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ABN 98 009 713 704

**Metcash Limited**
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17 March 2010

## ASX RELEASE

### SUPREME COURT OF VICTORIA APPROVES SCHEMES OF ARRANGEMENT

The Supreme Court of Victoria today approved the inter-conditional Mitre 10 Australia Limited (**M10A**) and Mitre 10 Limited (**M10L**) (together, **Mitre 10**) schemes of arrangement as more particularly described in the Mitre 10 Scheme Booklet dated 15 February 2010. The Court's approval of the schemes follows their approval by M10A and M10L shareholders at scheme meetings held on Friday, 12 March 2010.

A copy of the Court's orders approving the schemes (which is attached) was lodged with the Australian Securities and Investments Commission earlier today at which time the schemes became effective.

Under the schemes of arrangement, Metcash Trading Limited (**Metcash**) will acquire a 50.1% interest in Mitre 10 in return for injecting an estimated $55 million of new equity capital into the Mitre 10 Group.

The record date under the M10L scheme for determining entitlements to M10L scheme consideration will be 5.00pm on Thursday, 18 March 2010 and the record date under the M10A scheme for determining entitlements to M10A scheme consideration will be 5.00pm on Tuesday, 23 March 2010.

The M10L scheme will be implemented on Monday, 22 March 2010. The M10A scheme will be implemented on Thursday, 25 March 2010.

In connection with implementing the schemes of arrangement, with effect from today:

- M10A directors Justin Benjamin, Brian Mudge, Christopher Sadler, Bruce Tindle-May and Arthur Trindall and M10L directors William Allen, Martin Dippie, Mark Fahey, Timothy Meyers, Frederick Womersley and David Woodman have resigned from the boards of M10A and M10L respectively;

- the nominee directors of Metcash, Andrew Reitzer, Edwin Jankelowitz, Mike Jablonski and Ken Bean have been appointed to the M10A and M10L boards; and

- to the extent the nominee directors of M10A, Lance Collins, Gary Woodruff and Phillip Petrie, are not already directors of M10A and M10L, they have each been appointed to the boards of M10A and M10L.

- the nominee directors of Metcash, Andrew Reitzer, Edwin Jankelowitz, Mike Jablonski and Ken Bean and the nominee directors of M10A, Lance Collins, Gary Woodruff and Phillip Petrie have also been appointed to the Mittenmet Limited Board.

The directors of Mitre 10 and Metcash are delighted with this outcome.

For Further Information Call:


**Metcash**

Andrew Reitzer
Metcash Limited
(02) 9741 3060

Tim Allerton
City Public Relations
(02) 9267 4511
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**Mitre 10 Australia**

Mark Burrowes
Mitre 10 Australia
(03) 9703 4232

Carolyn Rogers
Mitre 10 Communications Manager
(03) 9703 4519
(0407) 869 083

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION

COMMERCIAL COURT

LIST B
No. S CI 2010 543

**IN THE MATTER OF MITRE 10 AUSTRALIA LTD ABN 98 009 713 704**

**MITRE 10 AUSTRALIA LTD ABN 98 009 713 704**

Plaintiff

## GENERAL FORM OF ORDER

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| | |
|---|---|
| **JUDGE** | The Honourable Justice Robson |
| **DATE MADE** | 17 March 2010 |
| **ORIGINATING PROCESS** | Originating process filed on 5 February 2010 |
| **ATTENDANCES** | Mr P D Crutchfield of Senior Counsel and C T Möller of Counsel for the plaintiff<br><br>Mr M N Connock of Senior Counsel for Metcash Trading Ltd and Mittenmet Ltd |
| **OTHER MATTERS** | The plaintiff relied upon the affidavits of:<br>1. Catherine Oosterman sworn 5 March 2010;<br>2. Lance Harcourt Collins sworn 12 March 2010;<br>3. Jolyon Percival Rogers sworn 12 March 2010; and<br>4. Jolyon Percival Rogers sworn 17 March 2010,<br>filed in this proceeding and the exhibits thereto.<br><br>The Court noted that the Australian Securities and Investments Commission had provided a letter dated 16 March 2010 indicating that it had no objection to the scheme of arrangement. |

IN THE SUPREME COURT
17 MAR 2010
AC
ASSOCIATE TO JUSTICE ROBSON

**THE COURT ORDERS THAT:**

1. Pursuant to section 411(4)(b) of the *Corporations Act 2001* (Cth) (**"Act"**), the scheme of arrangement between the plaintiff and its members, a copy of which is attached to these orders, is approved.

2. Pursuant to section 411(12) of the Act, the plaintiff is exempted from compliance with section 411(11) of the Act.

3. This order be drawn up by the solicitors for the plaintiff and be signed by Justice Robson.

DATE: 17 March 2010

SUPREME COURT OF VICTORIA
Associate of a Judge of the Court

THE HONOURABLE JUSTICE ROBSON

# Scheme of Arrangement

Mitre 10 Australia Limited
ACN 009 713 704

and

The holders of fully paid ordinary shares in M10A as at the M10A Record Date

**Middletons**
Melbourne office
Ref: ZTOW.JXR.10021409

## Table of Contents

# Scheme of Arrangement

Pursuant to section 411 of the *Corporations Act 2001 (Cth)*

## Parties

1. **Mitre 10 Australia Limited** ACN 009 713 704 of 12 Dansu Court, Hallam, Victoria (**M10A**)

2. The holders of fully paid ordinary shares in M10A as at the M10A Record Date (**M10A Scheme Shareholders**)

## Agreed terms

## 1. Definitions and interpretation

### 1.1 Definitions

In this M10A Scheme:

**A Class Shares** means those issued shares comprising the Class "A" shares as set out in clause 2.3 of M10A Constitution;

**ASIC** means the Australian Securities and Investments Commission;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne or Sydney;

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

**Court** means the Supreme Court of Victoria or any other court of competent jurisdiction under the Corporations Act agreed to in writing by Metcash, NewCo and M10A;

**Effective** means, when used in relation to a scheme of arrangement under Part 5.1 of the Corporations Act, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to that scheme of arrangement;

**Effective Date** means, when used in relation to a scheme of arrangement under Part 5.1 of the Corporations Act, the date on which the scheme of arrangement becomes Effective;

**Encumbrance** means:

(a) an interest or power reserved in or over an interest in an asset, including any retention of title;

(b) an interest or power created or arising in or over an interest in an asset under a bill of sale, mortgage, charge, lien, pledge, trust or other similar instrument, device or power; or

(c) any other adverse right, title or interest of any nature, by way of security for the payment of a debt or the performance of any other obligation, and includes any agreement or arrangement (whether legally binding or not) to grant or create any of the above;

**End Date** means 6 months from the date of the Investment and Implementation Agreement;

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority (including any agency responsible for the administration of environment, health and safety issues) and includes any self-regulatory organisation established under statute and includes the Takeovers Panel, the Australian Securities and Investments Commission and ASX Limited;

**Ineligible Foreign Shareholder** means a M10A Scheme Shareholder whose address shown in the M10A Share Register is a place outside Australia and its external territories unless NewCo determines that it is lawful and not unduly onerous or impracticable to issue that M10A Scheme Shareholder with NewCo Convertible Redeemable Preference Shares when the M10A Scheme becomes Effective;

**Investment and Implementation Agreement** means the Investment and Implementation Agreement dated 10 December 2009 (as subsequently amended) between M10A, M10L, Metcash and NewCo;

**Law** means:

(a) principles of law or equity established by decisions of courts;

(b) statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a Government Agency; and

(c) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a Government Agency that have the force of law;

**M10A Board** means the board of directors of M10A;

**M10A Director** means a director of M10A;

**M10A Implementation Date** means the second Business Day after the M10A Record Date;

**M10A Record Date** means 5:00pm on the first Business Day after the M10L Implementation Date;

**M10A Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between M10A and the M10A Scheme Shareholders to give effect to the acquisition by NewCo of all the M10A Scheme Shares in return for the issue of NewCo Convertible Redeemable Preference Shares to M10A Scheme Shareholders, (subject to any amendments as may be agreed in writing between Metcash, NewCo and M10A);

**M10A Scheme Consideration** means the consideration to be provided by NewCo to each M10A Scheme Shareholder for the transfer to NewCo of each M10A Scheme Share, as determined in accordance with the terms of this M10A Scheme;

**M10A Scheme Deed Poll** means the deed poll executed by NewCo;

**M10A Scheme Meeting** means the meeting of M10A Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act;

**M10A Scheme Shareholders** means each M10A Shareholder recorded in the M10A Share Register as at the M10A Record Date;

**M10A Scheme Shares** means all of the fully paid ordinary shares in M10A on issue as at the M10A Record Date;

**M10A Share** means a fully paid ordinary share in M10A;

**M10A Shareholder** means a holder of fully paid ordinary shares in the capital of M10A;

**M10A Share Register** means the register of members of M10A;

**M10L** means Mitre 10 Limited ACN 004 603 114;

**M10L Implementation Date** means the second Business Day after the M10L Record Date;

**M10L Record Date** means 5.00pm on the first Business Day after the Effective Date in respect of the M10L Scheme;

**M10L Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between M10L and the M10L Scheme Shareholders to give effect to the acquisition by M10A of all the M10L Scheme Shares, in return for the issue of fully paid ordinary shares in M10A to M10L Scheme Shareholders;

**M10L Scheme Shareholders** means each M10L Shareholder recorded in the M10L Share Register as at the M10L Record Date;

**M10L Scheme Shares** means all M10L Shares held by the M10L Scheme Shareholders as at the M10L Record Date;

**M10L Share** means a fully paid ordinary share of M10L;

**M10L Share Register** means register of members of M10L;

**M10L Shareholder** means each person who is registered as the holder of a M10L Share;

**Metcash** means Metcash Trading Limited ACN 000 031 569;

**NewCo** means Mittenmet Limited ACN 141 010 906;

**NewCo Constitution** means the constitution of NewCo in force from time to time;

**NewCo Convertible Redeemable Preference Shares** means convertible redeemable preference shares in the capital of NewCo which have attached to them the rights and obligations set out in the NewCo Constitution and the Corporations Act;

**NewCo Share Register** means the register of members of NewCo;

**Registered Address** means in relation to a M10A Shareholder, the address shown in the M10A Share Register;

**Sale Agent** means a person appointed by NewCo after consultation with M10A to sell the NewCo Convertible Redeemable Preference Shares that are attributable to Ineligible Foreign Shareholders under the terms of the M10A Scheme; and

**Second M10A Court Date** means the first day on which an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the M10A Scheme is heard,

and capitalised terms used in this M10A Scheme which are not defined have the meaning given to those terms in the Investment and Implementation Agreement.

## 1.2 Interpretation

In this M10A Scheme, headings are used for convenience only and do not affect the interpretation of this M10A Scheme and unless the context requires otherwise:

(a) the singular includes the plural and vice versa;

(b) a gender includes the other genders;

(c) other grammatical forms of defined words or expressions have corresponding meanings;

(d) a reference to a document includes the document as modified from time to time and any document replacing it;

(e) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;

(f) the word "person" includes a natural person and any body or entity whether incorporated or not;

(g) the word "month" means calendar month and the word "year" means 12 months;

(h) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;

(i) a reference to a thing includes a part of that thing;

(j) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;

(k) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";

(l) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this M10A Scheme;

(m) money amounts are stated in Australian currency unless otherwise specified;

(n) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body; and

(o) a reference to a time is a reference to the time in Melbourne.

## 2. Preliminary

(a) M10A is an unlisted public company registered in Queensland and is a company limited by shares.

(b) At 27 January 2010 M10A's issued share capital consisted of:

(i) 29,390,766 fully paid ordinary shares; and

(ii) 2 fully paid ordinary shares which are classified as A Class Shares.

(c) NewCo is an unlisted public company registered under the laws of Victoria and is a company limited by shares.

### 2.2 Summary of the M10A Scheme

(a) If the M10A Scheme becomes Effective, on the M10A Implementation Date:

(i) NewCo will provide the M10A Scheme Consideration to M10A Scheme Shareholders in accordance with the M10A Scheme and the M10A Scheme Deed Poll; and

(ii) all the M10A Scheme Shares held by M10A Scheme Shareholders will be transferred to NewCo and M10A will enter the name of NewCo in the M10A Share Register in respect of the M10A Scheme Shares held by M10A Scheme Shareholders.

(b) NewCo and M10A have agreed by executing the Investment and Implementation Agreement to implement the M10A Scheme.

(c) NewCo has agreed by executing the M10A Scheme Deed Poll that NewCo will provide the M10A Scheme Consideration to M10A Scheme Shareholders in accordance with the terms of the M10A Scheme and M10A Scheme Deed Poll.

## 3. Conditions

(a) The M10A Scheme is conditional on:

(i) all the conditions in clause 6.1 of the Investment and Implementation Agreement (other than the conditions in clause 6.1(c) and 6.1(f) of the Investment and Implementation Agreement) having been satisfied or waived in accordance with the terms of the Investment and Implementation Agreement by 8.00am on the Second M10A Court Date;

(ii) as at 8.00am on the Second M10A Court Date, the Investment and Implementation Agreement having not been terminated in accordance with its terms;

(iii) approval of this M10A Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act; and

(iv) approval of the M10L Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act.

(b) The satisfaction of clause 3(a) is a condition precedent to the operation of clauses 4 and 5.

(c) The M10A Scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the End Date or any later date that M10A and NewCo agree in writing.

(d) NewCo and M10A will provide to the Court at the Second M10A Court Date a certificate confirming (in respect of matters within their knowledge) whether or not the conditions precedent in the Investment and Implementation Agreement and this M10A Scheme (other than the conditions in clause 6.1(c) and clause 6.1(f) of the Investment and Implementation Agreement) have been satisfied or waived. The certificate constitutes conclusive evidence that such conditions precedent are satisfied, waived or taken to be waived.

# 4. Implementation of the M10A Scheme

## 4.1 Lodgement

M10A will lodge with ASIC office copies of the Court orders under section 411 of the Corporations Act approving the M10A Scheme by the later of:

(a) 5.00pm on the day on which the Court approves the M10A Scheme; or

(b) 5.00pm on the day on which the Court orders are entered.

## 4.2 Transfer of M10A Scheme Shares

On the M10A Implementation Date:

(a) subject to the issue of the M10A Scheme Consideration in the manner contemplated by clause 5.2, the M10A Scheme Shares, together with all rights and entitlements attaching to the M10A Scheme Shares as at the M10A Implementation Date, will be transferred to NewCo, without the need for any further act by any M10A Scheme Shareholder by:

(i) M10A delivering to NewCo a duly completed and executed share transfer form or forms (or master share transfer form) to transfer all the M10A Scheme Shares to NewCo; and

(ii) NewCo duly executing such transfer form or forms attending to the stamping of the form or forms (if required) and delivering it or them to M10A for registration; and

(b) immediately after receipt of the transfer form or forms in accordance with clause 4.2(a)(ii), M10A must, subject to NewCo carrying out the steps referred to in clause 4.2(a), enter, or must procure the entry of, the name of NewCo in the M10A Share Register in respect of the M10A Scheme Shares.

# 5. M10A Scheme Consideration

## 5.1 Form of M10A Scheme Consideration

(a) The M10A Scheme Consideration in respect of each M10A Scheme Share is to be the number of NewCo Convertible Redeemable Preference Shares for every one M10A Scheme Share calculated as follows:

A = 499,000,000/B

where:

A = the number of NewCo Convertible Redeemable Preference Shares for every one M10A Scheme Share

B = the total number of M10A Shares on issue as at the M10A Record Date,

provided that the maximum number of NewCo Convertible Redeemable Preference Shares to be issued by NewCo in aggregate in connection with the M10A Scheme will not exceed 499,000,000.

(b) Each M10A Scheme Shareholder is entitled to receive the M10A Scheme Consideration in respect of each M10A Scheme Share held by that M10A Scheme Shareholder.

## 5.2 Provision of M10A Scheme Consideration

(a) On or before the M10A Implementation Date, in consideration for the transfer of the M10A Scheme Shares to NewCo, M10A must procure that NewCo, in relation to each M10A Scheme Shareholder, issues such number of NewCo Convertible Redeemable Preference Shares to which that M10A Scheme Shareholder is entitled under clause 5.1.

(b) The obligations of M10A under clause 5.2(a) will be satisfied by NewCo:

(i) no later than the M10A Implementation Date, dispatching a share certificate or holding statement (or equivalent document) in respect of the requisite number of NewCo Convertible Redeemable Preference Shares issued to each M10A Scheme Shareholder in the name of each M10A Scheme Shareholder by prepaid post to their Registered Address (as at the M10A Record Date); and

(ii) on the M10A Implementation Date entering the name and Registered Address (as at the M10A Record Date) of each M10A Scheme Shareholder on the NewCo Share Register as the holder of the NewCo Convertible Redeemable Preference Shares issued to them under this M10A Scheme.

## 5.3 Ineligible Foreign Scheme Shareholder

(a) NewCo will be under no obligation under the M10A Scheme to provide, and will not provide, any NewCo Convertible Redeemable Preference Shares to an Ineligible Foreign Shareholder, and instead:

(i) subject to clause 5.4, NewCo must issue the NewCo Convertible Redeemable Preference Shares which would otherwise be required to be provided to the Ineligible Foreign Shareholders under the M10A Scheme to the Sale Agent;

(ii) NewCo must procure that, as soon as reasonably practicable after the M10A Implementation Date, the Sale Agent, in consultation with NewCo, sells or procures the sale, of all the NewCo Convertible Redeemable Preference Shares issued to the Sale Agent and remits to NewCo the proceeds of sale (after deduction of any applicable brokerage, stamp duty and other costs, taxes and charges) (**Proceeds**); and

(iii) NewCo must pay, or procure the payment of, to each Ineligible Foreign Shareholder the amount calculated in accordance with the following formula and rounded down to the nearest cent:

$A = (B \div C) \times D$

where

A = the amount to be paid to each Ineligible Foreign Shareholder;

B = the number of NewCo Convertible Redeemable Preference Shares that would otherwise have been issued to that Ineligible Foreign Shareholder had it not been an Ineligible Foreign Shareholder and which are issued to the Sale Agent;

C = the total number of NewCo Convertible Redeemable Preference Shares which would otherwise have been issued to all Ineligible Foreign Shareholders and which are issued to the Sale Agent; and

D = the Proceeds (as defined in clause 5.3(a)(ii)).

(b) None of M10A, NewCo or the Sale Agent gives any assurance as to the price that will be achieved for the sale of NewCo Convertible Redeemable Preference Shares described in clause 5.3(a).

## 5.4 Rounding of fractional entitlements and splitting

(a) Any fractional entitlement of a M10A Scheme Shareholder to a part of a NewCo Convertible Redeemable Preference Share will be rounded down to the nearest whole number of NewCo Convertible Redeemable Preference Shares.

(b) If NewCo is of the opinion, formed reasonably, that several M10A Shareholders, each of which holds a holding of M10A Shares which results in a fractional entitlement to NewCo Convertible Redeemable Preference Shares, have, before the M10A Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each M10A Shareholder's entitlement to the M10A Scheme Consideration, NewCo may direct M10A to give notice to those M10A Shareholders:

(i) setting out the names and Registered Addresses of all of them;

(ii) stating that opinion; and

(iii) attributing to one of them specifically identified in the notice the M10A Shares held by all of them,

and, after the notice has been so given, the M10A Shareholder specifically identified in the notice shall, for the purposes of the M10A Scheme, be taken to hold all those M10A Shares and each of the other M10A Shareholders whose names are set out in the notice shall, for the purposes of the M10A Scheme, be taken to hold no M10A Shares.

### 5.5 Joint holders

In the case of M10A Scheme Shares held in joint names:

(a) any NewCo Convertible Redeemable Preference Share must be issued to and registered in the names of the joint holders; and

(b) the share certificate or holding statement (or equivalent document) in respect of the requisite number of NewCo Convertible Redeemable Preference Shares must be sent to the holder whose name appears first in the M10A Share Register as at the M10A Record Date.

## 6. Issue of NewCo Convertible Redeemable Preference Shares

### 6.1 Issue

(a) The NewCo Convertible Redeemable Preference Shares will be duly and validly issued in accordance with the Law and the NewCo Constitution.

(b) Each M10A Scheme Shareholder agrees to become a member of NewCo and agrees to be bound by the NewCo Constitution as in force from time to time.

(c) Each M10A Scheme Shareholder will be deemed to have irrevocably appointed NewCo and each of its directors and officers (jointly and severally) as its attorneys for the purpose of executing any form of application or transfer required for the NewCo Convertible Redeemable Preference Shares.

(d) On issue, the NewCo Convertible Redeemable Preference Shares will be fully paid and free from any mortgage, charge, lien, Encumbrance or other security interest, except to the extent provided for in the NewCo Constitution.

## 7. Dealings in M10A Scheme Shares

### 7.1 Dealings prior to M10A Record Date

(a) To establish the identity of the M10A Scheme Shareholders, dealings in M10A Shares will only be recognised if registrable transfers in respect of those dealings are received on or before the M10A Record Date at the place where the M10A Share Register is kept.

(b) M10A must register registrable transfers of the kind referred to in clause 7.1(a) on the M10A Record Date.

(c) M10A will not accept for registration or recognise for any purpose any transfer in respect of M10A Shares received after the M10A Record Date.

(d) If this M10A Scheme becomes Effective, a holder of M10A Shares (and any person claiming through that holder) must not dispose of or purport to dispose of any M10A Shares or any interests in them after the M10A Record Date.

### 7.2 Dealings after M10A Record Date

(a) For the purpose of determining entitlements to the M10A Scheme Consideration, M10A must maintain the M10A Share Register in accordance with the provisions of this clause 7 until the M10A Scheme Consideration has been paid to the M10A Scheme Shareholders. The M10A Share Register in this form will solely determine entitlements to the M10A Scheme Consideration.

(b) All statements of holding for M10A Shares will cease to have effect from the M10A Record Date as documents of title in respect of those shares. As from the M10A Record Date, each entry current at that date on the M10A Share Register will cease to have effect except as evidence of entitlement to the M10A Scheme Consideration in respect of the M10A Shares relating to that entry.

(c) As soon as possible on or after the M10A Record Date and, in any event, by 5.00pm on the Business Day after the M10A Record Date, M10A must ensure that details of the names, Registered Addresses and holdings of M10A Shares for each M10A Scheme Shareholder are available to NewCo in the form NewCo reasonably requires.

## 8. General M10A Scheme provisions

### 8.1 Consent

If the Court proposes to approve the M10A Scheme subject to any alterations or conditions, M10A may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Metcash and NewCo have both consented in writing.

### 8.2 Agreement of M10A Scheme Shareholders

Each M10A Scheme Shareholder:

(a) agrees to the transfer of its M10A Scheme Shares in accordance with this M10A Scheme and agrees to the variation, cancellation or modification of the rights attached to their M10A Scheme Shares constituted by or resulting from the M10A Scheme; and

(b) acknowledges that this M10A Scheme binds M10A and all M10A Scheme Shareholders (including those who do not attend the M10A Scheme Meeting or do not vote at that meeting or vote against the M10A Scheme at that M10A Scheme Meeting).

### 8.3 Warranties by M10A Scheme Shareholders and title to M10A Scheme Shares

(a) Each M10A Scheme Shareholder is deemed to have warranted to M10A in its own right, and appointed and authorised M10A as its attorney and agent to warrant to NewCo on its behalf, that:

(i) all of its M10A Scheme Shares which are transferred to NewCo under the M10A Scheme will, on the date on which they are transferred to NewCo, be fully paid and free from all mortgages, charges, liens, Encumbrances and interests of third parties of any kind whether legal or otherwise, and free of restrictions on transfer of any kind; and

(ii) it has full power and capacity to sell and to transfer its M10A Scheme Shares to NewCo together with any rights attaching to those M10A Scheme Shares.

M10A undertakes that it will provide such warranty to NewCo as agent and attorney for each M10A Scheme Shareholder.

(b) To the extent permitted by law, the M10A Scheme Shares transferred under the M10A Scheme will be transferred free from all mortgages, charges, liens, Encumbrances and interests of third parties, whether legal or otherwise.

(c) To the extent that any M10A Scheme Shares are subject to an Encumbrance in favour of M10A, then, subject to the M10A Scheme becoming Effective, M10A consents to the transfer of the M10A Scheme Shares under the M10A Scheme.

## 8.4 Beneficial entitlement to M10A Scheme Shares

NewCo will be beneficially entitled to the M10A Scheme Shares transferred to it under the M10A Scheme pending registration by M10A of NewCo in the M10A Share Register as the holder of the M10A Scheme Shares.

## 8.5 Authority given to M10A

(a) M10A Scheme Shareholders will be deemed to have authorised M10A to do and execute all acts, matters, things and documents on the part of each M10A Scheme Shareholder necessary to implement the M10A Scheme, including executing, as agent and attorney of each M10A Scheme Shareholder, a share transfer or transfers or a master share transfer form in relation to M10A Scheme Shares as contemplated by clause 8.5(b) and providing their tax file numbers to NewCo (to the entent that M10A is aware of these numbers).

(b) Each M10A Scheme Shareholder, without the need for any further act, irrevocably appoints M10A and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:

(i) enforcing the M10A Scheme Deed Poll against NewCo;

(ii) executing any document necessary to give effect to the M10A Scheme, including without limitation a proper instrument of transfer of its M10A Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the M10A Scheme Shares.

## 8.6 Appointment of sole proxy

On the M10A Scheme becoming Effective and until M10A registers or procures the registration of NewCo as the holder of all M10A Scheme Shares in the M10A Share Register, each M10A Scheme Shareholder:

(a) is deemed to have irrevocably appointed NewCo as attorney and agent (and directed NewCo in such capacity) to appoint an officer or agent nominated by NewCo as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the M10A Scheme Shares registered in its name and sign any shareholders' resolutions, whether in person, by proxy or by corporate representative and no M10A Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than as pursuant to this clause 8.6(a)); and

(b) must take all other actions in the capacity of a registered holder of M10A Scheme Shares as NewCo reasonably directs.

# 9. General

## 9.1 Duty

(a) Any duty (including related interest or penalties) payable in respect of this M10A Scheme or any instrument created in connection with it must be paid by M10A.

(b) M10A undertakes to keep each M10A Scheme Shareholder indemnified against all liability relating to the duty (including related interest or penalties).

## 9.2 Governing law and jurisdiction

(a) This M10A Scheme is governed by and must be construed in accordance with the laws in force in Victoria.

(b) The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this M10A Scheme, its performance or subject matter.

## 9.3 Notices

Any notice or other communication to or by a party under this M10A Scheme:

(a) may be given by personal service or by ordinary post or pre-paid courier;

(b) must be delivered to the address shown below:

(i) If to M10A:

Address: 12 Dansu Court, Hallam, Victoria 3803
Attention: Company Secretary
Facsimile: (03) 8795 7074

(ii) If to a M10A Scheme Shareholder, at the relevant Registered Address pertaining to that M10A Scheme Shareholder;

(c) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the Corporations Act; and

(d) is deemed to be given by the sender and received by the addressee:

(i) if delivered in person, when delivered to the addressee;

(ii) if posted to a M10A Scheme Shareholder, 2 Business Days (or 6, if addressed outside Australia) after the date of posting to the addressee whether delivered or not; or

(iii) if posted to M10A, on the date on which it is actually received by M10A,

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

## 9.4 Failure to give notice

The accidental omission to give notice of the M10A Scheme Meeting or non-receipt of such notice by a M10A Scheme Shareholder will not invalidate the M10A Scheme Meeting or proceedings of the M10A Scheme Meeting, unless otherwise ordered by the Court.

## 9.5 Counterparts

If this M10A Scheme consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

## 9.6 Conflicting provisions

If there is any conflict between the main body of this M10A Scheme and any schedules or annexures comprising it, then the provisions of the main body of this M10A Scheme prevail.

## 9.7 Non merger

A term or condition of, or act done in connection with, this M10A Scheme does not operate as a merger of any of the rights or remedies of the parties under this M10A Scheme and those rights and remedies continue unchanged.

## 9.8 No right of set-off

Unless this M10A Scheme expressly provides otherwise, a party has no right of set-off against a payment due to another party.

## 9.9 Further action

A party must, at its own expense and within a reasonable time of being requested by another party to do so, do all things and execute all documents necessary to give full effect to this M10A Scheme and the transactions contemplated by it.

middletons

**Melbourne | Perth | Sydney**
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Sydney NSW 2000
Australia
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facsimile: +61 2 9513 2399

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION

**COMMERCIAL COURT**

**LIST B**
**No. S CI 2010 00570**

**IN THE MATTER OF MITRE 10 LIMITED ACN 004 603 114**

**MITRE 10 LIMITED ACN 004 603 114**

Plaintiff

**GENERAL FORM OF ORDER**

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**JUDGE** The Honourable Justice Robson

**DATE MADE** 16 ~~February~~ March AC. 2010

**ORIGINATING PROCESS** Originating process filed on 8 February 2010

**ATTENDANCES** Mr P D Crutchfield of Senior Counsel and C T Möller of Counsel for the plaintiff

Mr M N Connock of Senior Counsel for Metcash Trading Ltd and Mittenmet Ltd

**OTHER MATTERS** The plaintiff relied upon the affidavits of:

1. David William Woodman sworn 12 March 2010; and
2. Graham Leonard Cummings sworn 17 March 2010,

filed in this proceeding, and the exhibits thereto,

and on the affidavits of

1. Catherine Oosterman sworn 5 March 2010;
2. Lance Harcourt Collins sworn 12 March 2010;
3. Jolyon Percival Rogers sworn 12 March 2010;
4. Jolyon Percival Rogers sworn 17 March 2010,

filed in proceeding S CI 2010 543, and the exhibits thereto.

IN THE SUPREME COURT 17 MAR 2010 AC ASSOCIATE TO JUSTICE ROBSON

The Court noted that the Australian Securities and Investments Commission had provided a letter dated 16 March 2010 indicating that it had no objection to the scheme of arrangement..

**THE COURT ORDERS THAT:**

1. Pursuant to section 411(4)(b) of the *Corporations Act 2001* (Cth) (**"Act"**), the scheme of arrangement between the plaintiff and its members, a copy of which is attached to these orders, is approved.

2. Pursuant to section 411(12) of the Act, the plaintiff is exempted from compliance with section 411(11) of the Act.

3. This order be drawn up by the solicitors for the plaintiff and be signed by Justice Robson.

DATE: 17 March 2010

SUPREME COURT OF VICTORIA Associate of a Judge of the Court

# Scheme of Arrangement

Mitre 10 Limited
ACN 004 603 114

and

The holders of fully paid ordinary shares in M10L as at the M10L Record Date

**Middletons**
Melbourne office
Ref: ZTOW.JXR.10021409

SUPREME COURT OF VICTORIA
Associate of a Judge of the Court

3988120

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# Scheme of Arrangement

Pursuant to section 411 of the *Corporations Act 2001 (Cth)*

## Parties

1. **Mitre 10 Limited** ACN 004 603 114 of Level 13, 350 Collins Street, Melbourne, Victoria (**M10L**)

2. The holders of fully paid ordinary shares in M10L as at the M10L Record Date (**M10L Scheme Shareholders**)

## Agreed terms

## 1. Definitions and interpretation

### 1.1 Definitions

In this M10L Scheme:

**ASIC** means the Australian Securities and Investments Commission;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne or Sydney;

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

**Court** means the Supreme Court of Victoria or any other court of competent jurisdiction under the Corporations Act agreed to in writing by M10A and M10L;

**Effective** means, when used in relation to a scheme of arrangement under Part 5.1 of the Corporations Act, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to that scheme of arrangement;

**Effective Date** means, when used in relation to a scheme of arrangement under Part 5.1 of the Corporations Act, the date on which the scheme of arrangement becomes Effective;

**Encumbrance** means:

(a) an interest or power reserved in or over an interest in an asset, including any retention of title;

(b) an interest or power created or arising in or over an interest in an asset under a bill of sale, mortgage, charge, lien, pledge, trust or other similar instrument, device or power; or

(c) any other adverse right, title or interest of any nature, by way of security for the payment of a debt or the performance of any other obligation,

and includes any agreement or arrangement (whether legally binding or not) to grant or create any of the above;

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority (including any agency responsible for the administration of environment, health and safety issues) and includes any self-regulatory organisation established under statute and includes the Takeovers Panel, the Australian Securities and Investments Commission and ASX Limited;

**Ineligible Foreign Shareholder** means a M10L Scheme Shareholder whose address shown in the M10L Share Register is a place outside Australia and its external territories unless M10A determines that it is lawful and not unduly onerous or impracticable to issue that M10L Scheme Shareholder with New M10A Shares when the M10L Scheme becomes Effective;

**Law** means:

(a) principles of law or equity established by decisions of courts;

(b) statutes, regulations or by-laws of the Commonwealth, a State, a Territory or a Government Agency; and

(c) requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a Government Agency that have the force of law;

**M10A** means Mitre 10 Australia Limited ACN 009 713 704;

**M10A Constitution** means the constitution of M10A in force from time to time;

**M10A Share** means a fully paid ordinary share of M10A;

**M10A Share Register** means the register of members of M10A;

**M10L Implementation Date** means the second Business Day after the M10L Record Date;

**M10L Record Date** means the first Business Day after the Effective Date in respect of the M10L Scheme;

**M10L Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between M10L and the M10L Scheme Shareholders to give effect to the acquisition by M10A of all the M10L Scheme Shares, in return for the issue of New M10A Shares to M10L Scheme Shareholders, (subject to any amendments as may be agreed in writing between Metcash, NewCo, M10A and M10L);

**M10L Scheme Consideration** means the consideration (consisting of New M10A Shares) to be provided by M10A to each M10L Scheme Shareholder for the transfer to M10A of each M10L Scheme Share, as set out in this M10L Scheme;

**M10L Scheme Deed Poll** means the deed poll executed by M10A;

**M10L Scheme Meeting** means a meeting to be ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act;

**M10L Scheme Shareholders** means each M10L Shareholder recorded in the M10L Share Register as at the M10L Record Date;

**M10L Scheme Shares** means all M10L Shares on issue as at the M10L Record Date;

**M10L Shareholder** means a holder of M10L Shares;

**M10L Share Register** means the register of members of M10L;

**M10L Share** means a fully paid ordinary share in M10L;

**Merger Implementation Agreement** means the Merger Implementation Agreement dated 10 December 2009 (as subsequently amended) between M10L and M10A;

**Metcash** means Metcash Trading Limited ACN 000 031 569;

**New M10A Shares** means a fully paid ordinary share in M10A to be issued to M10L Scheme Shareholders under the M10L Scheme;

**NewCo** means Mittenmet Limited ACN 141 010 906;

**Registered Address** means in relation to a M10L Shareholder, the address shown in the M10L Share Register;

**Sale Agent** means a person appointed by M10A after consultation with M10L to sell the New M10A Shares that are attributable to Ineligible Foreign Shareholders under the terms of the M10L Scheme;

**Second M10L Court Date** means the first day on which an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the M10L Scheme is heard; and

**Sunset Date** means 6 months after the date of the Merger Implementation Agreement,

and capitalised terms used in this M10L Scheme which are not defined have the meaning given to those terms in the Merger Implementation Agreement.

## 1.2 Interpretation

In this M10L Scheme, unless the context requires otherwise:

(a) the singular includes the plural and vice versa;

(b) a gender includes the other genders;

(c) the headings are used for convenience only and do not affect the interpretation of this M10L Scheme;

(d) other grammatical forms of defined words or expressions have corresponding meanings;

(e) a reference to a document includes the document as modified from time to time and any document replacing it;

(f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;

(g) the word "person" includes a natural person and any body or entity whether incorporated or not;

(h) the word "month" means calendar month and the word "year" means 12 months;

(i) a reference to any time is a reference to Melbourne time;

(j) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;

(k) a reference to a thing includes a part of that thing;

(l) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) includes that statute as amended, consolidated, re-enacted or replaced from time to time;

(m) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";

(n) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this M10L Scheme;

(o) money amounts are stated in Australian currency unless otherwise specified; and

(p) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (**defunct body**), means the agency or body which performs most closely the functions of the defunct body.

## 2. Preliminary

### 2.1 Preliminary

(a) M10L is an unlisted public company registered in Victoria and is a company limited by shares.

(b) As at 27 January 2010, M10L's issued capital was as follows:

(i) 65 class A shares;

(ii) 74 class B shares;

(iii) 90 class C shares;

(iv) 42 class D shares;

(v) 27 class E shares;

(vi) nil F class shares;

(vii) 4 class G shares; and

(viii) 63 class T shares.

(c) M10A is an unlisted public company registered under the laws of Queensland and is a company limited by shares.

### 2.2 Summary of the M10L Scheme

(a) If the M10L Scheme becomes Effective, on the M10L Implementation Date:

(i) M10A will provide the M10L Scheme Consideration to M10L Scheme Shareholders in accordance with the M10L Scheme and the M10L Scheme Deed Poll; and

(ii) all the M10L Scheme Shares held by M10L Scheme Shareholders will be transferred to M10A and M10L will enter the name of M10A in the M10L Share Register in respect of the M10L Scheme Shares held by M10L Scheme Shareholders.

(b) M10A and M10L have agreed by executing the Merger Implementation Agreement to implement this M10L Scheme.

(c) M10A has agreed by executing the M10L Scheme Deed Poll that M10A will provide the M10L Scheme Consideration to M10L Scheme Shareholders in accordance with the terms of the M10L Scheme and the M10L Scheme Deed Poll.

## 3. Conditions

(a) The M10L Scheme is conditional on:

(i) all the conditions in clause 3.1 of the Merger Implementation Agreement (other than the conditions in clause 3.1(f) and 3.1(h) of the Merger Implementation Agreement) having been satisfied or waived in accordance with the terms of the Merger Implementation Agreement by 8.00am on the Second M10L Court Date;

(ii) as at 8:00am on the Second M10L Court Date, the Merger Implementation Agreement having not been terminated in accordance with its terms;

(iii) approval of this M10L Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act; and

(iv) approval of the M10A Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act.

(b) The satisfaction of clause 3(a) is a condition precedent to the operation of clauses 4 and 5.

(c) The M10L Scheme will lapse and be of no further force or effect if the Effective Date does not occur on or before the Sunset Date or any later date that M10L and M10A agree in writing.

(d) M10A and M10L will provide to the Court at the Second M10L Court Date a certificate confirming (in respect of matters within their knowledge) whether or not the conditions precedent in the Merger Implementation Agreement and this M10L Scheme (other than the conditions in clause 3.1(f) and 3.1(h) of the Merger Implementation Agreement) have been satisfied or waived. The certificate constitutes conclusive evidence that such conditions precedent are satisfied, waived or taken to be waived.

# 4. Implementation of the M10L Scheme

## 4.1 Lodgement

M10L will lodge with ASIC office copies of the Court orders under section 411 of the Corporations Act approving the M10L Scheme by the later of:

(a) 5.00pm on the day on which the Court approves the M10L Scheme; or

(b) 5.00pm on the day on which the Court orders are entered.

## 4.2 Transfer of M10L Scheme Shares

On the M10L Implementation Date:

(a) subject to the issue of the M10L Scheme Consideration in the manner contemplated by clause 5.2, the M10L Scheme Shares, together with all rights and entitlements attaching to the M10L Scheme Shares as at the M10L Implementation Date, will be transferred to M10A, without the need for any further act by any M10L Scheme Shareholder by:

(i) M10L delivering to M10A a duly completed and executed share transfer form or forms (or a master share transfer form) to transfer all the M10L Scheme Shares to M10A; and

(ii) M10A duly executing such transfer form or forms, attending to the stamping of the form or forms (if required) and delivering it or them to M10L for registration; and

(b) immediately after receipt of the transfer form or forms in accordance with clause 4.2(a)(ii), M10L must, subject to M10A carrying out the steps referred to in clause 4.2(a), enter, or must procure the entry of, the name of M10A in the M10L Share Register in respect of the M10L Scheme Shares.

# 5. M10L Scheme Consideration

## 5.1 Form of M10L Scheme Consideration

(a) The M10L Scheme Consideration is to be calculated using the following formula:

$A = B / (4 \times C)$

where:

A = the number of New M10A Shares to be issued for every 1 M10L Scheme Share (being the M10L Scheme Consideration);

B = the number of M10A Shares on issue as at the M10L Record Date which, for the avoidance of doubt, includes any M10A Shares issued after the date of the Merger Implementation Agreement and excludes any M10A Shares cancelled after the date of the Merger Implementation Agreement; and

C = the total number of M10L Scheme Shares.

(b) Each M10L Scheme Shareholder is entitled to receive the M10L Scheme Consideration in respect of each M10L Scheme Share held by that M10L Scheme Shareholder.

## 5.2 Provision of M10L Scheme Consideration

(a) On or before the M10L Implementation Date, in consideration for the transfer of the M10L Scheme Shares to M10A, M10L must procure that M10A, in relation to each M10L Scheme Shareholder, issues such number of New M10A Shares to which that M10L Scheme Shareholder is entitled under clause 5.1.

(b) The obligations of M10L under clause 5.2(a) will be satisfied by M10A on the M10L Implementation Date entering the name and Registered Address (as at the M10L Record Date) of each M10L Scheme Shareholder in the M10A Share Register as the holder of the New M10A Shares issued to them under the M10L Scheme.

## 5.3 Rounding of fractional entitlements

(a) Any fractional entitlement of a M10L Scheme Shareholder to a part of a New M10A Share:

(i) which is 0.5 or greater will be rounded up to the nearest whole number of New M10A Shares; and

(ii) which is less than 0.5 will be rounded down to the nearest whole number of New M10A Shares.

(b) If M10A and M10L are of the opinion that several M10L Shareholders, each of which holds a holding of M10L Shares which results in a fractional entitlement to New M10A Shares, have, before the M10L Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to the rounding provided for in the calculation of each M10L Shareholder's entitlement to the M10L Scheme Consideration, M10A and M10L may give notice to those M10L Shareholders:

(i) setting out the names and Registered Addresses of all of them;

(ii) stating that opinion; and

(iii) attributing to one of them specifically identified in the notice the M10L Shares held by all of them,

and, after the notice has been so given, the M10L Shareholder specifically identified in the notice will, for the purposes of the M10L Scheme, be taken to hold all those M10L Shares and each of the other M10L Shareholders whose names are set out in the notice will, for the purposes of the M10L Scheme, be taken to hold no M10L Scheme Shares.

## 5.4 Ineligible Foreign Shareholders

(a) M10A will be under no obligation under the M10L Scheme to provide and will not provide, any New M10A Shares to an Ineligible Foreign Shareholder, and instead:

(i) subject to clause 5.3, M10A must issue the New M10A Shares which would otherwise be required to be provided to the Ineligible Foreign Shareholders under the M10L Scheme to the Sale Agent;

(ii) M10A must procure that, as soon as reasonably practicable after the M10L Implementation Date, the Sale Agent, in consultation with M10A, sells or procures the sale of all the New M10A Shares issued to the Sale Agent and remits to M10A the proceeds of sale (after deduction of any applicable brokerage, stamp duty and other costs, taxes and charges) (the **Proceeds**); and

(iii) M10A must pay, or procure the payment of, to each Ineligible Foreign Shareholder the amount calculated in accordance with the following formula and rounded down to the nearest cent:

$A = (B \div C) \times D$

where

A = the amount to be paid to each Ineligible Foreign Shareholder;

B = the number of New M10A Shares that would otherwise have been issued to that Ineligible Foreign Shareholder had it not been an Ineligible Foreign Shareholder and which are issued to the Sale Agent;

C = the total number of New M10A Shares which would otherwise have been issued to all Ineligible Foreign Shareholders and which are issued to the Sale Agent;

and

D = the Proceeds (as defined in clause 5.4(a)(ii)).

(b) None of M10L, M10A or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New M10A Shares described in clause 5.4(a).

### 5.5 Joint holders

In the case of M10L Scheme Shares held in joint names, any New M10A Shares must be issued to and registered in the names of the joint holders.

## 6. Issue of New M10A Shares

(a) The New M10A Shares will be duly and validly issued in accordance with the Law and the M10A Constitution, will be issued fully paid and will rank equally in all respects with all other M10A Shares then issued and outstanding.

(b) Each M10L Scheme Shareholder agrees to become a member of M10A and agrees to be bound by the M10A Constitution as in force from time to time.

(c) Each M10L Scheme Shareholder will be deemed to have irrevocably appointed M10A and each of its directors and officers (jointly and severally) as its attorneys for the purpose of executing any form of application or transfer required for the New M10A Shares.

(d) On issue, the New M10A Shares will be fully paid and free from any mortgage, charge, lien, Encumbrance or other security interest.

# 7. Dealings in M10L Shares

## 7.1 Dealings prior to M10L Record Date

(a) To establish the identity of the M10L Scheme Shareholders, dealings in M10L Shares will only be recognised if registrable transfers in respect of those dealings are received on or before the M10L Record Date at the place where the M10L Share Register is kept.

(b) M10L must register registrable transfers of the kind referred to in clause 7.1(a) on the M10L Record Date.

(c) M10L will not accept for registration or recognise for any purpose any transfer in respect of M10L Shares received after the M10L Record Date.

(d) If this M10L Scheme becomes Effective, a holder of M10L Shares (and any person claiming through that holder) must not dispose of any M10L Shares or any interest in them after the M10L Record Date.

## 7.2 Dealings after M10L Record Date

(a) For the purpose of determining entitlements to the M10L Scheme Consideration, M10L must maintain the M10L Share Register in accordance with the provisions of this clause 7 until the M10L Scheme Consideration has been paid to the M10L Scheme Shareholders. The M10L Share Register in this form will solely determine entitlements to the M10L Scheme Consideration.

(b) All statements of holding for M10L Shares will cease to have effect from the M10L Record Date as documents of title in respect of those shares. As from the M10L Record Date, each entry current at that date on the M10L Share Register will cease to have effect except as evidence of entitlement to the M10L Scheme Consideration in respect of the M10L Shares relating to that entry.

(c) As soon as possible on or after the M10L Record Date and, in any event, by 5.00pm on the M10L Record Date, M10L must ensure that details of the names, Registered Addresses and holdings of M10L Shares for each M10L Scheme Shareholder are available to M10A in the form M10A reasonably requires.

# 8. General M10L Scheme provisions

## 8.1 Consent

If the Court proposes to approve the M10L Scheme subject to any alterations or conditions, M10L may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which M10A has consented in writing.

## 8.2 Agreement of M10L Scheme Shareholders

Each M10L Scheme Shareholder:

(a) agrees to the transfer of its M10L Scheme Shares in accordance with the M10L Scheme and agrees to the variation, cancellation or modification of the rights attached to their M10L Scheme Shares constituted by or resulting from the M10L Scheme; and

(b) acknowledges that the M10L Scheme binds M10L and all M10L Scheme Shareholders (including those who do not attend the M10L Scheme Meeting or do not vote at that meeting or vote against the M10L Scheme at that M10L Scheme Meeting).

## 8.3 Warranties by M10L Scheme Shareholders and title to the M10L Scheme Shares

(a) Each M10L Scheme Shareholder is deemed to have warranted to M10L, in its own right and appointed and authorised M10L as its attorney and agent to warrant to M10A on its behalf that:

(i) all of its M10L Scheme Shares which are transferred to M10A under the M10L Scheme will, on the date on which they are transferred to M10A, be fully paid and free from all mortgages, charges, liens, Encumbrances and interests of third parties of any kind, whether legal or otherwise and free of restrictions on transfer of any kind; and

(ii) it has full power and capacity to sell and to transfer its M10L Scheme Shares to M10A together with any rights attaching to those M10L Scheme Shares.

M10L undertakes that it will provide such warranty to M10A as agent and attorney for each M10L Scheme Shareholder.

(b) To the extent permitted by law, the M10L Scheme Shares transferred under the M10L Scheme will be transferred free from all mortgages, charges, liens, Encumbrances and interests of third parties of any kind, whether legal or otherwise.

## 8.4 Beneficial entitlement to M10L Shares

M10A will be beneficially entitled to the M10L Scheme Shares transferred to it under the M10L Scheme pending registration by M10L of M10A in the M10L Share Register as the holder of the M10L Scheme Shares.

## 8.5 Authority given to M10L

(a) M10L Scheme Shareholders will be deemed to have authorised M10L to do and execute all acts, matters, things and documents on the part of each M10L Scheme Shareholder necessary to implement the M10L Scheme, including executing, as agent and attorney of each M10L Scheme Shareholder, a share transfer or transfers or a master share transfer form in relation to M10L Scheme Shares as contemplated by clause 8.5(b) and providing their tax file numbers to M10A (to the extent that M10L is aware of these numbers).

(b) Each M10L Scheme Shareholder, without the need for any further act, irrevocably appoints M10L and all of its directors, secretaries and officers (jointly and severally) as its attorney and agent for the purpose of:

(i) enforcing the M10L Scheme Deed Poll against M10A;

(ii) executing any document necessary to give effect to the M10L Scheme, including without limitation a proper instrument of transfer of its M10L Scheme Shares for the purposes of section 1071B of the Corporations Act which may be a master transfer of all the M10L Scheme Shares.

### 8.6 Appointment of sole proxy

On the M10L Scheme becoming Effective and until M10L registers or procures the registration of M10A as the holder of all M10L Scheme Shares in the M10L Share Register, each M10L Scheme Shareholder:

(a) is deemed to have irrevocably appointed M10A as attorney and agent (and directed M10A in such capacity) to appoint an officer or agent nominated by M10A as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the M10L Scheme Shares registered in its name and sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than as pursuant to this clause 8.6(a)); and

(b) must take all other actions in the capacity of a registered holder of M10L Scheme Shares as M10A reasonably directs.

## 9. General

### 9.1 Duty

(a) Any duty (including related interest or penalties) payable in respect of this M10L Scheme or any instrument created in connection with it must be paid by M10A.

(b) M10L undertakes to keep each M10L Scheme Shareholder indemnified against all liability relating to the duty (including related interest or penalties).

### 9.2 Governing law and jurisdiction

(a) This M10L Scheme is governed by and must be construed in accordance with the laws in force in Victoria.

(b) The parties submit to the non-exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this M10L Scheme, its performance or subject matter.

### 9.3 Notices

Any notice or other communication to or by a party under this M10L Scheme:

(a) may be given by personal service or by ordinary post or pre-paid courier;

(b) must be delivered to the address shown below:

(i) If to M10L:

Address: Level 13, 350 Collins Street, Melbourne, Victoria 3000
Attention: Company Secretary
Facsimile: (03) 9602 1539

(ii) If to a M10L Scheme Shareholder, at the relevant Registered Address pertaining to that M10L Scheme Shareholder;

(c) in the case of a corporation, must be signed by an officer or authorised representative of the sender or in accordance with section 127 of the Corporations Act; and

(d) is deemed to be given by the sender and received by the addressee:

(i) if delivered in person, when delivered to the addressee;

(ii) if posted to a M10L Scheme Shareholder, 2 Business Days (or 6, if addressed outside Australia) after the date of posting to the addressee whether delivered or not; or

(iii) if posted to M10L, on the date on which it is actually received by M10L,

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

### 9.4 Failure to give notice

The accidental omission to give notice of the M10L Scheme Meeting or non-receipt of such notice by a M10L Scheme Shareholder will not invalidate the M10L Scheme Meeting or proceedings of the M10L Scheme Meeting, unless otherwise ordered by the Court.

### 9.5 Counterparts

If this M10L Scheme consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

### 9.6 Conflicting provisions

If there is any conflict between the main body of this M10L Scheme and any schedules or annexures comprising it, then the provisions of the main body of this M10L Scheme prevail.

### 9.7 Non merger

A term or condition of, or act done in connection with, this M10L Scheme does not operate as a merger of any of the rights or remedies of the parties under this M10L Scheme and those rights and remedies continue unchanged.

### 9.8 No right of set-off

Unless this M10L Scheme expressly provides otherwise, a party has no right of set-off against a payment due to another party.

## 9.9 Further action

A party must, at its own expense and within a reasonable time of being required by another party to do so, do all things and execute all documents necessary to give full effect to this M10L Scheme and the transactions contemplated by it.

middletons

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