the effect of any participants under any incentive plan of the Company becoming a separate "interest class" from all of other Shareholders for the purposes of voting on the Transaction at the Scheme Meeting pursuant to section 236A(4)(b) of the Companies Act (or such action causes any Government Agency to be likely to consider such participants to be a separate "interest class"), then the parties will consult in good faith on alternative arrangements to give effect to the intent of this clause 9.5, but ensuring that no such separate "interest class" is created.

## 10. BUSINESS CONTRACTS AND LEASES

10.1 **Acknowledgement:** The parties acknowledge that the Trade Me Group's material leases and contracts may contain provisions requiring:

- (a) the consent of the counterparty to that lease or contract to a change of control, "deemed assignment" or similar that arises under the terms of that lease or contract as a result of the Transaction; or
- (b) a waiver from the counterparty to that lease or contract of any termination or cancellation right which will arise or otherwise become enforceable under the terms of that lease or contract as a result of the Transaction,

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

10.2 **Change of Control Consent:** Subject to clause 10.3:

- (a) the Company will, and will procure that each member of the Trade Me Group will, use reasonable endeavours to obtain each Change of Control Consent that Apax (with the Company's reasonable assistance) identifies and requests that it obtain;
- (b) Apax must cooperate with and use its reasonable endeavours to assist the Company to obtain each required Change of Control Consent (but without contacting any contractual counterparties directly without the Company's consent); and

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- (c) After the Scheme Meeting and assuming the Scheme has been approved by Shareholders, to the extent reasonably requested by Apax, the Company will collaborate with Apax to introduce it to relevant Trade Me Group counterparties and jointly discuss the implications of the Transaction, including Change of Control Consents.

10.3 **No obligation to pay money:** Nothing in this clause 10 will require either party to pay any money or provide any other valuable consideration to or for the benefit of any person (other than: (i) to provide a replacement guarantee or similar security that a lessor is entitled to require under the terms of a lease; or (ii) where required pursuant to an obligation under a contract or lease to reimburse the reasonable out-of-pocket costs of any counterparty's reasonable costs of considering a request for consent) or otherwise take action which would, or might reasonably be expected to, impact adversely on or otherwise be contrary to the interests of either party, as the case may be.

10.4 **Scheme to proceed:** Subject to clause 14, the implementation of the Scheme will not be delayed if all or any required Change of Control Consents have not been obtained on or before the Implementation Date.

## 11. WARRANTIES AND UNDERTAKINGS

### 11.1 Trade Me Warranties and undertakings:

- (a) The Company represents and warrants to Apax that, subject to the limitations in this agreement, each of the Trade Me Warranties is true, accurate and not misleading as at:
- (i) the date of this agreement;
  - (ii) immediately prior to the last affidavits being filed in respect of the Final Orders; and
  - (iii) 8:00am on the Implementation Date,
- except that a Trade Me Warranty which refers to only one of those dates is given only at that date.
- (b) The Company undertakes to Apax to comply with the Trade Me Undertakings.
- (c) The Trade Me Warranties (other than the Fundamental Warranties) are given on the basis that they will take effect subject to and are qualified by any matter:
- (i) expressly provided for in this agreement;
  - (ii) fairly disclosed in the Due Diligence Materials or by the Company through the NZX market announcements platform before the date of this agreement;
  - (iii) any matter recorded, as at the date five Business Days prior to the date of this agreement, in a register or in the records held by the Registrar, the Financial Markets Authority (in respect of the disclose register), the Intellectual Property Office of New Zealand, the High Court of New

Zealand, the Personal Property Securities Register and Land Information New Zealand; and

(iv) within the actual knowledge of Apax as at the date of this agreement, which for these purposes will be taken to include (and be limited to) the facts, matters and circumstances of which the following individuals are actually aware as at the date of this agreement after due enquiry in the context of the Transaction:

(aa) Steven Kooyers; and

(bb) Roy MacKenzie.

(d) **Forward-looking information:** No warranty or representation is given by or on behalf of the Company, and Apax may not bring any claim, with respect to any information that is a forecast, projection, estimate, opinion or other forward looking statement as to the future performance, financial condition, results of operations, strategy and plans of the Trade Me Group, in each case whether contained in the Due Diligence Material or otherwise.

#### 11.2 **Apax warranties and undertakings:**

(a) Apax represents and warrants to the Company that, subject to the limitations in this agreement, each of the Apax Warranties is true, accurate and not misleading as at:

(i) the date of this agreement;

(ii) immediately prior to the last affidavits being filed in respect of the Final Orders; and

(iii) 8:00am on the Implementation Date.

(b) Apax undertakes to the Company to comply with the Apax Undertakings.

11.3 **Separate; independent:** Each of the warranties given by each party are separate and independent and, except as expressly provided, will not be limited by reference to any other warranty. Each undertaking given in this clause 11 is a continuing obligation.

11.4 **Scheme becoming Effective:** After the Scheme becomes Effective, any breach of the warranties or the undertakings made or given under this clause 11 may only give rise to a claim for damages and does not entitle a party to terminate this agreement.

11.5 **Waiver of claims against Excluded Persons:** Each party waives all rights and claims that it may have against the Representatives of the other party or any of its Related Companies (together "**Excluded Persons**") in relation to any matter arising directly or indirectly in connection with this agreement or the Scheme except to the extent that such rights or claims arise out of the bad faith, fraud, wilful misconduct or wilful default of such person. The parties acknowledge and agree that the waivers and undertakings in this clause 11.5 are given for the benefit of each of the Excluded Persons and are intended to be enforceable by any of the Excluded Persons in accordance with Part 2 of the Contract and Commercial Law Act 2017.



## 12. INSURANCE

### 12.1 Insurance policies:

- (a) Apax acknowledges that, subject to clause 12.1(b), the Company may, prior to the Implementation Date, enter into a run-off directors' and officers' liability insurance policy in respect of any Trade Me Directors or officers (or the directors or officers of any other member of the Trade Me Group) for a 7-year period (the "**D&O Run-off Policy**") and pay all premiums required.
- (b) Provided that the D&O Run-off Policy is, to the extent practicable, obtained at normal commercial rates and the cover is not more favourable than those of the Company's directors' and officers' liability insurance at the date of this agreement, Apax agrees that:
  - (i) the Company entering into and paying the premium for the D&O Run-off Policy does not breach any provision of this agreement; and
  - (ii) after the Implementation Date it will not, and will procure that no member of the Trade Me Group will, vary or cancel the D&O Run-off Policy (for so long as such member of the Trade Me Group remains a Related Company of Apax).

## 13. EXCLUSIVITY AND MATCHING RIGHTS

### 13.1 **No shop restriction:** Subject to clause 13.13, during the Exclusivity Period, the Company must not, and must procure that each of its Related Companies and their respective Representatives does not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Proposal or any offer, proposal, expression of interest, enquiry, negotiation or discussion with any Third Party in relation to, or for the purpose of, or that may reasonably be expected to encourage or lead to, a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 13.1(a) on its behalf.

### 13.2 **No talk restriction:** Subject to clause 13.3 and clause 13.13, during the Exclusivity Period, the Company must not, and must procure that each of its Related Companies and their respective Representatives does not, directly or indirectly:

- (a) enter into, permit, continue or participate in, negotiations or discussions with any Third Party in relation to a Competing Proposal, or for the purpose of or that may reasonably be expected to encourage or lead to a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 13.2(a) on its behalf,

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

13.3 **No talk exception:** The restriction in clause 13.2 does not apply to the extent that it restricts the Company or the Board from taking or refusing to take any action with respect to:

- (a) a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated, initiated, or continued in contravention of clause 13.1 or 13.2); or
- (b) continuing any discussions in respect of a Competing Proposal existing and notified to Apax as at the date of this agreement,

in each case only if:

- (c) the Board has determined, after taking advice from its external financial adviser, that the Competing Proposal is, or is reasonably capable of becoming, a Superior Proposal or would be reasonably likely to constitute a Superior Proposal if it were to be proposed; and
- (d) acting in good faith and after having taken advice from its external legal advisers, the Board has determined that it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of any member of the Board.

13.4 **No due diligence restriction:** Subject to clause 13.5 and clause 13.13, but without limiting clause 13.2, during the Exclusivity Period, the Company must not, and must procure that each of its Related Companies and their respective Representatives does not, directly or indirectly:

- (a) make available to any Third Party, or cause or permit any Third Party to receive, any non-public information relating to the Company or any of its Related Companies that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 13.4(a) on its behalf.

13.5 **No due diligence exception:** The restriction in clause 13.4 does not apply in respect of a bona fide Competing Proposal (which was not encouraged, solicited, invited, facilitated, initiated, or continued in contravention of clause 13.1, clause 13.2) only if all of the following requirements are satisfied:

- (a) the Board has determined, after taking advice from its external financial adviser, that the Competing Proposal is, or is reasonably capable of becoming, a Superior Proposal or would be reasonably likely to constitute a Superior Proposal if it were to be proposed;
- (b) acting in good faith and after having obtained advice from its external legal advisers, the Board has determined that it is necessary to respond to such Competing Proposal in order to fulfil the fiduciary duties or statutory obligations of any member of the Board;
- (c) the Third Party has first entered into a written agreement in favour of the Company restricting:

- (i) the use and disclosure by the Third Party and its affiliates and advisers of the information made available to the Third Party, on terms, the Company, acting in good faith, reasonably believes are no more favourable to the Third Party than those in the confidentiality agreement referred to in clause 19.4; and
  - (ii) the acquisition of a Relevant Interest in Shares by the Third Party or any of its Related Companies or any of their respective Associates on terms, the Company, acting in good faith, reasonably believes are no more favourable to the Third Party than the terms included in the confidentiality agreement referred to in clause 19.4; and
- (d) to the extent that any information made available to the Third Party that is material and has not previously been provided to Apax, the Company provides or makes that information available to Apax at the same time as it is provided to the Third Party or promptly thereafter.

13.6 **General notification obligations:** During the Exclusivity Period, the Company must promptly notify Apax if:

- (a) the Company, its Related Companies or any of their respective Representatives receive any Competing Proposal or any offer or request to do any of the things referred to in clause 13.2(a) or clause 13.4(a); or
- (b) the Company or any of its Related Companies propose to take any action in reliance on the exceptions in clause 13.3 or clause 13.5,

and such notification will include reasonable detail of the terms of such approach, action or circumstances.

13.7 **Standstill arrangements with other parties:** During the Exclusivity Period, except with the prior written consent of Apax, the Company must not amend or waive the terms of any standstill agreement or arrangement between the Company and any person other than a member of the Apax Group, other than in circumstances where Apax has failed to provide a Counter Proposal during a Matching Period or the Board determines that the terms and conditions of that Counter Proposal taken as a whole are less favourable to Shareholders than the relevant Competing Proposal.

13.8 **Return of confidential information:** If the Company has at any time in the 12 months before the date of this agreement provided any confidential information to a person other than a member of the Apax Group in connection with a Competing Proposal, the Company must, except to the extent the Board considers it necessary to continue discussions with that person and continue to provide access to due diligence pursuant to clauses 13.3(b) and 13.5, promptly request in writing the immediate return or destruction by that person of such confidential information, and must promptly exercise all rights available to it to ensure compliance with that request. The Company must immediately advise Apax if it becomes aware that any such rights have not been enforced or corresponding obligations of Third Parties have not been complied with.

13.9 **Matching rights:** If the Company or any of its Representatives receives a Competing Proposal which is, or is reasonably likely to constitute, a Superior Proposal, then:

- (a) the Company must as soon as reasonably practicable give Apax a notice setting out all material terms of the Competing Proposal, including the person who has made the Competing Proposal, the amount and form of consideration to be offered, the conditions to which it is subject and the proposed timetable; and
- (b) from the time that the Company receives the Competing Proposal until the day that is five Business Days after the Company gives notice to Apax under clause 13.9(a) (the "**Matching Period**"):
- (i) the Company must not enter into, or agree to enter into, any binding documentation to give effect to or implement the Competing Proposal;
  - (ii) the Company must use its best endeavours to ensure that no Trade Me Director makes any public statement recommending the Competing Proposal to Shareholders; and
  - (iii) Apax may offer to amend the terms of the Scheme and this agreement or make an alternative proposal to the Company or to Shareholders with a view to providing an equivalent or a superior outcome for Shareholders than that offered under the relevant Competing Proposal (being a "**Counter Proposal**").

**13.10 Company response to Counter Proposal:** If, during the Matching Period, Apax makes a Counter Proposal:

- (a) the Company must procure that the Board considers the Counter Proposal in good faith; and
- (b) if the Trade Me Board determines that the terms and conditions of the Counter Proposal taken as a whole are no less favourable to Shareholders than those in the relevant Competing Proposal, then:
- (i) the parties must use their reasonable endeavours to agree and enter into such documentation as is necessary to give effect to and implement the Counter Proposal as soon as reasonably practicable; and
  - (ii) the Company must use its best endeavours to procure that each Trade Me Director makes a public statement recommending the Counter Proposal to Shareholders.

**13.11 Changes to proposals:** Any material change to a Competing Proposal, including:

- (a) any material change to the terms referred to in clause 13.9(a); or
- (b) any incomplete or non-binding proposal or expression of interest (for the avoidance of doubt, whether existing at the date of this agreement or new) becoming complete, capable of acceptance or, subject to clause 13.12, binding on the Third Party,

will be taken to constitute a new Competing Proposal in respect of which the Company must separately comply with its obligations under clauses 13.9 and 13.10.

- 13.12 **No matching:** If Apax fails to provide a Counter Proposal within the Matching Period or the Board otherwise determines that the terms and conditions of the Counter Proposal taken as a whole are less favourable to Shareholders than those in the relevant Competing Proposal, then the Company may enter into a binding implementation agreement or similar binding arrangement in respect of a Competing Proposal, in which case the matching right under this agreement will end in respect of that Competing Proposal (with such Competing Proposal being a Superior Proposal for the purposes of this agreement).
- 13.13 **Normal provision of information:** Nothing in this clause 13 prevents the Company from providing information required to be provided by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules or the ASX Listing Rules or in connection with investor presentations or roadshows.

## 14. TERMINATION

- 14.1 **Events affecting Company:** Subject to clauses 11.4 and 14.3, Apax may terminate this agreement by giving notice in writing to the Company before 8:00am on the Implementation Date if:
- (a) there is a material breach of any Trade Me Warranty or any event occurs or circumstance arises that would cause any Trade Me Warranty to be untrue as at 8.00am on the Implementation Date, where the consequences of that breach (other than in respect of a Fundamental Warranty) is material in the context of the Scheme and the Trade Me Group (taken as a whole);
  - (b) the Company is in material breach of any Trade Me Undertaking or any other material obligation under this agreement, where the consequences of that breach is material in the context of the Scheme and the Trade Me Group (taken as a whole);
  - (c) a Prescribed Occurrence occurs between the date of this agreement and 8:00am on the Implementation Date;
  - (d) Trade Me Group or the Business is subject to a Material Adverse Change the effect of which is continuing at the time such termination rights are exercised; or
  - (e) an Insolvency Event occurs in respect of any member of the Trade Me Group.
- 14.2 **Events affecting Apax:** Subject to clauses 11.4 and 14.3, the Company may terminate this agreement by giving notice in writing to Apax before 8:00am on the Implementation Date if:
- (a) there is a material breach of any Apax Warranty or any event occurs or circumstance arises that would cause any Apax Warranty to be untrue as at 8:00am on the Implementation Date;
  - (b) Apax is in material breach of any Apax Undertaking or any other material obligation under this agreement, where the consequences of that breach is material in the context of the Scheme; or
  - (c) an Insolvency Event occurs in respect of Apax.

- 14.3 **Notice of termination:** A party may only exercise a right of termination in accordance with clause 14.1 or clause 14.2 if:
- (a) the party wishing to terminate has not previously waived any Condition under clause 3.6, or given any other waiver, in each case in respect of the same breach, event or circumstance the subject of termination;
  - (b) the party wishing to terminate has given notice to the other party setting out the circumstances that it considers permit it to terminate and stating its intention to do so;
  - (c) the relevant circumstances have not been remedied within 10 Business Days after the time that the notice is given or any shorter period ending at 5.00pm on the day before the Implementation Date; and
  - (d) the party wishing to terminate does so before the earlier to occur of 15 Business Days after the time that the notice is given and 8.00am on the Implementation Date.
- 14.4 **Recommendation or undertaking termination:**
- (a) Apax may terminate this agreement by giving notice in writing to the Company at any time before the Final Orders Date if, at any time before the Scheme is Effective, any Trade Me Director fails to make the recommendation or give the undertaking referred to in clause 8.1, or changes, qualifies or withdraws that recommendation or undertaking once made or makes any statement inconsistent with that recommendation or that undertaking.
  - (b) The Company may terminate this agreement by giving notice in writing to Apax at any time before the Final Orders Date if Apax fails to provide a Counter Proposal within the Matching Period or the Board otherwise determines that the terms and conditions of the Counter Proposal taken as a whole are less favourable to Shareholders than those in the relevant Competing Proposal, and the Company has entered into a binding implementation agreement or similar binding arrangement in respect of a Competing Proposal, or is subject to a takeover offer, which is a Superior Proposal without the Company having breached this agreement.
  - (c) The Company may terminate this agreement if the Independent Adviser's Report concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares.
- 14.5 **Scheme Resolution not passed:** This agreement will terminate automatically if, at the Scheme Meeting, the Scheme Resolution is not passed by the requisite majorities in accordance with sections 236A(2)(a) and 236A(4) of the Companies Act.
- 14.6 **Court does not grant the Court Orders:** Subject first to complying with clauses 7.3 and 7.4, either party may terminate this agreement by giving notice in writing to the other party if the Court determines not to grant either the Initial Court Orders or the Final Orders and the terminating party has complied in all material respects with its obligations under this agreement.

14.7 **End Date:** Either party may terminate this agreement by giving notice in writing to the other if the Scheme has not become Effective by the End Date, provided that (if relevant) the parties have discharged their obligations under clause 3.8, and the terminating party's failure to comply with its obligations under this agreement has not directly and materially contributed to the Scheme not becoming Effective by the End Date.

14.8 **Effect of termination:** If this agreement is terminated under clause 3 or this clause 14, then:

- (a) except as provided in clause 14.8(c), all the provisions of this agreement cease to have effect and each party is released from its obligations to further perform this agreement;
- (b) each party retains all rights that it has against the other party in respect of any breach of this agreement occurring before termination; and
- (c) the provisions of, and the rights and obligations of each party under, this clause 14 and clauses 11.5, 15, 16, 17, 18 and 19 survive termination of this agreement.

14.9 **No other termination:** Except as expressly set out in this agreement, neither party has the right to terminate or cancel this agreement whether before or after the Implementation Date as a result of any matter, information or circumstance, including for misrepresentation, repudiation, anticipatory breach or breach of or in respect of any matter giving rise to or the subject of a claim arising out of or in connection with this agreement (whether arising in tort (including negligence), in contract, statute, by operation of law or otherwise), and sections 36 and 37 of the Contract and Commercial Law Act 2017 will not apply to this agreement.

## 15. BREAK FEE AND REVERSE BREAK FEE

15.1 **Acknowledgement and agreement:** The Company (on the one hand) and the Apax (on the other hand) each acknowledges and agrees that:

- (a) the other and its Related Companies have incurred and will continue to incur significant costs and expenses in pursuing the Transaction including:
  - (i) advisory costs;
  - (ii) costs of management and directors' time;
  - (iii) in respect of Apax, funding costs;
  - (iv) out of pocket expenses; and
  - (v) opportunity costs of pursuing the Transaction or not pursuing alternative transactions or business opportunities;
- (b) the costs and expenses actually incurred by each party and its Related Companies are of such nature that they cannot accurately be ascertained;
- (c) the Break Fee and Reverse Break Fee are each a genuine and reasonable estimate of costs and expenses that have been or will be actually incurred by the relevant party and its Related Companies in pursuing the Transaction;

- (d) the parties have negotiated the inclusion of this clause 15 in this agreement and would not have entered into this agreement without it; and
- (e) each party has received external independent legal and financial advice in relation to this clause 15 and has concluded that it is reasonable and appropriate for it to agree to payment of the Break Fee or Reverse Break Fee (as applicable) in the circumstances described in clause 15.2 or 15.3 (as applicable) in order to secure the other party's entry into this agreement.

**15.2 Circumstances where Break Fee payable:**

- (a) Subject to clause 15.5 and clause 15.7, the Company must pay the Break Fee to Apax if:
  - (i) at any time before this agreement is terminated a Competing Proposal is announced and within 12 months after the date of that announcement, the person making the Competing Proposal, or one or more Associates of that person, completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal; or
  - (ii) any Trade Me Director fails to make the recommendation and/or any Trade Me Director fails to give the undertaking referred to in clauses 8.1 and 16.1 or changes, qualifies or withdraws that recommendation or undertaking or makes any statement inconsistent with that recommendation or that undertaking, except, subject to clause 15.2(b), where the Independent Adviser issues an Independent Adviser's Report which concludes that the Consideration is not within or above the Independent Adviser's valuation range for the Shares; or
  - (iii) Apax terminates this agreement as permitted under clauses 14.1(a) or 14.1(b).
- (b) If the exception to clause 15.2(a)(ii) applies, the Break Fee will nonetheless be payable by the Company if prior to the issue of the Independent Adviser's Report concluding that the Consideration was not within the Independent Adviser's valuation range a Competing Proposal had been received by the Target or made public and within 12 months after the date that Competing Proposal is received or becomes public, the person making the Competing Proposal or one or more person Associated with that person completes in all material respects a transaction of the kind referred to in the definition of Competing Proposal (provided that for the purposes of this clause 15.2(b), the reference to 20% in limb (e) of the definition of Competing Proposal is to be read as a reference to 50%).

**15.3 Circumstances where Reverse Break Fee payable:** Subject to clause 15.7, Apax must pay the Reverse Break Fee to the Company if the Company terminates this agreement as permitted under clause 14.2(a) or 14.2(b).

**15.4 Payment of Break Fee or Reverse Break Fee:** If the Break Fee or Reverse Break Fee becomes payable under this agreement, the Company or Apax (as applicable) must pay it to or as directed by the other party without withholding or set-off within 15 Business Days after receipt of a written demand for payment from the other party.



- 15.5 **Break Fee or Reverse Break Fee:** Notwithstanding anything else in this agreement:
- (a) neither the Break Fee nor Reverse Break Fee is payable if the Scheme becomes Effective; and
  - (b) each of the Break Fee or the Reverse Break Fee is payable only once.

15.6 **Sole and exclusive remedy:** Apax acknowledges and agrees that payment of the Break Fee is the sole and exclusive remedy available to Apax in connection with any event or occurrence referred to in clause 15.2 (*Circumstances where Break Fee payable*) and the Company is not liable for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Apax the Break Fee under this clause 15.

15.7 **Amendments to Break Fee or Reverse Break Fee arrangements:** If any of the following occurs:

- (a) the Takeovers Panel indicates to either party in writing that it requires any modification to the amount of the Break Fee or Reverse Break Fee or the circumstances in which either is to be paid (the “**Break Fee Arrangements**”) as a condition of not opposing the Scheme; or
- (b) the Court requires any modification to the Break Fee Arrangements as a condition of making orders convening the Scheme Meeting,

then the parties must amend this clause 15 to the extent required to give effect to the requirements of the Court or the Takeovers Panel, as the case may be, and in the circumstances referred to in clause 15.7(b) must give any required undertakings.

15.8 **Specific performance and other rights:** Subject to clause 15.5, nothing in this agreement precludes the Company from suing Apax for specific performance or from otherwise terminating this agreement in accordance with its terms and/or suing Apax for damages (the amount of which it is acknowledged will be reduced by the amount of any Reverse Break Fee actually paid to the Company by Apax in accordance with this agreement). Without limiting the foregoing, Apax acknowledges and agrees that the Company may require Apax to enforce its rights under the Equity Commitment Letter and/or Debt Commitment Letters to cause Apax to fund the Consideration or the Reserve Break Fee (as applicable).

## 16. ANNOUNCEMENTS

16.1 **Initial announcements:** Immediately following execution of this agreement the Company must issue an announcement in a form agreed with Apax and including a statement that each Trade Me Director:

- (a) recommends that Shareholders vote in favour of the Scheme; and
- (b) undertakes to vote, or procure the voting of, all Shares held or controlled by him or her in favour of the Scheme,

in each case in the absence of a Superior Proposal and subject to the Independent Adviser's Report concluding that the Consideration is within or above the Independent Adviser's valuation range for the Shares.

16.2 **Other announcements:** Each party must not make, and must procure that its Related Companies and their respective Representatives do not make, any public announcement concerning the Scheme or the subject matter of this agreement other than:

- (a) the announcement referred to in clause 16.1;
- (b) with the written consent of the other party, which must not be unreasonably withheld or delayed;
- (c) where disclosure is necessary to obtain the benefits of, or to fulfil obligations under, this agreement; or
- (d) if required by law, any court of competent jurisdiction, any Government Agency or the NZX Listing Rules or the ASX Listing Rules, but if either party is so required to make any announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement,

provided that that the obligations in this clause will not prevent the Company from responding to media and other stakeholders where not inconsistent with announcements that are permitted to be made in accordance with the terms of this agreement, including this clause 16.2.

## 17. PAYMENTS

17.1 **Manner of payments:** Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), each payment to be made under this agreement must be made in New Zealand dollars by transfer of the relevant amount into the relevant account on or before the date on which the payment is due and in immediately available funds. The relevant account for a given payment is the account that the party due to receive the payment specifies, not less than 10 Business Days before the date on which payment is due, by giving notice to the party due to make the payment.

17.2 **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) on that sum at an annual rate equal to the Bill Rate plus 5%, which interest accrues from day to day and must be compounded monthly. The party making such payment is permitted to withhold Tax required to be withheld by law without gross-up.

17.3 **GST exclusive:** Unless otherwise expressly stated in this agreement, any consideration to be provided under this agreement is exclusive of GST. If GST is imposed on any supply made by one party ("**GST Supplier**") to the other party ("**GST Recipient**") under this agreement, GST Recipient must pay an additional amount equal to the GST at the same time and in the same manner as any consideration payable under this agreement for the supply (unless the consideration is specified as GST inclusive), provided that the GST Supplier issues a tax invoice to the GST Recipient.

**18. NOTICES**

18.1 **Notice:** Every notice or other communication ("**Notice**") for the purposes of this agreement will:

- (a) be in writing; and
- (b) be delivered in accordance with clause 18.2.

18.2 **Method of service:** A Notice may be given by:

- (a) delivery to the physical address of the relevant party;
- (b) sending it by email to the email address of the relevant party.

18.3 **Time of receipt:** A Notice given in the manner:

- (a) specified in clause 18.1(a) is deemed received at the time of delivery;
- (b) specified in clause 18.2(b) is deemed received:
  - (i) if sent between the hours of 9am and 5pm (local time) on a local Business Day, at the time of transmission; or
  - (ii) if subclause (i) does not apply, at 9am (local time) on the local Business Day most immediately after the time of sending.

For this purpose "local time" is the time in the place of receipt of the Notice, and a "local Business Day" is a Business Day in that place.

18.4 **Addresses:** For the purposes of this clause the address details of each party are:

- (a) the details set out below; or
- (b) such other details as any party may notify to the others by Notice given in accordance with this clause.

**Apax:**

Attention: Steven Kooyers  
Physical address: 53<sup>rd</sup> Floor, 601 Lexington Avenue, New York, United States of America  
Email address: [steven.kooyers@apax.com](mailto:steven.kooyers@apax.com)

With a copy to (which will not constitute notice, except in relation to the service of process and other documents contemplated by clause 19.10):

Attention: Anna Buchly / James Gibson, Bell Gully  
Physical address: Level 22, Vero Centre, 48 Shortland Street, Auckland, New Zealand  
Email address: [anna.buchly@bellgully.com](mailto:anna.buchly@bellgully.com) / [james.gibson@bellgully.com](mailto:james.gibson@bellgully.com)

**Company:**

Attention: Caroline Rawlinson and Sarah Hard

Physical address: Level 5, 2 Market Lane, Wellington 6011  
 Email address: [caroline.rawlinson@trademe.co.nz](mailto:caroline.rawlinson@trademe.co.nz) / [sarah.hard@trademe.co.nz](mailto:sarah.hard@trademe.co.nz)

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

Attention: David Raudkivi, Russell McVeagh  
 Physical address: Level 30, Vero Centre, 48 Shortland Street, Auckland, New Zealand  
 Email address: [david.raudkivi@russellmcveagh.com](mailto:david.raudkivi@russellmcveagh.com)

## 19. GENERAL

### 19.1 Amendments etc: No:

- (a) amendment to this agreement;
- (b) agreement between the parties for the purpose of, or referred to in, this agreement;  
or
- (c) request, consent, or approval for the purposes of, or referred to in, this agreement,

is effective unless it is in writing and signed (if subclauses (a) or (b) apply) by both parties or (if subclause (c) applies) the party making the request or required to give the consent or approval.

### 19.2 Costs: Subject to clause 15, each party will pay its own costs in respect of entry into and negotiation of this agreement.

### 19.3 Counterparts: This agreement may be executed on the basis of an exchange of email or scanned copies of this agreement and execution of this agreement by such means is to be a valid and sufficient execution. If this agreement consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

### 19.4 Entire agreement: This agreement and the confidentiality agreement dated 5 November 2018 between the Company and Apax Partners, L.P. constitutes the entire agreement between the parties relating to the subject matter of this agreement and supersedes and cancels any previous agreement, understanding, or arrangement, whether written or oral.

### 19.5 Further assurance: Each party will make all applications, execute all documents and do or procure all other acts and things reasonably required to implement and to carry out its obligations under, and the intention of, this agreement.

### 19.6 Assignment: Neither party will directly or indirectly assign, transfer or otherwise dispose of any of its rights or interests in, or any of its obligations or liabilities under or in connection with this agreement, except with the prior consent of the other party, which consent may be withheld in the absolute discretion of the other party.

### 19.7 Rights and powers cumulative: The rights, powers and remedies provided in this agreement are cumulative with, and are not exclusive of, any rights, powers or remedies at law or in equity unless specifically stated otherwise.

### 19.8 No merger: The provisions of this agreement, and anything done under, or in connection with, this agreement will not operate as a merger of any of the rights, powers or remedies of

either party under, or in connection with, this agreement or at law, and those rights, powers and remedies will survive and continue in full force and effect to the extent that they are unfulfilled.

- 19.9 **Governing law:** This agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute or proceeding arising out of this agreement. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.
- 19.10 **Service of process:** Apax appoints Anna Buchly or James Gibson of Bell Gully as its agent in New Zealand for service of process and other documents in any legal action or proceedings arising out of or in connection with this agreement and will ensure that at all times prior to the Implementation Date or termination of this agreement, Bell Gully or a replacement appointed by Apax and notified to the Company, is authorised and able to accept service of process and other documents on its behalf in New Zealand.

*[Signature page follows]*

**SIGNATURES**

**TRADE ME GROUP LIMITED** by:

Signature of director

Signature of director

Name of director

Name of director

**TITAN ACQUISITIONCO NEW ZEALAND  
LIMITED** by:

Signature of director

Signature of director

Name of director

Name of director

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**SIGNATURES**

**TRADE ME GROUP LIMITED by:**

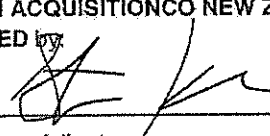
\_\_\_\_\_  
Signature of director

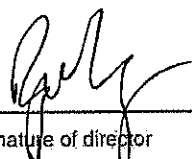
\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

**TITAN ACQUISITION CO NEW ZEALAND  
LIMITED by:**

  
\_\_\_\_\_  
Signature of director

  
\_\_\_\_\_  
Signature of director

**Steven Kooyers**  
\_\_\_\_\_  
Name of director

**Roy Mackenzie**  
\_\_\_\_\_  
Name of director

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**SCHEDULE 1****Prescribed Occurrences**

1. The Company or another member of the Trade Me Group authorises, declares, pays, or makes any distributions (within the meaning of the Companies Act) of any nature, or any distribution from wholly owned subsidiaries of the Company to the Company or to other wholly owned subsidiaries of the Company.
2. Any Trade Me Group member issuing, agreeing to issue, or granting an option or right to subscribe for, shares, convertible securities, other securities or financial products of any nature (including warrants, options, phantom or cash settled rights over Shares, convertible notes, entitlements, rights or interests in any ordinary shares) other than the issuing of shares by a wholly owned subsidiary of the Company to the Company or another wholly owned subsidiary of the Company or the transfer of Shares due to the vesting of Performance Rights as permitted under clause 9.5.
3. The Company or a member of the Trade Me Group:
  - a. altering the rights, privileges, benefits, entitlements or restrictions attaching to any securities (including the Shares) or other securities or financial products (if any) of any member of the Trade Me Group (other than any Performance Rights, as permitted under clause 9.5); or
  - b. converting all or any of the Shares into a larger or smaller number.
4. An action, claim, litigation, arbitration, prosecution, investigation by any party (including by a Government Agency) is notified or commenced against any member of the Trade Me Group that is material to the Trade Me Group, taken as a whole or in respect of the Scheme or that has a material adverse effect on the Transaction.
5. Any member of the Trade Me Group:
  - a. makes or incurs (or agrees to make or incur) any payments, commitments or liabilities (including contingent liabilities) outside of the ordinary course of business which are material to the Trade Me Group taken as a whole;
  - b. disposes of, purchases, transfers, leases, grants or permits any security interest, mortgage, option, lien, charge, encumbrance or other adverse interest of any nature over, grants an option or legal or equitable interest in respect of, or otherwise deals with a legal or equitable interest in, an asset, business, operation, property or Related Company (or agrees, including agreeing to vary any agreement, to do any of these things), that is material to the Trade Me Group taken as a whole (which, for clarity, will not include any sale, disposal of assets or winding up in relation to any business, division, subsidiary or other interest of the Trade Me Group having a value of less than \$10 million), other than as fairly disclosed in the Due Diligence Materials or by the Company through the NZX markets announcements platform before the date of this agreement; or
  - c. enters into, terminates or materially varies, any major transactions (as defined in section 129(2) of the Companies Act).



6. The Company breaches any of the provisions in clauses 9.2 or 9.3, the effect of which is material to the Trade Me Group taken as a whole.
7. Any alteration to the constitutional documents of any member of the Trade Me Group, or to any terms of the Executive Long-Term Incentive Share Scheme or the One Incentive Plan (except as specifically provided for this agreement), that is material in the context of the Scheme (other than to comply with law or the NZX Listing Rules).
8. An Insolvency Event occurs in respect of a material member of the Trade Me Group.
9. The board or shareholders of a Trade Me Group member pass a resolution to do or authorise the doing of any act or matter referred to in any of paragraphs 1 to 8.
10. A member of the Trade Me Group is, or will be, under any obligation to make any payment or provide any consideration to any of its employees or directors in the event of any member of the Trade Me Group becoming a subsidiary of Apax, or under Apax's Control, which is material in the context of the Trade Me Group taken as a whole, other than as fairly disclosed in the Due Diligence Materials.
11. The Shares cease to be quoted, or are suspended from trading for a period of longer than five trading days, on the NZX and ASX (other than in connection with the implementation of the Scheme).
12. The Company or another Trade Me Group member amends in a material respect any agreement or arrangement with any financial advisor in relation to the Transaction or a Competing Proposal, or entering into an agreement or arrangement with a new financial advisor, in respect of the Transaction or a Competing Proposal.
13. A member of the Trade Me Group entering into a transaction with a related party (other than a related party that is also a member of the Trade Me Group) that is material to the Trade Me Group taken as a whole.
14. A member of the Trade Me Group increases the remuneration of (including with regard to any superannuation, benefits, incentives or bonuses), or materially varies the terms of employment of, or terminates the employment of, any of its directors, officers or senior employees, other than within the exceptions provided in clauses 9.3 to 9.5 or as fairly disclosed in the Due Diligence Materials or on the basis of retirement by rotation under the NZX Listing Rules.
15. A member of the Trade Me Group accelerates the rights of any of its directors, officers or employees to benefits of any kind, other than as permitted under clause 9.5 in respect of the Executive Long-Term Incentive Share Scheme and One Incentive Plan.
16. A member of the Trade Me Group pays a director, officer or senior employee a termination payment, other than as provided for in an existing employment contract (or equivalent) in place as at the date of this agreement which has been fairly disclosed in the Due Diligence Material.

## SCHEDULE 2

## Trade Me Warranties and Undertakings

## Part 1: Trade Me Warranties

## Fundamental Warranties

1. **Incorporation:** The Company is a company duly incorporated under the laws of New Zealand.
2. **Capacity:** The Company has the power to execute and to perform its obligations under this agreement and the Scheme, and (subject to obtaining the approvals contemplated by clause 3.1(c) of this agreement) has taken all necessary corporate action to authorise such execution and the performance of such obligations.
3. **Binding effect:** The obligations of the Company under this agreement constitute legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. **Compliance:** The execution and performance of this agreement and the Scheme:
  - a. complies with the Company's constitution; and
  - b. does not constitute a breach of any law or other obligation by which the Company is bound and which would prevent it from entering into and performing its obligations under this agreement or the Scheme.
5. **Share capital:** The entire share capital of the Company as at the date of this agreement is 396,973,029 fully paid ordinary shares and will not exceed 396,886,913 fully paid ordinary shares as at the Record Date.
6. **Options etc:** With the exception of Performance Rights under the Executive Long-Term Incentive Share Scheme and the One Incentive Plan (to be dealt with in accordance with clause 9.5 of this agreement) which relate to a maximum of 578,602 Shares (not including any rights under the One Incentive Plan which might, but for clause 9.5, have entitled participants in the One Incentive Plan to be issued Shares in the future), there are no other shares, options or other securities (including equity securities, debt securities or convertible securities) or other instruments which are convertible into securities in the Trade Me Group in favour of any person, nor has any member of the Trade Me Group offered or agreed to issue or grant, and no person has any right to call for the issue or grant of, any such shares, options or other securities or other instruments.

## Disclosure warranties

7. **Disclosure:** The Company has filed with the Registrar, NZX and ASX all documents required to be filed with the Registrar, NZX or ASX including pursuant to NZX Listing Rule 10.1 (the "**Disclosure Documents**") and is not in breach of its continuous and periodic disclosure obligations under the Companies Act, the FMCA, the NZX Listing Rules, the ASX Listing Rules and is not relying on the exception in NZX Listing Rule 10.1 to withhold any information from public disclosure. The Disclosure Documents do not contain any untrue statement of a material fact or omit to state a material fact required to be stated in it, except

to the extent that such statements have been modified or superseded by a later Disclosure Document.

8. **Due Diligence Material:** The Due Diligence Material has been prepared and provided in good faith and, as far as the Company is aware, no information has been included in the Due Diligence Material that was, when given, materially false or misleading, including by omission.

9. **Land:** No member of the Trade Me Group has a legal or equitable interest in land that has not been disclosed in the Due Diligence Material.

#### **General warranties**

10. **Prescribed Occurrence:** No Prescribed Occurrence has occurred on or after the date of this agreement.

11. **Authorisations:** As far as the Company is aware, each member of the Trade Me Group has complied in all material respects with all New Zealand and foreign laws and regulations applicable to it, has all material licences, authorisations, consents and approvals (or similar) necessary for it to conduct the Business as presently being conducted and, so far as the Company is aware, no member of the Trade Me Group is under investigation with respect to the violation of any laws or applicable licences, authorisations, consents and approvals (or similar).

12. **Financing:** As at the date of this agreement, the Trade Me Group does not have any outstanding debt or equity financing that is not reflected in either its financial statements and notes thereto for the year ended 30 June 2018 and since 30 June 2018 no member of the Trade Me Group has engaged in debt or equity financing of a type which is not required to be shown or reflected in its financial statements or notes thereto.

#### **Part 2: Trade Me Undertakings**

1. The Company will ensure that the Trade Me Information:
  - a. is prepared in good faith and on the understanding that each of the Apax Indemnified Persons will rely on that information for the purposes of considering and approving the Apax Information in the Scheme Booklet;
  - b. complies with all applicable laws and the NZX Listing Rules; and
  - c. in the form and context in which it appears in the Scheme Booklet, is true and correct in all material respects and is not misleading or deceptive, including by omission, as at the date the Scheme Booklet is sent to Shareholders.
2. The Company will provide to Apax all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Trade Me Information, in the form and context in which it appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive, including by omission. This clause is not intended to limit any continuous disclosure obligations.
3. All information provided by or on behalf of the Company to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon

that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive, including by omission.

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## SCHEDULE 3

## Apax Warranties and Undertakings

## Part 1: Apax Warranties

1. **Incorporation:** Apax is a company duly incorporated under the laws of New Zealand.
2. **Capacity:** Apax has the power to execute and perform its obligations under this agreement, the Scheme and the Deed Poll, and has taken all necessary corporate action to authorise such execution and the performance of such obligations.
3. **Binding effect:** The obligations of Apax under this agreement, and under the Deed Poll once executed, constitute legal, valid and binding obligations enforceable subject to and in accordance with their terms.
4. **Compliance:** The execution and performance of this agreement, the Scheme and the Deed Poll:
  - a. complies with Apax's constitution or other constituent documents; and
  - b. does not constitute a breach of any law or other obligation by which Apax is bound and which would prevent it from entering into and performing its obligations under this agreement, the Scheme or the Deed Poll.
5. **Equity commitment:** The Equity Commitment Letter has been duly executed by the parties to it and constitutes legally binding obligations on those parties that are enforceable in accordance with their respective terms, and the Equity Commitment Letter has not been terminated.
6. **Debt commitment:** Each Debt Commitment Letter:
  - a. is a true and complete copy executed by all parties thereto;
  - b. has not been terminated, modified or rescinded, and no event has occurred which with notice, lapse of time, or both, would result in a default under that Debt Commitment Letter;
  - c. is enforceable in accordance with its terms and Apax is not in default thereunder;
7. **Funding:** The debt commitments under the Debt Commitment Letters, when aggregated with the amounts available under the Equity Commitment Letter, provides an amount of funding which is sufficient to satisfy all of Apax's payment obligations under this agreement, including paying the Consideration on the Implementation Date.

## Part 2: Apax Undertakings

1. Apax will ensure that the Apax Information:
  - a. is prepared in good faith and on the understanding that each of the Trade Me Indemnified Persons will rely on that information to prepare the Scheme Booklet and to propose and implement the Scheme in accordance with the Companies Act;

- b. complies with all other applicable laws; and
- c. in the form and context in which it appears in the Scheme Booklet is true and correct in all material respects and is not misleading or deceptive, including by omission, as at the date the Scheme Booklet is sent to Shareholders.
2. Apax will provide to the Company all new material information of which it becomes aware after the Scheme Booklet has been sent to Shareholders and before the date of the Scheme Meeting which is necessary to ensure that the Apax Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to Shareholders, is not misleading or deceptive in any material respect, including by omission.
3. All information provided by or on behalf of Apax to the Independent Adviser will be provided in good faith and on the understanding that the Independent Adviser will rely upon that information for the purpose of preparing the Independent Adviser's Report for inclusion in the Scheme Booklet, will be true and correct in all material respects and will not be misleading or deceptive, including by omission.

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## SCHEDULE 4

### Timetable

	EVENT	INDICATIVE DATE (BUSINESS DAYS)
1	Announcement	Upon signing this agreement
2	Submission of OIO application	Within 2 Business Days of Item 1
3	Draft Scheme Booklet provided to Apax	Within 25 Business Days of Item 1
4	Comments on the Scheme Booklet provided by Apax to the Company for review	Within 5 Business Days of Item 3
5	Final draft Scheme Booklet provided to Apax	Within 5 Business Days of Item 4
6	Scheme Booklet provided to the Takeovers Panel and NZX for review and provision of "no objection" indication letter by Takeovers Panel	Within 5 Business Days of Item 5
7	Scheme Booklet (including Independent Adviser's Report) approved by Takeovers Panel and NZX	Within 12 Business Days of Item 6
8	Application for Initial Orders filed	Within 3 Business Days of Item 7
9	First Court Date	Within 10 Business Days of the Initial Orders filing
10	Sealed Initial Orders and a Minute of the Court from the First Court Date sent to Takeovers Panel (together with any updated material) with application for "no objection" letter	Within 3 Business Days of Initial Orders
11	Scheme Booklet sent to Shareholders (including Independent Adviser's Report)	Within 5 Business Days of the Initial Orders
12	Scheme Meeting	12 Business Days following Item 10
13	Documents filed in respect of Second Court Date	Within 7 Business Days of Scheme Meeting
14	Second Court Date (if required)	Within 10 Business Days of Item 12
15	Final Orders Date	On the Second Court Date
16	Suspend trading on NZX and ASX (assuming OIO Condition satisfied)	On the second Business Day after the Final Orders Date (assuming OIO satisfied)
17	Record Date (assuming OIO Condition satisfied)	On the fifth Business Day after the Final Orders Date (assuming OIO satisfied)
18	Implementation Date (assuming OIO Condition satisfied)	On the second Business Day after the Record Date

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**SCHEDULE 5**

**Scheme Plan**

Attached.

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## SCHEDULE 5

## Scheme Plan

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

## PARTIES

TRADE ME GROUP LIMITED ("Trade Me")

TITAN ACQUISITIONCO NEW ZEALAND LIMITED ("Apax")

Each person who is registered in the Register as the holder of one or more Scheme Shares as at the Record Date (together the "**Scheme Shareholders**")

## 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Scheme Plan, unless the context otherwise requires:

"**ASX**" means ASX Limited or Australian Securities Exchange, as the context requires;

"**Business Day**" means a day other than a Saturday, Sunday or statutory public holiday in Auckland or Wellington, New Zealand and excludes any day NZX is not open for trading;

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

"**Conditions**" means:

- (i) the conditions precedent set out in the first column of the table in clause 3.1 of the Scheme Implementation Agreement; and
- (ii) such other conditions made or required by the Court under section 236(1) of the Companies Act and approved in writing by Trade Me and Apax in accordance with clause 3.2 of the Scheme Implementation Agreement.

"**Court**" means the High Court of New Zealand;

"**Deed Poll**" means the deed poll entered into by Apax in favour of the Scheme Shareholders dated [●];

"**End Date**" means [●] or such later date as Apax and Trade Me agree in writing;

"**Final Court Orders**" means orders of the Court that the Scheme shall be given effect, which shall be binding on Trade Me, Apax, Scheme Shareholders and such other persons or classes of persons as the Court may specify in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

"**Final Orders Date**" means the date on which the Final Court Orders are sealed;

"**Government Authority**" means any government, any department, officer or minister of any government and any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial agency, authority, board, commission, tribunal or entity in any jurisdiction, and includes

(for the avoidance of doubt) the Overseas Investment Office, the Takeovers Panel and the Financial Markets Authority;

**"Implementation Date"** means the day on which the Scheme is to be implemented, being the date two Business Days after the Record Date, or such other date as Apax and Trade Me agree in writing;

**"Link"** means Link Market Service Limited;

**"NZX"** means NZX Limited;

**"Record Date"** means 7.00 pm on the date which is two Business Days after the Trading Halt Date.

**"Register"** means the register of Shares maintained by Link on behalf of Trade Me;

**"Registered Address"** means, in relation to a Shareholder, the address shown in the Register as at the Record Date;

**"Scheme"** means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under Part 15 of the Companies Act and approved by Apax and Trade Me in writing;

**"Scheme Booklet"** means the notice of meeting (including proxy form) and scheme booklet dated [●] prepared by Trade Me in relation to the Scheme;

**"Scheme Consideration"** means NZ\$6.45 cash in respect of each Scheme Share held by a Scheme Shareholder as adjusted in accordance with the Scheme Implementation Agreement;

**"Scheme Implementation Agreement"** means the scheme implementation agreement dated [●] between Apax and Trade Me;

**"Scheme Meeting"** means the special meeting of Shareholders ordered by the Court to be convened pursuant to section 236(2)(b) and 236A(2) of the Companies Act in respect of the Scheme (and includes any adjournment of that meeting);

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

**"Scheme Shares"** means all of the Shares on issue at the Record Date;

**"Share"** means a fully paid ordinary share in the capital of Trade Me;

**"Shareholder"** means a person who is registered in the Register as the holder of one or more Shares from time to time; and

**"Takeovers Code"** means the takeovers code approved in the Takeovers Code Approval Order 2000 (SR 2000/210) as amended, including by any applicable exemption granted by the Takeovers Panel under the Takeovers Act 1993.

**"Trading Halt Date"** means the date which is two Business Days after the Unconditional Date or such other date as Apax and Trade Me agree in writing.

**"Unconditional Date"** means the later of:

- (a) the Final Orders Date; or
- (a) the date on which the last of the Conditions (as that term is defined in the Scheme Implementation Agreement) is satisfied or, if capable of waiver, waived in accordance with the terms of the Scheme Implementation Agreement.

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

- (a) headings are to be ignored in construing this document;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether before or after this date of this agreement);
- (d) reference to any document includes reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented, or replaced from time to time;
- (e) reference to a party, person or entity includes:
  - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
  - (ii) an employee, sub-contractor, agent, successor, assign, executor, administrator and other representative of such party, person or entity;
- (f) "**written**" and "**in writing**" include any means of reproducing words, figures or symbols in a tangible and visible form;
- (g) the words "**including**" or "**includes**" do not imply any limitation;
- (h) a reference to any time is a reference to that time in New Zealand; and
- (i) references to money are to New Zealand dollars.

1.3 **Business Day:** Where the day on, or by which, any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day, unless otherwise indicated.

## 2. CONDITIONS

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

- (a) all of the Conditions having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement by 8.00 am on the Implementation Date; and
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with its terms before 8.00 am on the Implementation Date.

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### 3. IMPLEMENTATION SEQUENCE

3.1 Subject to any amendments or variations as may be required by the Court and the conditions set out in clause 2 being satisfied or waived in accordance with the provisions of the Scheme Implementation Agreement, the following will occur on the dates specified and in the sequential order specified below:

- (a) Following the sealing of the Final Court Orders:
  - (i) Trade Me will advise NZX of the grant of the Final Court Orders and, once known, the Trading Halt Date and Record Date;
  - (ii) at the close of trading on the Trading Halt Date, trading in Shares on the NZX Main Board and ASX will be suspended; and
  - (iii) the Scheme Shareholders entitled to participate in the Scheme will be determined as those persons registered as the holders of one or more Scheme Shares on the Register on the Record Date. The Register in this form will solely determine entitlements to the Scheme Consideration.
- (b) At no later than 4:00pm on the Business Day before the Implementation Date (and subject to the Scheme Implementation Agreement not having been terminated), Apax must deposit (or procure the deposit of) an amount equal to the aggregate amount of the Scheme Consideration payable to Scheme Shareholders in immediately available cleared funds into a New Zealand denominated trust account operated by Link (and which is in compliance with the details set out at clause 4.1 below) (the "**Link Trust Account**").
- (c) Commencing at 9.00 am on the Implementation Date, the following steps will occur sequentially:
  - (i) without any further act or formality, all the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, will be transferred to Apax, and Trade Me must enter, or procure the entry of, the name of Apax in the Register in respect of all of the Scheme Shares; and
  - (ii) subject to compliance in full with clause 3.1(c)(i), Apax must instruct Link to pay or procure the payment from Link Trust Account of the Scheme Consideration to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Register on the Record Date.

### 3.2 Dealings and Register:

- (a) Trade Me must not accept for registration, nor recognise for any purpose (except a transfer to Apax pursuant to this Scheme Plan), any subsequent transfer or transmission application or other request received after 7.00 pm on the Record Date, or received prior to such times but not in registrable or actionable forms.
- (b) A holder of Scheme Shares (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them, after close of trading on the Trading Halt Date otherwise than pursuant to this Scheme Plan, and any attempt to do so will have no effect and Trade Me and Apax shall be entitled to disregard any such disposal.

- (c) All statements of holding for Shares (other than statements of holding in favour of Apax) will cease to have effect after 7:00 pm on the Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Register (other than entries on the Register in respect of Apax) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of Shares relating to that entry.
- (d) As soon as possible on the first Business Day after the Record Date and in any event by 7:00 pm on that day, Trade Me must make available to Apax in the form Apax reasonably requires, details of the names, Registered Addresses and holdings of Shares for each Scheme Shareholder as shown in the Register on the Record Date.

#### 4. LINK TRUST ACCOUNT AND DIRECTION

##### 4.1 Details of Link Trust Account:

- (a) Subject to clause 4.1(b), the Link Trust Account will be held and operated by Link on the basis that the funds are held on trust for Apax and to its order, such that only Apax may direct how the funds will be paid from the Link Trust Account.
- (b) Clause 4.1(a) is subject to a standing direction from Apax to Trade Me and Link to make payment of the Scheme Consideration to the Scheme Shareholders upon transfer of the Scheme Shares to Apax under clause 3.1(c)(ii).
- (c) The details of the Link Trust Account will be provided to Apax by (or on behalf of) Link not less than 3 Business Days before the Implementation Date.

- 4.2 **Interest:** Any interest earned on the amount deposited will be payable to Apax by Link as directed by Apax (less bank fees and other third party charges relating to the account).

#### 5. PAYMENT OF THE SCHEME CONSIDERATION

##### 5.1 Method of payment: The payment under clause 3.1(c)(ii) will be satisfied by:

- (a) where a Scheme Shareholder has, not less than [●] Business Days prior to the Record Date, made a valid election in accordance with Trade Me's requirements (acting through Link) to receive payments from Trade Me by electronic funds transfer to a bank account nominated by that Scheme Shareholder, paying the relevant amount by electronic transfer in accordance with that election[ or an election made in accordance with the instructions in the Scheme Booklet] (unless Link in its absolute discretion elects to make the payment in accordance with clause 5.1(b)); or
- (b) otherwise dispatching, or procuring the dispatch of, a cheque for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.3).

- 5.2 **Australian dollars:** For the purposes of clause 5.1(a), if Trade Me requires, where a Scheme Shareholder is to be paid the relevant Scheme Consideration in Australian dollars in accordance with section [●] of the Scheme Booklet, then Trade Me may procure that the payment pursuant clause 5.1 can be made in Australian dollars, provided however that this will be a matter

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between Trade Me and the applicable Scheme Shareholder. Apax will satisfy its obligation by complying with clause 3.1(b).

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

- (a) subject to clause 5.1, the Scheme Consideration is payable to the joint holders and any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Trade Me, the holder whose name appears first in the Register as at the Record Date or to the joint holders; and
- (b) any other document required to be sent under this Scheme Plan, will be forwarded to either, at the sole discretion of Trade Me, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

5.4 **Surplus in Link Trust Account:** To the extent that, following satisfaction of the obligations under clause 3.1(c)(ii), there is a surplus in the Link Trust Account that surplus (less any amount retained under clause 5.6(b)) shall be paid to Apax.

5.5 **Unclaimed monies:**

- (a) Apax may cancel a cheque issued under clause 5.1(b) if the cheque is returned to Trade Me or has not been presented for payment within one year after the Implementation Date.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Trade Me, Trade Me must reissue, or procure the reissue of, a cheque that was previously cancelled under clause 5.5(a).

5.6 **Orders of a court or Government Authority:** Notwithstanding any other provision of this Scheme Plan, if written notice is given to Trade Me on or prior to the Record Date of an order or direction made by a court of competent jurisdiction or a Government Authority that:

- (a) requires consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with clause 3.1(c)(ii), Trade Me will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents the consideration from being provided to any particular Scheme Shareholder in accordance with clause 3.1(c)(ii), or the payment of such consideration is otherwise prohibited by applicable law, the payment (equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration) will be retained in the Link Trust Account until such time as provision of the consideration to the Scheme Shareholder in accordance with clause 3.1(c)(ii) is permitted by that order or direction or otherwise by law. Any amount so retained under this clause 5.6(b) may be held by Trade Me or any of Trade Me's related companies, provided that Apax procures that such company complies with the obligations under this clause to pay such consideration to any applicable Scheme Shareholders,

and such provision or retention (as the case may be) will constitute the full discharge of Apax's and Trade Me's obligations under clause 3.1(c)(ii) with respect to the amount so provided or retained.

## 6. GENERAL PROVISIONS

### 6.1 Title to and rights in Scheme Shares:

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme Plan to Apax will, at the time of transfer to Apax, vest in Apax free from all mortgages, charges, liens, encumbrances, pledges, security interest (including any "security interests" within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind).
- (b) Each Scheme Shareholder is taken to have warranted to Apax on the Implementation Date that all their Scheme Shares (including any rights and entitlements attaching to those shares) which are transferred under this Scheme Plan will, at the time of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 17(1)(a) of the Personal Property Securities Act 1999) and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their Shares to Apax together with any rights and entitlements attaching to those shares.

### 6.2 Authority given to Trade Me: Each Scheme Shareholder, without the need for any further act:

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

and Trade Me, for itself and on behalf of each of its directors, accepts each such appointment. Each such attorney and agent, may sub-delegate its actions, authorities or powers under this clause 6.3 to one or more of Trade Me's officers.

### 6.3 Binding effect of Scheme:

- (a) The Scheme binds:
  - (i) Trade Me;
  - (ii) Apax; and
  - (iii) all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting).
- (b) In the event of any inconsistency, this Scheme Plan overrides Trade Me's constitution.

### 6.4 End Date: The Scheme must be implemented by the End Date. If the Scheme has not been implemented by the End Date, this Scheme Plan will become void and be of no further force or

effect (other than any provision of the Scheme or this Scheme Plan relating to the repayment to Apax of any funds deposited in accordance with clause 2 and the interest thereon (less bank fees and other third party charges directly in connection with the account)).

6.5 **No liability when acting in good faith:** Each Scheme Shareholder agrees that none of the directors, officers or employees of Trade Me or Apax, will be liable for anything done or omitted to be done in the performance of the Scheme in good faith.

6.6 **Governing law:** This Scheme Plan is governed by and must be construed in accordance with the laws of New Zealand. The parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of all matters arising out of or relating to this Scheme Plan, its performance or subject matter. The parties irrevocably waive any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

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**SCHEDULE 6****Standard OIO conditions**

For the purposes of clause 3.3, the terms and conditions are:

1. the time period after which the consent will lapse if the Scheme Shares have not been acquired by and transferred to Apax, provided such date is not less than 12 months from the date of the consent;
2. the requirement for Apax to notify the Overseas Investment Office in writing confirming that the Scheme Shares were transferred to Apax, such notice to include:
  - a. the date the Scheme became Effective;
  - b. the final consideration paid;
  - c. the structure by which the transfer of Scheme Shares was made;
  - d. where applicable, copies of transfer documents and settlement statements; and
  - e. any other information that would aid the Overseas Investment Office in its function to monitor conditions of consent;
3. the requirement that Apax, or the individuals with control of Apax, must:
  - a. continue to be of good character; and
  - b. not become an individual of the kind referred to in sections 15 or 16 of the Immigration Act 2009 (New Zealand);
4. the requirement that Apax must notify the Overseas Investment Office within 20 Business Days if:
  - a. Apax, any individual with control of Apax, or any person in which Apax or any individual with control of Apax has, or had at the time of the offence or contravention, a 25% or more ownership or control interest, commits an offence or contravenes the law (whether convicted or not);
  - b. any individual with control of Apax:
    - a. ceases to be of good character;
    - b. commits an offence or contravenes the law (whether convicted or not); or
    - c. becomes an individual of the kind referred to in section 15 or 16 of the Immigration Act 2009; or
  - c. Apax:
    - a. becomes aware of any other matter that reflects adversely on an fitness of any individual with control of Apax to control Apax;

- b. ceases to be an overseas person; or
  - c. disposes of the Scheme Shares.
5. the requirement that Apax must, if requested in writing by the OIO, provide a written report within 20 Business Days (or such other timeframe as specified) on any matter relating to its compliance with the representations and plans made or submitted in support of the application and notified by the OIO as having been taken into account by the OIO when the consent was granted or the conditions of consent were decided by the OIO;
  6. that the information provided by Apax to the Overseas Investment Office or the relevant Minister or Ministers in connection with the application for the consent was correct at the time it was provided and
  7. in respect of any residential land that the Company has a relevant interest in, to extent within its control, maintain the current use of such residential land.

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**SCHEDULE 7**

**Deed Poll**

Attached.

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This **Deed Poll** is made on [•]

**BY**

**Titan AcquisitionCo New Zealand Limited**

(NZCN 7170554), a company incorporated in New Zealand, with its registered office at Level 22, 48 Shortland Street, Auckland, New Zealand ("**Apax**")

**IN FAVOUR OF**

Each registered holder of ordinary shares in Trade Me Group Limited ("**Trade Me**") on issue as at the Scheme Record Date.

**BACKGROUND**

- A. Trade Me and Apax have entered into the Scheme Implementation Agreement.
- B. Trade Me has agreed under the Scheme Implementation Agreement to propose a scheme of arrangement between Trade Me, Apax and the Scheme Shareholders, the effect of which will be that all Scheme Shares will be transferred to Apax and Apax will provide or procure the provision of the Scheme Consideration to the Scheme Shareholders.
- C. Apax is entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to pay the Scheme Consideration to Scheme Shareholders in accordance with the Scheme Plan.

**IT IS DECLARED:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions:** In this deed poll, unless the context otherwise requires:

"**Final Orders**" means, on application of Trade Me, orders that the Scheme will be binding on Trade Me, Apax, Shareholders and/or such other persons or class of persons as the Court may specify, in accordance with section 236(1) (and section 237, if applicable) of the Companies Act;

"**Scheme Implementation Agreement**" means the Scheme Implementation Agreement entered into between Trade Me and Apax dated [•]; and

"**Scheme Plan**" means the scheme plan attached as Schedule 5 to the Scheme Implementation Agreement, subject to any alterations or conditions approved by Apax and Trade Me in writing and which are disclosed to the Court prior to the Court making the Final Orders,

and words defined in the Scheme Plan which are not separately defined in this deed poll have the same meaning when used in this deed poll.

**1.2 Interpretation:** Clause 1.2 of the Scheme Implementation Agreement applies to the interpretation of this deed poll, except that references to "this agreement" are to be read as references to "this deed poll".

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1.3 **Nature of deed poll:** Apax acknowledges that:

- (a) this deed poll is intended to confer a benefit upon, and therefore be relied upon and enforced by, any Scheme Shareholder in accordance with its terms under part 2 of the Contract and Commercial Law Act 2017 (but not otherwise) even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme Plan, each Scheme Shareholder irrevocably appoints Trade Me and each of its directors and officers (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Apax on the date prescribed for such appointment in connection with the Scheme (but without limiting each Scheme Shareholder's right to itself enforce this deed poll).

Notwithstanding the foregoing, this deed poll may be varied in accordance with clause 7.3 without the approval of any Scheme Shareholder.

**2. CONDITIONS TO OBLIGATIONS**

2.1 **Conditions:** This deed poll, and the obligations of Apax under this deed poll, are conditional in all respects on the Scheme becoming Effective.

2.2 **Termination:** The obligations of Apax under this deed poll to the Scheme Shareholders will automatically terminate, and the terms of this deed poll will be of no force or effect, if:

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

unless Apax and Trade Me otherwise agree in writing.

2.3 **Consequences of termination:** If this deed poll terminates under clause 2.2 then Apax is released from its obligations to further perform this deed poll.

**3. SCHEME CONSIDERATION:**

3.1 Subject to clause 2, Apax:

- (a) undertakes in favour of each Scheme Shareholder to deposit, or procure the deposit of, in immediately available cleared funds, by no later than 4.00pm on the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Scheme Consideration payable to all Scheme Shareholders as set out in the Scheme Plan, such deposit to be made into a New Zealand dollar denominated trust account operated by Link Market Services Limited to be held and dealt with in accordance with the Scheme Plan; and
- (b) irrevocably acknowledges and agrees that, subject to compliance in full with clause 3.1(c)(i) of the Scheme Plan, the Scheme Consideration deposited into the trust accounts referred to in clause 3.1(a) above must be applied to the Scheme Shareholders in satisfaction of their respective entitlements to receive Scheme Consideration under the Scheme in accordance with the Scheme Plan.

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## 4. WARRANTIES

4.1 Apax represents and warrants in favour of each Scheme Shareholder that:

- (a) **Validly existing:** it is a company validly existing under the laws of New Zealand;
- (b) **Corporate power:** it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **Corporate action:** it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **Deed Poll valid:** this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) **No conflict:** this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

## 5. CONTINUING OBLIGATIONS

5.1 This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) Apax has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

## 6. NOTICES

6.1 **Form of Notice:** A notice or other communication in respect of this deed poll ("**Notice**") must be in writing and may be delivered or sent by post or email to Apax as follows:

Attention: The Directors  
 Address: Level 22, Vero Centre, 48 Shortland Street, Auckland, New Zealand  
 Email: anna.buchly@bellgully.com

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

Attention: Roy Mackenzie, Apax Partners  
 Address: 601 Lexington Avenue, 53<sup>rd</sup> Floor, New York, NY 10022  
 Email: Roy.Mackenzie@apax.com

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).

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

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- (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); or
- (c) if sent by email, upon the generation of a receipt notice by the recipient's server or, if such notice is not so generated, upon 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.

6.3 **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 email was properly addressed and transmitted as the case may be.

## 7. GENERAL

### 7.1 Governing law and jurisdiction:

- (a) This deed poll is governed by the laws of New Zealand.
- (b) Apax irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New Zealand in respect of any proceedings arising out of or in connection with this deed poll. Apax irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

### 7.2 Waiver:

- (a) Apax may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) For the purposes of this clause 7.2:
  - (i) "**conduct**" includes delay in the exercise of a right;
  - (ii) "**right**" means any right arising under or in connection with this deed poll and includes the right to rely on this clause; and
  - (iii) "**waiver**" includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

### 7.3 Variation:

- (a) Subject to clauses 7.3(b) and 7.3(c), this deed poll may not be varied.

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- (b) Before the date on which the Final Orders are made, this deed poll may be varied by agreement in writing between Apax and Trade Me, in which event Apax and Trade Me will enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation.
- (c) If the Court orders that it is a condition of the Scheme that Apax enter into a new deed poll which has the effect of reversing any variation under clause 7.3(b), then, if Apax so agrees, Apax must promptly enter into a further deed poll in favour of the Scheme Shareholders to give effect to the reversal of that variation.

- 7.4 **Cumulative rights:** The rights, powers and remedies of Apax and the Scheme Shareholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.
- 7.5 **Assignment:** The rights and obligations of Apax and each Scheme Shareholder under this deed poll are personal. They cannot be assigned, charged or otherwise dealt with at law or in equity. Any purported dealing in contravention of this clause 7.5 is invalid
- 7.6 **Further action:** Apax will, at its own expense, do all things and execute all documents reasonably required to give full effect to this deed poll and the transactions contemplated by it.

#### EXECUTED AS A DEED POLL

**SIGNED** on behalf of **Titan AcquisitionCo  
New Zealand Limited** by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director

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